UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of Amazon.com, Inc., Respondent.	CPSC Docket No. 21-2 Hon. Carol Fox Foelak Presiding Officer

DECLARATION OF NICHOLAS GRIEPSMA
IN SUPPORT OF AMAZON'S OPPOSITION TO COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION

I, Nicholas Griepsma, hereby declare:

1. I am an attorney for Respondent Amazon.com, Inc. ("Amazon") in the above-captioned matter.

2. I am over the age of 18 and I am competent to make this declaration.

3. As used in this Declaration, "CPSC" refers to the U.S. Consumer Product Safety Commission.

4. For ease of reference, Amazon has continued exhibit numbering from its September 23, 2022 Motion for Summary Decision. Amazon Exhibits 1–106 are attached to the September 23, 2022 Declaration of Joshua González filed in support of Amazon's Motion. Amazon Exhibits 107–122 are attached to this Declaration filed in support of Amazon's Opposition to Complaint Counsel's Motion for Summary Decision.

5. Attached as Exhibit 107 is a true and correct copy of the Government Accountability Office report titled "Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards" and dated October 23, 1997.

6. Attached as Exhibit 108 is a true and correct copy of the Government Accountability Office report titled "Consumer Product Safety Commission: Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children" and dated August 2009.

7. Attached as Exhibit 109 is a true and correct copy of the CPSC's consolidated notes from a discussion titled "What is an Effective Recall?" and hosted by CPSC staff members Carol Cave, Blake Rose, Shelby Mathis, and Tanya Topka at the CPSC's Recall Effectiveness Workshop on July 25, 2017.

8. Attached as Exhibit 110 is a true and correct copy of the Food and Drug Administration document titled "Public Warning and Notification of Recalls Under 21 CFR Part 7, Subpart C - Guidance for Industry and FDA Staff" dated February 2019.

9. Attached as Exhibit 111 is a true and correct copy of the Frequently Asked Questions ("FAQ") page on the CPSC website titled "For Buying and Selling Products Online" as it appeared on the CPSC website on October 17, 2022.

10. Attached as Exhibit 112 is a true and correct copy of the U.S. Congressional Record, Volume 118, Part 29, pages 21,768 through 21,917, dated June 21, 1972.

11. Attached as Exhibit 113 is a true and representative copy of emails sent between Amazon's Product Safety team and a seller for the Subject Product hair dryer with Amazon Standard Identification Number ("ASIN") B07X182ZBB, Bates No. Amazon-CPSC-FBA-00002346, sent on June 15, 2021. This document is designated Confidential and will be submitted for in camera review pursuant to the Protective Order.

12. Attached as Exhibit 114 is a true and correct copy of the U.S. House of Representatives Committee on Interstate and Foreign Commerce Report No. 92-1153, dated June 21, 1972.

13. Attached as Exhibit 115 is a true and correct copy of the U.S. House of Representatives Committee on Interstate and Foreign Commerce Report No. 92-1593, dated October 12, 1972.

14. Attached as Exhibit 116 is a true and correct copy of the U.S. Congressional Record, Volume 118, Part 29, pages 36,170 through 36,360, dated October 14, 1972.

15. Attached as Exhibit 117 is a true and correct copy of the U.S. House of Representatives Committee on Energy and Commerce Report No. 110-501, dated December 19, 2007.

16. Attached as Exhibit 118 is a true and correct copy of the CPSC recall alert titled "Children's Sleep Sacks Recalled by Gildan Activewear Due to Violation of Federal Flammability Standard; Sold Exclusively at AmericanApparel.com" and published on the CPSC website as part of CPSC Recall No. 19-747 on May 28, 2019.

17. Attached as Exhibit 119 is a true and correct copy of the CPSC recall notice titled "L.L. Bean Girl's Pajamas Recalled Due to Violation of Federal Flammability Standard" and published on the CPSC website as part of CPSC Recall No. 14-017 on November 12, 2013.

18. Attached as Exhibit 120 is a true and correct copy of the CPSC recall notice titled "Roberta Roller Rabbit Recalls Children's Pajama Sets" and published on the CPSC website as part of CPSC Recall No. 15-122 on April 23, 2015.

19. Attached as Exhibit 121 is a true and correct copy of the CPSC recall notice titled "Esme Recalls Children's Sleepwear Due to Violation of Federal Flammability Standards and

Burn Hazard" and published on the CPSC website as part of Recall No. 22-080 on February 16, 2022.

20. Attached as Exhibit 122 is a true and correct representative sample of the direct notice sent to purchasers of the Subject Product Home Swee children's sleepwear garments with ASIN # B0761X8FCK, as it appeared in the "Message Center" inbox of purchasers' accounts on Amazon.com, with Bates No. CPSC_AM0009553-09554. This document is designated Confidential and will be submitted for in camera review pursuant to the Protective Order

21. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 21, 2022.

Nicholas Griepsma

Nicholas Griepsma

CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2022, a true and correct copy of the foregoing documents were, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

- filed by email with the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

Nicholas Griepsma

Nicholas Griepsma

Exhibit 107

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Telecommunications, Trade, and Consumer Protection, Committee on Commerce, House of Representatives

For Release on Delivery
Expected at 9:30 a.m.
Thursday, October 23, 1997

CONSUMER PRODUCT SAFETY COMMISSION

Better Data Needed to Help Identify and Analyze Potential Hazards

Statement of Carlotta C. Joyner, Director
Education and Employment Issues
Health, Education, and Human Services Division

GAO/T-HEHS-98-23

Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our work on the Consumer Product Safety Commission (CPSC). CPSC was created to protect consumers from "unreasonable risk of injury," and in doing so it oversees about 15,000 consumer products, ranging from kitchen appliances and children's toys to hot tubs and garage door openers. With a budget of about $42.5 million, CPSC enforces existing federal consumer product regulations and also develops agency projects to address products with a potential hazard not covered by existing regulations.[1] These projects may result in CPSC's issuing new regulations concerning a specific product, assisting in the development of voluntary industry standards, or providing information to consumers about how to use a product safely.

Contending that the agency is ineffectively allocating its resources, some industry representatives and other individuals have voiced dissatisfaction with the agency's selection of certain projects and have questioned the validity of CPSC's cost-benefit and risk assessment analyses supporting those projects. Congressional and interest-group critics have also raised concerns about the agency's procedures for ensuring the accuracy of manufacturer-specific information before it releases the information to the public, maintaining that such releases can mar the reputation of responsible corporations. In light of these concerns, you asked us to discuss CPSC's project selection, use of cost-benefit analysis and risk assessment, and information release procedures. Today, we are also releasing our report on CPSC, which covers these issues in more detail.[2]

To do our work, we reviewed internal CPSC documents, relevant legislation, regulations, and legal cases, and the literature on cost-benefit analysis and on consumer product safety issues. In addition, we interviewed current and former CPSC commissioners, CPSC staff, consumer advocates, industry representatives, and outside experts to obtain their perspectives on CPSC's work. We identified CPSC projects by compiling from various agency documents a list of 115 potential product hazards examined by the agency from January 1990 to September 30, 1996, and we reviewed available agency documentation on each of these projects. We

[1]Projects vary widely in scope, and CPSC has no standard definition of what constitutes a project. For our review, we defined a "project" as work CPSC conducted on any specific consumer product that was associated with a potential hazard or hazards not covered by existing regulation.

[2]Consumer Product Safety Commission: Better Data Needed to Help Identity and Analyze Potential Hazards (GAO/HEHS-97-147, Sept. 29, 1997).

examined the agency's internal databases to obtain project information and assess the agency's information on product hazards.

In summary, although CPSC has established criteria to help select new projects, with the agency's current data, these criteria can be measured only imprecisely if at all. CPSC has described itself as "data driven," but its information on product-related deaths and injuries is often sketchy, and its lack of systematized descriptive information on past or ongoing projects makes it more difficult for agency management to monitor current projects and to assess and prioritize the need for new projects in different hazard areas. CPSC's data are often insufficient to support rigorous application of risk assessment and cost-benefit analysis. In addition, the cost-benefit analyses conducted by CPSC between 1990 and 1996 were frequently not comprehensive, and the reports on these analyses were not sufficiently detailed. We also found that CPSC has established procedures to implement statutory requirements restricting the release of manufacturer-specific information. Although industry representatives, consumer advocates, and CPSC expressed differing views on the merits of these restrictions, available evidence suggests that CPSC complies with these statutory requirements.

Background

CPSC was created in 1972 under the Consumer Product Safety Act (P.L. 92-573) to regulate consumer products that pose an unreasonable risk of injury, to assist consumers in using products safely, and to promote research and investigation into product-related deaths, injuries, and illnesses. CPSC currently has three commissioners, who are responsible for establishing agency policy.[3] One of these commissioners is designated as the chairman, who directs all the executive and administrative functions of the agency.

In fiscal year 1997, CPSC carried out its broad mission with a budget of about $42.5 million and a full-time-equivalent staff of 480. After adjusting for inflation, the agency's budget has decreased by about 60 percent since 1974. Similarly, CPSC's current staffing level represents 43 percent fewer positions as compared with the agency's 1974 staff.

Although CPSC has broad regulatory powers, many of the agency's efforts are carried out using nonregulatory methods. For example, CPSC frequently assists industry and private standard-setting groups in developing

[3]The Consumer Product Safety Act provides for the appointment of five commissioners by the President of the United States for staggered 7-year terms. However, since 1986, no more than three commissioners have been in office at one time.

voluntary product safety standards.[4] CPSC also addresses product hazards by providing information to consumers on safety practices that can help prevent product-related accidents. In addition to its own efforts to disseminate information, CPSC provides considerable amounts of information in response to requests from the public.

CPSC Has Limited Information Available to Assist in Project Selection

CPSC's Project Selection Process

CPSC's resource base and extensive jurisdiction require the agency to select among potential product hazards. New agency initiatives may come to CPSC in several ways. First, any person may file a petition requesting CPSC to issue, amend, or revoke a regulation. For example, CPSC's cigarette lighter project, which resulted in a new mandatory safety standard, originated with a petition from an emergency room nurse. Second, CPSC can receive a product hazard project from the Congress. The Congress may require CPSC to study a wide-ranging product area (such as indoor air quality) or impose a specific regulation (such as a mandatory safety standard for garage door openers).[5] Third, CPSC commissioners and agency staff can initiate projects or suggest areas to address.

CPSC has wide latitude over which potential product hazards it targets for regulatory and nonregulatory action. Although the agency has little or no discretion over projects mandated by the Congress, it can accept or reject suggestions submitted by petition or proposed by agency staff. Of the 115 projects the agency worked on from January 1, 1990, to September 30, 1996, 59 percent were initiated by CPSC, 30 percent originated from a petition, and about 11 percent resulted from congressional directives.

CPSC has established criteria for setting agency priorities and selecting potential hazards to address. These criteria, which are incorporated in agency regulations, include the following:

[4]The 1981 amendments to the Consumer Product Safety Act require CPSC to defer to a voluntary standard—rather than issue a mandatory regulation—if the Commission determines that the voluntary standard adequately addresses the hazard and that there is likely to be substantial compliance with the voluntary standard.

[5]This mandate was imposed in the Child Safety Protection Act (P.L. 103-267, June 16, 1994).

- the frequency of injuries and deaths resulting from the hazard;
- the severity of the injuries resulting from the hazard;
- addressability—that is, the extent to which the hazard is likely to be reduced through CPSC action—agency regulations note that the cause of the hazard should be analyzed to help determine the extent to which injuries can reasonably be expected to be reduced or eliminated through CPSC action;
- the number of chronic illnesses and future injuries predicted to result from the hazard;
- preliminary estimates of the costs and benefits to society resulting from CPSC action;
- the unforeseen nature of the risk—that is, the degree to which consumers are aware of the hazard and its consequences;
- the vulnerability of the population at risk—whether some individuals (such as children) may be less able to recognize or escape from potential hazards and therefore may require a relatively higher degree of protection;
- the probability of exposure to the product hazard—that is, the number of consumers exposed to the potential hazard, or how likely it is that typical consumers would be exposed to the hazard; and
- additional criteria to be considered at the discretion of CPSC.

Commissioners and staff may select projects on the basis of what they believe are the most important factors. For example, the regulations do not specify whether any criterion should be given more weight than the others, nor that all criteria must be applied to every potential project. Our interviews with present and former commissioners and our review of CPSC briefing packages showed that three criteria—the number of deaths and injuries, the cause of injuries, and the vulnerability of the population at risk—were more strongly emphasized than the others. However, although the commissioners and former commissioners we interviewed generally agreed about which criteria they emphasized for project selection, they expressed very different views on how some of these criteria should be interpreted. For example, their opinions differed about choosing projects on the basis of the cause of injuries. A major issue in this regard concerned the appropriate level of protection the agency should be responsible for providing when a product hazard results, at least in part, from consumer behavior. Some current and former commissioners argued that no intervention was warranted when consumer behavior contributed to injuries; others were more willing to consider a regulatory approach in these situations.

Project Management Information Was Incomplete or Unavailable

Although CPSC conducts a number of projects annually, staff were unable to give us a comprehensive list of projects the agency had worked on in the 6-year period we examined. CPSC was also unable to verify the completeness of the project list that we compiled from agency documents and interviews with staff. According to CPSC staff, internal management systems do not generally contain this information because most projects are accounted for under either broad codes such as "children's products" or activity codes such as "investigations," "product safety assessment," and "emerging problems." In addition, CPSC staff told us that reliable inferences about the characteristics of individual projects, their outcomes, and the resources spent on them cannot be drawn from management information systems because of limitations in the computer system and because no consistent rule exists about how staff time in different directorates is recorded to project codes. Without systematic and comprehensive information on its past efforts, CPSC cannot fully assess whether its projects overrepresent some hazard areas and therefore agency resources might be more efficiently employed. In our report, we recommend that the Chairman of CPSC direct agency staff to develop and implement a project management tracking system to compile information on current agency projects.

Significant Gaps Exist in CPSC's Data on All Selection Criteria, Including Product-Related Injuries and Deaths

CPSC has developed a patchwork of independent data systems to provide information on deaths and injuries associated with consumer products. To estimate the number of injuries associated with specific consumer products, CPSC gathers information from the emergency room records of a nationally representative sample of 101 hospitals. CPSC also obtains information on fatalities by purchasing a selected group of death certificates from the states. Because neither emergency room nor death certificate data provide detailed information on hazard patterns or causes of injuries, CPSC also investigates selected incidents to obtain more detailed information.

CPSC's data give the agency only limited assistance in applying its project selection criteria. Data on all CPSC's project selection criteria suffer from major limitations, as shown in table 1. In fact, none of the criteria are supported by complete data that are available for most projects at the time the project is selected.

Table 1: CPSC's Regulatory Priority-Setting Criteria and Their Major Limitations

Criterion	Major limitations
Number of deaths	Incomplete because not all certificates are gathered and not all product-related incidents are noted on the certificates
Number of injuries	Generally limited to injuries treated in emergency room, excluding injuries treated in other settings
Severity of injuries	Not representative of the severity of all injuries
Chronic illnesses	Little systematic information
Predicted future injuries	Questionable validity, given changes in medical care over time
Vulnerable populations	Incomplete—information available only on age and not on other vulnerable populations, such as people with disabilities
Exposure	Exposure surveys are time consuming and expensive, not done for all projects, and done only after project is well under way
Addressability/ causation	Often impossible to make an informed judgment until project is well under way; investigations are time consuming and expensive
Preliminary cost-benefit analysis	Quality data are frequently not available; data from early stages of project are of limited accuracy

CPSC staff identified four data-gathering areas as key concerns: (1) lack of data on injuries treated in physicians' offices and other settings outside the emergency room; (2) lack of data that would identify chronic illnesses that may be associated with consumer products; (3) sketchy information about accident victims, which limits the ability to assess which hazards disproportionately affect vulnerable populations; and (4) lack of data on exposure to consumer products.

CPSC's injury and death data allow at best an incomplete view—and at worst a distorted one—of the incidents that result from consumer product hazards. Product-related injuries may be treated in a variety of settings—a hospital emergency room, a physician's office, or an outpatient clinic, for example. CPSC systematically collects information only on deaths and on injuries treated in the emergency room; injuries treated in other settings (such as physicians' offices) are generally not represented in CPSC's data. Because CPSC's data reveal only a portion of the injury picture, the agency underestimates the total numbers of deaths and injuries associated with any given consumer product. The extent of this undercount is unknown, but it may be increasing; pressure to contain health care costs has led to more injuries and illnesses being treated outside the hospital setting.[6] In addition, CPSC's incomplete injury information raises doubts about whether the agency can reliably discern long-term trends in injuries. Trend

[6]For example, according to the American Hospital Association, hospitalizations decreased by 5 percent on a per capita basis between 1982 and 1994, while between 1983 and 1993 hospital outpatient clinics saw a 53-percent increase in visits on a per capita basis.

information is needed not only because it is a criterion for project selection but also because it is important in evaluating the success of CPSC's injury reduction efforts and determining the need for possible follow-up actions.

According to CPSC staff, identifying chronic illnesses associated with consumer products is nearly impossible with CPSC's current data. CPSC staff stated that little is known about many chronic illness hazards that may be associated with potentially dangerous substances, and even less information is available about which consumer products may contain these ingredients. Chronic illnesses are likely to be especially underestimated in CPSC's emergency room data, because they are underrepresented among emergency room visits and because product involvement is more difficult to ascertain. Similarly, consumer product involvement is seldom recorded on death certificates in the case of chronic illnesses.

Sketchy information about accident victims also limits CPSC's ability to assess which consumer product hazards have a disproportionate impact on vulnerable populations. CPSC's surveillance data systems provide information only on the age of the victim; no systematic or comprehensive information is available to determine whether a given hazard has a special impact on other vulnerable populations such as people with disabilities. A former commissioner told us that the lack of other demographic information (such as race, income, and disability status) made it difficult to know which subpopulations were predominantly affected by a particular hazard. Another commissioner echoed this concern, adding that such information would be useful in targeting public information campaigns on certain hazards to those groups that need the information most.

Although CPSC staff identified the need for additional exposure data as a major concern, they also said that obtaining such information can be time consuming and costly. Because exposure data are generally not included in CPSC's ongoing data collection efforts, exposure is assessed either not at all or well after the project has started, precluding the use of exposure as an effective criterion for project selection. Similarly, CPSC's emergency room and death certificate data give little information about the circumstances of the incident. Therefore, CPSC staff follow up on a few selected incidents to obtain additional details. These investigations may include detailed interviews with victims and witnesses, police or fire reports, photographs of the product and the accident site, laboratory

testing of the product, and recreations of the incident. As with exposure data, these investigations are not conducted for every project and are done only after a project has been established. Thus, assessment of causation at the project selection stage is unavoidably speculative.

We believe that improved information on each of these four areas is necessary for CPSC to make informed decisions on potential agency projects. However, we also recognize that such information may be costly to obtain. In our report, we recommend that the Chairman of CPSC consult with experts both within and outside the agency to prioritize CPSC's needs for additional data, investigate the feasibility and cost of alternative means of obtaining these data, and design systems to collect and analyze this information.

Better Data and Methodology Are Needed to Improve CPSC's Cost-Benefit Analysis and Risk Assessment

CPSC uses two analytical tools—risk assessment and cost-benefit analysis—to assist in making decisions on regulatory and nonregulatory methods to address potential hazards. Risk assessment involves estimating the likelihood of an adverse event, such as injury or death. Cost-benefit analysis details and compares the expected effects of a proposed regulation or policy, including both the positive results (benefits) and the negative consequences (costs). The Congress requires CPSC to perform cost-benefit analyses before issuing certain regulations, and CPSC has conducted cost-benefit analyses for these regulations and in other situations in which such an analysis was not required by law. Because most of the agency's projects do not involve regulation, relatively few CPSC projects conducted between January 1, 1990, and September 30, 1996, were subject to these requirements. We identified 8 cost-benefit analyses that CPSC performed in accordance with these requirements and an additional 21 analyses that it conducted when it was not required.[7] Before issuing certain regulations, CPSC is required to consider the degree and nature of the risk of injury the regulation is designed to eliminate or reduce. However, CPSC usually does not conduct a formal, numerical risk assessment before issuing a regulation, and the law does not require it to do so. We determined that CPSC conducted 24 risk assessments between January 1, 1990, and September 30, 1996; only 4 of these were associated with regulatory action.

Both risk assessment and cost-benefit analysis require extensive data. CPSC's data systems are frequently unable to adequately meet the extensive

[7]In addition to the complete cost-benefit analyses, we identified an additional 23 cases in which some information was provided on some economic benefits or costs.

demands for information posed by risk assessment and cost-benefit analysis. As a result, the agency's estimates of risks, costs, and benefits are less accurate because they reflect the substantial limitations of the underlying data. For example, because CPSC's data undercount the deaths and injuries associated with particular consumer products, estimates of risk—and the potential benefits of reducing that risk—appear smaller than they actually are. However, CPSC's data provide information only on whether a product was involved in an accident, not whether the product caused the accident. This can sometimes make the risks assessed by CPSC—and the benefits of reducing those risks—appear greater.

The methodology used to conduct a cost-benefit analysis frequently depends on the circumstances and the context of the analysis. For this reason, there is no complete set of standards for evaluating the quality of an individual cost-benefit analysis. However, the professional literature offers some guidance for analysts, and certain specific elements are frequently used to determine whether a given analysis meets a minimum threshold of comprehensiveness and openness. For example, analysts generally agree that all methodological choices and assumptions should be detailed, all limitations pertaining to the data should be revealed, and measures of uncertainty should be provided to allow the reader to take into account the precision of the underlying data. Similarly, practitioners generally call for sensitivity analysis, which enables the reader to determine which assumptions, values, and parameters of the cost-benefit analysis are most important to the conclusions.

Our review of all the cost-benefit analyses that CPSC conducted between January 1, 1990, and October 31, 1996, showed that for six of eight evaluation elements, CPSC's analyses were not comprehensive and not reported in sufficient detail (see table 2).[8] Specifically, CPSC provided descriptive information on proposals and also provided information on a variety of reasonable alternatives in almost 100 percent of cases. But in only 17 percent of its analyses did CPSC provide any statistical information on the precision of the underlying estimates. Similarly, when estimates are based on a relatively small sample size, projections are generally not considered reliable. But CPSC analysts cautioned the reader against drawing conclusions on the basis of small sample data only 45 percent of

[8]From our review of the cost-benefit literature, we developed a list of the elements that are frequently used in evaluating cost-benefit analyses. Although we compared each of these elements with each of CPSC's analyses, not all elements were applicable to each case. For this reason, and to emphasize those areas that we viewed as most critical, we reported only those results that related to key elements, applied to the majority of CPSC's analyses, and for which a determination was possible in all or nearly all cases.

the time. Furthermore, some of CPSC's data sets have a known upward or downward bias because of the way the data were constructed. For example, when estimates of incidents are based only on investigated or reported cases, two potential biases are likely to be introduced into the analysis: (1) the estimates are likely to be biased downward by nonreporting and (2) the incidents reported tend to be the more severe ones. In only 53 percent of applicable cases did CPSC's analysis inform the reader of known limitations inherent in the data being used for cost-benefit analysis.

Table 2: Evaluation of CPSC's Analyses Shows Problems in Several Evaluation Elements

Evaluation element	Percentage of CPSC's analyses that were consistent with this element
Provided descriptive information about a well-defined proposal	98
Addressed multiple alternatives	95
Reported measures of precision for underlying data	17
Cautioned reader about making inferences from data with a small sample size	45
Reported known biases in underlying data	53
Provided any sensitivity analysis information	26
Included all important categories of benefits and costs	54
Considered risk-risk trade-offs[a]	49

[a]A "risk-risk" trade-off refers to an action to decrease a hazard's risk that unintentionally increases that or another risk.

We identified several other areas in which CPSC analyses could benefit from improvement. For example, researchers agree that sensitivity analysis should be incorporated in cost-benefit analyses. CPSC usually did not provide sensitivity analysis information. In addition, only 54 percent of CPSC analyses considered the full range of costs and benefits likely to result from regulation. CPSC analysts frequently did not mention intangible costs or benefits (costs or benefits that are difficult to quantify, such as loss of consumer enjoyment) or potential indirect effects (such as changes in the prices of related goods). CPSC also frequently excluded risk-risk considerations from its evaluation of the costs and benefits of potential actions. Sometimes actions taken to reduce one risk can unintentionally increase that or another risk—such as when individuals take more or

fewer precautions in response to a change in a product's safety features. For example, in establishing a standard for child-resistant packaging that was also "senior-friendly," CPSC considered that because child-resistant medicine bottles can be difficult to open, a grandparent might leave the cover off the bottle, creating an even greater risk than would exist with the original cap. Although CPSC considered such factors in some cases, only 49 percent of its analyses reflected potential risk-risk trade-offs.

CPSC has not established internal procedures that require analysts to conduct comprehensive analyses and report them in sufficient detail. For example, according to CPSC staff, the agency has little written guidance about what factors should be included in cost-benefit analyses, what methodology should be used to incorporate these factors, and how the results should be presented. Staff also told us that CPSC analyses are not generally subject to external peer review. Such reviews can serve as an important mechanism for enhancing the quality and credibility of the analyses that are used to help make key agency decisions. In our report, we recommend that the Chairman direct agency staff to develop and implement procedures to ensure that all cost-benefit analyses performed on behalf of CPSC are comprehensive and reported in sufficient detail, including providing measures of precision for underlying data, incorporating information on all important costs and benefits, and performing sensitivity analysis.

CPSC Has Established Procedures for Complying With Statutory Requirements for Releasing Manufacturer-Specific Information

To help minimize the possibility that a product might be unfairly disparaged, in section 6(b) of the Consumer Product Safety Act, the Congress imposed restrictions on CPSC's disclosure of manufacturer-specific information.[9] Before CPSC can release any information that identifies a manufacturer,[10] it must

- take "reasonable steps" to verify the accuracy of the information and to ensure that disclosure is fair;
- notify the manufacturer that the information is subject to release; and
- give the manufacturer an opportunity to comment on the information.

[9]An exception to these restrictions is given if CPSC has declared that the product is an "imminent hazard" under section 12 of the Consumer Product Safety Act.

[10]These restrictions also apply even if the manufacturer is not named but the information would allow the reader to readily identify the manufacturer from the context. For example, if there is only one manufacturer of a product identified in the information, the information may be subject to restriction even if the manufacturer's name is not given.

These restrictions apply not only to information the agency issues on its own—such as a press release—but also to information disclosed in response to a request under the Freedom of Information Act. Section 6(b) also requires CPSC to establish procedures to ensure that releases of information that reflect on the safety of a consumer product or class of products are accurate and not misleading, regardless of whether the information disclosed identifies a specific manufacturer.

In implementing section 6(b), CPSC established several procedures designed to ensure compliance with these statutory requirements. These include obtaining written verification from individuals of the information they report to the agency, notifying manufacturers by certified mail when manufacturer-specific information has been requested, and giving manufacturers the option to have their comments published with any information disclosed. For example, CPSC has issued clearance procedures for situations when commissioners and staff initiate public disclosures—for example, when CPSC publishes the results of agency research. Under CPSC's guidelines, each assistant or associate executive director whose area of responsibility is involved must review the information and indicate approval for the release in writing. After all other reviews have been completed, the Office of the General Counsel must also review and approve the release.

Information from three sources—industry sources, published legal cases, and data on retractions—suggests that CPSC complies with its statutory requirements concerning information release. Industry sources, even those otherwise critical of the agency, told us that CPSC generally keeps proprietary information confidential as required by law. Our review of published legal decisions found no rulings that CPSC violated its statutory requirements concerning the release of information. Retractions by CPSC are also rare—only three retractions have been issued by CPSC since the agency was established.[11]

Industry observers, CPSC staff, and consumer groups expressed a wide range of opinions on the effectiveness of section 6(b). In response to our inquiries, some CPSC commissioners and former commissioners said that these restrictions serve a useful purpose and should not be changed. However, CPSC's current chairman, industry and advocacy group representatives, and others expressed dissatisfaction with 6(b) and some

[11]Two of these retractions, in 1984 and 1994, were issued in response to requests from firms. A third retraction, in 1990, was issued after CPSC discovered that a report in its public reading room had mistakenly included inaccurate information.

suggested possible changes. Although these individuals raised issues about the extent of the protection afforded to manufacturers and the resources necessary to ensure compliance, we did not assess whether the specific suggestions were necessary or feasible.

CPSC's chairman, other CPSC officials, former commissioners, and the representative of a consumer advocacy group stated that compliance with 6(b) is costly for CPSC and delays the agency in getting information out to the public. To reduce the burden of complying with these requirements, CPSC staff have suggested that the notification requirement that gives manufacturers 20 days in which to comment should apply only to the first time information is released and that, instead of requiring CPSC to verify information from consumer complaints, the agency should be allowed to issue such information with an explicit disclaimer that CPSC has not verified the consumer's report.

Instead of reducing CPSC's verification requirements, some industry representatives suggested expanding them. These manufacturers stated that before CPSC releases incident information, the agency should substantiate it, rather than relying on a consumer's testimony. Industry representatives stated—and CPSC staff confirmed—that many of the requests for CPSC information come from attorneys for plaintiffs in product liability suits. As a result, some industry representatives expressed concern that unsubstantiated consumer complaints could be used against them in product liability litigation. They suggested that 6(b) should require CPSC to substantiate all incident reports by investigating them before they can be disclosed, instead of merely checking with the consumer. However, CPSC officials told us that, because of limited resources, investigations—which are time consuming and costly—can be conducted only on a small proportion of specially selected cases.

Retailers' representatives also suggested specific changes to CPSC's information release requirements. They said that retailers do not receive timely notice of recalls because CPSC has interpreted the law to prohibit advance notification of retailers. Consequently, the retailers said, they sometimes receive notice of recalls at the same time as their customers and have no time to prepare. Retailers' representatives suggested amending 6(b) to provide for 5 business days' advance notice to retailers before the public announcement of a recall. CPSC officials said that typically manufacturers are, and should be, the ones to contact the retailers and make all arrangements for a recall. Although they disagreed on the need for a statutory change, both CPSC staff and a major retailers'

association said they were trying to work out a more satisfactory arrangement.

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions you or Members of the Subcommittee might have.

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are $2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

http://www.gao.gov

United States
General Accounting Office
Washington, D.C. 20548-0001

Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100

Official Business
Penalty for Private Use $300

Address Correction Requested

Exhibit 108

United States Government Accountability Office

GAO

Report to Congressional Committees

August 2009

CONSUMER PRODUCT SAFETY COMMISSION

Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children

GAO-09-731

August 2009

CONSUMER PRODUCT SAFETY COMMISSION

Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children

GAO Accountability·Integrity·Reliability

Highlights

Highlights of GAO-09-731, a report to congressional committees

Why GAO Did This Study

In 2004, the U.S. Consumer Product Safety Commission (CPSC) estimated that 29,400 deaths in the United States were related to consumer products. As required under Section 107 of the Consumer Product Safety Improvement Act of 2008, this study reviews what is known about the relative incidence of preventable injuries and deaths among minority children associated with products intended for children's use and also examines what actions CPSC has taken through its public information and education initiatives to minimize these injuries and deaths. To address these issues, we assessed injury and death data sources used by CPSC, compared CPSC's consumer education efforts with key practices, and interviewed federal officials and groups representing the health and consumer interests of minority populations.

What GAO Recommends

GAO recommends that CPSC develop and implement cost-effective means of improving data collection on factors that may contribute to any differences in the incidence of consumer product-related injury and death. GAO also recommends that CPSC develop and implement cost-effective ways to enhance and assess the likelihood that safety messages are received and implemented by all the intended audiences. CPSC and the Department of Health and Human Services (HHS) agreed with GAO's recommendations.

View GAO-09-731 or key components.
For more information, contact Cornelia M. Ashby at (202) 512-7215 or ashbyc@gao.gov.

What GAO Found

Few studies have assessed racial and ethnic differences in child death rates from injuries related to consumer products, and CPSC has not analyzed whether specific racial or ethnic groups are disproportionately affected by product hazards because of data limitations. These limitations include incomplete and inconsistent race and ethnicity data on emergency room reports and the inconsistent presence of product-related information on death certificates. In 2007, race and ethnicity data were not coded in about 31 percent of cases in CPSC's National Electronic Injury Surveillance System (NEISS), which collects data from a nationally representative sample of hospital emergency rooms. In addition, the hospitals that do record race and ethnicity information in CPSC's NEISS system do so inconsistently, in part because of limited CPSC guidance. While death certificates may include more complete race and ethnicity information compared with nonfatal injury data from hospitals, related product information is not consistently documented on the certificates.

Despite this lack of data, CPSC has developed or modified some consumer information efforts to reach specific minority populations, but it has not assessed the results of these efforts. CPSC provides information in Spanish for many of its outreach efforts, including its telephone hotline, Web site, television, radio, and print publications. CPSC has also identified and established relationships with other organizations to help disseminate consumer safety information to minority communities. And while CPSC has used some consumer input to develop safety information, it has not assessed outreach efforts for specific audiences. CPSC has also established goals for its overall consumer information efforts, but not for its messages targeted to specific populations. In addition, CPSC relies on its Neighborhood Safety Network, a group of organizations that have expressed interest in receiving product safety information, to share information with audiences that can be hard to reach, but the agency has not assessed whether these populations are receiving and using the information. Organizations we contacted for this report, including Neighborhood Safety Network members and children's safety groups, generally reported using safety information provided by CPSC, but some offered suggestions for improvement of efforts to reach minority communities, such as providing safety information in other languages and additional exposure through broadcast media.

Contents

Letter 1

Background 3
Few Studies Assess Racial and Ethnic Differences in Children's Risk of Death from Injuries Related to Consumer Products, and Data Limitations Constrain CPSC Analysis 7
CPSC Has Developed or Modified Some Consumer Information Efforts to Reach Specific Minority Populations, but Has Not Assessed the Results of These Efforts 16
Conclusions 21
Recommendations for Executive Action 22
Agency Comments and Our Evaluation 23

Appendix I **Objectives, Scope, and Methodology** 25

Appendix II **Key Practices for Consumer Education Planning** 27

Appendix III **Comments from the Department of Health and Human Services** 28

Appendix IV **GAO Contact and Staff Acknowledgments** 30

Related GAO Products 31

Table

Table 1: Key Practices for Planning Consumer Education Campaigns 27

Figures

Figure 1: CPSC Consumer Information Methods 4
Figure 2: Estimated Percentage of NEISS Cases Missing Race and Ethnicity Information, 1999-2007 12

Figure 3: Portion of NEISS Hospitals with Various Percentages of Cases Not Coded for Race and Ethnicity, 2007 13
Figure 4: Examples of CPSC Consumer Information 18

Abbreviations

CDC	Centers for Disease Control and Prevention
CPSC	U.S. Consumer Product Safety Commission
CPSIA	Consumer Product Safety Improvement Act
HHS	Department of Health and Human Services
IHS	Indian Health Service
MCHB	Maternal and Child Health Bureau
NEISS	National Electronic Injury Surveillance System
NCHS	National Center for Health Statistics
NSN	Neighborhood Safety Network

GAO
Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

August 5, 2009

Congressional Committees

The U.S. Consumer Product Safety Commission (CPSC), an independent federal agency charged with protecting the public from consumer products that pose an unreasonable risk of injury and death, estimated that 29,400 deaths in the United States related to consumer products occurred in 2004.[1] CPSC works to fulfill its broad mission in part by conducting research into the causes and prevention of product-related deaths, illnesses, and injury and assisting consumers in evaluating the comparative safety of consumer products. CPSC has identified certain populations as vulnerable or hard to reach with safety information, including older Americans, urban and rural low-income families, new parents, and minority groups. Consumer groups and researchers have also suggested that minority children, particularly those living in low-income communities, may face an increased risk of death from injuries because of factors associated with living in poverty, such as poor living conditions and less access to health care, quality recreational activities, and safety devices. Similarly, reports from the Centers for Disease Control and Prevention (CDC) have documented racial disparities in injury-related death rates among children.

The Consumer Product Safety Improvement Act of 2008 (CPSIA) established consumer product safety standards and other safety requirements for children's products. It also contained a provision requiring GAO to study disparities in the risks and incidence of preventable injuries and deaths among children of minority populations related to consumer products intended for children's use.[2] Specifically, GAO is to look at preventable injuries and deaths related to suffocation, poisoning, and drowning, including those associated with the use of swimming pools and spas; toys; cribs, mattresses, and bedding materials; and other products intended for children's use. Minority populations

[1]CPSC has jurisdiction over consumer products used in and around the home and in sports, recreation, and schools, including many products intended for children's use, such as toys, swimming pools, cribs, and beds. However, CPSC does not have jurisdiction over all consumer products, such as car seats protecting children in on-road vehicles, automobiles, foods, drugs, cosmetics, and boats.

[2]Pub. L. No. 110-314, § 107.

specified in the mandate include Black, Hispanic, American Indian, Alaska Native, Native Hawaiian, and Asian/Pacific Islander.[3] The mandate also required GAO to provide information about ways to minimize risks of preventable injuries and deaths among minority children, including through consumer education initiatives. To address this mandate, we examined (1) what is known about the relative incidence of preventable injuries and deaths related to drowning, poisoning, and suffocation associated with products intended for children's use among minority children compared with nonminority children, and (2) what actions CPSC has taken through its public information and education initiatives to minimize child injuries and deaths, including those in minority populations, related to products intended for children's use.

To answer these questions, we reviewed studies and reports by the Institute of Medicine, federal agencies, researchers, and other organizations that assessed racial or ethnic differences in injury and death among children and related studies that discussed injury prevention programs targeted to minority populations.[4] We reviewed injury and death data sources used by CPSC to estimate product-related injuries and deaths. We interviewed federal officials at CPSC and five Department of Health and Human Services (HHS) organizations to learn about their related programs and initiatives. In addition, we obtained information about injury data, racial and ethnic disparity issues, and injury prevention campaigns from researchers, representatives of injury prevention programs, consumer groups, and groups representing the health and consumer interests of minority populations. Finally, we reviewed CPSC documents and interviewed CPSC officials regarding the development, operation, and evaluation of the agency's consumer information efforts. We compared the processes used by CPSC with key practices identified by experts in GAO's previous work on consumer information and education.[5]

[3]Racial and ethnic categories defined in Office of Management and Budget standards for maintaining, collecting, and presenting federal data on race include American Indian or Alaska Native, Asian, Black or African-American, Native Hawaiian or Other Pacific Islander, and White. There are two categories for data on ethnicity: Hispanic or Latino, and Not Hispanic or Latino. Hispanic or Latino refers to a person of Spanish culture or origin, regardless of race.

[4]The Institute of Medicine is a branch of the National Academy of Sciences, a private nonprofit organization made up of subject matter experts that advises the federal government on scientific and technological matters.

[5]For details, see GAO, *Digital Television Transition: Increased Federal Planning and Risk Management Could Further Facilitate the DTV Transition*, GAO-08-43 (Washington, D.C.: Nov. 19, 2007).

The key practices include defining goals and objectives; analyzing the situation; identifying stakeholders; identifying resources; researching target audiences; developing consistent, clear messages; identifying credible messengers; designing media mix; and establishing metrics to measure success. Appendix I explains our scope and methodology in more detail.

We conducted this performance audit from December 2008 through August 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

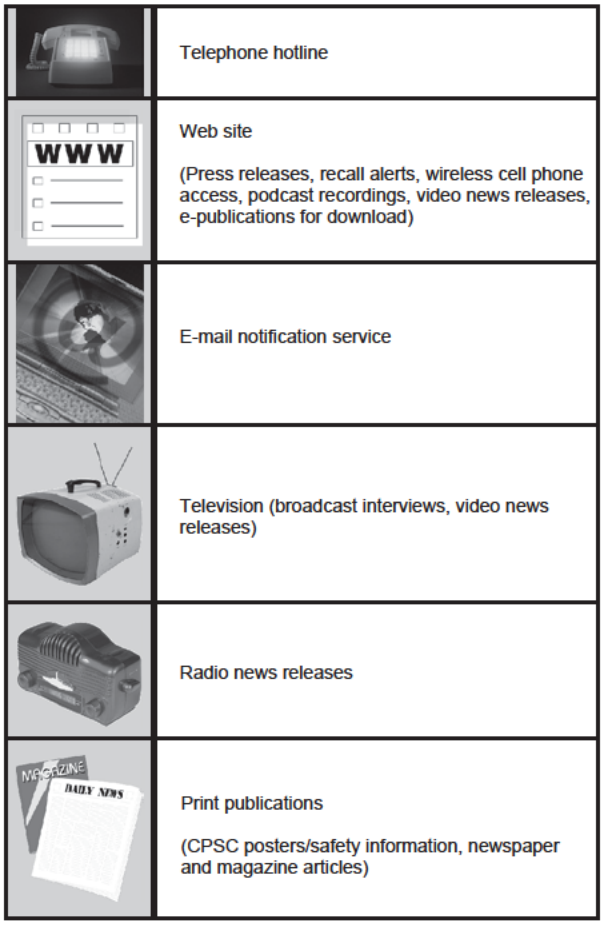
CPSC was created in 1972 under the Consumer Product Safety Act to regulate consumer products that pose an unreasonable risk of injury, assist consumers in using products safely, develop uniform safety standards for consumer products, minimize conflicting state and local regulations, and promote research and investigation into product-related deaths, injuries, and illnesses. CPSC oversees about 15,000 types of consumer products used in the home, in schools, and in sports and recreation. In fiscal year 2008, CPSC carried out its mission with a budget of about $80 million and 396 full-time employees. Prior to 2008, CPSC experienced significant budget cuts and a sharp decline in its staffing level from a high of 978 employees in 1980. Congress appropriated increased funding totaling about $105 million for fiscal year 2009. This appropriation funds a staffing level of 483 full-time employees, according to CPSC's 2010 budget request.

CPSC Efforts to Inform Consumers about Product Hazards

CPSC uses different methods to inform the public about product recalls and safety practices that can help prevent product-related injuries (see fig. 1). CPSC maintains a National Injury Information Clearinghouse that disseminates information to the public related to deaths and injuries associated with consumer products under the agency's jurisdiction. CPSC also warns the public about product hazards by announcing product recalls and providing other safety information through print and electronic media, a telephone hotline, electronic mail, and the Internet. For example, CPSC works with manufacturers to provide public notice of product recalls, in which a defective item is to be removed from store shelves and consumers are alerted to return the item for repair, replacement, or

refund, or otherwise dispose of them. To further its reach, CPSC also provides safety information to broadcast outlets, such as radio and television stations, and to print media outlets. According to CPSC officials, CPSC has allocated approximately $1 million annually to support its consumer information efforts and has nine employees in the Office of Public Affairs, the office responsible for developing and implementing CPSC's consumer information efforts in consultation with CPSC's technical experts and other CPSC staff. Congress appropriated funding in 2009 to help CPSC administer the Virginia Graeme Baker Pool and Spa Safety Act, including about $2.4 million for a state grant program and over $4 million for a program to inform the public and pool owners of pool and spa hazards to prevent children from drowning.

Figure 1: CPSC Consumer Information Methods



Sources: CPSC and Art Explosion (photos).

Recently passed legislation requires CPSC to improve its consumer information activities. For example, the Consumer Product Safety Improvement Act (CPSIA) requires CPSC to develop an online database that is publicly available and searchable by date, product name, model, and manufacturer. The database must contain reports of harm relating to the use of consumer products. CPSIA also specifies the information that must be included in a mandatory product recall notice, including details about related injuries and deaths. The act also authorizes CPSC to require manufacturers to give public notice in languages other than English, although this provision applies only to mandatory recalls, according to CPSC officials.[6]

Related Department of Health and Human Services Efforts

While CPSC is charged with protecting the public from unreasonable risks of injury and death from the thousands of types of consumer products under the agency's jurisdiction, HHS offices and agencies also play a role in injury prevention by conducting injury prevention research and information campaigns, collecting injury data, and promoting the health of minority populations. For example, according to agency officials and documents, CDC and the National Institutes of Health support research on a variety of topics, including injury prevention, and have conducted public information campaigns to reduce childhood injury. CDC's National Center for Health Statistics (NCHS) collects information about injuries, including race and ethnicity characteristics, from death certificates in all 50 states and the District of Columbia, as well as from household surveys and health care provider surveys. The Maternal and Child Health Bureau (MCHB) and the Indian Health Service (IHS) finance public health services, including injury prevention programs. HHS offices and agencies also lead efforts aimed at understanding and addressing racial and ethnic disparities in health care, including rates of unintentional injury among minority groups. For example, HHS's Office of Minority Health serves as a focal point within HHS to coordinate efforts to improve racial/ethnic minority health and eliminate racial/ethnic health disparities. The Office of Minority Health is charged with providing leadership and coordination for offices of minority health operating in other HHS agencies and in states to reduce racial and ethnic health disparities, according to agency officials. CDC is the lead agency charged with measuring progress toward national HHS

[6]CPSC rarely uses its authority to seek a mandatory recall. All of the 563 product recalls conducted in 2008 were voluntary, with CPSC negotiating a corrective action plan with the responsible companies.

goals to eliminate disparities in injuries, disabilities, and deaths due to unintentional injuries and violence.

Injury and Death Data Sources Used by CPSC

CPSC collects and analyzes data on consumer product-related injuries and deaths for products under its jurisdiction to determine where hazards exist and how to address them. CPSC obtains most of its information on injuries from its National Electronic Injury Surveillance System (NEISS), which gathers information from a nationally representative sample of about 100 hospital emergency rooms. NEISS provides national estimates of the number and severity of emergency room-treated injuries associated with, although not necessarily caused by, consumer products in the United States. Characteristics coded in the NEISS system include the date of treatment; the patient's age, gender, race and ethnicity, injury diagnosis, body part affected, case disposition; incident location; as well as the product involved. In 2000, NEISS was expanded to provide data on all trauma-related injuries. The expanded data provide other federal agencies, researchers, and the public with more comprehensive information on injuries from all sources, not just consumer products. CPSC receives approximately $2 million each year from CDC to support this effort.

CPSC obtains most of its information on fatal injuries from death certificates. Information recorded on death certificates includes the date and place of death, cause of death, age, gender, race and ethnicity, and residence of the deceased. CPSC estimates the number of consumer product-related deaths from data collected by NCHS about all deaths through the National Vital Statistics System. Because of the complexity and volume of collecting information about all deaths, there is over a 2 year lag before NCHS mortality data become available. According to a CPSC official, to obtain more timely information, CPSC annually purchases about 8,000 death certificates directly from states for selected causes of death that the agency has determined are likely to be product-related, such as bicycle accidents or falls involving playground equipment.

CPSC supplements information from the NEISS system and death certificates with reports from individual consumers and with data from private organizations such as fire prevention groups and poison control centers. CPSC collects approximately 4,600 additional reports from participating medical examiners and coroners throughout the country, about 7,400 news clips, and 14,300 other reports of product-related injuries and deaths from consumers, lawyers, physicians, fire departments, and other sources, according to its 2010 performance budget request.

Few Studies Assess Racial and Ethnic Differences in Children's Risk of Death from Injuries Related to Consumer Products, and Data Limitations Constrain CPSC Analysis

Few Studies Assess Racial and Ethnic Differences in Child Death Rates from Injuries Related to Consumer Products

Although some research suggests racial disparities in child death rates resulting from general causes of injury—including drowning, poisoning, and suffocation—we identified few studies that assessed racial and ethnic differences in child death rates from injuries related to consumer products. The studies we identified included two that identified racial and ethnic disparities in drownings in swimming pools and a study that identified a disparity between black and white infants in the risk of suffocation or strangulation in bed. We did not identify any studies that compared the incidence of poisoning related to consumer products by children's race and ethnicity. While these studies identified racial and ethnic differences in death rates related to specific products, the researchers were not consistently able to consider all factors that may contribute to these differences, such as differences in exposure to the consumer products.

Drowning

Mortality data reported by CDC suggest racial disparities in drowning rates, although these data do not specify whether the deaths involved consumer products. Drownings can occur in a variety of settings, such as natural water settings, swimming pools, bathtubs, and buckets. According to CDC, between 2000 and 2005, the fatal unintentional drowning rate of black children ages 5 to 14 was 3.2 times that of white children in the same age range. For American Indian and Alaska Native children, the fatal drowning rate was 2.4 times higher than for white children.

One study, conducted by researchers from HHS's National Institutes of Health, CPSC, and a research institute, found racial and ethnic disparities in swimming pool drowning rates.[7] This study examined circumstances surrounding 678 swimming pool drownings among U.S. residents aged 5 to 24 years that occurred between 1995 and 1998. The study used data collected by CPSC about drowning deaths from death certificates, medical examiner reports, and newspaper clippings.[8] The study found that black non-Hispanic males and females had higher swimming pool drowning rates compared with white non-Hispanic males and females of comparable age. Drowning rates were highest among black males, often occurring during the day at public pools, and this increased risk persisted after controlling for differences in neighborhood income. Hispanic males also had higher rates of pool drowning compared with white non-Hispanic males, but they had lower rates compared with black non-Hispanic males of comparable age. The drowning rates among Hispanic females were similar to those of white non-Hispanic females. The drowning rates among foreign-born victims were higher than among American-born victims. The study concluded that targeted interventions are needed to reduce the incidence of swimming pool drownings across racial and ethnic groups; it particularly recommended adult supervision at public pools and swimming instruction to increase children's swimming ability.

Another study examining racial disparities in drowning rates in specific locations found that after the age of 5 years, the risk of drowning in a swimming pool was greater among black males compared with white males.[9] Specifically, this study analyzed death certificate data collected by CPSC and NCHS about U.S. drowning deaths of children aged up to 19 in 1995. This research found that among black males aged 5 to 19 years, about 37 percent of drowning deaths with known location of drowning were in swimming pools, while only 10 percent of similar drownings among white males occurred in pools.

[7]Gitanjali Saluja, Ruth A. Brenner, Ann C. Trumble, Gordon S. Smith, Tom Schroeder, and Christopher Cox, "Swimming Pool Drownings Among US Residents Aged 5-24 Years: Understanding Racial/Ethnic Disparities," *American Journal of Public Health* (2006), 96(4):728-733.

[8]Although the race of the victim was included as a precoded field on death certificates, researchers used data on death certificates about place of birth, nationality, and country of origin to more specifically code ethnicity.

[9]Ruth A. Brenner, Ann C. Trumble, Gordon S. Smith, Eileen P. Kessler, and Mary D. Overpeck, "Where Children Drown, United States, 1995,"*Pediatrics*, (2001), 108: 85-89.

Suffocation

One study conducted by CDC researchers found that black infants were disproportionately affected by accidental suffocation and strangulation in bed (27.3 versus 8.5 deaths per 100,000 live births for blacks and whites, respectively).[10] This study analyzed infant deaths occurring between 1984 and 2004 using CDC's National Center for Health Statistics mortality files containing information from all death certificates. Researchers only analyzed differences between black and white infants in this study because of concerns about misreporting of racial and ethnic identity on death certificates for other racial and ethnic groups.[11] Although not reported by racial group, beds, cribs, and couches were reported overall as the most common sleep surfaces where accidental suffocation and strangulation deaths occurred.[12] In addition, co-sleeping or bed sharing was reported in over half of the cases. The study concluded that efforts should target those at highest risk and focus on helping parents and caregivers provide safer sleep environments.

Poisoning

We did not identify any studies that compared the incidence of poisoning related to consumer products by children's race and ethnicity. CPSC has assessed differences in the incidence of product-related poisonings among children by age group and gender. A recent study conducted by CPSC staff found that 70 percent of an estimated 86,194 child poisoning incidents involving children less than 5 years of age treated in hospital emergency rooms that occurred in 2004 involved children 1 to 2 years of age; slightly more than one-half involved boys; and about 60 percent involved oral prescription drugs, nonprescription drugs, and supplements.[13] The study concluded that while fatal child poisonings involving drugs and other

[10]Carrie K. Shapiro-Mendoza, Melissa Kimball, Kay M. Tomashek, Robert N. Anderson, and Sarah Blanding, "US Infant Mortality Trends Attributable to Accidental Suffocation and Strangulation in Bed From 1984 Through 2004: Are Rates Increasing?" *Pediatrics* (2009), No. 2, 123: 533-539.

[11]See also E. Arias, W. Schauman, K. Eschbach, P. Sorlie, and E. Backlund, "The Validity of Race and Hispanic Origin Reporting on Death Certificates in the United States," Centers for Disease Control and Prevention, National Center for Health Statistics, *Vital and Health Statistics* (2008), 2(148).

[12]Accidental suffocation and strangulation in bed is a subgroup of sudden, unexpected infant deaths, a leading category of injury-related infant deaths.

[13]Robert L. Franklin, MS, and Gregory B. Rodgers, PhD, Directorate for Economic Analysis, US Consumer Product Safety Commission, Bethesda, Maryland, "Unintentional Child Poisonings Treated in United States Hospital Emergency Departments: National Estimates of Incident Cases, Population-Based Poisoning Rates, and Product Involvement," *Pediatrics* (2008), Vol. 122 No. 6.

hazardous household substances have decreased in recent years, nonfatal child poisonings treated in hospital emergency rooms have remained at high levels.

Poisoning can also occur when children swallow or put in their mouths products that contain excessive levels of lead paint or lead content, such as toys or children's costume jewelry; however, CPSC receives little information about such incidents through its data systems.[14] According to CPSC officials, the agency rarely receives reports of child lead poisoning through its data systems because lead poisoning usually appears as a chronic illness rather than an acute injury, and as we have previously reported, CPSC's data systems are not set up to capture information about chronic illnesses.[15]

CPSC Has Not Analyzed Racial and Ethnic Differences in Product-Related Injury and Death because of Data Limitations

CPSC estimates product-related injury and death rates by age group, but because neither emergency room nor death certificate data provide complete information about both race and ethnicity and related products, CPSC has not analyzed product-related injury and death rates by race and ethnicity or other characteristics that could identify particularly vulnerable populations.[16] While other federally supported data collection efforts provide more, or more reliable, information on the range of factors, including race and ethnicity, that may contribute to injury risk, these efforts have not collected data on consumer product involvement or CPSC has not been involved with them.

NEISS System

While products related to patients' injuries are coded in the NEISS system, limited patient race and ethnicity information has hindered analysis of racial and ethnic differences in product-related injuries. CPSC's NEISS system specifies the products involved in injuries treated in hospital emergency rooms. NEISS coders can choose from approximately 900 product codes when identifying any products mentioned in hospital

[14]Elevated blood lead levels are associated with harmful health effects in children, such as impaired mental and physical development.

[15]GAO, *Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards*, GAO/HEHS-97-147 (Washington, D.C.: September 1997).

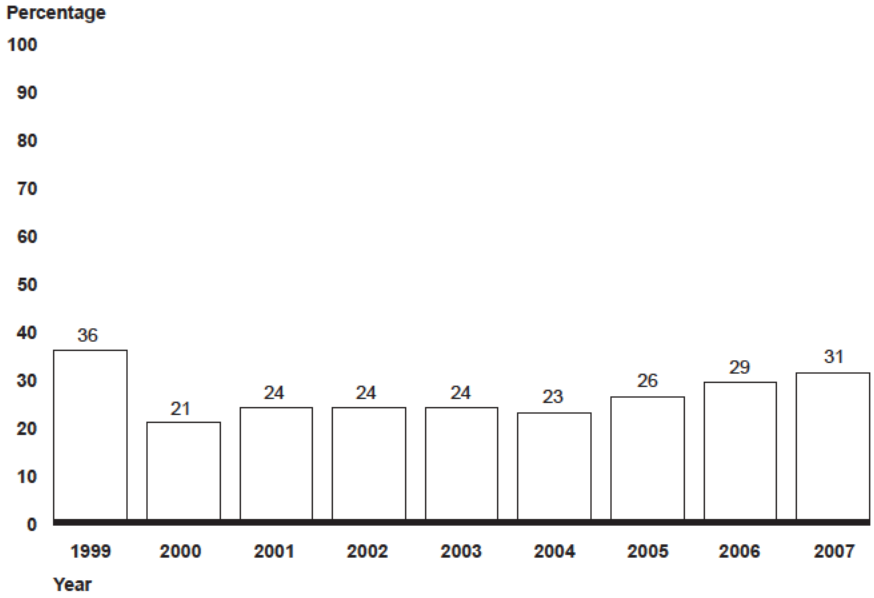
[16]We previously found that CPSC uses its data to identify rates of injury and death by age group, but not other characteristics, to assess which consumer product hazards have a disproportionate effect on vulnerable populations, such as persons with disabilities. For details, see GAO/HEHS-97-147.

emergency room records, such as toys, cribs, and swimming pools. Consumer products are coded to allow for specificity. For example, a baby bathtub seat would be specified differently from a baby bath. In its 2008 performance report, CPSC reported conducting annual monitoring visits to all of the NEISS hospitals in its sample, concluding that data were collected on over 90 percent of product-related cases in emergency room records through the NEISS system.

As shown in figure 2, our analysis of CPSC's NEISS data found that race and ethnicity data were not coded in about 31 percent of cases in 2007. The percentage of NEISS cases missing race and ethnicity information has prevented CPSC and CDC from assessing racial and ethnic differences in nonfatal injury rates, according to agency officials. According to a CPSC official, the agency has been aware of the missing race and ethnicity data and considered ways of statistically estimating race and ethnicity information using existing data, but has not pursued such analysis because of competing agency priorities.[17]

[17]Developing accurate estimates of product-related injury rates by racial and ethnic group could be challenging given existing CPSC data and data collection methods. Adequate numbers of cases from each racial and ethnic group are needed to develop accurate rates of product-related injury, and developing such rates could be a challenge in smaller minority groups. In addition, CPSC data systems do not collect other information that could explain differential rates of injuries treated in hospital emergency rooms, such as access to health insurance.

Figure 2: Estimated Percentage of NEISS Cases Missing Race and Ethnicity Information, 1999-2007

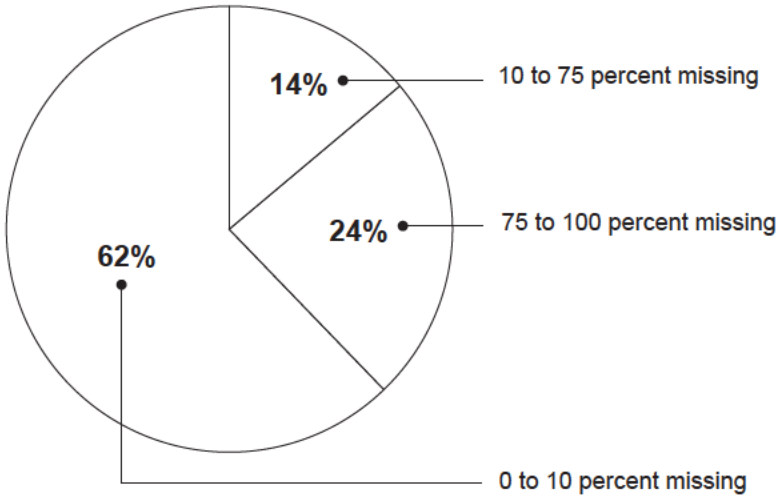


Source: GAO analysis of CPSC's NEISS data.

Note: Ninety-five percent confidence intervals are all less than or equal to plus or minus 0.2 percent.

Our analysis of CPSC's NEISS data found that some hospitals have a high percentage of cases missing race and ethnicity information. As shown in figure 3, about one-quarter of NEISS hospitals had more than 75 percent of cases missing race and ethnicity information in 2007.

Figure 3: Portion of NEISS Hospitals with Various Percentages of Cases Not Coded for Race and Ethnicity, 2007



Source: GAO analysis of CPSC's NEISS data.

In addition, NEISS hospitals that have recorded race and ethnicity information do so inconsistently, in part because of limited CPSC guidance. For example, a NEISS coder in one NEISS hospital we visited reported that the hospital registrar would generally record the patient's race and ethnicity using visual observation and rarely verify this information with the patient. Staff at other NEISS hospitals reported that the admitting staff may ask for race or ethnicity data along with other information when the patient is checking into the emergency room. In its manual, CPSC does not specify how hospital staff should obtain the information about patient race and ethnicity, although some researchers suggest that information reported by patients or patient representatives is more accurate than visual observation by hospital staff. In addition, CPSC's coding system for race and ethnicity is limited to white, black, and a narrative field for "other" categories, resulting in inconsistent coding and making data on other categories challenging to analyze. Our review of NEISS data found that NEISS hospitals use different terminology to code the same racial or ethnic categories in the "other" category.

According to a few organizations we interviewed, hospital-based collection of data on the race and ethnicity of patients is a challenge for several reasons. A hospital staff member from one NEISS hospital we visited said that these data are missing because hospital staff are uncomfortable asking patients about race and ethnicity. CDC officials and a researcher we interviewed said that hospital staff may not be trained to

collect race and ethnicity information or may not understand that it is being used for purposes other than providing medical care.

Other studies have found incomplete and inconsistent collection of information about patient race and ethnicity from hospitals. A panel convened by the National Academy of Sciences conducted a survey of hospitals and found that many hospitals report collecting race and ethnicity information, but these data are not reported to state and federal programs in a standardized format, and the information reported for racial and ethnic groups other than white and black may be unreliable.[18] The panel recommended that HHS require health insurers, hospitals, and private medical groups to collect data on race, ethnicity, socioeconomic position, and acculturation and language and provide leadership in developing standards for collecting these data. Another qualitative study, funded by the California Endowment, reviewed hospital efforts to provide culturally and linguistically appropriate health care in 60 hospitals nationwide.[19] The majority of hospitals reviewed in this study had inconsistent methods for collecting data on patient race, ethnicity, and primary language. In some hospitals, systems were in place but not used; in others, staff appeared not to have been trained on methods to accurately collect data from patients.

Death Certificates

Death certificates may include more complete and accurate race and ethnicity information compared with nonfatal injury data from hospitals, according to CDC officials, but concerns remain about the accuracy of this information for some groups. The accuracy of race and ethnicity information recorded on death certificates has been studied over time. A recent evaluation conducted by CDC found that race and ethnicity reporting on death certificates has been excellent for white and black populations, poor for the American Indian or Alaska Native populations, and reasonably good for the Hispanic and Asian or Pacific Islander populations.[20] According to CDC, studies have shown that individuals who

[18]Michele Ver Ploeg and Edward Perrin, eds., *Eliminating Health Disparities: Measurement and Data Needs* (Washington, D.C.: The National Academies Press, 2004).

[19]A. Wilson-Stronks and E. Galvez, *Exploring Cultural and Linguistic Services in the Nation's Hospitals: A Report of Findings.* (Oakbrook Terrace, Ill.: Joint Commission, 2007).

[20]E. Arias, W. Schauman, K. Eschbach, P. Sorlie, and E. Backlund, "The Validity of Race and Hispanic Origin Reporting on Death Certificates in the United States," Centers for Disease Control and Prevention, National Center for Health Statistics, *Vital and Health Statistics* (2008), 2(148).

self-reported as American Indian, Asian, or Hispanic on census and survey records were sometimes reported as white or non-Hispanic on the death certificate, resulting in an underestimation of deaths and death rates for the American Indian, Asian, and Hispanic groups.

While death certificates may contain more complete and accurate race and ethnicity data than the NEISS system, according to CPSC and CDC officials, related product information is not consistently documented on the certificates. Unlike coders who enter data into CPSC's NEISS system, individuals who complete death certificates are not prompted or required to record information identifying specific consumer products related to the death. Information about product involvement may be found in the narrative recorded on the certificate; however, this information is not consistently recorded, according to both CPSC and CDC officials. CPSC has developed national estimates of consumer product-related death rates by age group using HHS data containing information about all deaths; but CPSC has not analyzed these deaths by race and ethnicity, according to CPSC officials. A CPSC official told us that CPSC staff could analyze consumer product-related deaths by race and ethnicity, although the agency has not done so to date. CDC officials said that given the limited information about product involvement found on death certificates, estimating product-related death rates by race and ethnicity could produce underestimates.

Some states are collecting information about product-related deaths as part of investigations to understand the causes of child deaths; however, CPSC has not been involved in this effort. HHS's Maternal and Child Health Bureau funds a Web-based system and technical assistance center to support state collection of data from child death reviews, including race and ethnicity, type of injury, and details on product involvement. Child death reviews involve state and local officials from multiple disciplines sharing information to better understand child deaths and prevent future deaths. Since 2002, HHS's Maternal and Child Health Bureau has funded the National Maternal Child Health Center for Child Death Review, a technical assistance center that developed the Child Death Review Case Reporting System. As of February 2009, 28 states have used the system, and states vary in the types of deaths reviewed, the timing of entry into the system, and the amount of detail entered into the system, according to officials. The system prompts the user to record whether the death was a consequence of a problem with a consumer product and, if so, collects information about the product and whether the incident was reported to CPSC. However, according to officials, CPSC has not been involved in the development and implementation of this system. CPSC does not currently

receive updates from HHS or the states directly through the Child Death Review Case Reporting System.

According to CDC, injury data collected from household interviews through its National Health Interview Survey may include more accurate data on race and ethnicity compared with medical records-based data collection efforts because the information is self-reported or reported by a knowledgeable representative. The National Health Interview Survey also contains information about other factors that could account for health conditions, such as socioeconomic status, but lacks consistently reported information about product involvement, according to CDC officials. A CPSC official said the agency has not pursued working with CDC to augment its data collection efforts by modifying this survey, citing doubts that the data collected could include sufficient detail about product involvement even if the survey were modified.

CPSC Has Developed or Modified Some Consumer Information Efforts to Reach Specific Minority Populations, but Has Not Assessed the Results of These Efforts

CPSC has incorporated some elements of key consumer education practices to provide consumer product safety information to minority populations, such as periodically using consumer and other stakeholder input to inform its outreach efforts, but it has not specifically defined goals or developed measures to assess whether these efforts are effectively reaching minority populations (see app. II for further detail on the key practices).

CPSC Has Tailored Some Outreach for Hispanic Communities and Established Relationships to Assist in Reaching Other Minority Populations

CPSC's consumer information efforts are intended to provide notice of product recalls and guidance on safely using products to the general public, although some of its safety information regarding children's products has also been targeted to minority populations, particularly the Hispanic community. CPSC provides information in Spanish for many of its outreach efforts, and according to CPSC officials, has hired a Hispanic media consumer outreach specialist to assist with translations and to work with the Hispanic media, and has established practices to develop and disseminate safety information to this community. CPSC officials also told us that they provide information to Spanish-language television and radio stations, use Spanish-speaking telephone operators for CPSC's toll-free

hotline, and maintain a language bank to provide assistance for calls in other languages.[21] During fiscal year 2008, CPSC records indicate that CPSC hotline staff answered 1,570 calls in Spanish. The main CPSC Web site also includes a section called El Mundo Hispano de la CPSC with recall notices and other product safety information in Spanish. See figure 4 for examples of CPSC consumer information in Spanish and English.

[21] According to CPSC officials, CPSC's language bank is a working list of CPSC staff members who have proficiency in other languages.

Figure 4: Examples of CPSC Consumer Information

NSN poster on safe sleep (in English)

NSN poster on safe sleep (in Spanish)

NSN poster on drowning prevention (in English)

NSN poster on drowning prevention (in Spanish)

Source: CPSC Web site.

CPSC has also identified and established relationships with other organizations to help disseminate consumer safety information to additional minority communities through electronic, broadcast, and print media. For example, CPSC officials noted that in 2000, CPSC worked with the Bureau of Primary Health Care, Gerber, and Black Entertainment Television (BET) to launch a safe sleep campaign to help lower sudden infant death syndrome (SIDS) rates, especially among African-Americans. The campaign included a nationwide television public service announcement about placing babies to sleep on their backs to prevent SIDS, and special programming to be televised on BET. CPSC has also worked on media outreach campaigns with other organizations such as public health agencies, industry groups, and child safety organizations. In 2004, CPSC launched the Neighborhood Safety Network (NSN), to enlist support from community-based organizations in extending its messages to communities it designated as hard to reach, including older Americans, urban and rural low-income families, new parents, and minority groups. According to CPSC officials, CPSC uses NSN, now numbering about 5,600 member organizations, to deliver information to minority populations. Membership in NSN is free and enrollment is voluntary. Some of the member organizations include HHS, hospitals and health clinics, day care centers, fire stations, parent organizations, and American Indian reservations. CPSC has developed a Web page offering online safety materials that NSN members can modify for use with specific groups. NSN member organizations receive CPSC's e-mail updates with product safety information on topics such as drowning prevention, crib and toy safety, and poison prevention and may elect to employ these in their own outreach efforts.

Organizations we contacted for this report, including NSN members, consumer groups, and organizations that conduct injury prevention research or implement injury prevention programs in diverse communities generally reported using safety information provided by CPSC, and some offered suggestions for improving efforts to reach minority communities. Some of the organizations said that they receive information from CPSC via e-mail notifications, and some mentioned distributing flyers or posters provided by CPSC and incorporating information from CPSC into their own pamphlets and brochures. Some suggestions to improve consumer information efforts for minority populations included additional exposure through broadcast media because access to electronic information via computers may be limited. Some NSN members also said it would be useful if safety information were provided in additional languages. According to CPSC officials, the agency does not have the resources to translate information into additional languages, but one NSN member we

interviewed mentioned that their organization had translated some CPSC materials for its audiences. Some organizations also expressed interest in collaborating more closely with CPSC on its consumer information efforts.

CPSC Has Used Some Consumer Input to Develop Safety Information, but Has Not Assessed Outreach Efforts to Specific Audiences

CPSC has periodically conducted audience research to strengthen its consumer information efforts. In 2003, the agency funded a literature review to examine the factors influencing consumers' understanding of and responses to recall notices and other safety information. The study findings suggested ways product recall communications could be improved to help consumers eliminate or reduce product hazards, such as using pictures and signal language like "warning" or "danger" to help consumers attend to and understand safety messages. CPSC also created an online Consumer Opinion Forum that consumers can join to provide feedback on product safety issues, such as how a recall notice could be written more clearly; however, consumers must have Internet access to participate in this forum. In addition, CPSC recognizes that to understand the culture and diversity within the Hispanic community, it must take certain steps such as interviewing members of the community, reviewing related research, and consulting with colleagues from other federal agencies. For example, to translate and adapt materials for one of its outreach campaigns for different segments of the Spanish-speaking audience, CPSC conducted interviews with members of the Hispanic community from varying educational backgrounds. Although CPSC has periodically conducted audience research, agency officials told us they do not have the resources to regularly pretest safety messages. However, officials from a few organizations we interviewed noted that CPSC could conduct focus groups with members of the target audience or include representatives of organizations that work with the target audience on an advisory committee to help design and implement safety campaigns.

CPSC has also established goals for its overall consumer information efforts, but not for its messages targeted to specific populations. In its 2008 performance and accountability report, CPSC stated that its goal for using consumer information was to alert the public to children's and other hazards through consumer outreach, press releases, and conducting nine public information efforts that included topics such as drowning and poisoning prevention. CPSC sets annual performance goals that measure the success for each of these consumer information methods according to the total number of items issued, viewed, or conducted during that fiscal year. For example, CPSC set a fiscal year 2008 goal to receive 450 million views of its safety messages through television appearances, video news releases, and downloads of e-publications.

CPSC relies on the Neighborhood Safety Network to share product safety information with audiences that can be hard to reach, but the agency has not formally assessed whether these populations are receiving and using the information. And while CPSC tracks the number of views its safety messages receive, CPSC officials stated that they do not collect information on audience demographics, which could indicate the target audiences being reached. Likewise, CPSC has conducted surveys to assess customer satisfaction with its toll-free hotline, Web site, and partnerships with state government agencies, and these surveys indicate a high level of satisfaction with CPSC services; however, these surveys do not collect information about the demographic characteristics of the consumers using CPSC's services to determine the extent to which they are representative of the general population. According to CPSC officials, CPSC has also not identified outcome measures to evaluate how well its campaigns affected the attitudes and behaviors of the target audiences it set out to influence. We previously identified strategies used by other federal agencies to evaluate the effectiveness of information campaigns, including analyzing findings from previous research, collaborating with program partners to help meet the information needs of diverse audiences and expand the usefulness of evaluations, and surveying the intended audience to ask about program exposure, knowledge, and attitude change.[22] CPSC officials have also cited a lack of resources as a challenge to establishing evaluation programs to measure results; however, CPSC has recently received more resources from the fiscal year 2009 appropriation for the Virginia Graeme Baker Pool and Spa Safety Act. In the course of our review, CPSC officials stated that with this new funding for the act, they planned to include an evaluation component, but as of the writing of this report, it was not yet known how CPSC planned to implement this component.

Conclusions

Protecting children from dangerous consumer products is a critical part of CPSC's mission. Some research suggests that there are racial and ethnic disparities in child death rates due to injuries related to particular consumer products; however, CPSC does not routinely assess whether such disparities exist, primarily because data limitations make it challenging to conduct such analyses. In addition, the lack of information about other characteristics of individuals who are injured or die from

[22]GAO, *Program Evaluation: Strategies for Assessing How Information Dissemination Contributes to Agency Goals*, GAO-02-923 (Washington, D.C.: Sept. 30, 2002).

involvement with a consumer product, such as socioeconomic status, prevents CPSC from identifying potential underlying causes of racial and ethnic differences in injury and death rates. Without efforts to augment or improve existing data, CPSC may not know which groups are most vulnerable to product-related injury or death. If available data are improved, CPSC may be better able to identify hazards that disproportionately affect certain communities and develop ways to reduce those hazards.

Despite limited information on racial and ethnic differences in product-related injury and death, CPSC has made some special efforts to deliver some of its consumer information to audiences the agency identified as hard to reach, including minority groups. However, CPSC has not collected information on whether these targeted groups are receiving and acting on the safety information. Without fully assessing its consumer education and public outreach campaigns, CPSC cannot know how effective these initiatives are at reaching intended audiences, some of which may be at an elevated risk of injury or death.

Recommendations for Executive Action

To better understand the relative risk of product-related injury among minority and nonminority children, we recommend that the Commission, in consultation with HHS,

- Develop and implement cost-effective means of improving CPSC's data collection on factors that may contribute to differences in the incidence of injury and death related to specific types of consumer products, including race, ethnicity, and other patient characteristics. For example, steps CPSC could consider include improving the NEISS racial and ethnic classification system; working with NEISS hospitals to improve collection of data on patient race and ethnicity; and leveraging related data collection efforts, such as those sponsored by the Maternal and Child Health Bureau, the National Center for Health Statistics, or the National Institutes of Health.

To improve the effectiveness of consumer information efforts, we recommend that the Commission,

- Develop and implement cost-effective ways to enhance and assess the likelihood that CPSC's safety messages are received and implemented by all the intended audiences. For example, CPSC could consider convening groups of consumers or Neighborhood Safety Network members to advise on the design and implementation of campaigns targeted to specific

communities, surveying NSN members, establishing metrics to measure NSN's success, and evaluating the effectiveness of information campaigns targeted to the racial and ethnic groups at highest risk of drowning as part of its implementation of the Virginia Graeme Baker Pool and Spa Safety Act.

Agency Comments and Our Evaluation

We provided a draft of this report to CPSC and HHS for review and comment. CPSC and HHS concurred with our recommendations and provided technical comments, which we incorporated as appropriate. A letter conveying HHS's comments is reproduced in appendix III.

We are sending copies of this report to the appropriate congressional committees, the Chairman of the U.S. Consumer Product Safety Commission, the Secretary of Health and Human Services, and other interested parties. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions regarding this report, please contact me at (202) 512-7215 or ashbyc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributors to this report are listed in appendix IV.

Cornelia M. Ashby
Director, Education, Workforce,
and Income Security Issues

List of Committees

The Honorable John D. Rockefeller, IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Member
Committee on Commerce, Science
and Transportation
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives

The Honorable Mark Pryor
Chairman
The Honorable Roger Wicker
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, and Insurance
Committee on Commerce, Science
and Transportation
United States Senate

The Honorable Bobby L. Rush
Chairman
The Honorable George Radanovich
Ranking Member
Subcommittee on Commerce, Trade
and Consumer Protection
Committee on Energy and Commerce
House of Representatives

Appendix I: Objectives, Scope, and Methodology

The objectives of this report were to examine (1) what is known about the relative incidence of preventable injuries and deaths related to drowning, poisoning, and suffocation associated with products intended for children's use among minority children compared with nonminority children, and (2) what actions the Consumer Product Safety Commission (CPSC) has taken through its public information and education initiatives to minimize child injuries and deaths, including those in minority populations, related to products intended for children's use.

To address the first objective, we reviewed injury and death data sources used by CPSC to estimate product-related injuries and deaths. We reviewed data and documentation obtained from CPSC concerning its databases that contain injury and death data, including the Death Certificates database, National Electronic Injury Surveillance System (NEISS), Injury or Potential Injury Incidents file, and In-Depth Investigations file.[1] We reviewed information describing Department of Health and Human Services (HHS) mortality data, which includes information from death certificates filed in the United States collected through the National Vital Statistics System. We also reviewed HHS household and health care provider surveys that include injury data, such as the National Health Interview Survey and the National Hospital Discharge Survey. We also interviewed CPSC officials, HHS officials, and researchers to gather information about the strengths and weaknesses of available data sources.

We assessed the completeness and reliability of the NEISS data set by (1) reviewing NEISS's technical documentation and methodological reports, (2) interviewing CPSC officials, (3) examining these data for obvious inconsistencies, and (4) visiting three NEISS hospitals to better understand how the data are coded. We determined that these data were sufficiently reliable to use as sources of summary statistics about the extent of missing race and ethnicity information in the NEISS system. To determine the extent of missing race and ethnicity information in CPSC's NEISS system, we analyzed NEISS data obtained from CPSC for the years 1999-2007.

To explore available data published in related studies, we searched relevant databases, including PubMed, ProQuest, PsycFirst, and

[1]The Injury or Potential Injury Incidents and In-Depth Investigations files include information about related consumer products, but not race and ethnicity information.

ScienceDirect. We also consulted with CPSC and HHS staff to identify related studies. We limited the scope of our work by looking at studies published since 1999. Through this process, our literature search identified about 70 studies, but only 3 studies published data on racial and/or ethnic differences in child injury or death rates related to specific consumer products, and we conducted detailed reviews of these studies. Our reviews entailed an assessment of each study's research methodology, including its data quality, research design, and analytic techniques, as well as a summary of each study's major findings and conclusions. We also assessed the extent to which each study's data and methods supported its findings and conclusions.

To address the second objective, we reviewed CPSC documents and interviewed CPSC officials regarding the development, operation, and evaluation of the agency's consumer information efforts. Specifically, we reviewed CPSC's Web site, and documents such as CPSC customer satisfaction surveys, press releases, strategic plans, and performance and accountability reports. We compared the processes used by CPSC with key practices identified by experts in GAO's previous work as important to planning a consumer education campaign, motivating a target audience, and alleviating challenges in a campaign (see app. II for a description of these practices). We interviewed federal officials at CPSC and five HHS organizations—Centers for Disease Control and Prevention, Indian Health Service, Maternal and Child Health Bureau, National Institutes of Health, and the Office of Minority Health—to learn about their related programs and initiatives. In addition, we interviewed representatives of injury prevention programs, consumer groups, and members of CPSC's Neighborhood Safety Network to obtain their views on CPSC's efforts to provide product safety information to minority communities.

We conducted this performance audit from December 2008 through August 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Key Practices for Consumer Education Planning

In a 2007 GAO report on consumer issues pertaining to the digital television transition, a panel of 14 senior management-level experts in strategic communications identified and came to consensus on key planning components for consumer education and outreach (see table 1).

Table 1: Key Practices for Planning Consumer Education Campaigns

Key practice	Description
Define goals and objectives	Define the goals of the communications campaign, e.g., to increase awareness or motivate a change in behavior. Define the objectives that will help the campaign meet those goals.
Analyze the situation	Analyze the situation, including any competing voices or messages, related market conditions, and key dates or timing constraints. Review relevant past experiences and examples to identify applicable “lessons learned” that may help to guide efforts.
Identify stakeholders	Identify and engage all the key stakeholders who will be involved in communications efforts. Clarify the roles and responsibilities of each stakeholder, including which entity or entities will lead overall efforts.
Identify resources	Identify available short- and long-term budgetary and other resources.
Research target audiences	Conduct audience research, such as dividing the audience into smaller groups of people who have relevant needs, preferences and characteristics, as well as measuring awareness, beliefs, competing behaviors, and motivators. Also, identify any potential audience-specific obstacles, such as access to information.
Develop consistent, clear messages	Determine what messages to develop based on budget, goals, and audience research findings. Develop clear and consistent audience messages; test and refine them.
Identify credible messengers	Identify who will be delivering the messages and ensure that the source is credible with audiences.
Design media mix	Plan the media mix to optimize different types of media such as news stories, opinion editorials, and broadcast, print, and Internet advertising. Identify through which methods (e.g., advertising in newsprint ads), how often (e.g., weekly or monthly) and over what duration (e.g., 1 year) messages will reach audiences.
Establish metrics to measure success	Establish both process and outcome metrics to measure success in achieving objectives of the outreach campaign. Process metrics ensure the quality, quantity, and timeliness of the contractor’s work. Outcome metrics evaluate how well the campaign influenced the attitudes and behaviors of the target audience(s) that it set out to influence.

Source: GAO-08-43.

Appendix III: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

JUL 14 2009

Cornelia M. Ashby
Director, Education, Workforce
and Income Security
U.S. Government Accountability Office
441 G Street N.W.
Washington, DC 20548

Dear Ms. Ashby:

Enclosed are comments on the U.S. Government Accountability Office's (GAO) report entitled: "CONSUMER PRODUCT SAFETY COMMISSION: Better Data Collection and Assessment of Consumer Information Efforts Could Help Protect Minority Children" (GAO-09-731).

The Department appreciates the opportunity to review this report before its publication.

Sincerely,

Barbara Pisaro Clark

Barbara Pisaro Clark.
Acting Assistant Secretary for Legislation

Attachment

GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED: BETTER DATA COLLECTION AND ASSESSMENT OF CONSUMER INFORMATION EFFORTS COULD HELP PROTECT MINORITY CHILDREN (GAO-09-731)

The Centers for Disease Control and Prevention (CDC) wishes to thank the GAO for the opportunity to review and comment on this Draft Report. CDC concurs with the GAO's recommendations and respectfully submits the following general comments.

The National Center for Health Statistics (NCHS) has a history of working with the Consumer Product Safety Commission (CPSC) to provide death certificate information to assist the CPSC in its mission. Mortality data from NCHS are a fundamental source of demographic, geographic, and cause of death information including the characteristics of individuals dying in the United States. The death certificate is not intended, however, to provide detailed information about consumer products that may contribute to death. NCHS will continue to assist the CPSC in using death certificate data to monitor the safety of consumer products.

2

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Cornelia M. Ashby, (202) 512-7215, ashbyc@gao.gov

Staff Acknowledgments

In addition to the contact named above, individuals making key contributions to this report include Betty Ward-Zukerman (Assistant Director), Carl Barden, Mitch Karpman, Kristy Kennedy, Jim Rebbe, Cathy Roark, Jay Smale, Gabriele Tonsil, and Kate van Gelder.

Related GAO Products

Feasibility of Requiring Financial Assurances for the Recall or Destruction of Unsafe Consumer Products. GAO-09-512R. Washington, D.C.: April 22, 2009.

Traffic Safety: Improved Reporting and Performance Measures Would Enhance Evaluation of High-Visibility Campaigns. GAO-08-477. Washington, D.C.: April 25, 2008.

Digital Television Transition: Increased Federal Planning and Risk Management Could Further Facilitate the DTV Transition. GAO-08-43. Washington, D.C.: November 19, 2007.

Health Care: Approaches to Address Racial and Ethnic Disparities. GAO-03-862R. Washington, D.C.: July 8, 2003.

Program Evaluation: Strategies for Assessing How Information Dissemination Contributes to Agency Goals. GAO-02-923. Washington, D.C.: September 30, 2002.

Internet: Federal Web-based Complaint Handling. GAO/AIMD-00-238R. Washington, D.C.: July 7, 2000.

Consumer Product Safety Commission: Injury Data Insufficient to Assess the Effect of the Changes to the Children's Sleepwear Safety Standard. GAO/HEHS-99-64. Washington, D.C.: April 1, 1999.

Lead Poisoning: Federal Health Care Programs Are Not Effectively Reaching At-Risk Children. GAO/HEHS-99-18. Washington, D.C.: January 15, 1999.

Children's Health: Elevated Blood Lead Levels in Medicaid and Hispanic Children. GAO/HEHS-98-169R. Washington, D.C.: May 18, 1998.

Consumer Product Safety Commission: Better Data Needed to Help Identify and Analyze Potential Hazards. GAO/HEHS-97-147. Washington, D.C.: September 29, 1997.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, http://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm
E-mail: fraudnet@gao.gov
Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Exhibit 109

Recall Effectiveness Workshop

CPSC in cooperation with stakeholders

Consolidated Discussion Notes

What is an Effective Recall?

Carol Cave with Blake Rose, Shelby Mathis, and Tanya Topka

What is an effective recall?

- Sufficient remedy (appealing to consumers)
- Use alternative metrics/measures
- No incidents after recall announcement
- Done quickly
- Fulfillment by firm quickly
- Eliminate future causes for recall

What does an effective recall look like?

- Tailored to hazard
- Flexible for manufacturers, retailers etc. in communicating recall information
- Done quickly
- Maintain brand image through recall process

What elements should the CPSC consider when determining if a recall is effective?

- Consumer correction rate
- Firm's speed and efficiency
- Readiness to provide remedy / Flexibility of announcement date
- Clear message communicated
- Consumer motivational challenges
- Early communication of pending recall to retailers
- Measure the effort of firm. Multiple ways to reach consumer
- Actual use, expected life of product
- Ease of taking advantage of remedy
- Getting and addressing negative feedback
- Consumer feedback to CPSC- make available to all public
- Hire contractors for surveying and modeling (to determine what elements to measure)
- Retail reporting limitations

What can the CPSC do to increase recall effectiveness?

Collaborate

- Collaborate with other agencies

Communication Channels

- Multimodal (if no initial response) – Use various channels
- New category of alerts (non-press release, non-recall alert)
- Clearer expectations on social media
- Consumer feedback

Flexibility

- With firm as long as recall effective (direct to consumer) and potential resellers (press release)
- Give staff greater approval authority
- Eliminating legal imped. of Fast Track

Explore new methods for:

- Ways to communicate
- Track purchases (apple pay, credit card companies)
- Consumer and retailer education on technology
- Consumer behavior research
- Consider appropriate use of word "recall" – change instructions, warning labels, inspect and then repair if necessary

Registration

- Increase registration rate (durables) via CPSC.gov
- Revisit regulations on juvenile product registration

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

- Research on registration cards
- Improve and ease of registration of products
- Creative registration ways (at purchase checkout)

Speed, Efficiency, Transparency

- Ensuring hazard and risk is efficiently communicated
- Shorter turnaround
- Increase transparency
- Tier hazards and give time frames like HC
- Speed up PSA process - if really a hazard should know sooner
- CAPs include being ready
- Set reach rate mirroring risk (comprehensive process)
- Reduce time between report and announcement
- Trust (company and CPSC)
- Engaging marketing /sales with safety/legal for notices
- Public information of correction rates (overall general /specific)
- Evaluate content of releases

Indirect Recall Support

- Communication retailer and recalling firm especially if won't do it (communicate CPSC to retailer)
- Acknowledge costs retailers to recalling firm and privacy concerns

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

Recall Effectiveness Workshop

CPSC in cooperation with stakeholders

Consolidated Discussion Notes

Communicating the Hazard

Celestine Kish and Tanya Topka with Shelby Mathis

What communication channels are available to convey a recall message?

- Bloggers
- CPSC.gov
- Emails (potential risk – privacy)
- Letters company website
- Social media (and user tags)
- Online communications with consumers
- Text messaging (potential risks – privacy)
- Use targeted advertising information to push recall information
- Trade magazines
- Registration with preferences from consumer for contacts
- Micro-targeting (by zip codes for instance)

Do companies develop specific marketing strategies for recalls?

- High hazard focused strategy
- Facebook/Social media ads
- Resonating message
- Recall strategies should match marketing strategies
- Increase registration by consumers
- Fast Track requires quick decision-making and cross-marketing strategy

What is the best way to convey the hazard in recall communications?

- Consider term "recall" in some cases
- Recall symbols (such as for recycling)
- Use recognizable term (e.g. "safety" to cue consumer)

How do consumers respond to the use of social media regarding recalls?

- Large amount of hits/traffic
- Effective for product registration
- Facebook messenger, texting = younger demographic reached
- Consider brand image impact from social media campaigns

What elements form the most effective social media communications?

- Clear and concise
- Videos (high click through rates)
- Images (high share/pass on rates – for videos as well)
- Use "URGENT" or other attention-grabbing language
- Facebook App (always on top and accessible) with tracking information on use
- How-to videos (e.g. repairs)
- Use comments from public to communicate recall information effectively
- Timely campaigns

What tips and tricks have you used for promoting your posts?

- Affordable ads via Facebook
- No competing messages
- Repetition is key
- Reach out to bloggers to reach new audience
- Connect with local media (not just via press release)
- Encourage sharing

Are there any barriers to the use of social media to promote recalls?

- Adequate staff for questions from public
- Limited to network of followers only

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

- Continually evolving/changing (social media type changes)
- Consumer fatigue/message confusion
- Clear hazard language

What types of notices are available for use in retail locations?

- Could maybe include in circulars
- Store posters ineffective
- Location of posters important (wrong location means consumers don't see)
- Be creative about notices in store
    - Elevator space
    - Use related product space to post e.g. cribs and diapers
- Limited recalls by retailer = better viewing
- App for recall notices
- Store receipts
- Loyalty programs
- Consumer targeted messaging much preferred
- On front door (most effective in retail)

In what situations are they use of posters most effective?

Skipped

What other types of notification are available to promote recalls?

- Advertising
- OEM CRM
- Credit card statements
- Push notices to smart devices
- Direct mail
- Phone calls
- Text messages
- Loyalty programs/rewards clubs
- Online interest groups tied to product
- YouTube videos

What are some of the limitations, barriers, or challenges of these communication channels?

- Push notices to smart devices
    - Could be firewalled
- Direct mail
    - Reimbursement requests and lack of customer information and overall costs
- Phone calls
    - Reassigned numbers
    - Issues with consumer protection
- Text messages
    - Reassigned numbers
- Loyalty programs/rewards clubs
    - Subject to use terms/limits

Recall Effectiveness Workshop

CPSC in cooperation with stakeholders

Consolidated Discussion Notes

Consumer Motivation

Shelby Mathis and Tanya Topka

How has consumer behavior changed in the last 20 years?

- Immediate gratification
  - Quick response
- Attention span
  - High priority recalls
- Lifespan of products has decreased
  - Remedies change
- Higher expectation of quality
- Less consumer interaction
  - Online registration
- More vocal consumers
- More diverse news sources
  - Good initial response for companies
- Peer recommendations more important
- More global markets

What challenges exist in motivating consumer behavior for recalls?

- Too complex/Time-consuming
- Brand image/maintenance of integrity with consumer
- Consumer can evaluate message/clearly communicate
- Communicate impact to consumer (of defect)
- Balance risk with remedy
- Recall effectively communicated very important measure

What motivates consumer to participate in recalls?

- Convey the message
- Consumer research/feedback on lack of recall participation
- Where in useful life of product consumers are
- Lack of alternatives

What type of incentives are the most effective for recalls?

- Communication of recall expense
- Discount/replacement with new product
- Repair vs. full refund
- More options
- Accessories and gifts (helps brand image)
- Remove hurdles to participate (receipts)

Are there wording styles/changes that can be made to notices that will help motivate consumers?

- Photos and image
- Uniform recall message – highlight retailer, time frame
- Consumer research on recall message needed (focus group)
- Picture of product and hazard wanted up front
- Call to action prominent
- Few seconds to convey message
- Press alert easier to follow than what goes to consumers

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

Recall Effectiveness Workshop

CPSC in cooperation with stakeholders

Consolidated Discussion Notes

Technological Advances to Improve Recall Effectiveness

Carol Cave, Pamela Chisholm, Christopher Nguyen, Blake Rose, and Mary Toro
with Celestine Kish, Matthew Lee, Stephen Lee, and Troy Whitfield

Questions:

(1) *What advances in technology have arisen to improve the notification of consumers?*
(2) *What advances in technology have arisen to improve the effectiveness of recalls?*
(3) *What can companies do to improve direct notification?*
(4) *What challenges exist in implementing new practices or acquiring new technology to assist in notifying consumers?*

Technological advances that improve notification and other technology that improves effectiveness (Questions 1 &2):

- Email addresses and email tracking/open rate
- Social Media, Facebook and Twitter, SM buzz platform
- Recall registration sites with scheduling for repairs
- Retailer posting National Brand recall
- CRM/loyalty programs
- QR and RFID Codes in retail locations
- Personal URL
  - Product confirmation
  - Remedy selection
- Micro-targeting of websites (art and music)
  - Stimulating to consumers but shouldn't sensationalize the hazard
  - Consider how you target, one size does not fit all
- Include clicks/views in effectiveness measures
  - Shares, opened emails
- Strong self-serving tools (registration – automation)
- Serial numbers
- Software updates and firmware
- Accept photo of destroyed product for verification
- Plenty of technology assuming registration/permission/tech to register
  - Text messaging
  - Email
- Apps – messaging functions
- Advanced search functions on website
- Text mining tools – CPSC to expand retail reporting preprogram
  - Synthesize data and use data analytics (sales force)
  - Use for recall effectiveness
- QRD and FRID (when affordable) at SKU level
- Connected devices allow for direct communication
- Voice activated communication devices

Direct Notification or Registration (Question 3):

- Online sales
- Make registration easier
  - Time of purchase registration/notification (Opt in/Opt out)
  - Incentives for registering ($, free gift, gift cards, coupons)
  - App
  - QR code or picture registration
  - Standardization of registration with voluntary standard
- Direct Mail with confirmation and incentive to respond
- Apps: Information collection app for receipt scanning, push notifications, easier for connective products)
- Targeted mailings (including bilingual)
- Better collaboration between retailers and manufacturers to contact consumers

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

- Leveraging smart home or voice activated products Google Home, Amazon Alexa
- Repetition in different forms of communication

Challenges (Question 4):

- No incentive to be creative
- Resources and Cost
- Rapid change in technology – time and resources
- Product marketing/brand protection mindset
- Notification issues with recall fatigue
- Notification issues with company contact fatigue (too many emails cause consumers to ignore/delete before reading)
- Consumer motivation issues
- Privacy concerns and Confidentiality
    - Information collection and sharing
    - Knowing and understanding the data
    - Budget – IT
    - Multiple contracts for sharing information
- The more complex the marketing/recall plan is, more staff involved – procedural slow down
- More social media requires more staff to respond
- Registration/challenges too much information
- One size doesn't fit all – creative actions creates expectation for future recalls
- 140 characters (twitter)

Other suggestions and comments:

- Handbook Best Practices
- Video – How-to-do Recall
- Something new = Replace old idea

Thank you to all stakeholders who participated in the workshop on July 25th, 2017

Exhibit 110

Public Warning and Notification of Recalls Under 21 CFR Part 7, Subpart C

Guidance for Industry and FDA Staff

You may submit electronic or written comments regarding this guidance at any time. Submit electronic comments to https://www.regulations.gov. Submit written comments to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number FDA-2016-D-3548.

For questions or information regarding this guidance, contact the Office of Regulatory Affairs (ORA), Office of Strategic Planning and Operational Policy (OSPOP), Food and Drug Administration at ORAPolicyStaffs@fda.hhs.gov.

The draft of this guidance was issued in January 2018.

U.S. Department of Health and Human Services
Food and Drug Administration
Office of Regulatory Affairs
Center for Food Safety and Applied Nutrition
Center for Drug Evaluation and Research
Center for Biologics Evaluation and Research
Center for Devices and Radiological Health
Center for Veterinary Medicine
Center for Tobacco Products

FEBRUARY 2019

Contains Nonbinding Recommendations

Public Warning and Notification of Recalls Under 21 CFR Part 7, Subpart C

Guidance for Industry and FDA Staff

Additional copies are available from:
Office of Strategic Planning and Operational Policy
Office of Regulatory Affairs,
Food and Drug Administration
12420 Parklawn Drive, Element Building,
Rockville, MD 20857

U.S. Department of Health and Human Services
Food and Drug Administration
Office of Regulatory Affairs
Center for Food Safety and Applied Nutrition
Center for Drug Evaluation and Research
Center for Biologics Evaluation and Research
Center for Devices and Radiological Health
Center for Veterinary Medicine
Center for Tobacco Products

FEBRUARY 2019

Recalls

Table of Contents

I. INTRODUCTION 4
II. TERMINOLOGY 5
III. DISCUSSION 6
A. Public Warnings 6
1. Under what circumstances should firms issue public warnings? 6
2. Who prepares public warnings? 8
3. What information should be contained in a public warning? 9
4. How are public warnings distributed and displayed? 10
B. Public Notification of Recalls 11
IV. REFERENCES 11

Public Warning and Notification of Recalls Under 21 CFR Part 7, Subpart C

Guidance for Industry and FDA Staff

This guidance represent the current thinking of the U.S. Food and Drug Administration (FDA, we, or Agency) on this topic. It does not establish any rights for any person and is not binding on the FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. To discuss an alternative approach, contact the FDA staff responsible for this guidance as listed on the title page.

I. Introduction:

The purpose of this guidance is to assist and provide recommendations to industry and FDA staff regarding the use, content, and circumstances for issuance of public warnings and public notifications for firm-initiated or FDA-requested recalls under 21 CFR Part 7, Subpart C – Recalls (Including Product Corrections) –Guidance on Policy, Procedures, and Industry Responsibilities. The guidance also discusses what information should be included in a public warning, as well as the parties responsible for issuing it. It represents FDA's current thinking on public warning and notification of recalls under 21 CFR Part 7.

This guidance applies to voluntary recalls of products subject to FDA's jurisdiction, including any food, drug, and device intended for human or animal use, any cosmetic and biologic intended for human use, any tobacco product intended for human use, and any item subject to a quarantine regulation under 21 CFR Part 1240. However, it does not apply to radiation emitting electronic products which are governed only by 21 CFR Parts 1003 and 1004.

FDA's guidance documents do not establish legally enforceable responsibilities. Instead, guidance describes the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited. The use of the word *should* in Agency guidance means that something is suggested or recommended, but not required.

II. Terminology:

Recall

Recall means a firm's removal or correction of a marketed product that FDA considers to be in violation of the laws it administers and against which the Agency would initiate legal action, e.g., seizure. Recall does not include a market withdrawal or a stock recovery.[1] (21 CFR §7.3(g))

Recall Determination

A recall determination is the assessment the FDA makes in deciding that a firm's ongoing or completed removal or correction of a marketed violative product constitutes a recall as defined at 21 CFR § 7.3(g). A firm's characterization of its action is not determinative of whether the FDA would determine that the action is a recall. A firm's action constitutes a recall when it meets the definition of "recall" under 21 CFR § 7.3(g).

Recall Classification

Recall classification means the numerical designation, i.e., I, II, or III, assigned by the FDA to a particular product recall to indicate the relative degree of health hazard presented by the product being recalled or considered for recall. (21 CFR §§ 7.3(m), 7.41(b)). The determination is made on the basis of the health hazard evaluation and in consideration of the factors provided at 21 CFR § 7.41.

Public Warning

The purpose of a public warning under 21 CFR Part 7 is to alert the public that a product being recalled presents a serious health hazard. It is reserved for urgent situations where other means of preventing use of the recalled product appear inadequate. (21 CFR § 7.42(b)(2)).[2] Public warnings under 21 CFR Part 7 can be disseminated through general or specialized news media, e.g., professional or trade press, and/or to specific segments of the population such as physicians, hospitals, etc. The FDA may issue public warnings in a variety of forms, including, but not limited to, press releases, emails, and web and social media postings.

Public Notification of Recalls

The FDA promptly makes available to the public in the weekly FDA Enforcement Report a descriptive listing of each new recall according to its classification, whether it was FDA-requested or firm-initiated, and the specific action being taken by the recalling firm. (21 CFR §

[1] 21 CFR § 7.3(j) defines market withdrawal to mean a firm's removal or correction of a distributed product which involves a minor violation that would not be subject to legal action by the Food and Drug Administration or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc. Stock recovery means a firm's removal or correction of a product that has not been marketed or that has not left the direct control of the firm, i.e., the product is located on premises owned by, or under the control of, the firm and no portion of the lot has been released for sale or use. 21 CFR § 7.3(k).

[2] In addition to the public warning authority described in 21 CFR Part 7, the Agency has other authorities to disseminate information in an array of circumstances, for example, the Secretary's authority in 21 U.S.C. 375(b) to disseminate information about FDA regulated products in situations that the Secretary determines involve imminent danger to health or gross deception of the consumer . Nothing in this guidance is meant to define, shape, or limit those authorities in any way.

7.50).

Confidential Commercial Information (CCI)

Commercial or financial information that is privileged or confidential means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs. (21 CFR § 20.61(b)).

III. Discussion:

The FDA's policy is to evaluate the particular circumstances of each individual recall in determining whether a public warning is needed in accordance with 21 CFR § 7.42(b)(2) as part of the recall strategy. The FDA may issue a public warning or notification before formally classifying a recall under 21 CFR § 7.41(b). We note that due to the level of hazard associated with Class I recalls, the FDA has generally issued, and/or sought issuance of, public warnings in Class I or potential Class I recalls unless specific circumstances indicate that one would not be beneficial to the public. The FDA also recommends and/or issues public warnings for some urgent Class II recalls that, while not rising to Class I hazards, still present a serious hazard to health.[3]

Once the FDA makes a recall determination or classification, the recall will be listed in the weekly FDA Enforcement Report in accordance with 21 CFR §7.50.

A. Public Warnings

1. Under what circumstances should firms issue public warnings?

Public warnings are for urgent situations and are issued to alert the public that a product being recalled presents a serious hazard to health, and where other means for preventing the use of a recalled product appear inadequate. For instance, public warnings may be appropriate for urgent recalls of prescription drugs or medical devices when retail level consignees cannot identify persons to whom the drug or device was dispensed. A public warning is also often needed when a recalled product has been widely distributed.

On the other hand, when recalled products have only been distributed to direct accounts[4], and the recalling firm has records that show exactly where the products have gone, a prompt and effective communication to such accounts informing them of the recall may be adequate to

[3] FDA has recommended public warnings for Class II recalls involving, for example, foods with low levels of undeclared allergens (e.g., wheat). While the adverse health consequences may be remote or temporary, FDA is committed to acting immediately when necessary to protect the public health.

[4] For internet purchases, the consumer level is considered a direct account. For some internet purchases, prompt and effective communication may not be feasible, and thus distribution to the direct account in an internet transaction may warrant a public warning. Where communication is feasible, the internet seller should attempt to confirm receipt of the communication.

prevent the use of a recalled product.[5] This could be an instance where the product has only reached the wholesale level, such as a warehouse or distribution center, and has not been further distributed to the retail or consumer level.

The FDA generally recommends public warning for recalls that are likely to be classified as, or have been classified as Class I recalls, unless specific circumstances indicate that the warning would not be beneficial to the public. Such circumstances could be where there is not adequate information to convey risk and appropriate actions, or when the product is limited to a small number of consignees that are easily identified and can be rapidly reached through targeted contact. Furthermore, different products might dictate different communication considerations. For instance, during a medical device recall, the FDA may consider how patients respond to a public warning about a defective product without first having the benefit of consulting with their physician. In these and similar situations, public warnings may be more confusing than helpful.

The FDA will continue to assess the need for public warnings for voluntary recalls of FDA-regulated products based on the particular circumstances of the individual recall. The following recalls generally present examples of serious hazards to health such that a public warning may be warranted:

- Recalls of food products initiated by a firm after receipt of consumer reports of illness or injury (including allergic reactions), for which there is an active outbreak associated with the product or its ingredients, or for which the FDA has substantiated reports of illness or injury.

- Recalls of food products that are intended for or would more likely be consumed by vulnerable populations. Examples of vulnerable human populations include infants, toddlers, the elderly, pregnant women, and medically-compromised individuals, who may be more susceptible to foodborne hazards than healthy persons.

- Recalls of food products initiated because of manufacturing deviations where the consequences of the manufacturing deviations could have significant health impacts; e.g., under processed low-acid canned foods which could result in botulism if the product is consumed.

- Recalls of food products initiated because of microbiological pathogen findings (e.g., *Listeria monocytogenes, Salmonella*, etc.) in environmental testing where direct food manufacturing contact surfaces are found to be contaminated.

- Recalls of animal food products which may be contaminated with low levels of drugs or unsafe food additives. Examples include pet jerky treats contaminated with antibiotics, and cat food products containing propylene glycol.

- Recalls of home use medical devices which could malfunction and lead to incorrect dosing of drugs or blood volumes.

[5] To be adequate to prevent the use of the product, a recalling firm should be able to confirm that business accounts received the communication and understood the instructions conveyed in the communication. FDA's model recall return response form, available in FDA's Regulatory Procedures Manual, is one way a recalling firm can document such confirmation from business accounts.

- Recalls of sterile injectable drug products which may contain particulate matter.
- Recalls of implantable pacemakers or defibrillators where the device's battery may fail suddenly and without warning.

The FDA may issue or supplement a firm's public warning, among other actions, in the following situations: a firm refuses to issue its own public warning when recommended or requested by the FDA, an ongoing recall or public warning is not prompt or effective, or the FDA learns of a completed recall where new adverse events associated with the product are reported after completion of the recall. The FDA will generally provide a timeframe for when the firm should issue a public warning based on the circumstances of the individual recall. While timeframes will vary depending on the recall and product, these firms should generally issue a public warning within 24 hours of the FDA notifying the firm that it believes a public warning is appropriate.

2. Who prepares public warnings?

The FDA generally gives firms the first opportunity to prepare and issue public warnings during recalls. For instance, for firm-initiated recalls, recalling firms are expected to develop their own recall strategy. The recall strategy addresses, among other things, whether a public warning is needed and how it will be issued. In most cases, the FDA reviews and comments on the recall strategies, including any public warnings developed by firms (see 21 CFR § 7.42(b)(2)). Firms should include any drafted public warning as part of their submission of the recall strategy to the extent that it does not delay strategy development or recall initiation.[6] In other situations that warrant an immediate warning, firms may choose to issue public warnings without the FDA's review. The FDA may supplement that warning with its own public statement, if necessary. When the FDA believes that a public warning is appropriate and the recalling firm does not include one in its initial recall strategy, the FDA will generally request one from the recalling firm.

In some situations, the FDA may prepare and issue public warnings on its own initiative and in accordance with 21 CFR § 7.42(b)(2). This may occur, for instance, when the public needs immediate warning concerning a product and the firm has not issued a public warning or a firm's public warning is deficient. The FDA will ordinarily work with the recalling firm to ensure the factual accuracy of a public warning. However, the FDA is not required to contact the firm before issuing a public warning or allow its review of the proposed statement.

If a firm issues a public warning that is deficient in any respect (see also section III.A.3 in this document), the FDA may supplement or correct that warning with its own public warning. If a firm's public warning is not reasonably likely to be adequately received by the target audience, the FDA may ask the firm to reissue its public warning and/or the FDA may issue its own public warning. Additionally, the FDA may publicly issue information that may address outstanding questions about the nature of the incident and/or the Agency's actions.

[6] Firms are reminded that, under 21 CFR § 7.42, they need not delay the initiation of a recall pending the FDA's review of their recall strategy.

3. What information should be contained in a public warning?

The purpose of a public warning is to alert the public that a product being recalled presents a serious hazard to health. As such, a public warning should include: a) information to help identify the recalled product including images, numerical product information (e.g., lot number, expiration date, serial number, unique device identification (UDI) number), packaging information or brand names; b) the geographic areas and dates of distribution of the affected product; c) a thorough description of the product defect, health hazard involved, and reason(s) for recall (e.g., product testing, environmental sampling, etc.); d) the name and contact information for the recalling firm; e) instructions to consumers or users; f) the number and nature of any illnesses/injuries/complaints associated with the product, related to the product defect; and g) a description of common symptoms of any illness of concern. The headline of the public warning should include the brand name, type of product, and the hazard prompting the recall (e.g., "XYZ chocolate chip cookies recalled for potential Salmonella contamination.").

In some cases, it may also be necessary to include the recalling firm's supply-chain relationships in order to alert the public of the product being recalled. When possible, the FDA encourages firms to provide specifics about firms it sold product to in order to help people better identify and avoid recalled product.[7]

What should not be included

Public warnings should not contain content that detracts from or defeats the purpose of the warning. Brief and succinct warnings are generally better at informing consumers of a product hazard and helping consumers understand the importance of avoiding the product. On the other hand, messages that cloud or lengthen a warning may distract a consumer and should be avoided. Generally, firms should not promote the qualities of the product being recalled, other products sold by the firm, or the firm in general, as part of a public warning. Phrases such as "an abundance of caution," that can be seen as trying to minimize the hazard, should not be used, for example, when illnesses or injury have resulted, or when there are positive results for pathogens associated with the finished product or ingredients.

What might make a public warning deficient

A public warning may be considered deficient if, among other things, it does not adequately identify the recalled product, describe the health hazard involved, or identify relevant information about the product's distribution. A public warning might also be considered deficient if, on the basis of the FDA's media monitoring, it is determined that the warning did not sufficiently reach the target audience (e.g., the firm's release was not disseminated sufficiently by the news media; the firm's warning for a nationally-distributed product was issued only to a regional audience; no Spanish translation was made available for a product largely used by Spanish-speaking populations). A factual statement in a firm's public warning that the FDA is unable to verify might also cause the FDA to issue a separate public warning.

[7] FDA's recall communications are intended to be as informative as possible within the scope of the Agency's authority for information disclosure. For example, depending on the circumstances, certain information such as supply-chain relationships and product distribution data may be CCI, which is generally protected from public disclosure. FDA's regulations authorize the release of CCI, in relevant part, when necessary to effectuate a recall. (21 CFR § 20.91).

The FDA will take actions to correct or supplement deficient public warnings as described in this guidance. The Agency encourages firms issuing public warnings to monitor media coverage and take further action to raise public awareness if media coverage appears to be insufficient.

4. How are public warnings distributed and displayed?

Firms and the FDA can alert the public about a recall by various means, including issuing press releases to the media, sending emails to a listserv or subscription service, and posting on the FDA and company websites or social media. All of these methods could be used to issue a public warning.

Issuing the Public Warning through a Press Release

It is critical that public warnings are distributed in a way that ensures that the information conveyed in the warning actually reaches the public. To this end, the FDA is open to different vehicles of dissemination that best convey the information of the particular recall. Historically, the FDA and industry have used general news media, as well as specialized news media, e.g., professional or trade press, among other means. When warranted, the FDA recommends that firms use press release distribution services or other mechanisms that ensurethe information in the press release will be appropriately relayed to the public, e.g., through news media outlets. Part of a firm's responsibility to inform a consumer of a recalled product includes taking earnest efforts to ensure that the information is actually distributed.

Firms issuing public warnings through press releases should also consider the area of distribution of the recalled product. The distribution of the release should match the distribution of the product: if the product is available online or is distributed nationally, the public warning should also be available online and/or distributed nationwide. Similarly, if the product is only available in a regional market, and the FDA and the firm are confident that no consumers from outside that region may have received it, the distribution of the public notification may be similarly targeted. If it is apparent that a significant percentage of consumers using the recalled product speak a language other than English, firms should consider having the public warning translated into that language and distributed via the appropriate distribution service.

Posting a Public Warning or Press Release on a firm or FDA Webpage

In many cases, a firm will announce a removal of an FDA regulated product from the market or correction[8] through a press release or other public announcement prior to the FDA reviewing and determining the action to be a recall. The FDA may post the information in or the text of the announcement on FDA.gov/recalls[9] if the FDA believes the announcement is factually correct and beneficial to consumers.

The FDA does not typically post a firm's announcement of an action that the FDA believes will

[8] A correction is a repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location. 21 CFR § 7.3(h).

[9] This webpage also provides links to various FDA Center webpages, where public warnings of recalls of products specific to that Center are also posted.

not be considered a recall. Further, not all recalls are posted on the FDA.gov/recalls page since not all recalls warrant a public warning and not all firms will issue a press release, depending on the circumstances. When the FDA posts removal or correction information that has been publicized by a firm, we do so as a public service and it does not necessarily mean that the situation is urgent or that the product presents a serious hazard to health, such that it would be considered a "public warning" as the term is defined in this guidance document. Information on major product recalls that the FDA believes merit expanded coverage due to the impact they have on public health can be found at https://www.fda.gov/Safety/Recalls/MajorProductRecalls/default.htm. When a firm posts its public warning on its own webpage, it should ensure that the warning is prominently displayed and accessible from both its home page and a web search. The posting should remain publicly accessible until the product is no longer expected to be used or consumed.

B. Public Notification of Recalls

The FDA provides public access to information on recalls by posting a listing of recalls according to their classification in the FDA Enforcement Report, whether they were requested by FDA or firm-initiated, and the specific action taken by the recalling firm.[10] The FDA Enforcement Report is designed to provide a public listing of products in the marketplace that are being recalled. Unlike with public warnings, the recalls listed in the FDA Enforcement Report are not limited to urgent situations that present serious hazards to health and are not necessarily used to alert the public about the risk or hazard of a product under recall.

Information on all recalls will be provided in the FDA Enforcement Report, regardless of the level of the hazard. The FDA will attempt to promptly post public notifications; however, delays might occur due to the timeliness of a firm's recall submission, the availability of facts, and other factors outside the FDA's control. The FDA may consider delaying public notification if it may cause unnecessary and harmful anxiety in certain consumers (e.g., when a patient needs to hear first from his doctor about a defective implanted medical device). The FDA is not required to provide firms with an opportunity to review and comment on public notifications, but may consult with a firm to ensure factual accuracy or when otherwise warranted.

Public notifications of recalls will only be posted in the FDA Enforcement Report after the FDA makes a determination that the action is a recall under 21 CFR § 7.3(g). If the recall posted in the FDA Enforcement Report has not yet been classified, the FDA will document the recall as not yet classified.[11]

IV. References

1. U.S. Food and Drug Administration. Guidance for Industry: Product Recalls, Including Removals and Corrections. Last updated 08/22/2014. https://www.fda.gov/Safety/Recalls/IndustryGuidance/ucm129259.htm

[10] We note that, although they are not the subject of this guidance document, mandatory recalls are also listed in the FDA Enforcement Report.

[11] FDA has begun posting information relating to some voluntary recalls when this information is provided to the agency, prior to the review and possible classification.

2. U.S. Food and Drug Administration. "Recalls, Market Withdrawals, & Safety Alerts." Last updated 04/04/2017. https://www.fda.gov/Safety/Recalls/default.htm

3. U.S. Food and Drug Administration. "Industry Guidance for Recalls. Information on Recalls of FDA Regulated Products." Last updated 08/15/2014. http://www.fda.gov/Safety/Recalls/IndustryGuidance/default.htm

4. U.S. Food and Drug Administration. Recalls, Corrections and Removals (Devices). Last updated 01/03/2017. https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/PostmarketRequirements/RecallsCorrectionsAndRemovals/default.htm

Exhibit 111

United States
CONSUMER PRODUCT
SAFETY COMMISSION

For Buying and Selling Products Online

How does the field monitor e-commerce sales of consumer products?

We have a dedicated e-commerce team that monitors websites for recalled and banned products listed for sale. CPSC searches for new and used products that pose a safety hazard and should not be sold. When a recalled or banned product is identified, we have the website remove the sales listing. This team also purchases suspect products that it finds for sale on various sites. The team conducts deep-dive internet searches for reports of safety issues involving specific products. This includes consumer reviews, tech review sites, forums, social media outlets, court records, or any other online source(s).

What if I purchase a product on-line and I think it is a safety hazard?

You should report the product through saferproducts.gov. Include the name of the website that you purchased the product from and any specific details you have about the product.

How do I know if a product is recalled?

Search for recalls at https://www.cpsc.gov/Recalls/.

What if I find a recalled product for sale on-line?

You should report the sale through saferproducts.gov. If you can, include a screenshot of the site and a link to the exact page where you found the product. You can also contact CPSC by phone at (800) 638-2772.

Is it okay to sell a recalled product if it's in good shape and hasn't caused me any problems?

No, selling recalled products is unlawful. Additionally, many online sales platforms specifically prohibit the sale of a recalled product.

Can I sell a recalled product if the item has been fixed with the remedy outlined in the public recall notice?

Yes, you can sell the product as long as the remedy has been applied. The sales listing should make it clear that the remedy is included.

Exhibit 112

By Mr. FISHER: Committee on Armed Services. S. 2945. An act to amend title 10 of the United States Code to permit the appointment by the President of certain additional persons to the service academies; with an amendment (Rept. No. 92-1163). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASPIN:

H.R. 15619. A bill to amend title 28 of the United States Code to provide for the recovery by defendants of reasonable attorneys' fees in certain civil actions brought by the United States, in the discretion of the court; to the Committee on the Judiciary.

By Mr. ASPIN (for himself and Mr. MITCHELL):

H.R. 15620. A bill to amend the Communications Act of 1934 to ban sports from closed-circuit television; to the Committee on Interstate and Foreign Commerce.

By Mr. BLACKBURN:

H.R. 15621. A bill to amend title 18 and title 28 of the United States Code with respect to the trial and review of actions involving obscenity, and for other purposes; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia:

H.R. 15622. A bill to prohibit funds appropriated to the Office of Education, for the fiscal year ending June 30, 1973, from being used by individuals at an institution of higher education or by such an institution if the playing of the national anthem at a public event is prevented or interrupted by such an individual or is not permitted by such an institution pursuant to this act; to the Committee on Education and Labor.

By Mr. BURKE of Massachusetts (for himself, Mr. NEDZI, Mr. MOLLOHAN, Mr. HAWKINS, Mr. ROYBAL, Mr. PRICE of Illinois, and Mr. BARRETT):

H.R. 15623. A bill to provide for a 6-month extension of the emergency unemployment compensation program; to the Committee on Ways and Means.

By Mr. BURKE of Massachusetts (for himself, Mr. NEDZI, Mr. MOLLOHAN, Mr. HAWKINS, Mr. PRICE of Illinois, and Mr. BARRETT):

H.R. 15624. A bill to amend section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 to permit the States to suspend the application of the 120-percent requirement for purposes of determining whether there has been a State "off" indicator; to the Committee on Ways and Means.

By Mr. CEDERBERG:

H.R. 15625. A bill to amend the Federal Property and Administrative Services Act of 1949 to prohibit the making available of Government procurement sources to Federal grantees and contractors; to the Committee on Government Operations.

By Mr. FORSYTHE:

H.R. 15626. A bill to provide for the reduction of the amounts of Federal-aid highway funds to any State which has not made provision for free access to emergency vehicles on any toll road, tunnel, or the approaches thereto within the jurisdiction of such State; to the Committee on Public Works.

By Mr. GARMATZ (for himself and Mr. PELLY):

H.R. 15627. A bill to amend the Oil Pollution Act, 1961 (75 Stat. 402), as amended, to implement the 1969 and the 1971 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended; and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. MELCHER:

H.R. 15628. A bill to amend the Small Business Act to authorize the Small Business Administration to make loans to small business concerns which are adversely affected as a result of certain international agreements; to the Committee on Banking and Currency.

By Mr. PEPPER:

H.R. 15629. A bill to provide payments to State and localities for high-priority expenditures; to the Committee on Ways and Means.

By Mr. PURCELL:

H.R. 15630. A bill to amend the Social Security Act to provide for medical and hospital care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities; to the Committee Ways and Means.

H.R. 15631. A bill to provide a program of tax adjustment for small business and for persons engaged in small business; to the Committee on Ways and Means.

By Mr. RAILSBACK:

H.R. 15632. A bill granting the consent and approval of Congress to an agreement between the States of Illinois and Iowa relating to the establishment by certain of their political subdivisions of a regional air pollution control board; to the Committee on the Judiciary.

By Mr. THOMPSON of Georgia (for himself, Mr. FINDLEY, Mr. HOGAN, and Mr. KEITH):

H.R. 15633. A bill to amend title 10 of the United States Code, to provide that personal delivery of notification of death of servicemen to the next of kin may only be made by officers; to the Committee on Armed Services.

By Mr. CLARK:

H.R. 15634. A bill to amend section 103 of title 23, United States Code, relating to the Interstate System; to the Committee on Public Works.

By Mr. PUCINSKI (for himself, Mr. BELL, Mr. PERKINS, Mr. QUIE, Mr. WILLIAM D. FORD, Mr. MEEDS, Mr. HAWKINS, Mrs. MINK, Mr. FORSYTHE, Mrs. CHISHOLM, Mr. VEYSEY, Mr. BIAGGI, Mr. KEMP, Mrs. HICKS of Massachusetts, Mr. PEYSER, Mr. MAZZOLI, and Mr. BADILLO):

H.R. 15635. A bill to assist elementary and secondary schools, community agencies, and other public and nonprofit private agencies to prevent juvenile delinquency, and for other purposes; to the Committee on Education and Labor.

By Mr. ROE:

H.J. Res. 1231. Joint resolution authorizing the President to designate the calendar month of September 1972 as "National Voter Registration Month"; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GREEN of Pennsylvania:

H.R. 15636. A bill for the relief of Sabatino Di Giacomo; to the Committee on the Judiciary.

By Mr. TEAGUE of California:

H.R. 15637. A bill for the relief of Melissa Catambay Gutierrez; to the Committee on the Judiciary.

H.R. 15638. A bill for the relief of Milagros Catambay Gutierrez; to the Committee on the Judiciary.

By Mr. WHITE:

H.R. 15639. A bill for the relief of Miss Modesta Juarez-Lopez; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

248. The SPEAKER presented a petition of Robert Duclos, Rockville, Md., et al., relative to including Federal employees in the social security system which was referred to the Committee on Ways and Means.

SENATE—*Wednesday, June 21, 1972*

(Legislative day of Monday, June 19, 1792)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Dear Lord and Father of Mankind, grant us the faith, we pray, to believe that more things are wrought by prayer than this world dreams of. Teach us to pray without ceasing—to pray in our hearts and in our minds and in our souls. May the time of work and the time of prayer be woven of one fabric. Guard our thoughts, control our speech, and guide our actions. We pray not for security or safety but for loyalty to the highest and best for the Nation and the world. And may we find our supreme joy in work well done; our chief reward the advancement of Thy kingdom on earth. Hear both the spoken and the unuttered prayers of our hearts and answer them according to Thy will. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 21, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. HOLLINGS thereupon took the chair as Acting President pro tempore.

not limited to functions under title III of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Radiation Control for Health and Safety Act (42 U.S.C. 263b et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Act of August 2, 1956 (15 U.S.C. 1211), and the provisions relating to product safety under the Public Health Service Act (42 U.S.C. 241, 244, 246, and 264).

(b) The Administrator shall annually present to Congress as part of his annual report under section 113 a detailed statement of delegation.

SEC. 203. All laws relating to any office, agency, bureau, or function transfered under this Act shall, insofar as such laws are applicable, remain in full force and effect. And orders, rules, regulations, permits, or other privileges made, issued, or granted by any office, agency, or bureau or in connection with any function transferred by this Act, and in effect at the time of the transfer, shall continue in effect to the same extent as if such transfer had not occurred until modified, superseded, or repealed. No suit, action, or other proceeding lawfully commenced by or against any office, agency, or bureau or any officer of the United States acting in his official capacity shall abate by reason of any transfer made pursuant to this Act, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceedings to obtain a settlement of the questions involved, may allow the same to be maintained by or against the appropriate office, agency, bureau, or officer of the United States.

TITLE III—CONSUMER PRODUCT SAFETY

COLLECTION AND DISCLOSURE OF INFORMATION ON CONSUMER PRODUCT RISKS

SEC. 301. (a) The Commissioner of Product Safety (hereinafter referred to as the "Commissioner") shall collect, evaluate, and disseminate, on a continuing basis in conjunction with the National Injury Information Clearinghouse, information on the types, frequency, severity, and causes of injury associated with the use of consumer products, and on means to test, measure, or evaluate the risks of such injury. In carrying out his functions under this section the Commissioner in addition to or in aid of the foregoing—

(1) shall collect data or perform research or studies to facilitate the establishment of consumer product safety standards and to evaluate their efficacy in reducing risks associated with consumer products;

(2) shall use interdisciplinary epidemiological teams where appropriate to ascertain the details and causation of injury resulting from the use of a consumer product;

(3) shall plan, conduct, coordinate, or provide technical assistance to research activities, development of methods, training of personnel, or operations, designed to minimize the risks associated with consumer products, or designed to develop means to test, measure, or evaluate such risks;

(4) shall secure information on the risks associated with consumer products from other Federal or State departments and agencies with related interests, professional organizations, industry, or labor associations, and other public or private agencies, organizations, or institutions;

(5) shall make available, through publications and by other appropriate means, the results of, and other information concerning, research and studies relating to the nature and extent of the risks associated with consumer products, and may include recommendations for the reduction of such risks, or information on the means of testing consumer products for risks; and

(6) shall obtain (by negotiation or otherwise) consumer products for research and testing purposes, and sell or otherwise dispose of such products.

(b) The Commissioner is authorized to obtain from any person by subpena, issued pursuant to regulation, information in the form of books, records, or other writings in his possession pertinent to the frequency or causes of death, or the types, frequency, severity, or causes of illness or injury associated with exposure to or use of consumer products. The district courts of the United States shall have jurisdiction to enforce such subpenas upon application of the Attorney General or the Administrator. An action for such enforcement may be brought in any district court of the United States for the district wherein such person is found or transacts business.

(c)(1) The Commissioner shall not disclose information obtained by him under this section which concerns or relates to a trade secret or other confidential business information, not related to a consumer product in such a way as to indicate the presence of an unreasonable risk of injury or death, described in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act; and

(E) to the public in order to protect their health and safety, after notice and opportunity for comment in writing or for discussion in closed session not to within 15 days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

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

(d) The Commissioner shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any unreasonable or significant risk to health or safety associated with such product.

(e) Whenever the Commissioner finds, on the basis of information available to him, that exposure to an aspect of the household environment other than a consumer product presents an unreasonable risk of personal injury or death and that a recognized building, electrical, or other code covers that aspect of the household environment, he may recommend to the appropriate code-making authority, and to those authorities responsible for enforcing the code having jurisdiction over that aspect, the code changes he considers warranted to reduce the risk to a reasonable level.

AUTHORITY TO PROMULGATE STANDARDS FOR CONSUMER PRODUCTS

SEC. 302. Whenever the Commissioner finds a need for action to eliminate unreasonable risk of injury or death associated with the use of a consumer product, or any type or class of such products, he may by regulation, in accordance with the requirements of this Act, promulgate for such product, or type or class of such products, a consumer product safety standard or amend any standard previously established. Such standard or amendment to a standard, insofar as practicable, shall be compatible with any environmental standards established for any consumer product by the Federal Government.

INITIATION OF PROCEEDING TO PROMULGATE A CONSUMER PRODUCT SAFETY STANDARD

Notice of Proceeding

SEC. 303. (a) A proceeding to promulgate a consumer product safety standard shall be initiated by the Commissioner by publication in the Federal Register of a notice of proceeding. Such notice shall invite public comment with respect to the initiation of such proceeding and shall include—

(1) a description or other appropriate designation of the consumer product or type or class of such products with respect to which the proceeding is initiated;

(2) the risk or risks intended to be controlled;

(3) a summary description of the information upon which the Commissioner has found a need to initiate the proceeding, and the manner, consistent with subsection (c) of section 301, in which interested persons may examine such information;

(4) information with respect to any existing standard known to the Commissioner which may be relevant to the proceeding; and

(5) an invitation for any person, including any Federal agency, within thirty days after the date of publication of the notice—

(A) to submit information challenging the need to control any risk or risks presented by the consumer product, or type or class of such products, with respect to which the proceeding is initiated;

(B) to submit to the Commissioner an existing standard as such proposed consumer product safety standard; or

(C) to offer to develop such proposed consumer product safety standard in accordance with regulations of the Commissioner prescribing procedures for such development.

Petititon by Interested Party

(b) Any consumer or other interested party may petition the Commissioner to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety standard or other action. Such petition shall set forth with particularity the reasons for such petition. The Commissioner shall publish petitions in the Federal Register and allow opportunity for comment. If the Commissioner denies such petition he shall publish his reasons for such denial.

Decision To Proceed

(c) If the Commissioner determines, after receiving and evaluating any information to the contrary, that there exists a need to control a risk or risks presented by the designated consumer product, or type or class of such products with respect to which the proceeding to promulgate a consumer product safety standard was initiated, then he shall proceed toward the publishing of a proposed consumer product safety standard.

Use of Existing Standard

(d) If the Commissioner—

(1) finds that there exists a standard which has been published by any Federal agency or other qualified agency, organization, or institution;

(2) has made reference to such standard (unless it is a standard submitted pursuant to section 303(a)(5)(B)) in his notice pursuant to subsection (a)(4); and

(3) determines that such standard may be acceptable to him as a consumer product safety standard, then he may, in lieu of accepting an offer pursuant to this section, publish such standard as a proposed consumer product safety standard pursuant to section 306.

Acceptance of Offers To Develop Proposed Consumer Product Safety Standards

(e)(1) Except as provided by subsection (b), the Commissioner may accept one, or more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (a)(5)(C), upon his determination that—

(A) the offeror is technically competent and is likely to develop an appropriate standard within one hundred and fifty days of the notice of proceeding or such longer period of time not to exceed three hundred and sixty days from the date of such notice;

(B) the offeror has the capacity to comply with regulations of the Commissioner prescribed pursuant to section 305; and

(C) the offeror, including any person assisting the offeror in the development of the proposal, is not a manufacturer, distributor or retailer or the employee of a manufacturer, distributor or retailer of a consumer product proposed to be included in the consumer product safety standard to which the offer applies.

The Commissioner shall publish in the Federal Register the name and address of each person whose offer he accepts, and a summary of the terms of such offer as accepted.

(2) Upon an offeror's application therefor prior to the acceptance of his offer under this subsection, the Commissioner may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, if the Commissioner determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commissioner shall set forth the items of cost in which he may participate, and shall exclude any contribution to the acquisition of land or buildings.

DEVELOPMENT OF A PROPOSED CONSUMER PRODUCT SAFETY STANDARD BY THE COMMISSIONER

SEC. 304. If the Commissioner has published a notice of proceeding as provided by section 303(a), and he has not accepted an existing standard pursuant to section 303(d) then the Commissioner shall proceed to develop a proposed consumer product safety standard whether or not he has accepted offers to develop a proposed standard if he has determined that his own development will be of benefit to the public.

REGULATIONS GOVERNING DEVELOPMENT OF STANDARDS

SEC. 305. The Commissioner shall prescribe regulations governing the development of proposed consumer product safety standards under sections 303 and 304 of this Act, which regulations shall not be considered rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code. Such regulations shall include requirements—

(1) that standards recommended for promulgation be supported by test data or such other documents or materials as the Commissioner may reasonably require to be developed, and be suitable for promulgation pursuant to section 306;

(2) that standards recommended for promulgation contain such test methods as may be appropriate for measurement of compliance with such standards;

(3) that the offeror, where the Commissioner has accepted an offer or offers under section 303, provide opportunity for all interested persons including consumers to participate in the offeror's development of a proposed consumer safety standard in accordance with accepted standards of due process, including adequate notice to all participants and access to all relevant records and documents;

(4) for the maintenance of such records as the Commissioner prescribes in such regulations to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development, including comments and information with respect to the need for such recommended standards, and such other matters as may be relevant to the evaluation of such recommended standards; and

(5) that the Commissioner, the Administrator, and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Commissioner, pursuant to section 303(e), to the development of such recommended standards.

PROMULGATION OF CONSUMER PRODUCT SAFETY STANDARDS; DECLARATION OF BANNED HAZARDOUS CONSUMER PRODUCT

Proposal To Promulgate Consumer Product Safety Standard or To Declare a Banned Hazardous Consumer Product

SEC. 306. (a)(1) Not more than one hundred and eighty days after his publication of a notice of proceeding pursuant to subsection (a) of section 303 (which time may be extended by the Commissioner by a notice published in the Federal Register stating good cause therefor), the Commissioner shall publish in the Federal Register either a notice withdrawing such prior notice or a proposal to promulgate a consumer product safety standard applicable to any consumer product subject to such notice, or a proposal to declare any such subject product a banned hazardous consumer product. A proposal to promulgate a consumer product safety standard and a proposal to declare a product a banned hazardous consumer product may be published in the alternative with respect to any consumer product subject to such notice.

(2) A proposal to promulgate a consumer product safety standard shall contain only one such proposed standard formulated by the Commissioner on the basis of the proposed standard developed by an offeror under section 303(e) of this title or by the Commissioner, or both.

(3) A proposal to promulgate a consumer product safety standard, or to declare a product a banned hazardous consumer product, shall set forth such proposed standard, or the reason for such declaration, the manner in which interested persons may examine data and other information upon which such proposed standard or declaration, or need therefor, is based (consistent with subsection (c) of section 301), and the period within which all interested persons may present their comments on such standard or declaration, or the need therefor, orally or in writing.

Disputes of Fact

(b) The Commissioner may conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of material fact raised by any person when presenting comments in accordance with paragraph (3) of subsection (a) of this section.

Findings

(c)(1) Prior to his issuance of an order to promulgate a consumer product safety standard pursuant to subsection (d) or to declare a product a banned hazardous consumer product pursuant to subsection (f), the Commissioner shall consider, and shall make appropriate findings for inclusion in such order with respect to—

(A) data and comments submitted in the course of any proceeding under section 303 relevant to such order;

(B) the types, frequency, severity, and causes of injury that may be attributed to those aspects of the consumer products subject to such order;

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

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

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

(2) The Commissioner shall include in any order promulgating a consumer product safety standard or banning a hazardous consumer product, a determination that his findings pursuant to paragraph (1), upon which such order shall be based, show that such standard or declaration is reasonably necessary to carry out the purposes for which such standard or declaration is authorized.

Order To Promulgate Consumer Product Safety Standard or To Declare a Banned Hazardous Consumer Product

(d) Within sixty days after the publication of a proposal to promulgate a consumer product safety standard, or to declare a consumer product a banned hazardous consumer product, the Commissioner shall, by order published in the Federal Register, act upon such proposed standard or declaration, or withdraw the applicable notice of proceeding. The order shall set forth the consumer product safety standard or declaration, if any, the reasons for the Commissioner's action (including reasons for the promulgation of a consumer product safety standard materially different than that set forth in the proposal or for his failure to promulgate any standard), and the date or dates upon which such standard or declaration, or portions thereof, shall become effective. If such effective date is later than six months after publication of an order setting forth a consumer product safety standard, the Commissioner shall publish his reasons therefor.

Characteristics of Consumer Product Safety Standards

(e)(1) Consumer product safety standards shall, where feasible, pertain to the safety performance characteristics (including safe packaging characteristics) of a consumer product, or type or class of such products, and shall to the extent practicable set forth test procedures (including instrumentation) capable of producing reproducible results to measure such performance characteristics, except that any such standard may apply to the composition, design, construction, or finish of a consumer product (or any component thereof), or type or class of such products, if the Commissioner determines that it is not feasible to protect the public health or safety by development of a consumer product safety standard pertaining to safety performance characteristics or any other consumer product safety standard authorized by this subsection.

(2) A consumer product safety standard may require that a consumer product (or any component thereof), or type or class of such products, (1) be marked, tagged, or accompanied by clear and adequate warnings or instructions, or (2) be subject to safety precautions related to physical distribution, as may be reasonably necessary for the protection of the public health or safety.

Ban of Product

(f)(1) The Commissioner may declare a consumer product to be a "banned hazardous consumer product", in accordance with the procedures of this section, only upon his finding, to be included in the Commissioner's order pursuant to subsection (d), that no feasible consumer product safety standard will adequately protect the public from unreasonable risk of injury or death presented by such product. A firearm or ammu-

nition may not be declared a banned hazardous consumer product.

(2) Any banned hazardous consumer product sold after the date on which notice was published of the proposal to declare such product a banned hazardous consumer product shall, in accordance with regulations promulgated by the Administrator, be repurchased as follows:

(A) The manufacturer of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

(i) refund that person the purchase price paid for such consumer product, upon tender of the product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender,

(ii) except as provided in subsection (g), if that person has repurchased such consumer product pursuant to subparagraph (B) or (C), reimburse him for any amounts paid in accordance with that paragraph for the return of such consumer product, and

(iii) if the manufacturer requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(B) The distributor of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

(i) refund that person the purchase price paid for such consumer product, upon tender of the product, less a reasonable allowance for ues if such product has been in the possession of the consumer for one year or more at the time of such tender.

(ii) except as provided in subsection g, if that person has repurchased such consumer product pursuant to subparagraph (C), reimburse him for any amounts paid in accordance with the subparagraph for the return of such consumer product in connection with its repurchase, and

(iii) if the distributor requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(C) In the case of any such consumer product sold at retail by a dealer, if the person who purchased it from the dealer or a subsequent owner returns it to him, the dealer shall refund that person the purchase price upon tender of such product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender and reimburse him for any reasonable and necessary transportation charges incurred in its return.

Notice by Manufacturer or Distributor

(g) If any manufacturer of a product which has been declared a banned hazardous consumer product under this Act furnishes notice by registered mail to a distributor or retail dealer of that product, his liability to reimburse that distributor or retail dealer under subsection (f)(2)(A)(ii) of this section with respect to the refunded purchase price of any such product sold by that distributor or retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that distributor or retail dealer. If any distributor of such a product furnishes notice by registered mail to a retail dealer of that product, his liability to reimburse that retail dealer under subsection (f)(2)(B)(ii) of this section with respect to the refunded purchase price of any such product sold by that retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that retail dealer.

SAFETY ANALYSIS STUDY

SEC. 307. In order to insure that a manufacturer gives adequate consideration to the safety aspects of a consumer product, so as to prevent an unreasonable risk of injury or death from such consumer product, the Commissioner, where applicable, may require by regulation that a consumer product (or component thereof), or type or class of consumer products, be subjected to a detailed safety analysis, if such consumer product is not subject to a consumer product safety standard under this Act. Such safety analysis shall be conducted in conformity with criteria set forth in such regulations promulgated by the Commissioner and may be conducted by the manufacturer, an independent testing laboratory, or any other person who the Commissioner may designate. If such consumer product is later subject to a proceeding under section 303 of this Act, then the Commissioner may take into consideration such safety analysis when considering the need for a consumer product safety standard on such consumer product. The Commissioner may demand of the manufacturer a copy of any required safety analysis report.

REVOCATION OR AMENDMENT OF STANDARD

SEC. 308. (a) The Commissioner may revoke, in whole or in part, any consumer product safety standard, upon the ground that there no longer exists a need therefor or that such standard is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner (consistent with subsection (c) of section 301) in which interested persons may examine data and other information relevant to the Commissioner's determination, and the period within which all interested persons may present their views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Commissioner shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Commissioner's action, and the date or dates upon which such revocation shall become effective.

(b) The requirements of sections 303, 304, 305, and 306 of this title for the promulgation of a consumer product safety standard shall apply to the promulgation of a material amendment of a consumer product safety standard. The Commissioner may promulgate an amendment of a consumer product safety standard, other than a material amendment, without regard to section 303, 304, or 305, but shall comply with the procedures set forth in subsections (a) and (b) of section 306, and shall set forth, in his order promulgating such amendment, such findings as he may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase any performance standard applicable to a consumer product, or substantially after the composition, design, finish, or packaging of such product.

COMPLIANCE

SEC. 309. (a) QUALITY CONTROL PROCEDURES.—Whenever the Commissioner has good cause to believe that a particular manufacturer is producing a consumer product with a significant incidence of noncompliance with a particular consumer product safety standard—

(1) he may require such manufacturer to submit to the Commissioner a description of the relevant quality control procedures followed in the manufacture of such product; and

(2) if the Commissioner thereafter determines that such noncompliance is attributable to the inadequacy of the manufacturer's control procedures, he may, after notice and opportunity for hearing pursuant to section 554 of title 5, United States Code, order the manufacturer to revise such quality control procedures to the extent necessary to remedy such inadequacy.

(b) NAMES OF FIRST PURCHASERS.—(1) The Commissioner may establish, by order at any time, procedures to be followed by manufacturers or importers, including procedures to be followed by distributors, dealers and consumers to assist manufacturers or importers in securing and maintaining the names and addresses of the first purchasers (other than dealers or distributors) of consumer products for which consumer product safety standards have been promulgated. Such procedures shall be reasonable for the particular type or class of consumer products for which they are prescribed.

(2) In determining whether to require the maintenance of the names and addresses of the first purchasers, the Commissioner shall consider—

(A) the severity of the injury that could result if a consumer product were not manufactured in compliance with an applicable consumer product safety standard;

(B) the likelihood that a particular type or class of consumer products would be manufactured not in compliance with an applicable consumer product safety standard: and

(C) the burden imposed upon the manufacturer or importer by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of such maintenance).

(c) COMPLIANCE TESTING.—(1) The Commissioner shall conduct or contract pursuant to section 104(c)(8) for compliance testing of consumer products subject to consumer product safety standards in order to insure that such products are in compliance with applicable consumer product safety standards pursuant to regulations promulgated in accordance with section 553 of title 5, United States Code.

(2)(A) Any person who manufactures or imports a consumer product for which a consumer product safety standard is in effect shall furnish a reasonable number of such products without cost to the Commissioner upon request. Consumer products furnished to the Commissioner under this subsection shall be drawn from regular production runs of such product.

(B) Upon the completion of any compliance testing, the Commissioner shall return or cause to be returned the consumer product in compliance with any applicable consumer product safety standard to the manufacturer or importer from whom he obtained it, and such manufacturer or importer, in any subsequent sale or lease of such product, shall disclose that it has been subjected to compliance testing and shall indicate the extent of damage, if any, prior to repair.

(d) CERTIFICATION.—Any manufacturer, importer, or distributor of a consumer product subject to a consumer product safety standard shall furnish to the distributor or dealer at the time of delivery of such consumer product certification

(a) by said manufacturer, or importer, or distributor; or

(b) by an independent testing laboratory qualified to perform such tests or testing program,

that each such consumer product conforms to all applicable consumer product safety standards. Any certification under this subsection shall be based upon test procedures in conformance with subsection 306(e)(1) or, where no procedures are prescribed, upon a reasonable testing program approved by the Commissioner.

JUDICIAL REVIEW

SEC. 310. (a) Any interested person affected by a final order or regulation of the Commissioner promulgated pursuant to sec-

tions 305, 306(d), 307, 308, or 309 may, at any time after such order is published by the Commissioner, file a petition with the United States Court of Appeals for the District of Columbia, or any circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner or other officer designated by him for that purpose and to the Administrator. The Commissioner shall transmit to the Administrator, who shall file in the court, the record of the proceedings on which the Commissioner based his order, as provided in section 2112 of title 28, United States Code. Such record shall include such order of the Commissioner and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (a) of section 303; any notice or proposal published pursuant to sections 350, 306(a), 307, 308, or 309; the transcript or summary of any proceedings and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Commissioner in the promulgation of such order.

(b) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the order of the Commissioner in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. The order of the Commissioner shall be affirmed if supported by substantial evidence on the record taken as a whole.

(c) The judgment of the court affirming or setting aside, in whole or in part, any order of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(d)(1) Any manufacturer of a product declared a banned hazardous consumer product under this Act, who seeks judicial review under this section, may be awarded at the discretion of the court, damages, interest, and the cost of suit, including reasonable attorney fees, for actual damages suffered by him due to any order of the Commissioner declaring a product to be a banned hazardous substance determined by the court to constitute an abuse of the discretion granted to the Commissioner under this Act.

(2) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated the amount of damages, interest, and costs awarded by the court under paragraph (1).

EMERGENCY ACTION

SEC. 311. (a) The Administrator or the Attorney General may file, in a district court of the United States having venue thereof, an action against a consumer product to have such product described an imminently hazardous consumer product, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding the existence of a consumer product safety standard applicable to such product, or the pendency of proceedings initiated pursuant to section 303. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product presenting an unreasonable risk of injury or death which requires action to protect adequately the public health and safety prior to the completion of administrative proceedings held pursuant to this Act.

(b) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent equitable relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of the first purchasers of such product of such risk, public notice, the recall, the repurchase, the repair, the replacement, or the seizure of such product.

(c) Concurrently with the declaration of an imminent hazard, the Commissioner shall initiate a proceeding, pursuant to section 303, to promulgate a consumer product safety standard applicable, to the consumer product with respect to which such declaration is made, or, if the initiation of such proceeding is not feasible, shall initiate a proceeding, pursuant to section 306, to declare such product a banned hazardous consumer product.

STOCKPILING

SEC. 312. Between the time a final order establishing a consumer product safety standard is issued and the time such order becomes effective, no manufacturer or importer, in an effort to stockpile that consumer product, shall produce or import such product in quantities significantly greater than quantities he had produced for a base period established by the Commissioner prior to the promulgation of a final order establishing a consumer product safety standard.

NOTIFICATION OF FAILURE TO COMPLY; REPAIR OR REPLACEMENT OF NONCOMPLYING CONSUMER PRODUCT

SEC. 313. (a) Every manufacturer, importer, or distributor of, or dealer in, a consumer product who discovers that such product has a defect which relates to the safety of use of such product or that such product fails to comply with an applicable consumer safety standard shall immediately notify the Commissioner of such defect or failure to comply if such product has left the place of manufacture. The notification required by this subsection shall contain (1) a clear description of such defect or failure to comply with an applicable consumer product safety standard, (2) an evaluation of the hazard reasonable related to such defect or failure to comply, and (3) a statement of the measures to be taken to effect repair to such defect or failure to comply.

(b) If any consumer product fails to comply with any applicable order issued pursuant to this title and thereby presents an unreasonable risk of injury or death or has a defect which causes it to present an unreasonable risk of injury or death, the manufacturer, importer, or distributor of, or dealer in, such product may be required by the Administrator (by order after opportunity for hearing pursuant to the provisions of section 554 of title 5, United States Code) to give public notice (including notice through electronic media when necessary to protect the public health and safety) and—

(1) to mail to each consumer of such product known to such manufacturer, importer, distributor, or dealer, and, in the case of a manufacturer or importer, to each distributor or dealer to whom he delivered such product, a notification of such failure containing such information as the Administrator may prescribe, upon the Administrator's determination that such notification is required in order adequately to protect the public health or safety,

(2) to bring such product into conformity with the requirements of such order without charge to the consumer, or

(3) to either replace such product with a like or equivalent consumer product which complies with such order without charge to the consumer or to refund the purchase price of such product upon its tender, whichever option is elected by the manufacturer, importer, distributor, or dealer whose product fails to comply. If an election is made to refund the purchase price, the price shall be less a reasonable allowance for use, if such product has been in the possession of the consumer for more than one year at the time of tender.

The manufacturer, importer, distributor, or dealer against whom an order is issued under this subsection shall reimburse each consumer of the product which is the subject of such order for any reasonable and foreseeable expenses (including transportation expenses) incurred by such consumer in availing himself of the remedies provided by such order.

INSPECTION AND RECORDKEEPING

SEC. 314. (a) For purposes of carrying out regulations, standards, or orders promulgated under this Act, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured, assembled, or held for introduction into commerce or are held for sale after such introduction; or to enter any vehicle being used to transport consumer products in interstate commerce; and

(2) to inspect, at reasonable times and in a reasonable manner, those areas of such factory, warehouse, establishment, or vehicle where or in which such products are produced, stored, or transported, and all pertinent equipment, materials, containers, and labeling therein.

A separate written notice shall be given for each inspection, but a notice shall not be required for each entry made during the period of inspection set forth in such notice. Each such inspection shall be completed with reasonable promptness. If the officer or employee who makes such inspection obtains any sample in the course thereof, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge, a receipt therefor describing such sample.

(b) Every person who manufactures, assembles, distributes, or sells in commerce, or imports, a consumer product required to conform to a consumer product safety standard shall establish and maintain such records, and make such reports, and provide such information as the Commissioner may by regulation reasonably require with respect to the safety of such product. Upon request of an officer or employee duly designated by the Commissioner every such person shall permit the inspection of such records and other books, records, and papers relevant to determining whether such person is in compliance with this Act and regulations, standards, and orders prescribed thereunder.

(c) The district courts of the United States shall have jurisdiction to issue any warrant in aid of an inspection or investigation under this section, if such warrant is required by the Constitution or laws of the United States, upon a finding that such inspection or investigation is for the purpose of enforcing this Act.

PROHIBITED ACTS

SEC. 315. It shall be unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to—

(1)(A) manufacture for sale or lease, in commerce, any consumer product which does not comply with a consumer product safety standard; (B) sell or lease, or offer for sale or lease, in commerce, any consumer product which does not comply with a consumer product safety standard (i) if such product was manufactured or assembled in the United States after the effective date of such standard, or (ii) if such product was imported into the United States in violation of clause (C); (C) import into the United States any consumer product which does not comply with a consumer product

safety standard; or (D) manufacture for sale or lease, sell or lease, or offer for sale or lease, in commerce, or import into the United States, any consumer product which has been declared a banned or imminently hazardous consumer product;

(2) fail or refuse to comply with any order of the Commissioner pursuant to section 313;

(3) fail or refuse to comply with any requirement of sections 309, 312, and 314;

(4) alter, modify, destroy, or remove any portion of, or do any other act with respect to, a consumer product or labeling thereon or attached thereto, if such act is done while such product is being held or transported for sale, and results in the consumer product or its labeling failing to conform to a consumer product safety standard, or renders the product a banned or imminently hazardous consumer product;

(5) fail to provide to the Director of the National Injury Information Clearinghouse the information concerning injuries as required in section 109(c)(1)(B); or

(6) fail to provide, pursuant to section 307, any required safety analysis.

ENFORCEMENT

Civil and Criminal Penalties

SEC. 316. (a) Whoever knowingly commits any act prohibited by section 315, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Agency in its own name by any of its attorneys designated by the Administrator for such purpose, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year or both. As used in this subsection, 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 (A) knowledge obtainable upon the exercise of due care to ascertain the truth of representations, and (B) knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

Injunctions

(b) Upon application by the Administrator or the Attorney General, the district courts of the United States shall have jurisdiction to enjoin the commission of acts prohibited by section 315, and to compel the taking of any action required by this Act.

Seizure

(c) Any consumer product which is not manufactured in compliance with an applicable consumer product safety standard, or which is not in compliance with such a standard as the result of an action made unlawful by clause (4) of section 315, or which is declared a banned or imminently hazardous consumer product, shall be liable to be proceeded against while in commerce or at any time thereafter, on complaint for forfeiture by the Administrator, and condemned in any district court of the United States within whose district the consumer product is found.

Private Suits

(d)(1) Any person who may be exposed to unreasonable risk of injury or death presented by a consumer product may bring an action in any district court for the district in which the defendant is found or transacts business to enforce a consumer product safety standard, or to enforce any order under subsection (f) of section 306, or under section 311, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commissioner, to the Administrator, 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. No separate suit shall be brought under this subsection if the same alleged violation is the subject of a pending action by the United States under this title. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award reasonable attorney's fees to the prevailing party.

(2) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety standard, regulation, or order issued by the Commissioner may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of section 1331 of title 28, United States Code, and shall recover damages sustained, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

IMPORTS

SEC. 317. (a) Any consumer product imported into the United States to which a consumer product safety standard applies (except insofar as the Commissioner may otherwise provide with respect to a consumer product accompanied by a certification of compliance with such standard in a form prescribed by the Commissioner) or which is declared a banned or imminently hazardous consumer product, shall not be delivered from Customs custody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product is delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and is declared a banned or imminently hazardous consumer product or fails to conform with a consumer product safety standard in effect on the date of entry of such merchandise, the Administrator shall so inform the Secretary of the Treasury, and unless it appears to the Administrator that the product can be brought into compliance with all applicable requirements under this title shall request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(b) If it appears to the Administrator that the consumer product can be brought into compliance with all applicable requirements under this title, final determination as to admission of such consumer product may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this section, the Administrator may, in accordance with regulations, authorize the applicant to perform such action specified in such authorization (including destruction or export of rejected consumer products or portions thereof, as may be specified in such authorization). All such action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Agency or of the Department of the Treasury.

(c) The Secretary of the Treasury shall obtain without charge and deliver to the Commissioner, upon his request, a reasonable number of samples of consumer products being offered for import. The owner or consignee of any such product may have a hearing before the Administrator with respect to admission of such imports into the United States. If, except as provided by subsection (b), it appears from examination or testing of such samples or otherwise that a product fails to comply with the requirements of this Act, such product shall be refused admission, and the Secretary of the Treasury shall cause destruction of such product unless it is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days after notice to the importer or consignee.

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

EXPORTS

SEC. 318. This title shall not apply to any consumer product manufactured, sold, or held for sale for export from the United States (or to any consumer product imported for export), if such consumer product, and any container in which it is enclosed, bears a stamp or label stating that such consumer product is intended for export and such consumer product is in fact exported from the United States; except that this title shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

EFFECT ON STATE LAW

SEC. 319. (a) No State or political subdivision thereof shall establish or continue in effect, with respect to any consumer product, any standard or similar regulation prescribing requirements applicable to any aspect of health or safety of such consumer product, if such aspect is required to conform to a consumer product safety standard under this title unless that standard or similar regulation is identical to a consumer product safety standard established pursuant to this title. Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing or continuing a health or safety requirement applicable to a consumer product for its own use, if such requirement imposes a higher standard of health or safety than that required to comply with the applicable consumer product safety standard under this title.

(b) The Administrator may, upon application of a State or political subdivision thereof, exempt such State or political subdivision from the limitation of subsection (a) if a consumer product safety standard proposed by such application (1) imposes a higher level of health or safety than the Federal consumer product safety standard with respect to consumer products to be manufactured, sold, held for sale, or used in such State or political subdivision thereof, (2) is required by compelling local conditions, (3) does not unduly burden commerce, and (4)

is adopted by such State or political subdivision pursuant to procedures and requirements which in the judgment of the Administrator are substantially comparable to those prescribed for consumer product safety standards under this title.

(d) Compliance with any consumer product safety standard issued under this title does not exempt any person from any liability under common law.

UTILIZATION OF OTHER FEDERAL AGENCIES

SEC. 320. (a) In carrying out their duties under this Act, the Administrator and the Commissioner shall, to the maximum practical extent, utilize the personnel, facilities, and other technical support available in other Federal agencies.

(b) Technical research support for fire safety projects undertaken by the Administrator or the Commissioner shall be provided by the National Bureau of Standards on a reimbursable basis.

TITLE IV—FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

SEC. 401. (a) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended as follows:

(1) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(g) If in package form unless its label, or labeling affixed to or within the package, bears conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase, (1) the common or usual name of the cosmetic, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that fragrance, color, and flavor may be designated as fragrance, color, and flavor without naming each ingredient: *Provided*, That to the extent that compliance with the requirements of clause (2) is impracticable, or results in deception or unfair competition, exemptions may be established by regulations promulgated by the Secretary."

(2) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Unless its labeling bears adequate warnings against use where it may be dangerous to health."

(3) Section 201(1) of such Act is amended by striking "articles; except that such terms shall not include soap.", and inserting in lieu thereof "articles.".

(b) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect one year after the date of enactment of this Act.

TITLE V—FEDERAL HAZARDOUS SUBSTANCES ACT AMENDMENTS

SEC. 500. This title may be cited as the "Hazardous Substances Registration Act of 1972".

SEC. 501. Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (p)) is amended by adding at the end thereof the following new paragraph:

"The term 'misbranded hazardous substance' also includes any hazardous substance required to be registered under section 16 of this Act if such substance fails to bear prominently and conspicuously on the label, in accordance with regulations issued by the Secretary, a registration number issued by the Secretary for the substance pursuant to section 16."

SEC. 502. The Federal Hazardous Substances Act is further amended by redesignating sections 16, 17, and 18 as sections 17, 18, and 19, respectively, and adding after section 15 the following new section 16:

"REGISTRATION OF CERTAIN SUBSTANCES

"SEC. 16. (a) Before beginning commercial distribution of any substance intended, or packaged in a form suitable, for use in or around the household or by children that may be 'toxic' or 'corrosive' a manufacturer or distributor shall conduct all screening tests prescribed by the Secretary or, where applicable, the Administrator of the Environmental Protection Agency, by regulation to determine whether the substance is toxic or corrosive. A copy of the results of such screening tests shall be maintained by the manufacturer or distributor for two years after the last shipment of the substance, and shall be available upon request by the Secretary.

"(b) The manufacturer or distributor of a substance which falls within any such screening level for a toxic or corrosive substance shall register such substance with the Secretary in accordance with regulations promulgated by the Secretary. The registration shall include the formulation of the product, a brief summary of the results of all screening tests, and the proper antidote or treatment for the substance.

"(c) If the Secretary determines that the substance is a hazardous substance, he shall issue a registration number for the substance, which number shall appear on the label of the substance prominently and conspicuously in accordance with regulations promulgated by the Secretary. Such a registration number shall be the same as any registration number for such substance that is required to appear on the label under any other provision of Federal law. Such registration number for any drug shall be the same as that assigned pursuant to the National Drug Code.

"(d) The Secretary shall establish a central office through which information contained in the registrations submitted under this section (except for trade secret information referred to in section 1905 of title 18, United States Code) shall be immediately available to any physician, hospital, clinic, poison control center, or other person requesting such information to provide treatment to any person injured, or who may be injured, as a result of the ingestion of, contact with, or exposure to any such substance. The Secretary shall notify physicians, hospitals, clinics, poison control centers and other persons who may have use for such information, of the availability of such information and the methods by which it may be obtained at any time.

"(e) The Secretary may exempt from any requirement of this section any substance for which he determines such requirement is unnecessary to protect the public health."

"SEC. 503. Subsection 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by deleting "nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooling or refrigeration system of a house,".

SEC. 504. (a) Section 19(a) of the Federal Hazardous Substances Act, as redesignated by section 502 of this Act (15 U.S.C. 1277(a)) is amended by striking out "except as specified in section 19" and replacing the comma after "Congress" with a period.

(b) Section 19 of such Act is hereby repealed.

SEC. 505. Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) is amended by adding at the end thereof the following new subsection:

"(i) The failure to conduct screening testing, maintain a copy of the results of such testing, or to provide the results of such screening testing, or to register, or to label a hazardous substance with a registration number, as required by section 16."

SEC. 506. Subsection 11(b) of the Federal Hazardous Substances Act (15 U.S.C. 1270 (b)) is amended by deleting "and" immediately before "(3)" in the first sentence, changing the period to a semicolon, and adding the following: "and (4) to inspect and copy the results of screening tests as required pursuant to section 16."

SEC. 507. The Federal Caustic Poison Act (44 Stat. 1406) is hereby repealed.

SEC. 508. Title V shall become effective one hundred and eighty days after the date of enactment of this Act except that the Secretary may postpone the applicability in the case of persons who were engaged on the date of enactment of this Act in the manufacture, compounding, or processing of a substance subject to these amendments if he determines such action is necessary to afford sufficient time for the proper and orderly testing and registration of such substances.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MAGNUSON. I ask unanimous consent that the bill as passed be reprinted.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, the period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT REFERENCE OF DRUG ABUSE PROPOSALS

Mr. MOSS. Mr. President, I ask unanimous consent that a letter addressed to the President pro tempore of the Senate proposing certain legislation on drug abuse be jointly referred to the Committee on Labor and Public Welfare and the Committee on the Judiciary. I also ask unanimous consent that the letter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter is as follows:

STATE OF CALIFORNIA,
Sacramento, Calif., June 12, 1972.

Hon. ALLEN J. ELLENDER,
President pro tempore of the Senate, Washington, D.C.

DEAR SENATOR ELLENDER: As Lieutenant Governor, one of my constitutional duties is that of Chairman of the California delegation to the Commission of the Californias. The Commission was established in 1964 by the Legislatures of California and the State of Baja California, Republic of Mexico, to further and develop economic and cultural relations between the two states. The Territory of Baja California Sur joined in 1967. Work is carried on by committees composed of legislators, government officials and private ctizens of the three entities.

One of our major concerns has been in the area of drug abuse. In 1970, the Commission sponsored a conference attended by American and Mexican experts in the educational, public health, and legal and law enforcement aspects of the drug abuse problem. From this frank and earnest exchange of views came an intensified cooperation among the authorities of the several jurisdictions. The State of Baja California enacted a new and stringent law with regard to dangerous drugs and im-

Exhibit 113

Filed for in camera review pursuant to protective order.

Exhibit 114

92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 92-1153

CONSUMER PRODUCT SAFETY ACT

JUNE 20, 1972.—Committed to the Committee of the Whole House and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 15003]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 15003) to protect consumers against unreasonable product hazards, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Consumer Product Safety Act".

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Consumer Product Safety Commission.
Sec. 5. Product safety information and research.
Sec. 6. Public disclosure of information.
Sec. 7. Consumer product safety standards.
Sec. 8. Banned hazardous products.
Sec. 9. Administrative procedure applicable to promulgation of consumer product safety rules.
Sec. 10. Petition by interested party for consumer product safety rule.
Sec. 11. Judicial review of consumer product safety rules.
Sec. 12. Imminent hazards.
Sec. 13. New products.
Sec. 14. Product certification and labeling.
Sec. 15. Notification and repair, replacement, or refund.
Sec. 16. Inspection and recordkeeping.
Sec. 17. Imported products.
Sec. 18. Exports.
Sec. 19. Prohibited acts.
Sec. 20. Civil penalties.
Sec. 21. Criminal penalties.
Sec. 22. Injunctive enforcement and seizure.
Sec. 23. Suits for damages by persons injured.
Sec. 24. Private enforcement of product safety rules and of section 15 orders.

65-006

Sec. 25. Effect on private remedies.
Sec. 26. Effect on State standards.
Sec. 27. Additional functions of Commission.
Sec. 28. Product Safety Advisory Council.
Sec. 29. Cooperation with States and with other Federal agencies.
Sec. 30. Transfers of functions.
Sec. 31. Limitation on jurisdiction.
Sec. 32. Authorization of appropriations.
Sec. 33. Effective date.

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) an unacceptable number of consumer products which contain unreasonable hazards are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate hazards and to safeguard themselves adequately;

(3) the public should be protected against unreasonable hazards associated with consumer products;

(4) control by State and local governments of unreasonable hazards associated with consumer products is inadequate and may be burdensome to manufacturers; and

(5) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this Act.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable hazards associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

DEFINITIONS

SEC. 3. (a) For purposes of this Act:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise; but such term does not include (A) any article which is not customarily produced or distributed for sale to or use, consumption, or enjoyment of a consumer; (B) tobacco and tobacco products, (C) motor vehicles or motor vehicle equipment (as defined by sections 102 (3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966), (D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act), (E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article, (F) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act), or (G) food. The term "food", as used in this paragraph, means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(2) The term "consumer product safety rule" means a consumer product safety standard described in section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product.

(3) The term "hazard" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7) (A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufacture" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 4.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) 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, one of whom shall be designated by the President as Chairman. The Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. 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) (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 occurring 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) Not more than three of the Commissioners shall be appointed from the same political party. No individual in the employ of, or holding any official relation to, any person, engaged in selling or manufacturing consumer products or owning stock or bonds of substantial value in a person so engaged or who is in any other manner pecuniarily interested in such a person, or in a substantial sup-

plier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) 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. 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) 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) (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.

(g) (1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. Individuals may be appointed under this paragraph without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(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. No full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS–14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission.

(h) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(59) Chairman, Consumer Product Safety Commission."

(2) Section 5315 of such title is amended by adding at the end thereof the following new paragraph:

"(96) Members, Consumer Product Safety Commission (4)."

PRODUCT SAFETY INFORMATION AND RESEARCH

SEC. 5. (a) The Commission shall—

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

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

(b) The Commission may—

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

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

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

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

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

PUBLIC DISCLOSURE OF INFORMATION

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

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

(b)(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith, the Commission shall provide such information to each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this Act.

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

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) The Commission may by rule, in accordance with this section and section 9, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

(b) A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall—

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

(2) state the Commission's determination that a consumer product safety standard is necessary to prevent or reduce the hazard;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4)(B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this Act would prevent or reduce the unreasonable hazard associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

(d)(1) Except as provided by subsection (c), the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b)(4)(B), if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b), and will comply with regulations of the Commission under paragraph (3). The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings.

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this Act, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards),

and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

(e)(1) If the Commission has published a notice of proceeding as provided by subsection (b) and has not, within 30 days after the date of publication of such notice, accepted an offer to develop a proposed consumer product safety standard, the Commission may develop a proposed consumer product safety rule and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same hazard associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d)(1) for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

(f) Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b) (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product.

BANNED HAZARDOUS PRODUCTS

SEC. 8. Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable hazard to the public; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable hazard associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product.

ADMINISTRATIVE PROCEDURE APPLICABLE TO PROMULGATION OF CONSUMER PRODUCT SAFETY RULES

SEC. 9. (a)(1) Within sixty days after the publication under section 7 (c), (e)(1), or (f) or section 8 of a proposed consumer product safety rule respecting a hazard associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the hazard associated with such product if it makes the findings required under subsection (c), or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with the product, or (ii) in the public interest;

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

(2) Consumer product safety rules which have been proposed under section 7 (c), (e) (1), or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(b) A consumer product safety rule shall express in the rule itself the hazard which the standard is designed to prevent or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act.

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

(A) the degree and nature of the hazard the rule is designed to prevent or reduce, and

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

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

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

(A) that the rule (including its effective date) is reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with such product;

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

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

(d) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. A consumer product safety standard under this Act shall be applicable only to consumer products manufactured after the date of promulgation of the standard.

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

PETITION BY INTERESTED PARTY FOR CONSUMER PRODUCT SAFETY RULE

SEC. 10. (a) Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

(b) Such petition shall be filed in the principal office of the Commission and shall set forth—

(1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary; and

(2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

(c) The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

(d) If the Commission grants such petition, it shall promptly commence an appropriate proceeding to prescribe a consumer product safety rule, or take such other action as it deems appropriate. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

JUDICIAL REVIEW OF CONSUMER PRODUCT SAFETY RULES

SEC. 11. (a) Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him for that purpose and to the Attorney General. The Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 7, 8, or 9; the transcript required by section 9(a)(2) of any oral presentation; any written submission of interested parties; and any other information, which the Commission considers relevant to such rule.

(b) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 9(c) are supported by substantial evidence on the record taken as a whole.

(d) The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

IMMINENT HAZARDS

SEC. 12. (a) The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2), or (2) against any person who is a manufacturer, or distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this Act. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b)(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the

case of an action under subsection (a)(2)) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1), the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d)(1) Prior to commencing an action under subsection (a), the Commission may consult the Product Safety Advisory Council (established under section 28) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e)(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving identical consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(f) Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

NEW PRODUCTS

SEC. 13. (a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce.

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers.

PRODUCT CERTIFICATION AND LABELING

SEC. 14. (a)(1) Every manufacturer of a product which is subject to a consumer product safety standard under this Act and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or

private labeler issuing the certificate; and shall include the date and place of manufacture.

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

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

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

(1) The date and place of manufacture of any consumer product.

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

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

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

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

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial hazard 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 hazard to the public.

(b) 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

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

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

(c) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for the oral presentation of views as well as for written presentations) 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; or

(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) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with section 554 of title 5, United States Code) 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; or

(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 subsection.

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

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

INSPECTION AND RECORDKEEPING

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

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

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

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

IMPORTED PRODUCTS

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

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

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

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

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

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

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

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

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

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

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

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

EXPORTS

SEC. 18. This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such

consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

PROHIBITED ACTS

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

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

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

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

(4) fail to furnish information respecting a substantial product defect, as required by section 15(b);

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

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

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

CIVIL PENALTIES

SEC. 20. (a) (1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), or (6) shall constitute a separate violation with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 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, 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 $500,000 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 product 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.

(b) 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 appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. 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.

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

CRIMINAL PENALTIES

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

(b) Whenever any corporation knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission, any individual director, officer, or agent of such corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part such violation and who had knowledge of such notice from the Commission shall be subject to penalties under this section in addition to the corporation.

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. (a) The United States district courts shall have jurisdiction to restrain any violation of section 19, or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule, or both. Such actions may be brought by the Attorney General, on request of the Commission, in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product which fails to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving identical consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

SUITS FOR DAMAGES BY PERSONS INJURED

SEC. 23. (a)(1) If any person dies or sustains personal injury or illness by reason of the failure of a consumer product to comply with an applicable consumer product safety rule under this Act, then such person (or his survivors or legal representative) may sue any manufacturer, distributor, or retailer of such noncomplying product, and may recover any damages sustained as a result of such failure to comply.

(2) If any person dies or sustains personal injury or illness by reason of a failure to comply with an order under section 15(c) or section 15(d), then such person (or his survivors or legal representative) may sue any person who failed to comply with such order under section 15, and may recover any damages sustained as a result of such failure to comply.

(3) An action under this section may be brought in any United States district court in the district in which the defendant resides or is found or has an agent, without regard to the amount in controversy. In any action under this section, whenever a plaintiff shall prevail the court may award the plaintiff the costs of the suit, including a reasonable attorney's fee.

(b) In the case of an action brought for noncompliance with an applicable consumer product safety rule, no liability shall be imposed under this section upon any manufacturer, distributor, or retailer who establishes (1) that he did not have reason to know in the exercise of due care that such product did not comply with such consumer product safety rule, and (2) in the case of a manufacturer or a distributor or retailer who is a private labeler of such noncomplying product, that the product was designed so as to comply with all applicable consumer product safety rules and that due care was used in the manufacture of the product so as to assure that the product complied with such rule. In the case of an action for noncompliance with an order under section 15, no liability shall be imposed under this section upon any manufacturer, distributor, or retailer who establishes that he took all steps as may be reasonable in the exercise of due care to comply with such order.

(c) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State statutory law.

PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OF SECTION 15 ORDERS

SEC. 24. Any interested person may bring an action 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. Not less than thirty days prior to the commencement of such action, such interested person 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. 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, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing party.

EFFECT ON PRIVATE REMEDIES

SEC. 25. (a) Compliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c)(1) Subject to section 6(a)(2) but notwithstanding section 6(a)(1), (A) accident and investigation reports made under this Act by any officer, employee, or agent of the Commission shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and (B) any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations.

(2) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (A) any accident or investigation report made under this Act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (B) all reports on research projects, demonstration projects, and other related activities shall be public information.

EFFECT ON STATE STANDARDS

SEC. 26. (a) Whenever a consumer product safety standard under this Act is in effect and applies to a hazard associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same hazard associated with such consumer product; unless such requirements are identical to the requirements of the Federal standard.

(b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(c) Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose) a proposed safety standard or regulation described in such application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

ADDITIONAL FUNCTIONS OF COMMISSION

SEC. 27. (a) The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(c) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

(e) For purposes of carrying out this Act, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(f) The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this Act.

(g) The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this Act.

(h) The Commission shall prepare and submit to the President and the Congress on or before October 1 of each year a comprehensive report on the administration of this Act for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this Act in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this Act.

PRODUCT SAFETY ADVISORY COUNCIL

SEC. 28. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this Act. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

(2) five members shall be selected from consumer product industries including at least one representative of small business; and

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

(b) The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

(c) The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

(d) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

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

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

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

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this Act the Commission shall give favorable consideration to programs which establish separate State and local

agencies to consolidate functions relating to product safety and other consumer protection activities.

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

TRANSFERS OF FUNCTIONS

SEC. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) A hazard which is associated with consumer products and which could be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts.

(d) (1) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a) and (b) of this section shall be transferred to the Commission. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall

abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(e) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

LIMITATION ON JURISDICTION

SEC. 31. The Commission shall have no authority under this Act to regulate hazards associated with consumer products which could be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Act of August 2, 1956 (70 Stat. 953); the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this Act to regulate any hazard associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355 (1) and (2) of the Public Health Service Act) if such hazard of such product may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of section 27(g) 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—

(1) $55,000,000 for the fiscal year ending June 30, 1973;

(2) $59,000,000 for the fiscal year ending June 30, 1974; and

(3) $64,000,000 for the fiscal year ending June 30, 1975.

(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(g); 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 Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce 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.

EFFECTIVE DATE

SEC. 33. This Act shall take effect on the sixtieth day following the date of its enactment, except—

(1) sections 4 and 32 shall take effect on the date of enactment of this Act, and

(2) section 30 shall take effect on the later of (A) 150 days after the date of enactment of this Act, or (B) the date on which at least three members of the Commission first take office.

Purpose and Summary of This Legislation

This legislation proposes that the Federal Government assume a major role in protecting the consumers from unreasonable risks of death, injury, or serious or frequent illness associated with the use or exposure to consumer products. To carry out that objective, this bill would create a new, independent regulatory commission with comprehensive authority to take action across the full range of consumer products to reduce or prevent product-related injuries. The powers and procedural requirements contained in this legislation, for the most part, draw and improve upon concepts and practices which the Congress has previously employed in other safety laws.

In its barest terms this bill would vest in the independent regulatory commission, which it establishes, authority to:

(1) collect and disseminate information on consumer product related injuries;

(2) establish mandatory safety standards where necessary to prevent or reduce unreasonable product hazards, or—where such standards are not feasible—to ban the product from the marketplace;

(3) obtain equitable relief in the courts to protect the public from products which pose imminent hazards to health and safety; and

(4) administratively order the notification and remedy of products which fail to comply with Commission safety rules or which contain safety related defects.

The bill would also provide a system of product certification and permit the Commission to compel inclusion of certain safety-related information in product labels. The Commission would be given broad inspection and record keeping powers. Enforcement of the bill may be obtained through court injunctive process or through imposition of criminal and civil penalties. Also, private suits for damages are allowed to be brought in Federal courts and consumer suits are permitted to compel compliance with safety rules and certain Commission orders.

Basis for Legislation

It is considered self-evident that the public is entitled to purchase products without subjecting themselves to unreasonable risk of injury or death. At the present time, however, consumers are not able to confidently rely on the safety of products which are distributed for their use or enjoyment.

The National Center for Health Statistics estimates that each year 20 million Americans are injured in and around the home. Of this total, 110,000 injuries result in permanent disability and 30,000 in death. One estimate has placed the annual dollar cost to the economy of product-related injuries at over $5 billion. Moreover, home accidents reap a death toll among children under the age of 15 which is higher than that of cancer and heart disease combined. Yet, despite the public's widely held assumption that the Federal government exercises

broad authority in the interest of their safety, existing federal authority to curb hazards in a majority of consumer products is virtually non-existent.

Within the last six years, the Congress has exhibited an increasing concern with the safety of the products which consumers encounter in their daily lives. This concern has been manifested in the passing of a series of acts designed to deal with specific hazards and categories of products for which a substantial regulatory need had been established. These acts include the National Traffic and Motor Vehicle Safety Act of 1966, the Gas Pipeline Safety Act of 1968, the Flammable Fabrics Act Amendments of 1967, the Radiation Control for Health and Safety Act of 1968, the Child Prevention and Toy Safety Act of 1969, and the Poison Prevention Packaging Act of 1970.

While each of these acts is meritorious in its own right and deserving of enactment, this legislative program has resulted in a patchwork pattern of laws which, in combiantion, extend to only a small portion of the multitude of products produced for consumers. Moreover, the technological revolution and ever-increasing public demand for consumer products has produced over the last several years thousands of new products whose applications are not easily understood by consumers and whose use may pose great potential for harm.

Recognizing this problem, Congress created in 1967 the National Commission on Product Safety with a mandate to "conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risks of injuries which may be caused by household products." The work of the Commission extended over a period of two years. Much of the Commission's investigative effort was concentrated in a series of widely publicized informational hearings which were held at different locations throughout the country. In the course of these proceedings, the Commission was presented with evidence from over 225 witnesses whose testimony contributed to a hearing record in excess of 7,000 pages. The Commission's final report was transmitted to both the President and the Congress in July 1970.

In general terms, the Commission confirmed both the absence of and the need for a strong, vigorous Federal presence to protect the public from hazardous consumer products. The Commission's findings set out in sharp terms the shortcomings of past Federal safety efforts.

> Federal products safety legislation consists of a series of isolated acts treating specific hazards in narrow product categories. No Government agency possesses general authority to ban products which harbor unreasonable risks or to require that consumer products conform to minimum safety standards.
>
> Such limited Federal authority as does exist is scattered among many agencies. Jurisdiction over a single category of products may be shared by as many as four different departments or agencies. Moreover, where it exists. Federal product safety regulation is burdened by unnecessary procedural obstacles, circumscribed investigative powers, inadequate and ill-fitting sanctions, bureaucratic lassitude, timid administra-

tion, bargain-basement budgets, distorted priorities, and misdirected technical resources.

In addition, the Commission found State and local laws to be a "hodgepodge of tragedy-inspired responses to challenges which cannot be met by restricted geographical entities."

Perhaps even more significant, however, are the Commission's findings that self-interest and competitive forces are not of themselves sufficient to influence manufacturers to produce safe products. Attempts at self-regulation through industry trade associtaions and standards groups was found "patently inadequate." Here, the Commission's findings bear repeating in some detail:

"Competitive forces may require management to subordinate safety factors to cost consideration, styling, and other marketing imperatives.

"There is a dearth of factors motivating producers toward safety. Only a few of the largest manufacturers have coherent, articulated safety engineering programs. Manufacturers' efforts to obtain data on injuries and on the costs and benefits of design changes that will reduce unreasonable hazards can be charitable described as sketchy and sporadic.

"The consensus principle, which is at the heart of all voluntary standards making, is not effective for elevating safety standards. It permits the least responsible segment of an industry to retard progress in reducing hazards.

"The protection afforded by various seals of approval is no better than the technical competence, product-testing protocols, and independence of the certifier. When an industry association awards the seal, or when it is awarded in return for paid advertising, the seal may convey a deceptive implication of third-party independence. Consumers appear to attribute to such endorsements a significance beyond their specific meaning."

There is today no central facility for the systematic collection and evaluation of injury data. And, for this reason, it is impossible to measure the true magnitude of product-related injuries or to determine with confidence what portion of the annual toll of 30,000 deaths or 20 million injuries which are estimated to occur around the American home are actually caused by unsafe products.

Innumerable individual reports, nevertheless, persuaded the Commission—and have persuaded your Committee—that a significant number of deaths and injuries are directly attributable in whole or in part to unsafe consumer products. The Commission's report catalogs a large number of products which it found, on an ad hoc basis, to present unreasonable hazards to consumers. These included various makes, models, or types of: architectural glass, color television sets, fireworks, floor furnaces, glass bottles, high-rise bicycles, hot water vaporizers, household chemicals, infant furniture, ladders, power tools, protective headgear, rotary lawnmowers, toys, unvented gas heaters, and wringer washing machines. In a section of its report entitled "Unfinished Business", the Commission went on to list an additional sixteen products which it believed warranted further safety investigation. By any standard of measurement, the Commission concluded

"the exposure of consumers to unreasonable consumer product hazards is excessive."

Rather than propose individual legislation designed to deal with the product hazards which it had identified, however, the Commission decided that the Federal Government should abandon its traditional case by case approach to product safety and consolidate in a single agency authority sufficient to regulate the full spectrum of products which are sold to or used by consumers. To this end, the Commission submitted with its final report legislative proposals to create a new independent regulatory commission with comprehensive powers to minimize or eliminate unreasonably hazardous products.

Committee Consideration

In the first session of this Congress, the Chairman of the committee's Subcommittee on Commerce and Finance, John E. Moss of California, introduced a bill which substantially embodied the Product Safety Commission's legislative recommendations. Also, drawing upon the Commission's report, the President transmitted legislation to the Congress which proposed the establishment of omnibus product safety authority in the Federal government.

These two proposals formed the focus of 13 days of hearings before the Subcommittee on Commerce and Finance which extended over a four-month period. After 8 meetings in executive session, the Subcommittee unanimously reported a clean bill which represented an accommodation between the legislative recommendations of the National Commission on Product Safety and those of the Administration. This bill, HR 15003, with certain amendments, was ordered favorably reported on voice vote by the full committee after 2 days in executive session.

Structure

All witnesses who testified on this legislation—including virtually every segment of the manufacturing industry—supported the proposition that the Federal government should assume a major role in assuring the safety of consumer products. Disagreement among witnesses primarily centered on the organizational structure for regulating product hazards and the procedures to be employed in the exercise of governmental authority. Indeed, the most fundamental difference between the recommendations of the National Commission on Product Safety and those submitted by the Administration relate to the form of the governmental agency which is to assume responsibility for protecting the public from hazardous products.

The Commission had recommended that a new independent federal agency be established; the Administration had asked that this authority be given to HEW. It was the Administration's plan to build on the activities, personnel and existing facilities of the Food & Drug Administration and to reorganize FDA for the purpose of assuming the additional responsibilities contained in this legislation.

Your committee has decided on the approach recommended by the National Commission on Product Safety, and, therefore, proposes to vest comprehensive authority to protect the public from hazardous products in an independent regulatory agency. This decision reflects the committee's belief that an independent agency can better carry

out the legislative and judicial functions contained in this bill with the cold neutrality that the public has a right to expect of regulatory agencies formed for its protection. Independent status, and bi-partisan commissioners with staggered and fixed terms, will tend to provide greater insulation from political and economic pressures than is possible or likely in a cabinet-level department. The Commission's decisions under this legislation will necessarily involve a careful meld of safety and economic considerations. This delicate balance, the committee believes, should be struck in a setting as far removed as possible from partisan influence. Also, the creation of a new independent agency, it is thought, will assure that the regulatory program contained in this bill will be highly visible to get off to a firm and vigorous start.

The committee's decision to delegate product safety responsibility to a new independent commission also stems, in part, from a reluctance to assign substantial additional responsibilities to FDA in the face of a series of studies in recent years which have been sharply critical of the agency's abilities to carry out effectively the responsibilities already assigned to it under existing law. Principal among these studies are internal analyses: beginning with the so-called Kinslow report in July 1969 (which offered an analysis of FDA's consumer protection objectives and programs); followed by a departmental review of FDA conducted by then Deputy Under Secretary Frederic V. Malek completed in December 1969; and ending with the Ritts Committee review of FDA's "total scientific effort" which was completed in May 1971.[1] Each of these studies identified structural shortcomings in FDA, citing inadequacies in internal procedures and organization. Following each study, the prescription has been for more money and manpower and for reorganization.

There is today evidence that FDA is beginning to take strong, positive steps to strengthen its regulatory capability. Moreover, the Department of HEW has recently taken long overdue action to increase the agency's budget.

There is no assurance, however, that the regulatory program for product safety envisioned in this legislation would be free from organizational and funding difficulties if the Congress were to assign this authority to FDA, as suggested. On the contrary, it has been the committee's experience that when regulatory programs are placed in Executive Departments which have broad and diverse responsibilities, the regulatory effort has typically suffered from a lack of adequate funding and staffing. This has often been the result of the regulatory program's inability to compete effectively with other deserving programs within the Department or to gain public attention and support. In this regard, it would be difficult to find another Department of the

[1] Copies of these studies were submitted in the committee's hearings on this legislation. The "Kinslow Report" entitled "Report from the Study Group on Food and Drug Administration Consumer Protection Objectives and Programs" appears in the published hearings at p. 1025; the "Malek Report" which is entitled "Analysis and Recommendations: The Food and Drug Administration Organizational Review. . . . December 10, 1969" appears at p. 982; and the Ritts Committee report which is entitled "Report to the Commissioner of Food and Drugs from the FDA Ad Hoc Science Advisory Committee, May 1971" appears at p. 986. These studies were repeatedly relied on by consumer groups participating in the subcommittee's hearings as evidence that FDA should not be assigned additional responsibilities for product safety. These critics also called the committee's attention to a recent report completed by GAO in April of this year which found a "serious problem of insanitary conditions" in food-manufacturing plants. In addition to placing fault on the manufacturers, it blamed inadequate resources of the FDA and the agency's "lack of timely and aggressive enforcement action" as contributing to the problem.

Executive branch whose responsibilities are more broad than HEW's, or where the internal competition for the Secretary's attention and for funds is more intense.

PROCEDURES GOVERNING THE EXERCISE OF FEDERAL REGULATORY AUTHORITY

In addition to the need to establish comprehensive and effective regulation over the safety of unreasonably hazardous consumer products, there is a need to insure that the procedures relating to consumer products are fair to both industry and consumers. The Committee heard extensive testimony from manufacturers and trade associations documenting some of the potential difficulties that might be faced in complying with the regulations of a product safety agency. This testimony convinces the Committee that it is essential to establish both an effective and fair product safety program, impacting to the minimum extent practicable on the manufacturing process. In addition, an effective consumer safety program must insure an adequate opportunity for participation and judicial review by consumers and regulated industries.

With these goals in mind the Committee has fashioned legislation which for the first time affords industry and consumer groups an opportunity to directly participate in the development of safety standards. In addition, the Consumer Product Safety Commission created under this bill may, where appropriate, agree to contribute to the cost of development of such standards.

Product safety standards or proposed banning rules must be issued pursuant to the procedures of the Administrative Procedure Act. In addition, the bill incorporates added requirements for an oral presentation of arguments and the keeping of a transcript in such proceedings. Review by the courts, where sought, would be on the basis of "substantial evidence" in support of the agency's action, rather than on the usual rule, which sustains the agency's rule-making action if it is neither arbitrary nor capricious.

While the Committee has determined that it is essential to include authority to recall substantially hazardous products and products which do not meet safety standards from the marketplace, it has provided for an informal hearing prior to public notification, and a formal hearing prior to repair, replacement or refund under these provisions. Whether to utilize either of the remedies of repair, replacement or refunds would be at the election of the manufacturer.

Through these procedures the Committee has sought to develop legislation which will afford effective protection to consumers and fairness to the industries of the nation.

Explanation of Reported Bill by Section

Finding and Purposes

Section 2(a) contains congressional findings respecting the subject matter of the bill. These include a finding that—in order to effectively regulate products distributed in interstate commerce—it is necessary to regulate hazards associated with products the distribution or use of which affects interstate commerce. The committee's decision to extend the reach of this bill to hazards associated with products the distribution or use of which "affects" commerce has two bases:

First, that effective enforcement of consumer product safety standards would be impracticable if the standards applied only to products in interstate commerce; and second, that the very substantial economic effects of accidents involving consumer products are by themselves sufficient to justify Federal intervention without regard to whether the particular product crosses State lines.

Subsection (b) of section 2 states the purposes of the bill, which are to protect the public against unreasonable hazards associated with consumer products, to assist consumers in evaluating product safety, to develop uniform consumer product safety standards, and to promote product safety research.

Definitions

Section 3 defines 13 terms which are to have particular application under this bill. Several of these are definitions commonly found in Federal statutes; others are unique to this bill and require special mention.

The definition of the term "consumer product" delimits the jurisdictional reach of this bill. Because it is intended to vest omnibus product safety authority in a single Federal agency, the definition is broadly stated to include any article which is produced or distributed for sale to or for the use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise. Special attention should be paid to the use of the phrase: "produced or distributed for sale to * * * or for the use of * * * a consumer." It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill. Also, products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for *use* of consumers.

It is not intended that true "industrial products" be included within the ambit of the Product Safety Commission's authority. Thus, your committee has specifically excluded products which are not *customarily* produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commission's jurisdiction. The term "customarily" should not be interpreted as intending strict adherence to a quantum test, however. Your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product.

The committe has also excluded from the definition of consumer product certain product categories which are either regulated under other safety laws or which the Committee has yet to determine should be subjected to safety regulation of the type envisioned in this bill. In this grouping are: tobacco and tobacco products, motor vehicles and motor vehicle equipment, economic poisons, firearms and ammunition,

medical devices and cosmetics. So that there may be no uncertainty as to the committee's intent with respect to the exclusion of food from this bill, the term is separately defined to make clear that poultry, meats, and eggs, and poultry, meat, and egg products are meant to be excluded. The specific listing of these foods and the failure to list others should not be interpreted as an intention to exclude some foods or food products while including others. The committee intends to exclude from application of this bill all foods within the broad meaning given to that term in section 201 of the Food, Drug and Cosmetic Act.

There has been some confusion over the intended application of this bill to mobile homes and the increasingly important problem of mobile home safety. It is the committee's understanding that the definition of the term "consumer product" would include any component, equipment, or appliance sold with or used in or around a mobile home. It is not thought that the term is so broadly stated as to bring the basic structure of the mobile home within the reach of this legislation. It is the committee's intent that the Consumer Product Safety Commission to be created under this legislation would have full authority, however, to regulate all appliances and appurtenances of the household environment of the mobile home.

In several sections of this bill, private labelers are required to assume the same duties and responsibilities as manufacturers. This follows the committee's belief that, if a person holds himself out as manufacturing a product and as standing behind the product's quality or performance, it is reasonable to ask him to assume certain responsibilities for that product.

For the purposes of this bill, a "private labeler" is defined to mean an owner of a brand or trademark which is placed on a consumer product in lieu of that of the manufacturer's. A product is not considered to bear a private label, however, if the manufacturer's brand or trademark also appears on the label.

The term "consumer product safety rule" is defined to include both a rule which establishes a safety standard, and a rule which declares a consumer product a banned hazardous product.

The term "hazard" is defined to mean a risk of death, injury, or serious or frequent illness. The phrase "unreasonable hazard" is used throughout the bill as a short-form reference to unreasonable risk of death, personal injury, or serious or frequent illness.

The term "manufacturer" is defined to include any person who manufactures, assembles or imports a consumer product. As a result, those engaged in the assembly of a consumer product are subjected to the same regulatory control as producers of the product. Also, to assure parity of regulation, importers are made subject to the same responsibilities as domestic manufacturers.

Subsection (b) of section 3 provides that common carriers, contract carriers, or freight forwarders shall not be deemed manufacturers, distributors, or retailers under this bill if the sole reason they would be considered as such arises out of their receiving or transporting a consumer product in the ordinary course of their business as carriers or forwarders. Unless excluded, carriers and forwarders would be swept up in the broad definitions of the terms "manufacturer," "distributor," and "retailers."

Consumer Product Safety Commission

Section 4 of this bill establishes an independent regulatory commission to carry out the assigned duties and responsibilities to protect consumers from unreasonably hazardous products. This section implements the National Commission on Product Safety's recommendation to create a strong independent product safety authority. In using the term independent, the committee intends that the agency be independent of the executive department and to be removed as far as possible from the influence of partisan politics or political control.

Section 4 creates the Consumer Product Safety Commission in the image of other regulatory commissions which have been created by the Congress to regulate the essential industries of rail and air transportation, oil and gas production, communications, and the securities markets. As such, the Consumer Product Safety Commission is made subject to traditional requirements relating to the appointment and organization of independent regulatory agencies. For example, to promote evenhanded regulation, the Commission is to consist of 5 members selected on a bipartisan basis to serve for seven-year terms. In the interest of efficiency and good organization, however, staffing authority is concentrated in the office of the Chairman—subject only to the general guidance of the Commission.

The committee has incorporated several provisions which depart from and improve upon traditional agency practice. Because the Commission's Chairman is designated as the principal executive officer and assigned special powers to control the operation of the agency, the committee does not believe that the Chairman should serve at the pleasure of the President. As Mr. Justice Sutherland once noted in a case involving the attempted removal of a member of the Federal Trade Commission "[i]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." Accordingly, section 4(a) qualifies the presidential appointment powers by requiring that the Chairman, when designated as such by the President, shall continue to serve as Chairman until the expiration of his term of office as a member of the Commission. Thus, if the President designates a member of the Commission to serve as Chairman at the time of his appointment to the Commission, that person shall continue in office as Chairman for his full seven-year term on the Commission. The President would not be empowered to designate some other Commissioner to serve as Chairman within this period. Also, if the seven-year term of office runs into another administration, the incumbent President would not be able to remove the Chairman and replace him with his own designee.

In order to properly isolate members of the Commission from removal from office at the whim of the executive, section 4(a) states that members of the Commission may be removed for neglect of duty or malfeasance in office, but for no other cause. By delineating the bases for removal, your committee intends to restrict the Preisdent's power to remove from office to these grounds alone.

Subsection 4(c) states that no person may hold office as a member of the Commission if he is a member of, or holds any official relation to, any person engaged in selling or manufacturing consumer products.

Commissioners are also disqualified if they own stocks or bonds in substantial valuation in a person engaged in selling or manufacturing consumer products or if they are in any way pecuniarily interested in such person or in a substantial supplier of such person. The committee recognizes that these restrictions are severe. It is intended by them to create a standard for members of the Commission which will assure that they are their own masters and are known to be such.

These requirements, of course, are in addition to conflict of interest codes contained in the criminal provisions of title 18 (see 18 U.S.C. 207). Also, to assure that Commissioners and principal agency employees carry out their responsibilities vigorously and without compromise, this section makes it unlawful for any member of the Commission or individual employee who receives compensation at a rate in excess of GS–14 to accept employment or compensation from any manufacturer subject to this act for a period of one year after terminating employment with the Commission. This restriction is intended to assure that persons will not seek employment with the agency or use their Federal office as a means of subsequently gaining employment in the regulated industry or as a means of acquiring members of industry as future clients.

Product Safety Information and Research

Section 5 directs the Commission to maintain an injury information clearing house to collect, investigate, analyze, and disseminate information relating to the causes and prevention of death, injury, and illness associated with consumer products. The Commission is also directed to conduct such accident investigations and studies as it considers necessary to this function.

The committee expects that, in the exercise of its responsibilities under this section, the Commission will develop the means to monitor accident occurrences throughout the United States, to determine whether they are product related and to measure the severity of the injury caused. Information which discloses that a product may be hazardous must be promptly transmitted to the manufacturer. In this regard it is expected that responsible manufacturers, once notified of the dangers attendant to their products, will act to correct the problem without requiring governmental action.

It is recognized, of course, that the powers given the Commission to collect and analyze injury data far exceed the abilities of any single manufacturer or industry association to acquire information concerning the accident experience associated with their products. Private industry however, should not rely totally on the Government to discover product hazards. Each manufacturer has today and should continue to have the responsibility to assure through testing and other independent means that his products are free from defect or hazard and are properly designed for the use for which they are intended or applied.

Section 5(b) authorizes the Commission to conduct research, studies, and investigations on the safety of consumer products; to test products and to develop safety testing methods and testing devices; and to offer training in product safety investigation; and to assist others in the development of safety standards and test procedures. This authority is designed to give the Commission the means of identifying

hazards before consumers are exposed to them. The application of modern technology makes possible sophisticated analysis of product design and testing for product degradation so that potential accidents may be foreseen and avoided. And such analyses may well provide a proper basis for regulatory action without awaiting an accumulation of accident statistics of the maimed and injured.

The Commission is given broad authority to make grants and enter into contracts to conduct any of these functions. Where the contribution of technical assistance or financial aid is more than minimal, such contracts, grants or other arrangements must provide that the rights to all information, processes, patents, and other developments resulting from any research and development activities must be available to the public without charge on a nonexclusive basis. Nothing in this section is intended to deprive the contracted party or grant recipient from any patent, patent application, or invention which he may have had prior to entering within the arrangement with the Commission. Subject to this qualification, it is intended that all information developed under these grants would be freely and fully available to the public.

Public Disclosure of Information

If the Commission is to act responsibly and with adequate basis, it must have complete and full access to information relevant to its statutory responsibilities. Accordingly, the committee has built into this bill broad information-gathering powers. It recognizes that in so doing it has recommended giving the Commission the means of gaining access to a great deal of information which would not otherwise be available to the public or to Government. Much of this relates to trade secrets or other sensitive cost and competitive information. Accordingly, the committee has written into section 6 of the bill detailed requirements and limitations relating to the Commission's authority to disclose information which it acquires in the conduct of its responsibilities under this act.

Subsection (a) makes clear that nothing in this act shall be deemed to compel the Commission to disclose information which would not otherwise be available to the public under the Freedom of Information Act (5 U.S.C. 552(b)). There is one exception to this requirement. The Freedom of Information Act would not require a Federal agency to permit public access to investigatory files compiled for law enforcement purposes. Section 25(c) of this bill qualifies the Commission's authority to deny access to investigatory files by making accident investigations specifically available to the public so long as they do not identify injured parties or attending physicians (unless a release is obtained from such persons).

Subsection (a)(2) contains an absolute prohibition against the Commission's disclosure of trade secrets and other information referred to in section 1905 of title 18—except to other officers or employees concerned with carrying out responsibilities under this act or when relevant in any proceeding under this act. The committee intends that the term "trade secrets" shall be given the same judicial construction as that term has acquired under 18 U.S.C. 1905. Accordingly, for the purposes of section 6 of this act, a trade secret means "an unpatented, secret, commercially valuable plan, appliance, formula, or process,

which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities." [1]

Before disseminating any information which identifies the manufacturer or private labeler of a product, the Commission is directed to give the manufacturer or private labeler 30 days in which to comment on the proposed disclosure of information. This procedure is intended to permit the manufacturer or private labeler an opportunity to come forward with explanatory data or other relevant information for the Commission's consideration. There is no intention that the Commission be required to include a manufacturer's or private labeler's explanation in the materials which it determines to disseminate at the end of the 30-day period. This was suggested to the committee and rejected

The committee recognizes that the Commission has a responsibiilty to assure that the information which it disseminates is truthful and accurate. Where it is discovered that the disclosure of information has been inaccurate or misleading and reflects adversely on the safety of a consumer product or the practices of any manufacturer, distributor, or retailer of the product, the Commission is directed to publish a retraction in a manner similar to that in which the original disclosure was made. It is intended that a retraction receive at least the same notoriety as the original disclosure. Accordingly, if the Commission had publicly released information to the news media which was inaccurate or misleading, the retraction must also be released to the news media and not simply placed in the Federal Register. By requiring that the Commission publish its retraction in a manner similar to that in which the original disclosure was made, the committee does not intend to limit the Commission to these means. There may be circumstances where equity requires fuller disclosure of the Commission's mistakes in order to repair the damage to any manufacturer, distributor, or retailer of the product which may have resulted from publication of the inaccurate information.

The Commission is not required to give prior notification to manufacturers of any information which may be disclosed with respect to a product for which an action has been brought under section 12 (relating to imminently hazardous products) or a product which the Commission has reasonable cause to believe is in violation of section 19. The Commission also need not notify manufacturers and await the tolling of the 30-day period prior to the disclosure of information in the course of or concerning an administrative or judicial proceeding under the act.

Consumer Product Safety Standards

Section 7 authorizes the Commission to promulgate mandatory consumer product safety standards where it finds that such standards are reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with a consumer product. These standards may prescribe requirements relating to the performance, composition, content, design, construction, finish, or packaging of a product or prescribe requirements relating to the labeling of a product. Safety standards

[1] See *Consumers Union of United States* v. *Veterans Administration*, 301 F. Supp. 796 (1969), citing with approval *United States ex rel. Norwegian Nitrogen Products Co.* v. *United States Tariff Comm.*, 6 F. 2d 491, 495 (1925).

may contain any combination of these requirements which the Commission determines is necessary to prevent or reduce the hazard to the public.

Section 7(a) contains the statutory admonition that, wherever feasible, a standard must be expressed in terms of performance requirements. Your committee has expresed a strong preference for performance standards in the recognition that such standards permit industry to make the fullest use of its technological resources in meeting safety requirements. Mandatory standards which prescribe performance requirements can often be expected to foster rather than stifle competition. Your committee expects that the Commission will exercise its authority to establish standards relating to a product's composition, content, design, construction, finish, or packaging only in circumstances where it is persuaded that it would not be feasible to establish performance criteria.

It should be noted that the Commission's authority to promulgate standards under this bill is limited to instances where the hazard associated with a consumer product presents an unreasonable risk of death, injury, or serious or frequent illness. Your committee has not included a definition of "unreasonable hazards" within this bill. Protection against unreasonable risks is central to many Federal and State safety statutes and the courts have had broad experience in interpreting the term's meaning and application. It is generally expected that the determination of unreasonable hazard will involve the Commission in balancing the probability that risk will result in harm and the gravity of such harm against the effect on the product's utility, cost, and availability to the consumer. An unreasonable hazard is clearly one which can be prevented or reduced without affecting the product's utility, cost, or availability; or one which the effect on the product's utility, cost or availability is outweighed by the need to protect the public from the hazard associated with the product. There should be no implication, however, that in arriving at its determination the Commission would be required to conduct and complete a cost-benefit analysis prior to promulgating standards under this act. Of course, no standard would be expected to impose added costs or inconvenience to the consumer unless there is reasonable assurance that the frequency or severity of injuries or illnesses will be reduced.

Procedures for the Development of a Consumer Product Safety Standard

Section 7 contains detailed procedures for the development of consumer product safety standards. Briefly stated, your committee has attempted to outline a process which makes maximum use of the expertise available in the private sector and permits maximum participation by industry and consumer interests in the standard-setting process, while at the same time reserving to the Commission that measure of discretion and authority necessary to permit it to efficiently and effectively carry out its responsibilities.

Initiation of the Standard-Making Process

A proceeding to develop a consumer product safety standard is initiated by publication of notice in the *Federal Register* which: (1) identifies the product and the nature of the hazard associated with it; (2) states the Commission's determination that a consumer product

safety standard is necessary to prevent or reduce the hazard; (3) includes information respecting any existing standard which may be relevant; and (4) invites interested persons to come forward within 30 days with an existing standard suitable to be proposed as a consumer product safety standard under this act or to offer to develop a proposed consumer product safety standard to deal with the product hazard.

The notice is required to state a development period within which the Commission must receive final recommendations from any person whose offer to develop a standard is accepted. The Commission is to allow 150 days for the development of a recommended standard unless, for good cause, it finds a longer or shorter period is appropriate.

Subsection (c) would permit the Commission, in lieu of accepting an offer for the development of a standard to publish an existing standard which it finds would adequately prevent or reduce the hazard associated with the product if promulgated as a Federal consumer product safety standard under this act. There are, of course, many thousands of existing standards which have been issued by a multitude of public and private organizations and agencies. Many of these relate to consumer product safety. In some cases an existing voluntary standard may be entirely adequate to prevent or reduce an unreasonable hazard associated with a product, but is ineffective in protecting the public because it is not widely accepted by industry or because the promulgating agency or organization lacks authority to require adherence to its terms.

Except in circumstances where the Commission determines that an existing standard would satisfactorily prevent or reduce the hazard, the Commission is required to accept an offer for the development of a standard made by an offeror which it determines is technically competent; is likely to develop an appropriate standard within the required period; and is willing and able to comply with certain regulations relating to procedures for the development of the standard. The requirement of technical competence contemplates that an offeror may be called upon to demonstrate his expertise and capability to carry out the undertaking to develop the proposed standard. It is not intended to require that an offeror have past standards-writing experience or particular knowledge of the product for which the standard is to be developed. It is anticipated that universities and research laboratories could be found technically competent even though they may have had no experience relating to the product to be regulated.

Subsection (d) makes it mandatory that the Commission accept an offer to develop a proposed standard in order to assure that, in the first instance, private standard-making organizations or technical committees as well as consumer groups and other public and private agencies will have an opportunity to prepare a proposed solution to the problem. If the Commission accepts an offer for the development of a standard, it may agree to contribute to the offeror's cost. It is expected that the Commission will exercise its authority under this section to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations. Also, in instances where an offer from a technical committee or standard-writing organization is accepted, it is contemplated that the Commission would have authority under this section to limit its contribution to such of the offeror's

costs as are attributable to assuring adequate participation by public representatives in the development process.

Subsection (d)(3) directs the Commission to adopt regulations to assure that offerors whose offers are accepted proceed fairly and openly in the development of the standard. To a large measure, these regulations parallel requirements which the Administrative Procedure Act (5 U.S.C. 551 et seq.) prescribes for Federal agencies. Accordingly, the regulations require the offeror to provide notice and opportunity for interested persons to participate in the development process; to keep public records showing the course of the standard's development and any information submitted to the offeror which relates to the development of the standard or other matter relevant to the evolution of the standard. Such regulations must also provide that the standards recommended for promulgation be suitable; be supported by test data or such other documentation as the Commission may reasonably require; and, in appropriate cases, that they contain suitable test methods for determining compliance with the standard. Each offeror must permit the Commission and the Comptroller General access to any books or records which are relevant to the development of the standard or to the expenditure of any contribution made by the Commission to the standard's development.

Commission Development of a Proposed Standard

Section 7(c) imposes restrictions on the ability of the Commission to proceed independently to develop a proposed standard once it has accepted an offer for its development. The committee has imposed these limitations in order to avoid duplication and to help assure that a proposed standard submitted by an offeror will be given serious consideration and will not be readily discarded by the Commission in favor of its own solutions to the problem.

Under subsection (e)(2), if the Commission accepts an offer to develop a standard, it may not, during the development period, develop proposals for such standard itself or contract with third parties for the development of such a standard. The Commission is also prohibited from publishing a proposed rule applicable to the same hazard associated with the product during this period. Subsection (e)(2) should not be interpreted, however, as preventing the Commission or its staff—while awaiting the submission of recommended standards—from developing or acquiring the technical capability necessary to properly evaluate the standards recommended to it.

If the Commission determines that no offeror is making satisfactory progress, it may proceed to develop its own proposals or contract with third parties for that purpose. It is hoped that this action will prompt an offeror to move more diligently to develop a recommended standard within the period allowed for its development. If, however, the Commission determines that no offeror is able or willing to continue satisfactorily to develop the standard, the Commission may end the development period and immediately publish a proposed product safety rule applicable to the product hazard with which the standard was to have dealt. This proposed rule may take the form either of a proposed standard or rule declaring the product a banned hazardous product.

Publication of Proposed Rule

Section 7(f) mandates that the Commission act within 210 days after publication of the original notice initiating a proceeding for the development of a standard to (1) withdraw the notice of proceeding, or (2) publish a proposed rule which either proposes a consumer product safety standard applicable to the product or proposes to declare the product a banned hazardous product. The Commission may extend the 210 day period for good cause shown.

Banned Hazardous Products

Section 8 grants authority to the Commission to administratively ban hazardous consumer products if it finds that the product presents an unreasonable hazard and that no feasible consumer safety standard would adequately protect the public from the hazard. Section 9(c)(2) requires that these findings must be affirmatively made and incorporated in any adopted rule which declares a product to be a banned hazardous consumer product. The Commission need not attempt to first develop a proposed standard to deal with the hazard under section 7, but may proceed directly to ban a hazardous product. Interested persons may obtain judicial review under section 11 of a banning rule and may thereby require the Commission to support with substantial evidence its finding that no feasible standard would adequately protect the public.

Administrative Procedures Applicable to Promulgation of Consumer Product Safety Rules

Section 9 requires the Commission to act to either adopt a final rule or withdraw the proposed rule within 60 days of publication of any proposed consumer product safety rule under this act. If the Commission determines to withdraw the proposed rule, it must find that withdrawal is in the public interest, or that the proposed rule is not reasonably necessary to prevent or reduce the hazard associated with the product. The 60-day period may be extended by the Commission for good cause shown.

Consumer product safety rules under this bill are to be promulgated pursuant to section 553 of title 5 of the United States Code. The committee has modified the informal rulemaking procedures of the Administrative Procedure Act by requiring that the Commission give interested persons an opportunity for the oral presentation of views, data, or arguments in addition to providing an opportunity for the submission of written comments. Also, a transcript must be kept of this proceeding to assure that the views of participating parties will be preserved and available to a reviewing court under section 11.

In traditional agency rulemaking, it is discretionary with the agency whether to provide an oral hearing under section 553 of title 5. Your committee has decided to remove that discretion and make mandatory that interested persons be afforded an opportunity to orally present arguments to the Commission. In so doing, the Committee sought to reach an accommodation between the informal requirements of section 553 and the formal trial type procedures of sections 556 and 557 of title 5. The informal procedures were not thought to provide the desired opportunity for interested parties to participate in the Commission's rulemaking proceeding; the formal, on the other hand, were thought to unduly involve the Commission

in adjudicatory procedures inappropriate to the essentially legislative nature of the rulemaking procedure. The committee has accordingly crafted an administrative procedure to be employed in this bill which it believes will maximize opportunities to participate in the rulemaking proceeding without unduly entangling the Commission in trial type procedures.

Consumer product safety rules are required to express the nature of the hazard the rule is designed to prevent or reduce and state the rule's effective date. Rules are required to take effect not more than 180 days from the date issued unless the Commission finds for good cause that a later effective date is in the public interest. Consumer product safety standards may be made applicable only to consumer products which are manufactured after the date a standard is promulgated. Thus the Commission could not establish a retroactive effective date for any consumer product safety rule which embodies a product safety standard. Rules declaring a product to be a banned hazardous consumer product, however, may apply to products of new manufacture or to products already distributed in commerce.

In determining whether to promulgate a final consumer product safety rule the Commission is directed to consider all relevant data available to it including the results of research, development, testing, and investigation activities. The Commission is instructed to make appropriate findings to be included in any final rule with respect to (1) the nature and degree of the hazard, (2) the approximate number of consumer products or types or classes of consumer products which are to be made subject to the rule, (3) the public need for the consumer products which are to be subject to the rule and (4) the probable effect of the rule upon the utility, cost, or availability of such product.

As a condition precedent to issuing a consumer product safety rule, the Commission must make findings that (1) the rule (including the effective date) is reasonably necessary to prevent or reduce an unreasonable hazard to the public and (2) the promulgation of the rule is in the public interest. In instances where the rule declares a product to be a banned hazardous product, the Commission must make an affirmative finding that no feasible consumer product safety standard would adequately protect the public.

Amendment and Revocation of Consumer Product Safety Rules

Under section 9(e) the Commission is permitted to adopt rules amending or revoking any consumer product safety rule which it has promulgated. An amendment or revocation must take effect within 180 days unless the Commission extends the period for good cause. If the amendment involves a material change in a consumer product safety rule, the Commission must observe the full procedures required for the promulgation of rules contained in sections 7, 8, and 9. For example, where the Commission proposes to make a material amendment in a rule which embodies a consumer product safety standard, it must publish notice under section 7 and invite interested persons to offer to develop an amended standard. In instances where the Commission proposes to revoke a rule, it must provide an opportunity for the oral presentation of views, data, and arguments and for written submissions in accordance with the provisions of section 9(a)(2). A rule may only be revoked if the Commission determines that the rule is no longer reasonably necessary to prevent or reduce the hazard.

Persons adversely affected or any consumer or consumer organization may obtain judicial review under section 11 of any rule which materially amends or revokes an existing consumer product safety rule.

Petition by Interested Parties for Consumer Product Safety Rules

Section 10 establishes a mechanism for interested persons to petition the Commission to commence a proceeding to issue, amend, or revoke a consumer product safety rule. The right to petition agency action is, of course, fundamental and already a part of the Administrative Procedure Act (5 U.S.C. 553(e)). This section would add to that privilege by requiring the Commission to explain its reasons if it determines to deny the petition. As a result, interested persons are given a means of requiring the Commission to explain the basis for inaction with respect to a particular product or class of consumer products.

Judicial Review of Consumer Product Safety Rules

Section 11 provides a procedure under which any person adversely affected by a consumer product safety rule or any consumer or consumer organization may obtain judicial review of the rule upon application to a U.S. court of appeals within 60 days following promulgation of the rule. The reviewing court, upon application of the petitioner, may order the Commission to adduce additional data, views, or arguments. Commission rules are to be overturned unless each of the findings which the Commission is required to make under section 9(c) is shown to be supported by "substantial evidence" on the record taken as a whole. Thus, although the Commission's rule-making proceeding is permitted to follow the informal procedures of section 553 of title 5 of the U.S. Code (subject to the further requirement that the Commission afford an opportunity for the oral presentation of views, data, and arguments) its determinations are subjected to the stricter standard of review that is normally reserved for formal agency proceedings under sections 556 and 557 of title 5.

Judicial review under this section is in addition to, not in lieu of, other legal rights or remedies. Accordingly, this section should not be interpreted as abridging in any way a person's right to collaterally attack a product safety rule to the extent otherwise provided by law in civil or criminal proceedings brought after the expiration of the 60-day period. Nor should the failure to subject other Commission rules or orders to review under this section be read as derogating from customary rights of judicial review of such rules and orders which are made available under applicable provisions of the Administrative Procedure Act (5 U.S.C. 701–06).

Imminent Hazards

Section 12 gives the Commission emergency authority to deal with hazardous products which present an imminent and unreasonable risk of death, serious illness, or severe personal injury. In such circumstances the Commission may file an action in U.S. district court to seize and condemn the offending product and may bring an action against any manufacturer, distributor, or retailer of the product for such equitable remedy as may be necessary to adequately protect the public from the hazard.

The district court is granted authority to issue mandatory orders requiring notification to purchasers known to the defendant, to require public notice, recall, repair, replacement, or repurchase of such product. The Commission may request and the court may order any combination of these remedies.

In determining whether to initiate an action and what type of equitable relief to request, the Commission may consult with the Product Safety Advisory Council which is established under section 28 of this bill. The Council is authorized to conduct such hearings or offer such opportunity for the presentation of views as it may consider necessary or appropriate. In light of the emergency nature of the proceeding, however, the Council is required to submit its recommendations to the Commission within one week. It is to be emphasized that the Commission has complete discretion whether to consult the Council and its failure to seek advice shall not in any way affect the validity of a proceeding under this section.

In appropriate cases, the Commission is required to initiate a proceeding to promulgate a consumer product safety rule applicable to the product concurrently with the filing of an action with the court under this section or as soon thereafter as may be practical. If the hazard is of a type which would not reasonably be corrected by a safety standard or by banning the product, the Commission would not be required to initiate such a proceeding.

New Products

Section 13 gives the Commission rulemaking authority to establish procedures requiring manufacturers of new consumer products to furnish notice and a description of the product to the Commission before its distribution in commerce. The term "new consumer product" is defined to mean any consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products *and* (2) as to which there exists a lack of information adequate to determine the safety of the product.

This section is designed to provide the Commission with a means of keeping abreast of new products entering the market place so that it can head off imminently hazardous products in the courts or promptly institute a proceeding to ban or develop standards for products which it determines are unreasonably hazardous. It is not intended that the Commission's rulemaking powers under this section be used to require premarket clearance of new consumer products. Thus, the Commission would not have authority under this section to require a manufacturer to postpone distribution of a new product until the Commission has had an opportunity to run tests on the product or make an analysis of its potential for harm.

Product Certification and Labeling

Section 14 provides that manufacturers (including importers) and private labelers of products subject to safety standards shall issue certificates which certify that their products conform to all applicable consumer product safety rules. Your committee has determined to require private labelers who distribute a product as if it were their own, to assume the same responsibilities with respect to certification that this section would impose upon a manufacturer of the product.

Certificates are to be issued on the basis of actual tests conducted of each product or upon a reasonable testing program, and shall state the name of the manufacturer or private labeler issuing a certificate and include the date and place of manufacture. The certificate must accompany the product or be otherwise furnished to any distributor or retailer to whom the product is delivered. Your committee does not intend to require that the certificate accompany delivery of each item. Where it is reasonable and appropriate to certify an entire production run, or batch or group of products based upon a reasonable testing program, the certificate may apply to the entire production run, batch, or group of products and may be furnished to the distributor or retailer together with a bill of lading (or otherwise) at the time the first product from the production run, batch, or group is delivered to the distributor or retailer. For some products it may be possible to certify an entire model year; for others, testing results would be valid for only a single day's production.

The committee understands that an original shipment is frequently divided in the course of its distribution and portions of the shipment will end up in the possession of more than one retailer. In these circumstances, manufacturers, importers, or private labelers would not be expected to issue original certificates to each distributor or retailer. It would satisfy the requirements of this section to deliver a copy of the certification to any party within the distribution chain to whom the product is delivered.

Under subsection (b), the Commission is given rulemaking authority to prescribe reasonable testing programs upon which certification must be based. In this connection it is the committee's intention that the Commission would adopt rules which establish testing criteria or methods for testing products and the results to be achieved therefrom. Your committee does not intend that this rulemaking authority be used by the Commission to require manufacturers to observe specified production techniques or manufacturing practices in the manufacture or assembly of products.

Section 14(b)(2) gives the Commission authority to prescribe rules applicable to certification where there is more than one manufacturer of a consumer product. This was thought necessary because, in an attempt to reach the fullest range of persons engaged in the production of a consumer product, the bill defines the process of manufacture to include the assembly or production of a product or any of its component parts. In the case of certain electrical products, therefore, it would be common for several "manufacturers" to have participated in the production of the product. In such a case it is expected that the Commission could designate one or more such manufacturers as the manufacturer required to issue a certificate under paragraph (1) of this subsection and could provide that other manufacturers of the product would be relieved of the requirement of issuing a certificate or seeing to it that a certificate accompanied delivery of the product or component. The Commission would have the same authority in cases in which there is more than one private labeler of a product.

Subsection (c) of this section permits the Commission to prescribe rules which may require any consumer product to be labeled with the date and place of manufacture and contain suitable identification of the manufacturer or private labeler. The Commission is given author-

ity to specify the form and content of such labels and, where practicable, to require that they be permanently marked on or affixed to the consumer product. Where products are subject to applicable product safety standards under this act, the Commission also may require that labels certify that the product conforms to all standards and specify those standards which are applicable to the product.

The committee recognizes that there may be circumstances where open dating of particular types or classes of consumer products may create special economic hardships, or cause a restruction of marketing techniques which may unduly affect the cost and availability of the product. In appropriate cases, therefore, it is expected that the Commission would permit manufacturers and private labelers to express in code the date of manufacture and other labeling information. Information which may be required by the Commission under this section is intended among other things to facilitate product identification in connection with a notification and recall under section 16 or pursuant to court order under section 12. Accordingly, if the Commission permits the required information to be expressed in code it should make certain that consumers and persons within the distribution chain, once supplied with the key to the code, will have no difficulty in decifering its meaning. In this regard, manufacturers and private labelers who use coded information may be required to assume added responsibilities to assure that adequate notice is given in the event recall of their product proves necessary.

Notification and Repair, Replacement, or Refund

Section 15 would require that every manufacturer of a consumer product which is distributed in commerce and every distributor or retailer of the product notify the Commission on obtaining information which reasonably supports the conclusion that the product (1) fails to comply with an applicable consumer product safety rule, or (2) contains a defect that could create a substantial product hazard. A manufacturer, distributor, or retailer is relieved from this obligation if he has actual knowledge that the Commission has been adequately informed of the defect or failure to comply.

If the Commission, based upon information which it receives from manufacturers, distributors, or retailers or on any other information which it may independently acquire, determines that a product presents a substantial hazard and that notification is required in order to adequately protect the public, it may order the manufacturer or distributor or retailer of the product to give public notice of the defect or failure to comply and require that notice be mailed to known customers and persons within the distribution chain. The Commission may specify the form and content of any notice required.

It is contemplated that a Commission order requiring public notice may, in appropriate cases, include a requirement that the manufacturer, distributor, or retailer purchase broadcasting time or buy advertising space in magazines or newspapers. While broadcasters and other media may wish to make time and space available without charge, there is no compulsion that they do so. Nor is it intended that broadcasters or news media be required to sell time or space in order to facilitate public notice under this section. A manufacturer, retailer, or distributor who is ordered to purchase broadcasting time, but is unable to do so, would be deemed to have complied with the Commis-

sion's order so long as he exercised good faith in attempting to carry out the Commission's directive.

It should be noted that manufacturers, distributors, and retailers may only be required to mail notice to customers who are known to them. This is intended to mean customers of whom they have actual knowledge. Thus, the Commission would not have authority to require a manufacturer to comb the files of its retailers to learn the names of customers who have purchased the product.

In order to compel notification under this section, the Commission must afford interested persons an opportunity to orally present their views in addition to affording them the opportunity to make written presentations. Like the administrative procedures contained in section 9, this marks a departure from traditional informal rulemaking authority.

Section 15(a) defines the term "substantial product hazard" to mean a defect which because of the pattern of defect, the number of defective products distributed in commerce and the severity of the risk or otherwise, can be determined to pose a substantial hazard to the public. This definition looks to the extent of the public exposure to the hazard. A few defective products will not normally provide a proper basis for compelling notification under this section.

Section 15(d) permits the Commission to order a manufacturer, distributor, or retailer to take remedial action with respect to the product if the Commission finds both that the product presents a substantial hazard and that it is in the public interest to order such action. The Commission must afford interested persons an opportunity for a hearing in accordance with section 554 *et seq.* of title 5 of the United States Code before it may order remedy of the product defect or failure to comply. Thus, before being compelled to take remedial action, manufacturers, distributors, and retailers may avail themselves of the procedural safeguards available under the formal adjudicatory procedures of the Administrative Procedure Act.

If the Commission orders that remedial action be taken, the person to whom the order is directed may elect whether to (1) bring the product into conformity with the applicable rule or to repair the defect in such product; (2) replace such product, or (3) refund the purchase price of such product—less a reasonable allowance for use in certain cases. When the Commission orders more than one person to take action, it may specify which of those persons shall be entitled to elect the remedies listed above. It is expected that in the exercise of this authority the Commission give consideration to where the ultimate legal responsibility for the defect or failure to comply may lie. The authority to issue multiple orders under this section is designed to allow the Commission to order retailers of a product to take action to remedy the product defect or failure to comply, while permitting the manufacturer to determine whether remedy shall take the form of repair, replacement, or refund.

A manufacturer, retailer, or distributor ordered to take remedial action under this section may be required to submit a plan satisfactory to the Commission which sets forth the action he intends to take in compliance with the Commission order. This is intended to give the Commission authority to supervise the remedy of the hazard associated with the product so as to disallow intended repairs which do not in fact prevent or sufficiently reduce it.

The Commission is also authorized to specify which persons are to receive refunds where that remedy is elected. This would permit the Commission to control not only who will be entitled to refund but also what proof of claim must be made in order for a person to recover the purchase price. Accordingly, the Commission is intended to have authority to specify whether present owners or only first purchasers are entitled to refund and whether the product must be tendered or whether the sales slip or some other proof of purchase or ownership must be made. The Committee has decided against an absolute requirement that consumers must tender products in order to be entitled to the refund in favor of this more flexible approach. The Committee was concerned that, in some instances, to require the tender of the product might unduly expose consumers and persons within the distribution chain to the hazards associated with the product. Also, the offending product may no longer be in a form which would allow its tender.

Consumers who avail themselves of the remedy provided by Commission order shall not be charged and must be reimbursed for any reasonable and foreseeable expenses incurred in availing himself of the remedy. The Commission is given authority to require any manufacturer, distributor, or retailer to reimburse any other person in the distribution chain for his expenses in carrying out the Commission's order. While it is expected that the Commission in the exercise of this authority will most commonly order those at fault to reimburse others for their expenses, it is contemplated that the Commission would have the authority to place this obligation on the person most able to bear the cost where equitable and other considerations appear to warrant such action in the public interest. In this area, general rules are neither appropriate or feasible. The Commission would be expected to exercise this power on an ad hoc basis taking into account the individual circumstances of each case.

Inspection and Recordkeeping

In pursuance of the act's purpose of protecting the public health and safety, section 16 grants the Commission broad authority to conduct on-site inspections of any factory, warehouse, or establishment in which consumer products are manufactured or held in connection with their distribution in commerce, or to enter and inspect any conveyance being used to transport consumer products. Such inspections may extend to any portion of any premises or facility which may relate to the safety of such products.

Inspections under this section may be conducted of any factory, warehouse, establishment, or conveyance in which consumer products are manufactured or held whether or not those consumer products are subject to an applicable product safety rule. The Commission is intended to have authority under this section to conduct periodic or random inspections in addition to inspections for cause. In the early stages of this program, however, it is expected that the Commission in marshalling its resources will place primary emphasis on inspections to test for compliance with applicable standards and concentrate on instances where it has reason to believe that the methods, tests, or procedures related to the manufacture and storage of a product may not be adequate or reliable.

Inspections are required to be conducted at reasonable times, in a reasonable manner, and are to be completed with reasonable promptness. By so conditioning the time, scope, and length of inspections, the committee has sought to allay manufacturers' fears that the inspection process may be used as a harassing technique or otherwise abused.

Section 16(b) gives the Commission authority to require manufacturers, private labelers, or distributors of consumer products to establish and maintain such records, make such reports, and provide such information as the Commission may reasonably require for purposes of implementing this act or to determine compliance with applicable rules or orders. It should be noted that this authority does not extend to retailers who are not also manufacturers, private labelers, or distributors (as defined in section 3 of the bill). Such persons have been excluded by the committee in the belief that mandatory customer recordkeeping requirements could prove unduly burdensome for a large number of small retailers and could materially add to the costs of consumer products. Manufacturers, of course, are free to develop such arrangements with their retailers as they may believe are necessary to facilitate the efficient and economic recall and remedy of defective and nonconforming consumer products. Such arrangements will remain a matter of private agreement.

Records required to be established and maintained by the Commission must be made available for inspection upon request of a duly designated officer or employee of the Commission. In exercising its recordkeeping authority under this section, the committee expects that the Commission will take due consideration of the cost of establishing and maintaining the records and benefits to be achieved.

Imported Products

Section 17(a) requires that any consumer product offered for importation be refused admission into the United States customs territory if the product (1) fails to comply with an applicable consumer product safety rule; (2) does not meet the certification or labeling requirements of section 14; (3) is, or has been, determined to be an imminently hazardous consumer product under section 12; (4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); or (5) manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g).

Subsection (b) directs the Secretary of the Treasury to obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. If it appears from examination of these samples or otherwise that a product cannot be admitted under the terms of subsection (a), such product must be refused admission unless modified under subsection (c).

Owners and consignees are entitled to an adjudicatory type hearing with respect to importation of their products (unless an opportunity for such a hearing has already been afforded under section 12).

Subsections (c) and (d) permit the owner or consignee to modify any product so that it may be admitted under the terms of subsection (a). The modification would be subject to requirements respecting bonds and would be under the supervision of the Commission and the Treasury Department.

Subsection (e) requires that products refused admission under this section be exported or destroyed.

Subsection (f) requires that the owner or consignee pay expenses in connection with the destruction of, and storage, cartage, or labor with respect to any consumer product refused admission under this section. If the expenses are not paid, they will be a lien against any future importations made by such owner or consignee.

Subsection (g) authorizes the Commission by rule to condition the importation of a consumer product on the manufacturer's compliance with certain inspection and record-keeping requirements.

Exports

Section 18 excludes exported products from the provisions of this act. This provision has been drawn to exclude only products which are exported or those which can be shown to have been manufactured, sold or held for sale for export and which are marked with a stamp or label stating that the product is intended for export. If a consumer product is, in fact, distributed in commerce for the use in the United States, it will be subject to the act.

The committee wishes to point out that any person claiming exemption under this section for any product found within the United States has the burden of proving that the product was manufactured, sold, or held for sale for export. Also, it should be noted that in cases where such product has been distributed in commerce, in order to qualify for an exemption, the product (or its container) must bear a stamp or label stating that the product is intended for export.

Any person engaged in the distribution or sale of products which are not labeled "for export" must proceed on the premise that the product is subject to the act and must comply with applicable standards or rules and, in appropriate circumstances, be accompanied by a certificate.

Prohibited acts

Section 19 lists prohibited acts under this bill for which civil and criminal penalties may be imposed or injunctive action brought.

Paragraphs 1 and 2 of subsection (a) make it unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import any consumer product which does not conform to an applicable consumer product safety standard or which has been declared a banned hazardous product by rule authorized by section 8. This language is intended to insure that the act may apply to each stage of the process followed in the manufacture and distribution of consumer products.

Several persons have expressed the fear that the broad sweep of this language, would hold in violation of the Act, a manufacturer whose product failed to comply with applicable standards as it came off the assembly line, even though the non-conformity was corrected prior to the products distribution in commerce. This would not be the intention of the committee. In interpreting the term "manufacture for sale" the Commission and the courts should look to whether the manufacturer evidenced an intention to distribute the product. Where the manufacturer could show his intention to correct a non-conforming product or where he has, in fact, made the required correction, this paragraph should not be read as permitting the manufacturer to be held in violation on the technical basis that the product as initially

produced or assembled did not comply with applicable standards or rules.

Paragraph 3 makes it unlawful for any person to fail or refuse to comply with inspection and record-keeping requirements or to furnish reports or other information required under this act or by Commission rule.

Paragraphs 4 and 5 make it unlawful to fail to give notice to the Commission as required by section 15(b) or to fail to comply with a Commission order under section 15 to give notice to or to repair, replace, or refund the purchase price of products which present substantial hazards.

Paragraph 6 would make it unlawful to fail to furnish a certificate required by section 14 or to issue a false certificate where such person, in the exercise of due care, would have reason to know is false or misleading in any material respect. It is also made a prohibited act to fail to comply with Commission rules issued under section 14(c) relating to the labeling of consumer products.

It would not be a prohibited act under this section for a distributor or retailer to distribute, sell, or offer for sale any product which does not conform to applicable standards or which has been declared a banned hazardous product if the retailer or distributor (1) holds a certificate certifying that the product conforms to all applicable consumer product safety rules (unless he knows that such consumer product does not so conform) or (2) relies in good faith on the representation of the manufacturer or distributor that the product is not subject to an applicable product safety rule. The representation that the product is not subject to an applicable product safety rule may be either expressed or implied. In some cases a retailer or distributor may properly assume that a product is not subject to safety rules. However, where the distributor or retailer relies on implied representations, he must be prepared to demonstrate his good faith in not pursuing further inquiry to determine whether a product was, in fact, subject to an applicable product safety rule.

Civil Penalties

Section 20 makes any person who knowingly commits a prohibited act under section 19 subject to a civil penalty of not more than $2,000 for each violation. The Commission may impose multiple penalties for any related series of violations not to exceed $500,000. In this respect a separate violation is committed with respect to each failure or refusal to perform a required act under section 19(a)(3). With respect to violations of paragraphs (1), (2), (4), (5), and (6) of section 19(a) it shall be considered a separate violation for each product involved.

A person who is not also a manufacturer, distributor, or private labeler (e.g. certain retailers) who knowingly violate section 19 may not be subjected to "multiple penalties" under this section unless he had actual knowledge that his sale or distribution of the product would violate the act or unless he received notice from the Commission that such action would constitute a violation of the act.

The Commission is given authority to compromise penalties which are imposed under this section.

It is to be noted that civil penalties may be imposed only for violations which are knowingly committed. In this regard the committee

has defined the term "knowingly" to mean (1) actual knowledge, or (2) knowledge presumed to be possessed by a reasonable man acting in the circumstances including knowledge obtainable upon the exercise of due care to ascertain the truth of representation.

Criminal Penalties

Under section 21, any person who knowingly and wilfully violates section 19 of the act after receiving notice of noncompliance from the Commission may be fined not more than $50,000 or imprisoned for not more than one year or both.

Where individual directors of corporations or their officers or agents knowingly and wilfully authorized, ordered, or performed acts which constituted a violation of the act with knowledge that the Commission had notified the corporation of its noncompliance, both the corporation and the individual director, officer, or agent may be subject to criminal penalties under this section.

Injunctive Enforcement and Seizure

Section 22(a) provides that the U.S. district courts shall have jurisdiction to restrain violations of section 19 or to restrain any person from distributing in commerce any product which does not comply with a consumer product safety rule. This section contains its own venue requirements and would permit process to be served on a defendant in any district in which he is resident or may be found.

Under subsection (b), any consumer product which fails to conform to an applicable safety rule or which is not promptly returned to customs custody upon the order of the Secretary of the Treasury, may be proceeded against in an action in U.S. district court, seized, and condemned. Proceedings under this section shall conform as nearly as possible to proceedings in rem in admiralty. To avoid a multiplicity of actions, this section provides that proceedings initiated against identical consumer products in two or more judicial destricts, may be consolidated by order of the court upon motion of any party in interest.

Suits for Damages by Persons Injured

Section 23 provides a private remedy for damages to persons injured by reason of noncompliance with certain provisions of the bill. If an individual dies or sustains personal injury or illness by reason of the failure of a consumer product to comply with an applicable consumer product safety rule under the bill, then he (or his survivors or legal representative) may sue any manufacturer, distributor, or retailer of the noncomplying product, and may recover any damages sustained as a result of such failure to comply. Likewise if a person dies or sustains personal injury or illness by reason of a failure to comply with an order under section 15(c) or section 15(d) (relating to notification respecting, and repair, etc., of products presenting substantial product hazards), then he (or his survivors or legal representative) may sue any person who failed to comply with such order under section 15, and may recover any damages sustained as a result of such failure to comply.

The committee anticipates, in cases in which it is established that death, personal injury, or illness occurred by reason of noncompliance with the consumer product safety rule or section 15 order, that the courts will in general apply State law as to questions of which types

of damages may be recovered and which parties in addition to the injured person can recover damages. The committee intends that any person who recovers damages by reason of personal injury, illness, or death, would also be able to recover for any property damage occurring by reason of the noncompliance giving rise to the injury, illness, or death.

Actions under this section may be brought without regard to the amount in controversy. In any action under this section, whenever a plaintiff prevails the court may award the plaintiff the costs of the suit, including a reasonable attorney's fee.

Section 27(b) contains affirmative defenses to actions under subsection (a). In the case of an action brought for noncompliance with an applicable consumer product safety rule, no liability will be imposed upon any manufacturer, distributor, or retailer who establishes (1) that he did not have reason to know in the exercise of due care that the product did not comply with the consumer product safety rule, and (2) in the case of a manufacturer or a private labeler of such noncomplying product, that the product was designed so as to comply with all applicable consumer product safety rules and that due care was used in the manufacture of the product so as to assure that the product complied with such rule. In the case of an action for noncompliance with a section 15 order, no liability will be imposed upon any manufacturer, distributor, or retailer who establishes that he took all steps as may be reasonable in the exercise of due care to comply with the order.

Subsection (c) makes it clear that remedies provided for in section 27 are in addition to and not in lieu of any other remedies provided by common law or under Federal or State statutory law.

Private Enforcement of Product Safety Rules and of Section 15 Orders

Section 24 permits any interested person to bring an action in the United States district court to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief. Thirty days prior notice to the Commission, the Attorney General, and the defendant is required. A separate suit under this section is prohibited 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 the bill. In an action under this section, the plaintiff may elect at the time he files his complaint to recover reasonable attorney's fees. If he makes such an election, the court must award reasonable attorney's fees to the prevailing party. In determining which party is the "prevailing party" in multi-issue or multiparty litigation, the trial court should award attorney's fees in a manner which it determines will carry out the purpose of this section.

Effect on Private Remedies

Sections 25(a) and 25(b) provide that compliance with consumer product safety rules or other rules or orders under the bill will not relieve any person from liability at common law or under State statutory law to any other person; and that the Commission's failure to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

Section 25(c)(1) provides accident and investigation reports by any officer, employee, or agent of the Commission will be available for use in any judicial proceeding arising out of such accident, and that any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. The availability of such reports and testimony is subject to the bill's restrictions on disclosure of trade secrets but not otherwise subject to the restrictions of section 6.

Section 25(c)(2) requires that any such accident or investigation report be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and that all reports on research projects demonstration projects, and other related activities shall be public information. The availability of reports under this provision is subject to all of the restrictions of section 6 except those of section 6(a)(1) (providing that matter exempted from the disclosure requirements of the Freedom of Information Act need not be disclosed under the bill).

Effect on State Standards

Section 26 provides that at such time as the Commission prescribes a product safety standard under this act and such standard takes effect, no State or political subdivision shall have authority to establish or continue in effect any safety standard or regulation which prescribes any requirement as to the performance, composition, contents, design, construction, finish, packaging, or labeling of such product which is devised to protect the public from the same hazard associated with the product (unless such requirements are identical to the Federal standard). It is intended that Federal authority—once exercised—occupy the field and broadly preempt State authority to regulate the same product hazards. Accordingly, the Federal preemption is intended to extend not only to State authority to set standards on labeling requirements but also to prevent States from acting to ban products which conform to applicable Federal safety standards where the purpose of the ban is to protect the public from the same product hazard.

This section would, however, permit States to establish or to continue standards which are identical to the Federal standard. Also, under certain conditions, States may be permitted by the Commission to impose standards which call for a higher level of performance. In both instances it is intended that the State or political subdivision will maintain its own enforcement mechanisms and be able to establish its own criminal and civil penalties for violation of the standard. By permitting dual enforcement, it is not intended that this section will be used as a means of subjecting violators to double penalties. In instances where violators have already been adequately penalized under State law, it is expected that Federal civil and criminal penalties will not be sought by the Commission or will not be imposed in their full measure. Moreover, in instances where State action follows the imposition of Federal penalties, it is expected that the Commission will take this into consideration in determining whether to compromise any civil penalty already imposed under section 21.

Additional Functions of Commission

Section 27(a) authorizes the Commission, its members, or its designated agent or agency, to conduct any hearing or other inquiry neces-

sary or appropriate to its functions anywhere in the United States. Commissioners who participate in such a hearing or inquiry are not disqualified solely by reason of such participation from subsequently participating in Commission decisions in the same matter. The Commission is directed to give notice of any hearing, and an opportunity to participate therein.

Subsection (b) of section 27 authorizes the Commission to require any person to submit reports and answers to questions; to administer oaths; to require by subpena the attendance and testimony of witnesses and the production of documentary evidence; to take depositions; and to pay witnesses' fees. United States district courts are authorized under subsection (c) to enforce the Commission's subpenas.

Section 27(d) permits the Commission to require, for purposes of carrying out the legislation, that manufacturers provide to the Commission with performance and technical data related to performance and safety, and that they give notification of such performance and technical data at the time of original purchase to certain purchasers and prospective purchasers.

Subsection (e) authorizes the Commission, for purposes of carrying out the bill, to purchase any consumer product and to require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost. Subsection (f) authorizes the Commission to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by the bill.

The Commission, under section 27(g), may plan, construct, and operate facilities suitable for research, development, and testing of consumer products in order to carry out the bill; however, appropriations to plan or construct such facilities would not be authorized except as provided in section 32(b) of the bill.

Section 27(h) directs the Commission to prepare and submit to the President and the Congress an annual report which would contain information respecting the Commission's activities, legislative recommendations, and certain other matters, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties.

Product Safety Advisory Council

Section 28 directs the Commission to establish a Product Safety Advisory Council which it may consult before prescribing consumer product safety rules or taking other action under the bill. The Council is to be appointed by the Commission and to be composed of fifteen members qualified by training and experience in fields related to product safety. Five members are to be selected from governmental agencies; five members are to be selected from consumer product industries (including a small business representative); and five members are to be selected from consumer organizations, community organizations, and recognized consumer leaders. The Council is to meet at the call of the Commission, but not less often than four times during each calendar year. The Council may propose consumer product safety rules to the Commission and may function through subcommittees. Council proceedings (and a record thereof) are to be public. Council members (other than Federal officers or employees) will be compensated on a per diem basis,

and receive travel expenses; but such payments will not render Council members officers or employees of the United States for any purpose.

Cooperation With States and Other Federal Agencies

The Commission is directed by section 29(a) to establish a program to promote Federal-State cooperation for the purposes of carrying out the legislation, and it is authorized under such program to—

(1) accept from any State or local authorities assistance in carrying out the legislation, and to pay in advance or otherwise for the reasonable cost of such assistance, and

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

In carrying out subsection (a), the Commission is directed to give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

Section 29(c) authorizes the Commission to obtain from any Federal department or agency such statistics, data, program reports, and other materials it deems necessary to carry out its functions under the bill, and such departments and agencies are authorized to cooperate with the Commission, and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies which administer programs related to product safety are directed to cooperate to the maximum extent practicable.

Transfers of Functions

Subsections (a) and (b) of section 30 transfer to the Commission all functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 and all functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the certain acts amended by section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are also transferred to the Commission. In addition, the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

Section 30(c) provides that a hazard which is associated with a consumer product and which could be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those acts.

Paragraph (1) of section 30(d) provides that personnel, property, etc., which are used primarily with respect to any function transferred under section 30 (a) or (b) will be transferred to the Commission, but transfer of personnel will be without reduction in classification

or compensation for one year after such transfer. The Chairman of the Commission, however, can assign personnel during such one-year period in order to carry out the bill.

The remaining paragraphs of section 30(d) contain savings provisions the principal provisions of which are as follows: Orders, rules, etc., which took effect under functions transferred under section 30 are to continue in effect according to their terms until changed in accordance with law. Section 30 does not affect pending administrative proceedings, except that such proceedings (to the extent that they relate to transferred functions) will be continued before the Commission. Section 30 does not affect suits commenced prior to the date it takes effect, and such suits will proceed as if section 30 had not beeen enacted; except that if, before section 30's effective date, any department or agency (or officer thereof) was a party to a suit involving functions transferred to the Commission, the suit will be continued by the Commission.

Some question has been raised about the interrelationship of the Poison Prevention Packaging Act provisions authorizing special packaging standards for foods, drugs, and cosmetics, and the packaging requirements for these same products under the Food, Drug and Cosmetic Act. In particular, since a new drug application requires approval by FDA of all drug packaging, there would be dual regulation over this particular aspect of the product. The Committee intends that the Commission and the Food and Drug Administration will cooperate fully in coordinating any overlapping statutory requirements. For example, before exercising its authority under the Poison Prevention Packaging Act to prescribe safety closure standards for drugs which may have been the subject of a new drug application under the Food, Drug and Cosmetic Act, the Commission would be expected to coordinate its activities with FDA to preclude the possibility that a safety closure standard would be inconsistent with requirements imposed by FDA to assure the purity and effectiveness of the drug.

Limitation on Jurisdiction

Section 31 provides that the Commission has no authority under the bill to regulate hazards associated with consumer products which could be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Act of August 2, 1956; the Atomic Energy Act of 1954; or the Clean Air Act. In addition, the Commission has no authority under the bill to regulate any electronic product radiation hazard which may be subjected to regulation under the electronic product radiation control provisions of the Public Health Service Act.

Authorization of Appropriations

Section 32(a) authorizes appropriations to carry out the provisions of the bill (other than the provisions of section 27(g) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act. The authorizations are $55,000,000, $59,000,000, and $64,000,000 for fiscal years 1973, 1974, and 1975, respectively.

Appropriations are authorized, under section 32(b), to plan and construct research, development, and testing facilities described in section 27(g); but no appropriation for planning or construction involving an expenditure in excess of $100,000 may be made unless the planning or construction has been approved by the Committee on Interstate and Foreign Commerce of the House of Representatives and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission is to transmit to Congress a prospectus which would include a description of the facility, its location, and estimated maximum cost. The estimated maximum cost of the facility could be increased in the manner set out in section 32(b)(2).

Effective date

Section 33 provides that the bill will take effect 60 days after the date of its enactment, except that sections 4 and 32 will take effect on the date of enactment of the bill, and section 30 will take effect on the later of (a) 150 days after date of enactment or (b) when at least three members of the Commission first take office.

Cost Estimates

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), your committee estimates the following costs will be incurred in carrying out functions under H.R. 15003:

Five-Year Cost Estimate for the Proposed Consumer Product Safety Commission

Fiscal year:	*Millions*
1973	$55
1974	59
1975	64
1976	65
1977	65

NOTE.—Cost estimates do not include appropriations for amounts required in the planning, construction, or operation of research, development and testing facilities authorized under this bill.

AGENCY REPORTS

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 29, 1972.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request of May 18, 1971, for a report on H.R. 8157, a bill "To protect consumers against unreasonable risk of injury from hazardous products, and for other purposes."

This bill is designed to protect consumers against unreasonable risk of injury from hazardous products through the establishment of a Consumer Product Safety Commission, issuance by the Commission and enforcement of consumer product safety standards, and other measures.

The Department much prefers H.R. 8110, a bill with similar intent which would vest responsibility in the Secretary of the Department of Health, Education, and Welfare.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 20, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your letter of May 10, 1971, requesting our views on H.R. 8110, which, if enacted, would be cited as the "Consumer Product Safety Act of 1971." The stated purpose of the bill is to protect the public health and safety by reducing the risks of death, illness, and injury associated with the use of consumer products.

While we have no special information as to the advantages or disadvantages of the proposed legislation and therefore have no recommendations as to its merits, we offer the following technical comments on certain provisions of the bill.

Section 3(1) of the bill would define the term "consumer products" and would specifically exclude, among other items, food, drugs, and cosmetics from the definition. These three items, as well as devices, are regulated by the Food, Drug and Cosmetic Act, as amended. The committee may wish to consider adding devices to the list of the exclusions in this section.

Section 20 provides that the Secretary, in carrying out his duties, shall, to the maximum extent practicable, utilize the personnel, facilities, and other technical support available in other Federal agencies. The committee may wish to clarify whether this is to be done on a reimbursable or nonreimbursable basis.

We note that the bill does not authorize the appropriation of funds to implement the program. The committee may wish to add a section establishing specific authorization amounts for carrying out the provisions of the bill.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General of the United States.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., June 23, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 10, 1971, for a report on H.R. 8110, a bill "To protect the public health

and safety by reducing the risks of death, illness, and injury associated with the use of consumer products."

The bill embodies an Administration proposal transmitted to the Congress on April 20, 1971, and would carry out a recommendation in the President's February 24, 1971, consumer message for enactment of a consumer product safety bill. The proposal is designed to reduce or eliminate unreasonable risk of death or serious or frequent injury associated with exposure to or use of such products, by establishing within the Department of Health, Education, and Welfare a product safety program under which the Secretary would collect and disseminate information on consumer product safety hazards and promulgate mandatory standards for consumer products insofar as the need for such standards is supported by injury and other data.

Provision would also be made for the banning of imminently hazardous consumer products, or unreasonably hazardous consumer products for which adequate standards cannot be set.

A section-by-section summary of the bill is included for your convenience.

We would suggest a minor technical correction. On page 11 of the bill, line 12, "Sec. 9" should read "Sec. 8".

For the reasons stated in the President's message, we urge prompt enactment of this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of this bill would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
March 1, 1972.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your requests for reports on H.R. 260 and H.R. 8157, bills "To protect consumers against unreasonable risk of injury from hazardous products and for other purposes."

Briefly stated, these bills would create an independent Consumer Product Safety Commission with authority to promulgate mandatory consumer product safety standards and regulations to protect consumers from unreasonable risks of death or injury. The Commission would be empowered to enforce compliance with such product safety standards through a broad range of civil and criminal sanctions and to ban unreasonably dangerous products for which feasible standards cannot be set. These bills would also create a Consumer Safety Advocate with specific responsibility to represent consumer interests before the Commission and an Injury Information Clearinghouse to collect, analyze and disseminate information relating to the causes and prevention of product-related injuries to consumers.

As you know there is a serious need to develop meaningful and practical legislation designed to assist in minimizing injuries and deaths associated with the use of and exposure to consumer products. The

President proposed comprehensive regulation of hazardous consumer products in his Consumer Message of February 24, 1971. This proposal is embodied in H.R. 8110, a bill which you have sponsored and which has been referred to your Committee. It encompasses five major responsibilities which would be assigned to a new Consumer Safety Administration within the Department of Health, Education, and Welfare. Through this organization we would:

(1) Gather data on injuries from consumer products;
(2) Make preliminary determinations of the need for particular standards;
(3) Develop and promulgate safety standards;
(4) Monitor industry compliance and enforce mandatory standards; and
(5) Ban unreasonably dangerous consumer products and use judicial action to move against products that are imminently hazardous.

Perhaps the foremost of the differences between H.R. 8110 and the instant bills is that of the organizational location assigned to the product safety function. H.R. 8110 would place it in our Department. H.R. 260 and H.R. 8157 would place it in an independent regulatory organization, a Consumer Product Safety Commission consisting of five Commissioners.

The reason for the organizational location proposed by H.R. 260 and H.R. 8157 is explained in the final report of the National Commission on Product Safety after whose recommendations the two bills are patterned. The Commission feared that if product safety regulation were subordinated to a larger agency administering other equally comprehensive programs, the emphasis on consumer safety would suffer. "Protection of the public interest will be strengthened," the Commission wrote, "if the agency has authority to make its own final decision, free of restriction by a parent agency, and if its funds are sufficient and its activities highly visible."

We are not inclined to think that these observations hold true over the long term. An action of the Federal Trade Commission, for example, has never seemed more "visible" than an action of the Food and Drug Administration, even though the FTC is an independent agency. Nor have independent regulatory agencies shown a greater resistance than other agencies to the pressures that often cause agencies to identify their interests with those of the industries they regulate.

Beyond these issues, though, there are positive advantages to be gained by locating the product safety function in HEW. On a wholly practical level, the Department now has an extensive field enforcement staff engaged in product regulation, as well as medical and technical experts in the area, and scientific testing laboratories. It seems far more economical and efficient to expand this staff to meet the workload to be generated by H.R. 8110, than to require such a staff to be duplicated through enactment of either H.R. 260 or H.R. 8157.

In a larger sense, however, we see H.R. 8110 as a measure to protect the public health. Of the various concerns of the citizen as a consumer, that of his health—the freedom from hazards to his health and safety from the products he buys—must surely be paramount. It is more

important to him than the threat of economic loss from defective goods or deceptive practices.

Because our Department has primary responsibility within the Executive Branch for protecting the public health, we now administer those consumer health and safety protection laws having the greatest breadth. These include, as you know, the Federal Food, Drug, and Cosmetic Act, the radiation control for health and safety program, and the Federal Hazardous Substances Act. Enactment of the President's reorganization proposals, by transferring these as well as other product safety programs to a new Department of Human Resources, would further consolidate consumer protection responsibility in a single Federal entity. Centralizing these responsibilities will give Federal consumer protection efforts a single direction: that is, a more rational ordering of regulatory priorities than is now possible, as well as coordinated, and therefore enhanced, enforcement.

The Administration, in a July 19, 1971, letter from the President to the Chairman of the Senate Commerce Committee, has also committed itself to strengthen the organizational structure for product safety within our Department, upon enactment of the Administration's proposal, so that we may bear our new responsibilities under it. We propose to fulfill this commitment in an orderly and practical manner by building upon existing competence, experience, and authorities within the Department.

In recognition of our expanding role in the consumer protection field, we have recently brought together within the Food and Drug Administration the previously scattered departmental authority to protect the health and safety of the consumer. Essentially all consumer protection authorities and resources of the Department are therefore now centered in FDA. In addition to long experience and a proven record of accomplishment, this agency possesses significant scientific competence; it maintains an extensive field investigational and enforcement staff; and it has strong laboratory and other technical capacity.

The Administration bill would substantially enlarge the Department's consumer protection responsibilities. Upon its enactment, therefore, we would build upon the FDA framework by establishing a new Consumer Safety Administration to be composed of three major Offices:

—the Office of Product Safety Regulation;
—the Office of Drug Regulation; and
—the Office of Food Regulation.

These Offices will be supported by information collecting, field surveillance, and research capabilities, foundations for which already exist within the Department. A National Center for Consumer Safety Statistics will be established to collect, analyze, and disseminate information on injuries and their causes, as they are associated with food, drugs, and consumer products.

Within this organizational frame, undergirded by more specific legislative authority and reinforced by the President's assurance that he will seek the necessary resources, we will be well prepared to serve the needs of the American consumer in the 1970's and beyond.

For these reasons, and for the additional reasons discussed in the appended staff memorandum, we strongly recommend enactment of H.R. 8110 rather than H.R. 260 or H.R. 8157.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report and that enactment of H.R. 8110 would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., September 3, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 8157, "To protect consumers against unreasonable risk of injury from hazardous products, and for other purposes."

The proposed bill would create and establish a Consumer Product Safety Commission consisting of five Commissioners who would have the authority to promulgate consumer product safety standards or other regulations for consumer product safety, except as to those products regulated under existing Federal laws as, for example, the Food, Drug, and Cosmetic Act; and the Federal Insecticide, Fungicide, and Rodenticide Act.

Section 21 of the bill deals with the responsibilities of this Department in regard to the importations of a product which fails to comply with an applicable standard or regulation prescribed under the Act, which is not accompanied by a certification in the form prescribed by the Act, or which contains a defect which creates an unreasonable risk of personal injury to the public. The Bureau of Customs is directed to refuse admission to such a product. In this regard, the bill is deficient in that it does not contain the usual provision permitting delivery of such a product under bond while it is being determined whether the product complies or can be brought into conformity with an applicable standard, or contains a defect which creates an unreasonable risk of personal injury to the public.

Moreover, under the prescribed procedure, the Bureau of Customs would be required to sample and test every imported product to make such determinations. We suggest as an alternative procedure that each product for which a product safety standard has been prescribed be accompanied by a certification to obviate the sampling and testing of products which have been approved by the Consumer Product Safety Commission. If the importation does not contain such a certification, it would be released under bond and a sample would be delivered to the Commission for a determination as to whether the product should be admitted. Customs would not attempt to determine whether a product creates an unreasonable risk of personal injury to the public. To accomplish this proposed revision, we suggest the following language:

"Any consumer product imported into the United States to which a product safety standard applies, and which is not accompanied by a

certification in the form prescribed by the Commission, shall not be delivered from Customs custody except under bond, as provided in section 499 of the Tariff Act of 1930, as amended. In the event an imported consumer product is delivered from Customs custody under bond the Secretary of the Treasury shall obtain without charge and deliver to the Commission, a reasonable number of samples of such consumer product. If the Commission determines from examination or testing of such samples or otherwise that the product cannot be brought into compliance with all applicable consumer product safety standards under this Act, or contains a defect which creates an unreasonable risk of personal injury to the public, such product shall be refused admission, and the Secretary of the Treasury shall demand redelivery of the merchandise into Customs custody. The Secretary of the Treasury shall cause destruction of such merchandise unless it is exported, under regulations prescribed by him, within 90 days after notice to the importer or consignee. If the importer fails to redeliver the merchandise, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of the condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the imported has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above."

If this procedure is adopted, paragraph (c) of section 21 becomes unnecessary. Otherwise, the paragraph creates administrative difficulties because it authorizes the Commission to permit the importer to perform such operations as are necessary to bring a product into conformity with an applicable standard without authorizing Customs to deliver the product to the importer. Consequently, the product would have to be altered while in Customs custody. The lack of adequate facilities for such operations would place an extreme burden on importers and Customs. If paragraph (c) is construed to permit the delivery of a nonconforming product to the importer, no provision is made for delivery under bond to insure redelivery to Customs if the product cannot be brought into conformity.

Section 24 makes unlawful the importation of any consumer product which is not in conformity with an applicable regulation or standard prescribed pursuant to this Act, if such product is manufactured after the effective date of such regulation or standard. To base such prohibition on a determination as to whether a product is manufactured after the effective date of a standard would present administrative problems in ascertaining the actual date of manufacture with regard to imported consumer products. Consideration should be given to amending section 24 with respect to imported consumer products, to prohibit the importation of nonconforming products into the United States after the effective date of a standard, without regard to the date of manufacture.

The terms "offered for importation" and "offered for import" which are used in paragraphs (a), (b), and (d) of section 21 might be interpreted as granting Customs jurisdiction over merchandise before its

arrival in this country. We suggest that the word "imported" be substituted for both terms.

In section 34(g) the definition of "state" would extend the coverage of the Act to a geographical area greater than the Customs territory of the United States (the states, District of Columbia, and Puerto Rico), the area where the Bureau of Customs administers the laws relating to importation and exportation of merchandise. Therefore, it is assumed that the provisions of the bill concerning importation and exportation into and from Guam and the Virgin Islands of the United States would be enforced by an agency other than the Bureau of Customs.

Potentially, the proposed bill would require a degree of sampling, inspection and Customs storage of nonconforming products which might require some increase in Customs manpower and funds.

H.R. 8110, which is also pending before your Committee, incorporates draft legislation on the matter proposed by the Department of Health, Education, and Welfare. Accordingly, the Department recommends favorable consideration of H.R. 8110 in lieu of action on H.R. 8157.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

SAMUEL R. PIERCE, *General Counsel.*

LETTER FROM PRESIDENT NIXON TO CHAIRMAN STAGGERS RECOMMENDING FAVORABLE ACTION ON H.R. 8110

THE WHITE HOUSE,
Washington, D.C., December 8, 1971.

Hon. HARLEY O. STAGGERS,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In my Consumer Message of February 24, I proposed comprehensive product safety legislation authorizing the Department of Health, Education, and Welfare to regulate hazardous consumer products. Subsequently H.R. 8110, a bill incorporating this proposal, was introduced on behalf of the Administration and referred to your Committee.

As part of the preparation of this bill, I asked Secretary Richardson to undertake a careful study of the organizational structure within the Department of Health, Education, and Welfare that would most effectively implement the consumer product safety authority proposed in H.R. 8110.

Today, Secretary Richardson will explain, with my approval, that upon enactment of this bill, he will create within the Department of Health, Education, and Welfare a new Consumer Safety Administration. This unit will build upon the activities, personnel and facilities of the Food and Drug Administration, which has a long and distinguished history in the field of consumer safety, primarily in the vital regulation of the foods we eat and the drugs we use.

The Consumer Safety Administration will continue the work of the Food and Drug Administration. At the same time, the new unit will be structured so that the regulation of hazardous consumer products authorized in H.R. 8110 will have the facilities, the personnel and the organizational prominence that will ensure an effective, efficient and responsive product safety program. Finally, where possible, common facilities such as laboratories and field offices will be utilized to gain the maximum possible cost effectiveness.

H.R. 8110 is a strong bill which will fully satisfy the public need for adequate protection against hazardous consumer products, and Secretary Richardson has acted to ensure that his Department is fully capable of implementing this needed authority. I urge your Committee to report H.R. 8110 favorably to the House of Representatives.

Sincerely,

RICHARD M. NIXON.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5. UNITED STATES CODE

* * * * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $40,000:

* * * * * * *

(59) Chairman, Consumer Product Safety Commission.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $38,000:

* * * * * * *

(96) Members, Consumer Product Safety Commission (4).

* * * * * * *

Appendix

ADMINISTRATIVE PROCEDURE PROVISIONS OF TITLE 5, UNITED STATES CODE

(Formerly the Administrative Procedure Act)

§ 553. Rule making.

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms of substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or
(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Source: Section 4, Administrative Procedure Act.

§ 554. Adjudications.

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
(2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title;
(3) proceedings in which decisions rest solely on inspections, tests, or elections;
(4) the conduct of military or foreign affairs functions;
(5) cases in which an agency is acting as an agent for a court; or
(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearings;
(2) the legal authority and jurisdiction under which the hearing is to be held; and
(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or pracitces of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

Source: Section 5, Administrative Procedure Act.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision..

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to publish rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Source: Section 7, Administrative Procedure Act.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the

parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Source: Section 8, Administrative Procedure Act.

Chapter 7.—JUDICIAL REVIEW

§ 701. Application; definitions.

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories of possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

Source: Section 10, Administrative Procedure Act.

§ 702. Right of review.

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Source: Section 10(a), Administrative Procedure Act.

§ 703. Form and venue of proceeding.

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

Source: Section 10(b), Administrative Procedure Act.

§ 704. Actions reviewable.

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsiderations, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Source: Section 10(c), Administrative Procedure Act.

§ 705. Relief pending review.

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Source: Section 10(d), Administrative Procedure Act.

§ 706. Scope of review.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Source: Section 10(e), Administrative Procedure Act.

18 U.S.C. 1905

For the information of the members, section 1905 of title 18, United States Code, is set forth below:

SECTION 1905 OF TITLE 18, UNITED STATES CODE

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association: or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(*96*) *Members, Consumer Product Safety Commission* (*4*).

* * * * * * *

MINORITY VIEWS

The concept that appropriate Federal legislation can result in reducing the risks resulting from the use of some consumer products is generally agreed upon. Any new legislation enacted should, however, build upon programs which have been tried and are known to be effective.

The record shows that the Food and Drug Administration has compiled a record in the past 30 months that can be favorably compared with any other regulatory agency in the Federal Government. The Secretary of Health, Education, and Welfare has testified, and it would be difficult to prove otherwise, that under existing authority the Food and Drug Administration has made the most dramatic progress in the 66 years of the existence of the organization.

In addition to reorganization, which gave FDA full agency status for the first time, the administration has vastly increased its budget. In the fiscal year 1970 the budget for FDA was $76.3 million. For fiscal year 1973 the administration has requested $178.8 million, which represents an increase of 146% over the last four fiscal years. The budget requested by the President for fiscal year 1973 is a 70% increase over 1972, the largest increase requested by any administration in the history of the Food and Drug Administration.

There is no doubt that controls can be more effective and enforcement moves made more quickly if we build upon the experience, capabilities and scientific resources of the existing administration rather than making it necessary to start all over again by creating a new commission.

Although independence from a cabinet department and bipartisan membership of independent regulatory agencies theoretically guarantee even-handed regulation and decision-making, these attributes have in fact resulted in chronic indecision and eternal bickering. Split decision policy-making and case-by-case enforcement have resulted in a mass of lengthy court actions at every turn. This is not to be desired in the field of product safety standard setting.

The very independence of a commission from cabinet affiliation makes it less able to pursue vigorously its purposes. In the matters of funding and competition for scarce personnel allocations, independent agencies have traditionally fared badly. There is no strong cabinet level executive to make the necessary priority decisions and to fight the fight for adequate funding at the highest levels. Chairmen of independent agencies seldom see the President for discussions of their agency needs.

To create a new commission will guarantee that not much of anything will happen in the field of product safety for two or three years. It will take that much time to work out the details, get space and hire the kinds of people needed. Even the commissioners themselves, however competent they may be, will need considerable time to learn to

work together. This does not mean there will not be some kind of entity very quickly or that stationery headed "Product Safety Commission" will not appear promptly. It only means that the real business of creating and enforcing product safety standards will not be meaningfully pursued for a long, long time after this legislation is passed.

There is also every reason to believe from a fiscal point of view that the creation of a new commission will cost the taxpayers far more than leaving the product safety effort in an already organized and operating department of government. A new effort will require new forces and new research facilities. HEW has these already. A new commission would of necessity create new and unnecessary costs for the taxpayer. Practically, in the ways of government there is no way to prevent this sort of thing from happening.

The interest of the consumer will clearly be served best by strengthening the present organization (FDA) as a key health and safety related agency within the Department of Health, Eucation, and Welfare.

SAMUEL L. DEVINE,
ANCHER NELSEN,
JAMES HARVEY,
CLARENCE J. BROWN,
JAMES F. HASTINGS,
JOHN G. SCHMITZ,
JAMES M. COLLINS.

O

Exhibit 115

92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 92-1593

CONSUMER PRODUCT SAFETY ACT

OCTOBER 12, 1972.—Ordered to be printed

MR. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 3419]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Consumer Product Safety Act".

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Consumer Product Safety Commission.
Sec. 5. Product safety information and research.
Sec. 6. Public disclosure of information.
Sec. 7. Consumer product safety standards.
Sec. 8. Banned hazardous products.
Sec. 9. Administrative procedure applicable to promulgation of consumer product safety rules.
Sec. 10. Commission responsibility—petition for consumer product safety rule.
Sec. 11. Judicial review of consumer product safety rules.
Sec. 12. Imminent hazards.
Sec. 13. New products.
Sec. 14. Product certification and labeling.
Sec. 15. Notification and repair, replacement, or refund.
Sec. 16. Inspection and recordkeeping.

Sec. 17. Imported products.
Sec. 18. Exports.
Sec. 19. Prohibited acts.
Sec. 20. Civil penalties.
Sec. 21. Criminal penalties.
Sec. 22. Injunctive enforcement and seizure.
Sec. 23. Suits for damages by persons injured.
Sec. 24. Private enforcement of product safety rules and of section 15 orders.
Sec. 25. Effect on private remedies.
Sec. 26. Effect on State standards.
Sec. 27. Additional functions of Commission.
Sec. 28. Product Safety Advisory Council.
Sec. 29. Cooperation with States and with other Federal agencies.
Sec. 30. Transfers of functions.
Sec. 31. Limitation on jurisdiction.
Sec. 32. Authorization of appropriations.
Sec. 33. Separability.
Sec. 34. Effective date.

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this Act.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

DEFINITIONS

SEC. 3. (a) For purposes of this Act:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or

around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 102 (3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966),

(D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958),

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this paragraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act), or

(I) food, The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

See sections 30(d) and 31 of this Act, for limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer product safety standard described in section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not apear on such label.

(8) The term "manufacture" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 4.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) 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, one of whom shall

be designated by the President as Chairman. The Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. 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) (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 occurring 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) 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) 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. 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) 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) (1) The Chairman of the Commision 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.

(g) (1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(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. No full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS–14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission.

(h) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(59) Chairman, Consumer Product Safety Commission."

(2) Section 5315 of such title is amended by adding at the end thereof the following new paragraph:

"(97) Members, Consumer Product Safety Commission (4)."

PRODUCT SAFETY INFORMATION AND RESEARCH

SEC. 5. (a) The Commission shall—

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

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

(b) The Commission may—

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

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

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

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

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this Act is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public

without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

PUBLIC DISCLOSURE OF INFORMATION

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

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

(b)(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith (unless the Commission finds out that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this Act.

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

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) The Commission may by rule, in accordance with this section and section 9, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

(b) A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall—

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

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4)(B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this Act would eliminate or reduce the unreasonable risk of injury associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

(d)(1) Except as provided by subsection (c), the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed

by subsection (b) (4) (B), if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b), and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings.

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this Act, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards), and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

(e) (1) If the Commission has published a notice of proceeding as provided by subsection (b) of this section and has not, within 30 days after the date of publication of such notice, accepted an offer to develop a proposed consumer product safety standard, the Commission may develop a proposed consumer product safety rule and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same risk of injury associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

In any case in which the sole offeror whose offer is accepted under subsection (d)(1) of this section is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop proposals for such standard during the development period.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d)(1) for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

(f) Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b) (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product.

BANNED HAZARDOUS PRODUCTS

SEC. 8. Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product.

ADMINISTRATIVE PROCEDURE APPLICABLE TO PROMULGATION OF CONSUMER PRODUCT SAFETY RULES

SEC. 9 (a)(1) Within 60 days after the publication under section 7 (c), (e)(1), or (f) or section 8 of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

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

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

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

(2) Consumer product safety rules which have been proposed under section 7 (c), (e) (1), or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(b) A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act.

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

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

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

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

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

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

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

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

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

(d) (1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for

such finding. The effective date of a consumer product safety standard under this Act shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

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

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

COMMISSION RESPONSIBILITY—PETITION FOR CONSUMER PRODUCT SAFETY RULE

SEC. 10. (a) Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

(b) Such petition shall be filed in the principal office of the Commission and shall set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary, and (2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

(c) The Commission may hold a public hearing or may conduct

such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

(d) Within 120 days after filing of a petition described in subsection (b), the Commission shall either grant or deny the petition. If the Commission grants such petition, it shall promptly commence an appropriate proceeding under section 7 or 8. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

(e) (1) If the Commission denies a petition made under this section (or if it fails to grant or deny such petition within the 120-day period) the petitioner may commence a civil action in a United States district court to compel the Commission to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120-day period.

(2) If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of evidence in a de novo proceeding before such court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rule-making proceeding under section 7 or 8 unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.

(3) In any action under this subsection, the district court shall have no authority to compel the Commission to take any action other than the initiation of a rule-making proceeding in accordance with section 7 or 8.

(f) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(g) Subsection (e) of this section shall apply only with respect to petitions filed more than 3 years after the date of enactment of this Act.

JUDICIAL REVIEW OF CONSUMER PRODUCT SAFETY RULES

SEC. 11. (a) Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 7, 8, or 9; the transcript required by section 9(a)(2) of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

(b) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the

court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 9(c) are supported by substantial evidence on the record taken as a whole.

(d) The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28 of the United States Code.

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

IMMINENT HAZARDS

SEC. 12. (a) The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2), or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this Act. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b)(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2)) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1), the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) (1) Prior to commencing an action under subsection (a), the Commission may consult the Product Safety Advisory Council (established under section 28) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e) (1) An action under subsection (a) (2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(f) Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

NEW PRODUCTS

SEC. 13. (a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce.

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers.

PRODUCT CERTIFICATION AND LABELING

SEC. 14. (a) (1) Every manufacturer of a product which is subject to a consumer product safety standard under this Act and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify

that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

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

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

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

(1) The date and place of manufacture of any consumer product.

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

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

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

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

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

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the

severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Every manufacturer of a consumer product distributed in commerce, 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

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

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

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

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

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

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

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

(d) 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 subsection.

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

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

(f) An order under subsection (c) or (d) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, United States Code, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

INSPECTION AND RECORDKEEPING

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

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

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

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

Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this Act and rules under this Act.

IMPORTED PRODUCTS

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

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

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

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

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

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

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

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

(d) All actions taken by an owner or consignee to modify such product under subsection (c) shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding

satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 22(b) if it is not so redelivered.

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

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

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

EXPORTS

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

PROHIBITED ACTS

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

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

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

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

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

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

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

(7) fail to comply with any rule under section 9(d)(2) (relating to stockpiling).

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

CIVIL PENALTIES

SEC. 20. (a)(1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 19(a)(1), (2), (4), (5), (6), or (7) shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 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 $500,000 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.

(b) 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 appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. 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.

(c) As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or

(2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

CRIMINAL PENALTIES

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

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

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. (a) The United States district courts shall have jurisdiction to restrain any violation of section 19, or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule, or both. Such actions may be brought by the Commission (with the concurrence of the Attorney General) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product which fails to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

SUITS FOR DAMAGES BY PERSONS INJURED

SEC. 23. (a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of section 1331 of title 28, United States Code as to the amount in controversy, and shall recover damages sustained, and the

cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

(b) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OF SECTION 15 ORDERS

SEC. 24. Any interested person may bring an action 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. Not less than thirty days prior to the commencement of such action, such interested person 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. 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, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing party.

EFFECT ON PRIVATE REMEDIES

SEC. 25. (a) Compliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (1) any accident or investigation report made under this Act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

EFFECT ON STATE STANDARDS

SEC. 26. (a) Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product,

unless such requirements are identical to the requirements of the Federal standard.

(b) Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(c) Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose) a proposed safety standard or regulation described in such application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

ADDITIONAL FUNCTIONS OF COMMISSION

SEC. 27. (a) The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665(b));

(7) to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, through its own legal representative

with the concurrence of the Attorney General or through the Attorney General; and

(8) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3), to any officer or employee of the Commission.

(c) Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission with the concurrence of the Attorney General or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

(f) For purposes of carrying out this Act, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this Act.

(h) The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this Act.

(i)(1) Each recipient of assistance under this Act pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this Act under other than competitive bidding procedures.

(j) The Commission shall prepare and submit to the President and the Congress on or before October 1 of each year a comprehensive report on the administration of this Act for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this Act in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this Act;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this Act, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this Act.

(k)(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

PRODUCT SAFETY ADVISORY COUNCIL

SEC. 28. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this Act. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

(2) five members shall be selected from consumer product industries including at least one representative of small business; and

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

(b) The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

(c) The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

(d) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

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

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

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

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

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Com-

mission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related ards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

TRANSFERS OF FUNCTIONS

SEC. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Commission.

(d) A risk of injury which is associaated with consumer products and which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts.

(e) (1) (A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Bureau of Standards. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this Act to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970 (84 Stat. 1676; 42 U.S.C. 215 nt).

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

LIMITATION ON JURISDICTION

SEC. 31. The Commission shall have no authority under this Act to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this Act to regulaate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355 (1) and (2) of the Public Health Service Act) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are hereby authorized to be appropriated for the purpose 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) $55,000,000 for the fiscal year ending June 30, 1973;

(2) $59,000,000 for the fiscal year ending June 30, 1974; and

(3) $64,000,000 for the fiscal year ending June 30, 1975.

(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 Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce 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.

SEPARABILITY

SEC. 33. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

SEC. 34. This Act shall take effect on the sixtieth day following the date of its enactment, except—

(1) sections 4 and 32 shall take effect on the date of enactment of this Act, and

(2) section 30 shall take effect on the later of (A) 150 days after the date of enactment of this Act, or (B) the date on which at least three members of the Commission first take office.

And the House agree to the same.

HARLEY O. STAGGERS,
JOHN E. MOSS,
W. S. (BILL) STUCKEY, Jr.,
BOB ECKHARDT,
WILLIAM L. SPRINGER,
JAMES T. BROYHILL,
JOHN WARE,
Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN O. PASTORE,
FRANK E. MOSS,
ABRAHAM RIBICOFF,
EDWARD M. KENNEDY,
NORRIS COTTON,
MARLOW W. COOK,
CHARLES H. PERCY,
JACOB K. JAVITS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House, with an amendment which is a substitute for both the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by reason of agreements reached by the conferees, and minor drafting and clarifying changes.

Establishment of Federal Agency To Regulate Consumer Product Safety

STRUCTURE OF AGENCY

Both the Senate bill and the House amendment established a new Federal agency to carry out the product safety functions dealt with in the legislation.

Senate.—The Senate bill provided for the establishment of an independent Food, Drug, and Consumer Product Agency. The Agency was to be headed by an Administrator, appointed by the President (with Senate confirmation) for a 5-year term. He could be reappointed as Administrator only once in succession. Within the Agency there would be established a Commission of Food and Nutrition, a Commission of Drugs, a Commission of Veterinary Medicine, and a Commission of Consumer Products, each to be headed by a Commissioner, appointed by the Administrator. In addition, the Senate bill directed the Administrator to appoint a Director of the Office of Consumer Information, to establish a Consumer Information Center and a Public Information Room, and to set up a National Injury Information Clearing House. The Administrator would be compensated at level III of the Executive Schedule, and the Directors and General Counsel would be compensated at level IV. The Senate bill authorized the Administrator to place twenty-five "supergrade" positions (grades GS 16–18).

House.—The House amendment provided for the establishment of an independent regulatory Commission—the Consumer Product

Safety Commission—consisting of five Commissioners appointed by the President (with Senate confirmation), one of whom would be designated by the President as Chairman (and when so designated would act as Chairman until the expiration of his term of office as Commissioner). A member of the Commission could be removed by the President only for neglect of duty or malfeasance in office. Commissioners would be appointed for staggered seven-year terms. Not more than three Commissioners could be appointed from the same political party. Commissioners were prohibited from having certain specified financial interests in the manufacturers or sellers of consumer products, or their suppliers.

The Chairman would be the principal executive officer of the Commission, and would exercise all of the executive and administrative functions of the Commission, subject to general policies of the Commission and its regulatory decisions, findings, and determinations. The Chairman would be authorized, subject to the approval of the Commission, to appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information.

The House amendment prohibited any full-time officer or employee of the Commission who was at any time during 12 months preceding termination of employment with the Commission paid at a rate in excess of that for grade GS–14 or above from accepting employment or compensation from any manufacturer subject to the bill for a period of 12 months after terminating employment with the Commission.

Under the House amendment the Chairman of the Commission is compensated at level III of the Executive Schedule, and the other Commissioners are compensated at level IV.

Conference substitute (§ 4).—The Senate recedes.

GENERAL POWERS AND DUTIES OF NEW FEDERAL AGENCY

In addition to functions specifically relating to safety regulation of consumer products and functions transferred from other agencies, both the Senate and House versions confer certain general powers and duties on the new agency.

Senate.—Under the Senate bill, the Administrator of the new Agency is authorized to employ experts and consultants, appoint advisory committees and a Joint Scientific Advisory Committee, prescribe regulations to carry out his functions, issue subpenas and order persons to respond to written questions, utilize other public and private agencies, enter into contracts and other arrangements with other public agencies or with any person, accept gifts, maintain liaison with public agencies and independent standard-setting bodies carrying out consumer safety activities, construct research and testing facilities (if subsequently authorized by Congress), conduct public hearings after publishing public notice thereof, submit budget estimates directly to the President for review and transmittal to the Congress and receive appropriations directly from the President and the Office of Management and Budget, submit legislative recommendations, etc., without prior clearance, initiate and direct all litigation of the agency, and

delegate within the agency any of his functions (other than issuance of subpenas). The Agency was directed to submit an annual report, which would include, among other matters, the Administrator's budget requests, and the budget recommendations of the Commissioners.

The Senate bill directed each of the Commissioners of the Agency to attempt to eliminate products presenting unreasonable risk of injury; and to establish certain analytic and investigatory capabilities, including a capability to engage in risk-based analysis.

House.—The House amendment authorized the Commission to conduct hearings (after publishing public notice thereof) and to conduct other inquiries, to issue subpenas and to order persons to respond to written questions, to take depositions, to enter into contracts with public agencies or any person, to construct a research and test facility (if the prospectus therefor is approved by the House Interstate and Foreign Commerce Committee and the Senate Commerce Committee), to require manufacturers of consumer products to provide performance and technical data to the Commission and to retail purchasers. The Commission is directed to submit an annual report, which would include, among other matters, a log or summary of meetings held between Commission officials and representatives of industry and other interested parties.

Conference substitute (§ 27).—The conference substitute follows the provisions of the House amendment with the following additions:

(1) The Commission is authorized to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665(b)).

(2) The Commission is authorized to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, through its own legal representative with the concurrence of the Attorney General or through the Attorney General.

(3) Section 27(k) of the conference substitute provides that, whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress; and that no Federal officer or agency may require the Commission to submit its legislative recommendations, etc., to any such officer or agency for approval, comment, or review prior to the submission of such recommendations, etc., to the Congress. A copy of such recommendations would have to be concurrently transmitted to the President.

(4) The Commission may delegate any of its functions (other than the function of issuing subpenas) to any of its officers or employees.

The committee of conference decided not to include the detailed provisions of the Senate bill regarding risk-based analysis and decided instead to rely on the provisions of the House amendment relating to the Commission's research and test capabilities [section 5(b)(2)].

COOPERATION WITH STATE AND FEDERAL AGENCIES

Senate.—The Senate bill authorized each Federal agency, on request of the Administrator, to make its services, etc., available with or without reimbursement to the greatest practicable extent to the new

Agency to furnish information, and to allow the new Agency access to information; directed the Agency, to the maximum practical extent, to utilize the personnel, facilities, and other technical support available in other Federal agencies; and authorized the Agency to utilize the National Bureau of Standards, with or without reimbursement, for purposes related to carrying out the responsibilities of the Agency under the bill. Technical research support for fire safety projects undertaken by the new Agency was required to be provided by the National Bureau of Standards on a reimbursable basis.

In addition, the Agency was generally authorized to use the services and facilities of, and enter into contracts and maintain liaison with, State agencies.

House.—The House amendment required the Commission, to the maximum extent practicable, to utilize the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to consumer product hazards, to develop test methods, to conduct studies and investigations, and to provide technical assistance relating to the Commission's functions. In addition, the Commission was authorized to obtain information and other materials from any Federal agency. Such agencies were authorized to cooperate with the Commission and, to the extent permitted by law, furnish such materials to it.

The House amendment also authorized the Commission to establish a program to promote Federal-State cooperation for the purposes of carrying out the bill, in which it could accept assistance from any State or local authorities in the administration and enforcement of the bill, to pay for the reasonable cost of such assistance, and to use State or local officials to conduct examinations, investigations, and inspections for the Commission.

Conference substitute (§ *29*).—The Senate recedes.

OBLIGATIONS OF AGENCY CONTRACTORS

Senate.—The Senate bill required certain recipients of financial assistance under the bill to keep specified records and to allow the Administrator and the Comptroller General access to those records.

House.—No comparable provision.

Conference substitute (§ *27*(*i*)).—The House recedes.

SCOPE OF REGULATORY AUTHORITY

Both the Senate bill and House amendment transferred certain existing Federal agency functions relating to product safety regulation to the new agency, and also provided the agency with new legal authority which, in general, was designed to permit it to regulate consumer products which are not subject to adequate Federal safety regulation under existing law.

TRANSFERS OF FUNCTIONS

Senate.—The Senate bill transferred to the Administrator of the new Agency all functions of—

(1) the Secretary of Health, Education, and Welfare administered through the Food and Drug Administration;

(2) the Secretary of Health, Education, and Welfare relating to licensing of clinical laboratories and to regulation of biological products; and

(3) the Secretary of Commerce and the Federal Trade Commission under the Flammable Fabrics Act and under the Act of August 2, 1956 (refrigerator safety).

The Senate bill also made provision for delegation by the Administrator of these transferred functions to appropriate Commissioners within the new Agency, and permitted certain Public Health Service officers to acquire competitive service status in the new Agency.

House.—The House amendment transferred to the Commission all functions of—

(1) the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act, and the Poison Prevention Packaging Act of 1970, and of the Administrator of the Environmental Protection Agency and the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of such Act, and

(2) the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act, and of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relates to the administration and enforcement of the Flammable Fabrics Act.

The House amendment also provided that a product hazard which could be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act could be regulated by the Commission only in accordance with the provisions of those Acts.

Conference substitute (§ 30).—The conferees adopted the provisions of the House amendment with the following changes:

(1) The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 (15 U.S.C. 1211), are transferred to the Commission.

(2) Personnel, property, obligations, etc., associated with fire and flammability research in the National Bureau of Standards are not transferred to the Commission.

(3) The Senate provision permitting Public Health Service officers to acquire competitive service status was included.

In determining whether a risk of injury can be reduced to a sufficient extent under one of the Acts referred to in this section, it is anticipated that the Commission will consider all aspects of the risk, together with the remedial powers available to it under both the bill and the other Acts.

DEFINITION OF CONSUMER PRODUCT

Senate.—The Senate bill authorized safety regulation by the new Agency of any "consumer product". Consumer product was defined as a product, or a component thereof, produced for or distributed to an

individual for his personal use, consumption, or enjoyment in or around a household or residence, a school, in recreation, or otherwise. Specifically excluded from the definition were:

(1) Tobacco and tobacco products.

(2) Products subject to safety regulation under the National Traffic and Motor Vehicle Safety Act of 1966.

(3) Aircraft or other aeronautical products subject to safety regulation by the Federal Aviation Administration.

(4) Food or drugs as defined in the Federal Food, Drug, and Cosmetic Act.

(5) Products subject to safety regulation under the Federal Insecticide, Fungicide, and Rodenticide Act.

(6) Products subject to safety regulation under the Occupational Safety and Health Act of 1970, insofar as such products are regulated for use in employment.

(7) Products subject to safety regulation under the Gas Pipeline Safety Act.

(8) Products subject to safety regulation under authority of the Atomic Energy Act of 1954.

(9) Vessels, appurtenances, and equipment subject to safety regulation under title 52 of the Revised Statutes, the Federal Boat Safety Act of 1971, or other marine safety statutes administered by the Coast Guard.

The Senate bill treated firearms as consumer products, but prohibited the new agency from administratively banning them.

House.—The House amendment defined "consumer product" as any article, or component part thereof, produced or distributed for sale to, (or for the personal use, consumption, or enjoyment of) a consumer in or around a household or residence, a school, in recreation, or otherwise; unless the article is not customarily produced or distributed for sale to or use, consumption, or enjoyment of a consumer. The exclusions from the House's definition were the same as those from the Senate's with the following exceptions:

(1) The House did not exempt aircraft or vessels (including boats), nor did it specifically exempt products subject to regulation under the Gas Pipeline Safety Act.

(2) The House added exemptions for firearms and ammunition, medical devices, and cosmetics. It also provided (under section 31) a qualified exemption for product hazards which could be prevented or reduced to a sufficient extent under the Clean Air Act, the Act of August 2, 1956, and for product hazards which could be regulated under the electronic product radiation provisions of the Public Health Service Act.

Conference substitute (§ 3(1), 31).—The conference substitute follows the House amendment but adds exemptions for aircraft and vessels including boats. The latter exemption is for boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971, vessels, and certain appurtenances thereto which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and certain boat and vessel equipment to the extent that a risk of injury associated with the use of such

equipment on boats or vessels could be eliminated or reduced by actions taken under any of the above statutes. It is not intended by this provision to in any way detract from the authority of the Coast Guard with respect to seaworthiness or operational capabilities concerning vessels, boats, or marine equipment.

TREATMENT OF CERTAIN PRODUCTS REGULATED UNDER OTHER LAWS

Senate.—All products excluded from the definition of "consumer product" (other than tobacco, foods, and drugs) were excluded only to the extent that they were subject to safety regulation under specified Federal laws. ("Subject to safety regulation" was defined as authorized to be regulated for the purpose of eliminating any unreasonable risk of injury or death, as determined by the Administrator through consultation with appropriate Federal officials.) However with respect to any of the specifically exempted products, the new Agency was authorized to petition any Federal agency which had jurisdiction over the products to establish and enforce appropriate safety regulations for the product; to participate in the establishment of such regulations; and upon request of such agency, to establish and enforce such regulations in accordance with the Consumer Safety Agency's authority under the bill. Upon such request, the product would no longer be excluded from the definition of "consumer product".

House.—The House (under section 31 of the bill) provided for an exemption from the Commission's authority for product hazards which could be "prevented or reduced to a sufficient extent" under the Occupational Safety and Health Act, the Act of August 2, 1956, the Atomic Energy Act, and the Clean Air Act. An exemption was also provided for electronic product radiation hazards which could be subjected to regulation under the electronic product radiation provisions of the Public Health Service Act. (See explanation of *transfers of functions* for similar House provisions applicable to product hazards which can be regulated under the Flammable Fabrics Act, the Federal Hazardous Substances Act, and the Poison Prevention Packaging Act.)

Conference substitute (§ 31).—The conference substitute incorporates the provisions of the House bill with an amendment which deletes the reference to the Refrigerator Safety Act (the Act of August 2, 1956) which is transferred to the Commission. In determining whether a risk of injury can be reduced to a sufficient extent under one of the Acts referred to in this section, it is anticipated that the Commission will consider all aspects of the risk, together with the remedial powers available to it under both the bill and the remedial powers under the other law available to the agency administering the law.

CONSUMER PRODUCT SAFETY INFORMATION AND RESEARCH; DISCLOSURE OF INFORMATION

Senate.—Under the Senate bill, the Office of Consumer Information, the National Injury Information Clearinghouse, and the Commissioner of Product Safety all were to participate in gathering and making available to the public information concerning consumer product safety.

(1) OFFICE OF CONSUMER INFORMATION

The Office of Consumer Information had the basic responsibility of informing the public concerning consumer product hazards. The Office was to make available to the public through its Consumer Information Center, subject to the limitations on the disclosure of information contained in the bill, information concerning consumer product safety hazards, copies of any communications, documents, reports, or other information received or sent by the Administrator or any Commissioner, and communications received by the Agency from any person outside the Agency concerning any matter under consideration by the Agency in a rulemaking or adjudicatory proceeding.

The Consumer Information Center was to respond to written inquiries from consumers and to conduct consumer education programs designed to inform the public about specific consumer product safety hazards.

The Director of the Office was to establish a Consumer Information Library and a Public Information Room in which the public would have access to Agency information and to a copying machine.

(2) NATIONAL INJURY INFORMATION CLEARINGHOUSE

The National Injury Information Clearinghouse would carry out a program under which a system of nationwide reporting centers would monitor injuries associated with foods, drugs, and consumer products. The system would identify causes of injury from such products, investigate the manner in which the injury occurred, and ascertain the severity of the injury. In carrying out his functions, the Director of the Clearinghouse would obtain injury data from both governmental and private sources and require persons engaged in the manufacture, distribution, or sale of foods, drugs, or consumer products (and their insurors) to provide information to him concerning injuries from such products which have come to their attention.

(3) COMMISSIONER OF PRODUCT SAFETY

The Commissioner of Product Safety was to collect, evaluate, and disseminate information on the types, frequency, severity, and causes of injury associated with the use of consumer products and on means to test, measure, or evaluate the risks of such injury. The Commissioner was authorized to undertake studies and research and otherwise to collect data to provide a basis for establishing consumer product safety standards in reducing the risk of injury; to form special study teams to gather information concerning injuries from consumer products; to provide assistance to persons and agencies engaged in research designed to minimize consumer product injury risks or designed to develop means of testing, measuring, and evaluating such risks; to secure information on consumer product injury risks from other government agencies and from private sources; to publish or otherwise make available information concerning consumer product injury risks (including recommendations for reducing such risks and for testing products for such risks); and to obtain products for research and testing and dispose of such products. The Commissioner

was authorized to obtain information relating to consumer product injuries by subpena from any person. Information disclosed by the Commissioner was subject to the limitations on public disclosure of information. The Commissioner was directed to inform any manufacturer of any unreasonable or significant risk to health or safety determined to be associated with any product of that manufacturer. The Commissioner was authorized to make recommendations to building, electrical, or other similar household environment code-making authorities with respect to any matter subject to such code which he determines to present an unreasonable risk of personal injury or death, without regard to whether that matter is a consumer product.

(4) LIMITATIONS ON DISCLOSURE OF INFORMATION

Information related to trade secrets or other confidential business information described in section 1905, title 18, United States Code, could not be released to the public unless it related to a consumer product in such a way as to indicate the presence of an unreasonable risk or injury or death or unless its release was necessary to protect the health and safety of the public. Before any such information could be made public, the manufacturer of the product to which the information related was entitled to notice and an opportunity to comment in writing, or in a closed session, on the information unless it was determined that the delay inherent in this procedure would be detrimental to the public health and safety. Such information could be disclosed to other Federal agencies for official use upon request, to appropriate Congressional committees, in any judicial proceeding under court order, or in any proceeding under the bill.

Information was not required to be publicly disclosed if it is information described in section 552(b), title 5, United States Code (relating to information protected from public access under the Freedom of Information Act), or which is otherwise protected by law from disclosure to the public.

No information could be made public which identified any individual injured by a consumer product or any person treating him for his injury without the express written consent of the individual or person involved.

House.—The House amendment provided for an Injury Information Clearing House which was charged with the duties of collecting, investigating, analyzing, and disseminating information related to the causes and prevention of illness, injury, or death associated with consumer products and with the duty of conducting such studies and investigations of deaths, injuries, diseases, the impairment of health, and economic loss resulting from accidents involving consumer products as it deemed necessary.

(1) LIMITATIONS ON DISCLOSURE OF INFORMATION

Information obtained by the Commission which contained or related to a trade secret or other matter referred to in section 1905, title 18, United States Code, could not be publicly disclosed. Such informa-

tion could be disclosed to agency officers or employees carrying out the provisions of the House amendment or, when relevant, in any proceeding under the provisions of the House amendment. Not less than 30 days before the public disclosure of information obtained under the provisions of the House amendment (or sooner if necessary to protect the public health and safety), the Commission was to the extent practicable to give notice and a summary of the information to each manufacturer or private labeler of any consumer product to which that information related, if the information to be disclosed would permit the public to identify that manufacturer or distributor, and to permit the manufacturer or distributor to submit comments to the Commission on that information. The Commission was directed to take steps to assure that publicly disclosed information from which specific manufacturers or distributors could be identified was accurate and that the disclosure was fair in the circumstances and reasonably related to carrying out its duties. No information would be required to be publicly disclosed if it is information described in section 552(b), title 5, United States Code (relating to information which is entitled to be protected from public access under the Freedom of Information Act), or which is otherwise protected by law from disclosure to the public.

The limitations on the disclosure of information did not apply to imminently hazardous consumer products against which the Commission had instituted a seizure action or to products which failed to conform with applicable product safety standards or which were banned hazardous consumer products, or to information in the course of, or concerning any, administrative or judicial proceeding under the provisions of the bill.

The Commission was to publish a retraction of any inaccurate or misleading information disclosed to the public.

(2) PRODUCT SAFETY RESEARCH

The Commission was authorized to conduct research studies and investigations concerning the safety of consumer products and means of improving the safety of such products, to test consumer products and develop product safety testing methods and devices, and to offer product safety investigation and testing training and otherwise assist public and private organizations in the development of safety standards and testing methods. The Commission could make grants or enter into contracts with any person, including a government agency, to carry out such functions. Whenever a person, other than the Commission, carried out any information, research, or development activity under contract with the Commission or with the aid of a grant from the Commission, provision was to be made for the availability to the public, without charge, on a nonexclusive basis, of the rights to information, uses, processes, patents and other developments resulting from that activity.

Conference substitute (*§ 5, 6*).—The conference substitute incorporates the House provisions respecting consumer product safety information and research, and disclosure of information.

Ok. accept the House version.

DEFINITIONS

Both bills contained definitions applicable to the entire bill. The principal definitions in the bills are described below with the exception of the definitions of "consumer product" and "subject to safety regulation" (discussed under *scope of regulatory authority*) and "risk based analysis" (mentioned under *general powers and duties of agency*).

Senate.—The Senate bill included the following definitions:

(1) "Consumer product safety standard" was defined as a minimum standard promulgated under the bill which prevents such product from presenting an unreasonable risk of injury or death.

(2) "Injury" was defined as harm (including adverse reactions and illness) produced by biologic, chemical, thermal, mechanical, electrical, radiological, or other natural or manmade agents.

(3) "State" was defined as a State, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Trust Territory of the Pacific Islands, or the Canal Zone.

(4) "Unreasonable risk of injury presented by a consumer product" was defined as that degree of risk which the Commissioner determines is incompatible with the public health and safety because the degree of anticipated injury or the frequency of such injury, or both, is unwarranted because the degree of anticipated injury or the frequency of such injury either (A) can be reduced without affecting the performance or availability of the consumer product or (B) cannot be reduced without affecting the performance or availability of the consumer product but the effect on such performance or availability is justified when measured against the degree of anticipated injury or the frequency of such injury.

(5) "Use" meant (A) exposure to, and (B) normal use or reasonably foreseeable misuse.

(6) "Commerce" was defined to include commerce within a State.

House.—The House amendment definitions of "State" and "commerce" were comparable to the Senate's definitions, except that the House did not treat certain possessions of the United States as States. The House did not require consumer product safety standards to be "minimum" standards, and did not define "unreasonable risk of injury presented by a consumer product" or "use". The House defined the term "hazard" (which is used comparably to "injury" in the Senate bill) as a risk of death, personal injury, or serious or frequent illness.

The House amendment contained the following definitions not present in the Senate bill:

(1) "Manufacturer" was any person who manufactures or imports a consumer product.

(2) "Distributor" meant a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that the term did not include a manufacturer or retailer of such product.

(3) "Retailer" was defined as a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(4) "Private labeler" was defined as the owner of a brand or trademark on the label of a consumer product which bears a private label. (A consumer product bears a private label under the House amendment if the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and the brand or trademark of a manufacturer of such product does not appear on such label).

(5) "To distribute in commerce" and "distribution in commerce" meant to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(6) A common carrier, contract carrier, or freight forwarder was not, for purposes of the bill, deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

Conference substitute.—The Senate recedes with an amendment treating certain possessions of the United States as States.

CONSUMER PRODUCT SAFETY RULES

(1) Authority to prescribe consumer product safety standards

Senate.—The Senate bill authorized the Commissioner of the new Agency, whenever he found a need for action to eliminate unreasonable risk of injury or death associated with the use of a consumer product (or type or class thereof), to promulgate a consumer product safety standard for such product (or type or class). The Senate bill provided that standards, insofar as practicable, must be compatible with any Federal environmental standards established for the product. A standard must, where feasible, pertain to the safety performance characteristics of the product (or type or class), and it must, to the extent practicable, set forth test procedures to measure such performance characteristics, except that any such standard may apply to the composition, design, construction, or finish of the consumer product (or type or class) if the Commissioner determines that it is not feasible to protect the public health or safety by development of a performance standard or any other consumer product safety standard authorized by the foregoing provisions.

The Senate bill provided, in addition, that a consumer product safety standard may require that a consumer product (or type or class) be marked, tagged, or accompanied by clear and adequate warnings or instructions, or be subject to safety precautions related to physical distribution.

House.—Under the House amendment the Commission was authorized to prescribe consumer product safety standards containing the same type of performance, design, and labeling requirements as were envisaged by the Senate bill (except that there is no House provision for safety precautions relating to physical distribution). Any requirement of such standards had to be reasonably necessary to prevent or

reduce an unreasonable hazard to the public associated with the product. Requirements (other than requirements relating to labeling, warnings, or instructions), whenever feasible, had to be expressed in terms of performance requirements.

Conference substitute (§ 7(*a*)).—The Senate recedes. The committee of conference is of the opinion that any safety problems created by methods of physical distribution can be met by a product safety standard related to the performance, composition, design, construction, or finish of a consumer product including packaging or, in appropriate cases, may be dealt with under the provisions of the substitute concerning imminent hazards [sec. 12].

(*2*) *Commencement of standard-setting proceeding*

Both the House and Senate versions provided that a proceeding to develop a consumer product safety standard be commenced by publication of a notice in the Federal Register containing certain information concerning the product hazard and an invitation to the public to participate in the standard-setting process.

Senate.—The Senate required the notice of proceeding to contain an invitation to the public to submit information challenging the need for the standard.

House.—The House amendment did not require the notice of proceeding to invite submission of information challenging the need for the standard, but did require the notice to specify a period during which public or private standard-setting organizations would be given an opportunity to develop a proposed standard. The period would be 150 days unless the Commission found a different period was appropriate.

Conference substitute (§ 7(*b*)).—The Senate recedes.

(*3*) *Development of proposed standard*

Senate.—The Senate bill provided that, unless he accepts an existing safety standard, the Administrator of the new agency could accept one or more offers from qualified offerors to develop a proposed standard. An offer could not be accepted if the offeror is a manufacturer, distributor, or retailer of a product to which the standard applies, or an employee of such a manufacturer, distributor, or retailer. The Senate permitted the Agency to proceed with development of a proposed standard whenever a notice of proceeding is published, even though the Agency accepted an offer to develop a standard.

House.—The House amendment differed from the Senate bill in that unless the Commission accepted an existing standard it was required to accept one or more offers from qualified offerors. The House did not prohibit acceptance of offers of offerors who were manufacturers, distributors, or retailers, or employees thereof.

The House also provided that if the Commission accepted an offer to develop a proposed consumer product safety standard, it could not, during the "development period" for the standard publish a proposed rule applicable to the same product hazard, or develop (or contract for the development of) proposals for the standard unless no offeror was making satisfactory progress. The "development period" was defined as a period beginning with the acceptance of an offer to develop the standard and ending (1) with the expiration of the period specified

in the notice of proceeding (which period could be extended), (2) the date the Commission determines no offeror is able and willing to continue satisfactory development of the standard, or (3) on the date on which an offeror submits a recommended standard, whichever of the three first occurs.

Conference substitute (§ 7(*d*)).—The conference substitute is identical to the House amendment except that the Commission is permitted during the development period to proceed independently to develop proposals for a standard in any case in which the sole offeror whose offer is accepted is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard. These provisions should not be interpreted, however, as preventing the Commission or its staff—while awaiting the submission of recommended standards—from developing or acquiring the technical capability necessary to properly evaluate the standards recommended to it.

(*4*) *Regulations governing offerors' development of standards*

Senate.—The provisions in the Senate bill relating to regulations applicable to offeror's development of proposed standards included requirements that interested persons be given an opportunity to participate in the development of the standard "in accordance with accepted standards of due process".

House.—No comparable provision.

Conference substitute (§ 7*d*)).—The Senate recedes.

(*5*) *Proposed consumer product safety rules*

Senate.—The Senate bill required the Agency, within 180 days after publication of a notice of proceeding (which period could be extended), to publish a proposed consumer product safety rule or withdraw the notice of proceedings. The Agency was specifically authorized to publish proposed rules in the alternative. The Agency was given authority to conduct a hearing on the proposed standard subject to conditions or limitations imposed by the Agency.

House.—The House amendment required publication of the proposed standard or withdrawal of notice of proceedings within 210 days (unless extended). The Commission was not specifically authorized to publish proposed rules in the alternative and was required to provide for an opportunity for oral and written presentation of views respecting the proposed rule.

Conference substitute (§ 7(*f*)).—The Senate recedes.

(*6*) *Findings*

Both the Senate bill and the House amendment required the new agency to make generally similar findings before finally promulgating a consumer product safety rule.

Senate.—The Senate bill required a finding respecting means of achieving the objective of the rule while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

House.—The House amendment required no comparable finding, but did require an additional finding that the rule be in the public interest.

Conference substitute (§ 9(c)).—The conference substitute requires both the Senate finding, respecting competition and commercial practices, and the House finding that the rule be in the public interest.

(7) *Effective date of standard*

House.—The House amendment added a provision requiring that the effective date of a consumer product safety standard be set at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case could the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard could apply only to consumer products manufactured after the effective date of the standard. The provision described above did not apply to rules banning a product.

Senate.—No comparable provision.

Conference substitute (§ 9(d)(1).—The Senate recedes.

(8) *Stockpiling*

Senate.—The Senate bill prohibited any manufacturer or importer, in an effort to stockpile a consumer product, from producing or importing such product, between the time a final order establishing a consumer product safety standard is issued and the time the order becomes effective, in quantities significantly greater than quantities he had produced for a base period established by the new Agency prior to the promulgation of the final order establishing the standard.

House.—No comparable provision.

Conference substitute (§ 9(d)(2)).—This provision of the Senate bill is incorporated in the conference report with technical and conforming changes. As so changed, it authorizes the Commission by rule to prohibit a manufacturer (including an importer) of a consumer product from stockpiling any product to which a consumer product safety rule applies so as to prevent the circumvention of the purpose of that rule. "Stockpiling" is defined as manufacturing or importing a product between the date of promulgation of the consumer product safety rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period ending before the date of promulgation of the consumer product safety rule.

(9) *Banned hazardous products*

Both bills gave the new agency administrative authority to ban a consumer product if no feasible consumer product safety standard would adequately protect the public.

Senate.—The Senate bill included a provision requiring a person in the distribution chain to repurchase any product sold by him after a proposed rule banning a product was published. The obligation to repurchase was subject to certain limitations if notice of the proposed banning rule was given down the distribution chain.

House.—The House amendment contained no provision applicable only to repurchase of banned hazardous products. However, the notification and remedy provisions of the House amendment (sec. 15(d)) gave the Commission authority to impose somewhat similar requirements in the case of substantial product hazard. The House amendment

also authorized a court, upon application of the Commission, to require repurchase of a banned hazardous product if the court found it to be an imminently hazardous product.

Conference substitute (§8).—The Senate provision on repurchase is not included in the conference report.

COMMISSION RESPONSIBILITY—PETITION BY INTERESTED PERSON

Senate.—The Senate bill contained two provisions permitting the public to seek initiation of agency action. The first provision generally permitted any individual or class of individuals who alleged that he or they have been exposed by an act or omission of the Agency to a food, drug, or consumer product presenting an unreasonable risk of injury or death, to petition the Agency to take specific action sufficient to eliminate the alleged unreasonable risk. After opportunity for comment, the Agency was required to determine whether an unreasonable risk of injury or death existed as a result of an act or omission of the Agency and issue a decision either refusing to take any action or taking action designed to eliminate any unreasonable risk of injury or death. If the Agency refused to take sufficient action to eliminate the alleged risk, the petitioner could bring a civil action in a United States Court of Appeals. If the court found, based upon a preponderance of the evidence in the Agency's record, that the Agency, by an act or omission, had exposed the petitioner to a food, drug, or consumer product presenting unreasonable risk of injury or death, the court was directed to remand the matter to the Agency for appropriate action. A civil action under this provision would not have been available for the purpose of requiring the Agency to permit the distribution, etc., of any food, drug, or consumer product, or to obtain money damages. Costs of the petition and civil action (including reasonable attorney's fees) would be apportioned to the parties as the interests of justice require.

The second provision of the Senate bill permitted any consumer or other interested party to petition the Commissioner of the new Agency to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety standard or other action. The Commissioner was required to publish petitions in the Federal Register, to allow opportunity for comment, and, if he denied the petition, to publish his reasons therefor.

House.—The House amendment did not have a provision comparable to the first Senate provision described above, but did have one comparable to the second. However, this House provision permitted petitions only for consumer product safety rules (defined as safety standards or banning rules). The Commission was not required to allow opportunity for comment unless it decided to commence a rulemaking proceeding under the bill.

Conference substitute (§ *10*).—The conference substitute permits any interested person (including a consumer or consumer organization) to petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule. The petition must be filed in the principal office of the Commission and must set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is

necessary, and (2) a brief description of the substance of the rule or amendment thereof which it is claimed should be issued by the Commission. The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not the petition should be granted.

The Commission is required, within 120 days after filing of a petition described above to either grant or deny the petition. If the Commission grants such petition, it must promptly commence an appropriate proceeding under section 7 or 8 of the bill. If the Commission denies such petition it must publish in the Federal Register its reasons for such denial.

Subsection (e) of section 10 of the conference substitute provides that if the Commission denies a petition made under this section (or if it fails to grant or deny the petition within the 120 day period) the petitioner may commence a civil action in a United States District Court to compel the Commission to initiate a proceeding to take the action requested. Any such action must be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120 day period. If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of evidence in a de novo proceeding before the court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rulemaking proceeding under section 7 or 8 of the bill unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court is required to order the Commission to initiate the action requested by the petitioner. In a civil action authorized by subsection (e), the court will have no authority to compel the Commission to take any action other than the initiation of a rulemaking proceeding in accordance with section 7 or 8 of the bill. The judicial remedy under subsection (e) applies only with respect to petitions filed more than 3 years after the date of enactment of the bill.

The remedies under section 10 of the conference substitute are in addition to, and not in lieu of, other administrative and judicial remedies provided by law. Section 10 does not authorize the petitioner to recover damages from the Commission or any of its employees.

JUDICIAL REVIEW

Both bills had a provision for pre-enforcement judicial review, under the "substantial evidence" rule, of certain regulations prescribed under the bill.

Senate.—The Senate's provision applied to the following types of rules: consumer product safety standards, banning rules, rules applicable to standards development, rules requiring manufacturers to conduct safety analyses, and rules relating to compliance testing.

The Senate bill permitted the court in its discretion to award the manufacturer of a product declared a banned hazardous consumer product, damages, interest, and the cost of suit, including reasonable attorney fees, for actual damages suffered by him as a result of any banning order of the new Agency if the court determined that the

order constituted an abuse of the discretion granted under the bill.

House.—The House judicial review provision applied only to consumer product safety rules. It contained no provision for awarding damages and attorneys fees to manufacturers. It contained a provision, not present in the Senate bill, authorizing the court under certain circumstances to order the Commission to conduct proceedings for additional presentations of data, views, or arguments.

Conference substitute (§ *11*).—The Senate recedes.

IMMINENT HAZARDS

Senate.—The Senate bill provided for initiation of judicial proceedings against any imminently hazardous consumer product, and against any manufacturer, importer, or seller of such a product. "Immediately hazardous consumer product" was defined as a consumer product presenting an unreasonable risk of injury or death which requires action to protect adequately the public health and safety prior to the completion of administrative proceedings under the bill. The Senate provision had no specific provision for seizure of an imminently hazardous product.

House.—The House amendment provided for initiation of judicial proceedings against any imminently hazardous consumer product and against any manufacturer (including importer), distributor, or retailer of the product. "Imminently hazardous consumer product" was defined as a consumer product which persents imminent and unreasonable risk of death, serious illness, or severe personal injury. The House provision specifically authorized the court to order seizure of such a product, and also contained provisions relating to venue, process and subpenas, and to multidistrict litigation. The Commission was authorized (but not required) to request the recommendations of the Product Safety Advisory Council (established under the bill) before commencing an action under the imminent hazard provision.

Conference substitute (§ *12*).—The Senate recedes.

SAFETY ANALYSIS; NEW PRODUCTS

Senate.—The Senate bill authorized the new Agency (where applicable) to require by regulation that a consumer product not subject to a consumer product safety standard (or type, class, or component thereof) be subjected to a detailed safety analysis in accordance with regulations of the Agency.

House.—The House amendment had no provision specifically authorizing the Commission to require a safety analysis. However, the House version contained a provision not present in the Senate bill requiring notification to the Commission respecting new products. The Commission could, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce. "New consumer product" was defined as a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used

substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers. The House amendment also authorized the Commission to require any manufacturer to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the Act.

Conference substitute (*§ 13, 27(e)*).—The Senate recedes.

PRODUCT CERTIFICATION

Senate.—The Senate bill required any manufacturer, importer, or distributor of a consumer product subject to a consumer product safety standard to furnish to the distributor or dealer at the time of delivery of such consumer product certification that each such consumer product conforms to all applicable consumer product safety standards. Any certification had to be based upon test procedures prescribed in the standards or (if none are prescribed) upon a reasonable testing program approved by the Agency.

The Senate bill directed the new Agency to conduct (or contract for) compliance testing of consumer products subject to consumer product safety standards. Manufacturers and importers of consumer products subject to standards were required to furnish a reasonable number of such products (drawn from regular production runs) without cost to the Agency upon request. The product tested would be returned to the manufacturer or importer upon the completion of any compliance testing, but the manufacturer or importer, in any subsequent sale or lease of the product, would have to disclose that it had been subjected to compliance testing.

The Senate bill also provided that whenever the new Agency had good cause to believe that a particular manufacturer was producing a consumer product with a significant incidence of noncompliance with a particular consumer product safety standard; it could require the manufacturer to submit a description of his relevant quality control procedures; and if the Agency determined that the noncompliance was attributable to the inadequacy of the manufacturer's control procedures, it could, after an adjudicatory hearing, order the manufacturer to revise his quality control procedures to the extent necessary to remedy the inadequacy.

House.—The House's certification provision was generally similar to the Senate's, except that the requirement to provide the certificate applied only to manufacturers and private labelers. The certificate was required to accompany the product and to be based on a test of each product or upon a reasonable testing program. In cases where more than one person was required to certify any given product, the Commission could designate one or more of them as subject to the requirement and relieve the others of the requirement. The Commission could by rule prescribe reasonable testing programs for products subject to a standard.

The House amendment authorized the Commission, for purposes of carrying out the bill, to purchase any consumer product and to require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

The House amendment authorized product testing, but did not *require* the Commission to conduct compliance testing activities and did not expressly authorize it to order manufacturers to revise their quality control procedures.

Conference substitute (*§ 14*).—The Senate recedes.

PRODUCT LABELING

House.—The House amendment authorized the Commission by rule to require the use and prescribe the form and content of labels containing the date and place of manufacture of a consumer product, and a suitable identification of the manufacturer of the consumer product (unless the product bears a private label in which case the label must identify the manufacturer by code and also identify the private labeler). If the product is subject to a consumer product safety rule, the rule under this provision may require the label to certify that the product meets all applicable standards and to specify the applicable standards. These labels, where practicable, could be required by the Commission to be permanently marked on or affixed to the consumer product. The Commission could permit any information as to date and place of manufacture and name of manufacturer to be coded.

Senate.—The Senate bill contained no comparable provision.

Conference substitute (*§ 14*).—The Senate recedes.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

(*1*) *Notification by manufacturer to agency*

Senate.—The Senate bill required every manufacturer, importer, or distributor of, or dealer in, a consumer product who discovers that such product has a defect which relates to the safety of use of such product or that such product fails to comply with an applicable consumer safety standard to immediately notify the new Agency of the defect or failure to comply if such product has left the place of manufacture.

House.—The House amendment required 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 the product fails to comply with an applicable consumer product safety rule, or contains a product defect which could create a substantial hazard to the public, to immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect of failure to comply.

Conference substitute (*§ 15(b)*).—The Senate recedes.

(*2*) *Notification by manufacturer to public*

Senate.—The Senate bill provided that if a consumer product fails to comply with an applicable order issued under the regulatory provisions of the bill and thereby presents an unreasonable risk or injury or death or has a defect which causes it to present an unreasonable risk of injury or death, the manufacturer, importer, or distributor of, or

dealer in, such product could be required by the Agency (by order after an adjudicatory hearing) to give public notice and to mail to consumers and certain persons in the distribution chain notification containing information required by the Agency.

House.—The House amendment authorized the Commission, if it determined (after affording an opportunity for a hearing) 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, to order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

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

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

(C) 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 the notice.

The House bill defined "substantial product hazard" for purposes of the notification and remedy provision of the bill as a failure to comply with an applicable consumer product safety rule which creates a substantial hazard to the public, or 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 hazard to the public.

Conference substitute (*§ 15(a) and (c)*).—The Senate recedes.

(*3*) *Repair, replacement, or refund*

Senate.—The Senate bill provided that in any case in which the Agency could order the manufacturer, importer, dealer, or distributor to notify the public of a defect or failure to comply, it could also require him to bring such product into conformity with the requirements of such order without charge to the consumer, or to either replace such product with a like or equivalent consumer product which complies with such order without charge to the consumer or to refund the purchase price of such product upon its tender, whichever option is elected by the manufacturer, importer, distributor, or dealer whose product fails to comply. If an election is made to refund the purchase price, the price shall be less a reasonable allowance for use, if such product has been in the possession of the consumer for more than one year at the time of tender.

House.—The comparable provision of the House amendment authorized the Commission, if it determined (after affording an opportunity for a hearing) that a product distributed in commerce presents a substantial product hazard and that action under this provision would be in the public interest, to 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 the product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product;

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

(3) to refund the purchase price of the 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 provision could also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the foregoing paragraphs the person elected. The Commission would 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 provision is directed to more than one person, the Commission shall specify which person has the election under this provision.

Conference substitute (§ *15(d)*).—The Senate recedes.

(*4*) *Reimbursement*

Senate.—The Senate required any manufacturer, importer, distributor, or dealer against whom an order is issued under the provisions relating to repair, replacement, etc., to reimburse each consumer of the product which is the subject of such order for any reasonable and foreseeable expenses (including transportation expenses) incurred by such consumer in availing himself of the remedies provided by the order.

House.—The House amendment provided that no charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under a repair, replacement, or refund order, 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. In addition, the House provided that any order issued under the notification, and repair, replacement, or refund section 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.

Conference substitute (§ *15(e)*).—The Senate recedes.

(*5*) *Hearings*

Senate.—The Senate bill required full adjudicatory hearings under section 554 of title 5, United States Code in proceeding to order notification or replacement, refund, or repair.

House.—The House provided that a notification order or a replacement, refund, or repair order 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).

Conference substitute (§ *15(f)*).—The Senate recedes.

Inspection and Recordkeeping

Both bills had provisions dealing with inspection and recordkeeping.

Senate.—The Senate bill provided that a separate written notice was to be given for each inspection, but a notice was not required for each entry made during the period of inspection set forth in the notice. If the officer or employee who made the inspection obtained any sample in the course thereof, he was, prior to leaving the premises, to give to the owner, operator, or agent in charge, a receipt therefor describing the sample.

The Senate bill further provided that the district courts of the United States were to have jurisdiction to issue any warrant in aid of an inspection or investigation, if the warrant was required by the Constitution or laws of the United States, upon a finding that the inspection or investigation was for the purpose of enforcing the bill's provisions.

The Senate bill also authorized the Commissioner to establish, by order at any time, procedures to be followed by manufacturers or importers of a consumer product required to conform to a consumer product safety standard, including procedures to be followed by distributors, dealers and consumers to assist manufacturers or importers in securing and maintaining the names and addresses of the first purchasers (other than dealers or distributors) of consumer products for which consumer product safety standards had been promulgated. These procedures were to be reasonable for the particular type or class of consumer products for which they were prescribed. In determining whether to require the maintenance of the names and addresses of the first purchasers, the Commissioner was to consider the severity of the injury that could have resulted if a consumer product had not been manufactured in compliance with an applicable consumer product safety standard, the likelihood that a particular type or class of consumer products would not have been manufactured in compliance with an applicable consumer product safety standard, and the burden imposed upon the manufacturer or importer by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of the maintenance).

House.—The House inspection and recordkeeping provisions did not contain any specific provisions similar to the above Senate provisions and its recordkeeping provision was applicable to every manufacturer, private labeler, or distributor of a consumer product, whether or not required to conform to a consumer public safety standard. However, the House amendment did authorize the Commission to require by rule manufacturers, private labelers, and distributors to establish and maintain such records as may be required to implement the Act.

Conference substitute (§ *16*).—The Senate recedes.

IMPORTED PRODUCTS

Senate.—The Senate bill provided that any consumer product imported into the United States to which a consumer product safety standard applied or which was declared a banned or imminently hazardous consumer product, was not to be delivered from Customs cus-

tody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product was delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and was declared a banned or imminently hazardous consumer product or failed to conform with a consumer product safety standard in effect on the date of entry of the merchandise, the Administrator was to inform the Secretary of the Treasury, and unless it appeared to the Administrator that the product could have been brought into compliance with all applicable requirements was to request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury was to assert a claim for liquidated damages for breach of a condition of the bond arising out of the failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages were not to be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer had previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury.

Destruction of products which failed to comply to regulations under this bill took place within ninety days after notice to the importer or consignee.

House.—The House amendment provided that any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) was to be refused admission into this customs territory if the product failed to comply with an applicable consumer product safety rule, was not accompanied by a certificate labeled in accordance with regulations under section 14 of the House amendment, was or had been determined to be an imminently hazardous consumer product in a proceeding brought under section 12 of the House amendment, had a product defect which constituted a substantial product hazard, or was a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of the inspection or recordkeeping requirements of the House amendment.

All actions taken by an owner or consignee to modify the product were subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury and if it appeared to the Commission that the product could not be modified or that the owner or consignee was not proceeding satisfactorily to modify the product it was to be refused admission into the customs territory of the United States, and the Commission could direct the Secretary to demand redelivery of the product into customs custody, and to seize the product if was not redelivered.

The House amendment further provided that products refused admission into the customs territory of the United States had to be exported, except that upon application, the Secretary of the Treasury could have permitted the destruction of the product in lieu of exportation. If the owner or consignee did not export the product within a

reasonable time, the Department of the Treasury could have destroyed the product.

Under the House amendment, the Commission was allowed to, by rule, condition the importation of a consumer product on the manufacturer's compliance with inspection and recordkeeping requirements and rules of the Commission with respect to these requirements.

Conference substitute (§ *17*).—The Senate recedes.

PROHIBITED ACTS

Both bills contained similar provisions dealing with prohibited acts, and, in particular, they prohibited manufacture, distribution, etc. of consumer products which do not comply with a consumer product safety rule.

Senate.—The Senate bill contained provisions making it unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to fail or refuse to comply with any requirement as to the Senate bill's compliance section (dealing with quality control procedures, names of first purchases, compliance testing, and certification) and stockpiling section, to alter, modify, destroy, or remove any portion of, or do any other act with respect to, a consumer product or labeling thereon or attached thereto, if the act is done while the product is being held or transported for sale, and results in the consumer product or its labeling failing to conform to a consumer product safety standard, or renders the product a banned or imminently hazardous consumer product, to fail to provide to the Director of the National Injury Information Clearinghouse the information concerning injuries, or to fail to provide any required safety analysis.

House.—The House amendment made it unlawful for any person to fail or refuse to permit access to or copying of records, fail to furnish information respecting a substantial product defect, fail to furnish a certificate or issue a false certificate if the person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect, or fail to comply with any rule relating to labeling.

The House amendment further provided that the unlawful acts of manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States any consumer product which was not in conformity with an applicable consumer product safety standard or manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States any consumer product which had been declared a banned hazardous product by a rule were not to apply to any person who held a certificate to the effect that the consumer product conformed to all applicable consumer product safety rules, unless the person knew that the consumer product did not conform, or relied in good faith on the representation of the manufacturer or a distributor of the product that the product was not subject to an applicable product safety rule.

Conference substitute (§ *19*).—The conference substitute incorporates the provisions of the House bill with a conforming amendment making violations of the Commission's stockpiling rules under section 9(d)(2) a prohibited act.

CIVIL PENALTIES

Senate.—The Senate bill stated that whoever knowingly committed any act prohibited in its prohibited acts section, or, in case of commission of any act so enumerated in the Senate bill's prohibited act section by a corporation, the corporation and any individual director, officer, or agent of the corporation who knowingly caused in whole or in part the corporation to commit the act, were to be subject to a civil penalty of not more than $10,000 for each act which was to accrue to the United States and could have been recovered in a civil action brought by the United States or the Agency in its own name by any of its attorneys designated by the Administrator for that purpose. "Knowingly" was defined in the Senate bill to include knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

House.—The House amendment provided that any person who knowingly violated the prohibited acts section of the House amendment was to be subject to a civil penalty not to exceed $2,000 for each violation. A violation of section 19(a) (1), (2), (4), (5), or (6) was to constitute a separate violation with respect to each consumer product involved, except that the maximum civil penalty was not to exceed $500,000 for any related series of violations. A violation of section 19 (a) (3) was to constitute a separate violation with respect to each failure or refusal to allow or perform an act required; and this violation was a continuing one, each day of the violation was to constitute a separate offense, except that the maximum civil penalty was not to exceed $500,000 for any related series of violations.

The House amendment further provided that the second sentence of the above paragraph did not apply to violations of paragraph (1) or (2) of section 19(a) of the House amendment if the person who violated these paragraphs was not the manufacturer or private labeler or a distributor of the product involved, and if the person did not have either actual knowledge that his distribution or sale of the product violated these paragraphs or notice from the Commission that the distribution or sale would have been a violation of these paragraphs.

Any civil penalty under the House amendment was authorized to be compromised by the Commission. In determining the amount of the penalty or whether it should have been remitted or mitigated and in what amount, the appropriateness of the penalty to the size of the business of the person charged and the gravity of the violation were to be considered. The amount of the penalty when finally determined, or the amount agreed on compromise, could have been deducted from any sums owing by the United States to the person charged.

Conference substitute (§ *20*).—The Senate recedes.

CRIMINAL PENALTIES

Senate.—The Senate bill provided that whoever knowingly committed any act prohibited by the prohibited acts section of the Senate bill, or, in case of commission of any prohibited act described in the prohibited act section of the Senate bill by a corporation, the corporation and any individual director, officer, or agent of a corporation who knowingly caused in whole or in part the corporation to

commit the act, and, if the act had been willfully committed, was to be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year, or both. "Knowingly" was defined to include knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

House.—The House amendment provided that any person who knowingly and willfully violated the prohibited acts section of the House amendment after having received notice of noncompliance from the Commission was to be fined not more than $50,000 or be imprisoned not more than one year, or both. Any individual director, officer, or agent of the corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part a violation of the prohibited acts section and who had knowledge of notice of noncompliance received by the corporation from the Commission would be subject to criminal penalties under this section.

Conference substitute (§ *21*).—The Senate recedes.

INJUNCTIONS

Senate.—The Senate bill provided that upon application by the Administrator or the Attorney General, the district courts of the United States were to have jurisdiction to enjoin the commission of acts prohibited by prohibited acts section of the Senate bill, and to compel the taking of any action required by the Senate bill.

House.—The House amendment provided that the United States district courts were to have jurisdiction to restrain any violation of the prohibited acts section of the House amendment, or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule, or both. These actions were authorized to be brought by the Attorney General, on request of the Commission, in any United States district court for a district wherein any act, omission, or transaction constituting the violation had occurred, or in the court for the district wherein the defendant was found or transacted business. In any injunctive action process could have been served on a defendant in any other district in which the defendant resided or could have been found.

Conference substitute (§ *21*(*a*)).—The Senate recedes with a conforming amendment.

SEIZURE

Senate.—The Senate bill provided that any consumer product which was not manufactured in compliance with an applicable consumer product safety standard, or which was not in compliance with such a standard as the result of altering, modifying, destroying, or removing any portion of, or doing any other act with respect to, a consumer product or labeling thereon or attached thereto, if the act was done while the product was being held or transported for sale, and resulted in the consumer product or its labeling failing to conform to a consumer product safety standard, or rendered the product a banned or imminently hazardous consumer product, or which was declared a banned or imminently hazardous consumer product, was to be liable to be proceeded against while in commerce or at any time thereafter,

on complaint for forfeiture by the Administrator, and condemned in any district court of the United States within whose district the consumer product was found.

House.—The House amendment provided that any consumer product which failed to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce was to be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which the consumer product was found. Proceedings in cases instituted under this authority was to conform as nearly as possible to proceedings in rem in admiralty. Whenever these proceedings involving identical consumer products were pending in courts of two or more judicial districts they were to be consolidated for trial by order of any of these courts upon application reasonably made by any party in interest upon notice to all other parties in interest.

Conference substitute (§ *21(b)*).—The Senate recedes with amendments permitting the commission's attorneys with the concurrence of the Attorney General to represent the Commission in seizure proceedings, and allowing consolidation where proceedings involved "substantially similar" products, rather than "identical" products as in the House amendment.

PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OTHER PROVISIONS

Both the Senate and the House bills had similar provisions for private suits for enforcement of consumer product safety rules and certain other requirements.

Senate.—The Senate bill provided that any person who could have been exposed to unreasonable risk of injury or death presented by a consumer product was authorized to bring an action to enforce a consumer product safety standard, or to enforce any order with respect to a banned hazardous consumer product under section 306(f) of the Senate bill, to enforce any order with respect to an imminently hazardous product under section 311 of the Senate bill, and to obtain the appropriate injunctive relief. The court could have awarded reasonable attorney's fees to the prevailing party.

House.—The House amendment provided that any interested person may bring an action to enforce a consumer product safety rule or to enforce any order relating to notification and repair, replacement, or refund under section 15 of the House amendment, and to obtain appropriate injunctive relief. The court could under certain conditions award costs of the suit, including reasonable attorney's fees, to the prevailing party.

Conference substitute.—The Senate recedes.

EFFECT ON PRIVATE REMEDIES

Senate.—The Senate bill contained a provision stating that compliance with any consumer product safety standard did not exempt any person from any liability under common law.

House.—The House bill contained a provision stating that compliance with consumer product safety rules or other rules or orders were

not to relieve any person from liability at common law or under State law to any other person, and the failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product was not to be admissible in evidence in litigation at common law or under State law relating to such consumer product.

The House bill further provided that—

(1) subject to the confidentiality requirements of section 6(a)(2) of the House amendment but notwithstanding 6(a)(1), accident and investigation reports made by any officer, employee, or agent of the Commission were to be available for use in any civil, criminal, or other judicial proceeding arising out of the accident, and any officer, employee, or agent could have been required to testify in proceedings as to the facts developed in the investigations, and

(2) subject to section 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), any accident or investigation report made by an officer or employee of the Commission was to be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and all reports on research projects, demonstration projects, and other related activities were to be public information.

Conference substitute. (§ *25*).—The House provisions, other than the provisions described in paragraph (1) above are included in the conference substitute.

EFFECT ON STATE LAW

House.—The House amendment provided that whenever a Federal consumer product safety standard is in effect and applies to a hazard associated with a consumer product, no State or political subdivision of a State could either establish or continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same hazard associated with such consumer product; unless such requirements are identical to the requirements of the Federal standards. This provision also provided that it should not be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to a consumer product for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

This provision also provided that upon application of a State or political subdivision thereof, the Commission by rule, after notice and opportunity for oral presentation of views, could exempt these preemption provisions (under such conditions as it may impose) a proposed safety standard or regulation described in the application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling

local conditions, and (3) does not unduly burden interstate commerce.

Senate.—The Senate bill was generally similar except that the exemptive authority was not required to be exercised by rule, and a State or political subdivision to qualify for an exemption and to adopt its standard pursuant to procedures and requirements which in the judgment of the Agency were substantially comparable to those prescribed for Federal consumer product safety standards.

Conference substitute. The Senate recedes.

PRODUCT SAFETY ADVISORY COUNCIL

House.—The House bill provided that the Commission would establish a Product Safety Advisory Council which it could have consulted before prescribing a consumer product safety rule or taking other action under the House bill. The Council was to be appointed by the Commission and was to be composed of fifteen members, each of whom was to be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council was to be constituted of five members selected from governmental agencies including Federal, State, and local governments, five members selected from consumer product industries including at least one representative of small business, and five members selected from among consumer organizations, community organizations, and recognized consumer leaders. The Council was to meet at the call of the Commission, but not less often than four times during each calendar year.

The House bill gave the Council authority to propose consumer product safety rules to the Commission for its consideration and to function through subcommittees of its members. All proceedings of the Council were to be public, and a record of each proceeding was to be available for public inspection.

The House bill further provided that members of the Council who were not officers or employees of the United States were, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, to be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they would have been allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. These payments were not to render members of the Council officers or employees of the United States for any purpose.

Senate.—The Senate bill had general authority to establish advisory committees.

Conference substitute (§ *28*).—The House provision is incorporated in the conference report.

AMENDMENTS TO OTHER LAWS

FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

Senate.—The Senate bill amended section 602 of the Federal Food, Drug, and Cosmetic Act to provide that a cosmetic is to be considered misbranded unless its label conspicuously sets forth the common or usual name of the cosmetic substance and that of each of its ingredients, subject to exemptions which may be prescribed by the Secretary of Health, Education, and Welfare, and sets forth adequate warnings against use where its use might be dangerous to health. Section 201 of that Act was also amended so as to include "soap" within the definition of cosmetics, and thereby subject soap to the provisions of that Act.

House.—No comparable provision.

Conference substitute.—The Senate recedes.

FEDERAL HAZARDOUS SUBSTANCES ACT

Senate.—The Senate bill amended the Federal Hazardous Substances Act to establish a new procedure under which possibly toxic or corrosive substances to be used around a household or by children would be subjected to screening tests for toxicity and corrosiveness before being distributed commercially. Those substances which the tests indicated were toxic or corrosive were to be registered with the Secretary of Health, Education, and Welfare, together with a description of the substance, the results of the tests, and the proper antidote or treatment for any injury or illness which might result from contact or use. Such substances were to be assigned a registration number which was to appear on the label of any container of the toxic or corrosive substances. The Secretary of Health, Education, and Welfare was to establish an office through which the registered information would be available at all times for medical treatment purposes. In other amendments to that Act, the Senate bill provided that any substance registered with the Secretary under the Act, which failed to bear its registration number on the label of its container, was a misbranded hazardous substance; that foods, drugs, and cosmetics regulated under the Federal Food, Drug and Cosmetic Act and fuels in containers, used around a house in heating, cooking, or refrigeration, were to be covered under the Federal Hazardous Substances Act (present law explicitly excludes them from the definition of hazardous substances) that failure to conduct the required screening tests was a prohibited act under the Federal Hazardous Substances Act; and that employees of the Department of Health, Education, and Welfare were authorized to enter factories, warehouses, and other establishments to inspect and copy screening test results.

House.—No similar specific provision.

Conference substitute.—The Senate recedes.

FEDERAL CAUSTIC POISON ACT

Senate.—The Senate bill repealed the Federal Caustic Poison Act.
House.—No comparable provision.
Conference substitute.—The Senate recedes.

AUTHORIZATION OF APPROPRIATIONS

Senate.—The Senate bill authorized the appropriation of $250,000,000 for fiscal 1973, $300,000,000 for fiscal 1974, and $350,000,000 for fiscal 1975. The authorization limited the expenditure of appropriated funds by providing that no funds appropriated to carry out the bill could be expended to plan, design, or construct any research or testing facility unless that expenditure was specifically authorized by law. The Senate authorization included sums necessary to carry out the Agency's regulation of foods, drugs, medical devices, and cosmetics, as well as consumer products.

House.—The House amendment authorized the appropriation of $55,000,000 for fiscal 1973, $59,000,000 for fiscal 1974, and $64,000,000 for fiscal 1975. No amount appropriated under that authorization could be expended for the planning or construction of research, development, or testing facilities. A separate provision authorized the appropriation of such sums as might be necessary for the planning and construction of such facilities, subject to the limitation that no appropriation might be made for any such planning or construction involving an expenditure of more than $100,000 unless that planning or construction had been approved by resolutions adopted by the House Interstate and Foreign Commerce Committee and the Senate Commerce Committee.

Conference substitute.—The Senate recedes.

EFFECTIVE DATES

Senate.—Section 119 of the Senate bill provided a general effective date of 90 days after the date on which the Administrator of the Agency first took office, or on such earlier date as the President might prescribe. Officers could be appointed at any time after the date of enactment of the proposed Act. Section 401 of the bill provided that the amendments made by that section to section 602 of the Federal Food, Drug, and Cosmetic Act were to take effect 1 year after the date of enactment of the proposed Act. Section 508 of the bill provided that the provisions in title V, amending the Federal Hazardous Substances Act, and repealing the Federal Caustic Poison Act, were to take effect 180 days after the date of enactment of the proposed Act. The Secretary of Health, Education, and Welfare was authorized to delay the applicability of the changes in law, made by the amendments to the Federal Hazardous Substances Act, to any person in any case in which he determined that the delay was necessary to allow sufficient time for testing and registration of the hazardous substances manufactured, compounded, or processed by that person.

House.—The House amendment provided that the proposed Act would become effective on the sixtieth day after the date of enactment, except for sections 4 (relating to the establishment of the Consumer Product Safety Commission) and 32 (relating to the authorization of appropriations) which were to take effect on the date of enactment of the proposed Act, and section 30 (relating to transfers of functions) which was to take effect 150 days after the date of enactment of the proposed Act or on the date on which at least 3 members of the Commission first took office, whichever was later.

Conference substitute (§ *34*).—The Senate recedes.

HARLEY O. STAGGERS,
JOHN E. MOSS,
W. S. (BILL) STUCKEY, Jr.,
BOB ECKHARDT,
WILLIAM L. SPRINGER,
JAMES T. BROYHILL,
JOHN WARE.
Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN O. PASTORE,
FRANK E. MOSS,
ABRAHAM RIBICOFF,
EDWARD M. KENNEDY,
NORRIS COTTON,
MARLOW W. COOK,
CHARLES H. PERCY,
JACOB K. JAVITS,
Managers on the Part of the Senate.

○

Exhibit 116

SENATE—*Saturday, October 14, 1972*

The Senate met at 8:30 a.m. and was called to order by Hon. ROBERT C. BYRD, a Senator from the State of West Virginia.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Our Father-God, grant that the service rendered by this Congress may be acceptable in Thy sight. Look not at our failures. Perfect our partial successes. Help us to refine and improve that which remains incomplete. Bless our accomplishments for the enhancement of the people. Lead us to a new era of peace and justice and hope for Thy coming kingdom.

Hallow the memory of our work together. Be in our hearts and in our homes. Accompany us as we travel. Lead us from strength to strength.

Guide the Nation through decision-making days that in all that is done Thy name may be glorified.

And now unto God's gracious mercy and protection we commit you. *The Lord bless you and keep you: The Lord make His face to shine upon you, and be gracious unto you.* Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 14, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ROBERT C. BYRD, a Senator from the State of West Virginia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. ROBERT C. BYRD thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, October 13, 1972, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

STATE NEEDS BIG VOICE IN COAL STUDY

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Montana Standard of Sunday, October 8, 1972, entitled "State Needs Big Voice in Coal Study."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STATE NEEDS BIG VOICE IN COAL STUDY

Interior Secretary Rogers Morton has now made it official: A federal-state "task force" will be formed to develop policy guidelines for coal mining in a five-state area that includes eastern Montana. The task force will include representatives of the Interior Department, Agriculture Department, Commerce Department, the Environmental Protection Agency and the state governments.

The group, according to Morton, will assess the social, economic and environmental impact of developing the coal deposits.

Gov. Forrest Anderson said, after Morton's announcement was made, that the states have been promised a well-coordinated study between the states, the federal government and private enterprise. It sounds great, and we hope the promise becomes reality.

But let's wait and see. Gary Wicks, director of Montana's Department of Natural Resources and Conservation, plans to do just that. Wicks wants to see just how big a role the states do get in the study group before he endorses its activities. Wicks claims that in other regional energy studies, the states have been given only a token role.

The northern Great Plains coal deposit, a good deal of which lies in Montana, will be developed to meet energy needs across the middle of America. Thus the development of the coal fields is of national interest, and not just a local issue.

It must be kept in mind, though, that with President Nixon's re-election virtually a sure thing, the study group will be doing most of its work during a Republican Administration. And the Nixon Administration's Interior Department and Commerce Department have a record to date that many feel is generally pro-industry. There's nothing particularly the matter with this. Democratic Administrations are widely felt to be pro-labor, etc., at the expense of business.

On the other hand, the Montana agencies that are concerned with setting pollution rules, enforcing reclamation laws, etc., appear to be getting increasingly conservation-minded.

If the above assumptions are true, then Wicks is justified in expressing concern over how much representation the states will have in the upcoming study. If the mood of Montana does favor a more cautious approach to development than the federal government might recommend, then it's important that Montana have some real influence within the federal-state task force.

As we've said before, we are in favor of development and jobs, but we want strong protection built in.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

THE MINORITY LEADER'S REPORT—THE OVERVIEW FROM THE UNDERSIDE, OR A REOPENING OF PATHS (S. DOC. NO. 92-92)

Mr. SCOTT. Mr. President, as of yesterday, not counting any quorum calls, there were 523 rollcall votes. This is just 100 votes more than were ever cast in the Senate in this century.

The record Congress was the 47th, of 1881–83, when 986 votes were taken. One wonders what they found to talk about, but one wonders also what we find to talk about.

The 92d Congress even labored on Leap Year Day, February 29, and labored indeed when 10 votes were taken.

The President has sent up 318 Presidentially sponsored measures, and, sad but true, only 141 have been enacted.

This Congress gets a mark of 44 percent for Presidential support, while in the last session of President Johnson's administration, Presidential support was 60 percent.

Mr. President, I am offering my annual minority report today entitled "The Overview From the Underside, or a Reopening of Paths."

Senators may note on page 4 my fervent hope expressed there that the Senate will not be allowed to denigrate to the point where the Roman Senate fell when the Emperor Caligula designated his horse to the senate. I believe this was known as going "whole horse," or perhaps it was a horse on them. We have tried to avoid sending whole horses to the Senate, and I hope we can continue to do so.

The report contains a good many statistics, and it is normally the custom to read the report, but, in deference to the absence of my colleagues, I shall not do so. I do pray they consume as much of it as they can by digesting the "charge of the lightweight brigade" and various other aspects of this session.

I do hope at least the statistical part of this statement will be of use to some Senators. In any event, I believe it was Philip Sidney who said once, "It is fitting that a man give reasons for the faith that is in him." That is what I try to do, and I ask unanimous consent to include the report at this point in the RECORD.

I further ask unanimous consent that this report for the 92d Congress, 2d session, entitled "The Overview From the Underside," be printed as a Senate Document.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

THE OVERVIEW FROM THE UNDERSIDE OR A REOPENING OF PATHS

I. INTRODUCTION

Mr. President, as I present the Republican Leader's Report, I want once again to express my appreciation and high regard for the Majority Leader, the Honorable Mike Mansfield, the Senator from Montana. I have many times had occasion to be grateful for his cooperation and thankful for his courtesy. We have competed, but it has been an honest and aboveboard competition. I have never failed to admire the skill with which he has managed the sometimes very complicated business of the Senate. If I ever get the chance—and in this I expect some competition from him—I shall be more than satisfied if I can do as well. His credo is fairness, firmness, and quiet reasonableness. I know all of us in the Senate have reason to be grateful for the leadership demonstrated by Mike Mansfield over so many years.

I also wish to express my appreciation to my colleagues of the Republican Leadership, Senator Margaret Chase Smith, Senator Gordon Allott, Senator Robert Griffin and Senator Norris Cotton. Nor should I fail to mention our Regional Whips, who have done so much to help Senator Griffin and me carry out our floor responsibilities in this Chamber. And to bid farewell to three splendid Republican Senators who are retiring: John Sherman Cooper, Len Jordan, and Karl Mundt.

The U.S. Senate

Mr. President, when I began to compose these remarks for submission at the end of this exhausting session, I felt myself pulled several ways at once. First I enjoy my work,

in the House, and the bill passed on April 19, 1972. The Senate Committee on Interior and Insular Affairs held hearings on S. 1456, which is the same bill as the House version, and S. 3234 on March 28, 1972, and reported the bill to the Senate on July 19, 1972, and it has been on the calendar since that time.

As amended, H.R. 7093 provides for distribution of $12,250,000, plus interest, on a per capita basis, with a reservation of $1 million to be used for programs of an educational or other socioeconomic nature.

This matter has been pending for more than 20 years. There has been a heavy cost of litigation. Legal fees amount to more than $1,300,000. Unless the Senate takes action today, these figures will continue to mount. There have already been more than 240 motions filed in connection with this claim.

In my opinion, the matter should have been settled years ago.

I am pleased that the Senate is taking action on it today.

I ask unanimous consent that a letter from Representative ED EDMONDSON, who represents the district where most of the Osage Indians live, be made a part of the RECORD at this time.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 2, 1972.

Hon. HENRY JACKSON,
Chairman, Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR CHAIRMAN JACKSON: I have spoken to several members of your Committee about the need for action on the distribution bill for the Osage Indian Tribe, H.R. 7093, which passed the House on April 17, 1972.

I would deeply appreciate anything you can do to secure passage of this bill, in the form in which it passed the House, before the end of the current session of the Congress.

With best wishes and kindest personal regards,

Sincerely yours,

ED EDMONDSON,
Member of Congress.

Mr. BELLMON. Representative EDMONDSON states, briefly, that he would appreciate passage of the bill and asks that it be enacted before the end of the current session of Congress because he also knows the importance of this legislation to his constituents.

Let me say, in conclusion, that I appreciate the courtesy of the majority leader in bringing this matter before the Senate at this time. It has been on the calendar for more than 3 months. If we do not act, the matter will be put off for many additional months, during which time those who should benefit from this legislation will, in many cases, suffer hardships. I believe the majority leader is performing a very fine service to those affected by this legislation in bringing up the bill for action today.

The PRESIDING OFFICER. If there be no further discussion or amendment to be offered, the question is on the third reading of the bill.

The bill was ordered to a third reading, read the third time, and passed.

CONSUMER PRODUCT SAFETY ACT—CONFERENCE REPORT

Mr. MOSS. Mr. President, I submit a report of the committee of conference on S. 3419, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two houses on the amendment to the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of October 12, 1972, at pp. 35592–35601.)

Mr. MOSS. Mr. President, I move that the Senate agree to the conference report on S. 3419.

This bill represents the culmination of 10 years of legislative effort to secure the consumer's right to safety in the marketplace. The bill creates an independent regulatory agency composed of five Commissioners who would have the authority to set product safety standards for consumer products of all types. The Commission would also be empowered to ban certain products which could not be made safe by the establishment of a safety standard. Consumer products which were imminently hazardous could be removed immediately without administrative proceedings through court action initiated by the Commission.

This bill provides the Federal Government with the weaponry to make significant inroads against unsafe consumer products in the marketplace, thereby preventing many of the 20 million product-associated injuries that occur each year. The bill also contains safeguards against bureaucratic indifference. Congress for the first time has created a mechanism whereby private citizens can compel, through petition court preceedings, an agency to initiate action to protect the public health and safety. The Commission responsibility provisions agreed to by the conference committee will guarantee that the promises of safety made by the sponsors of this legislation will be met in subsequent years.

Mr. President, while the bill agreed to by the conference committee is a great step forward for the American consumer, I cannot help but express my regret that the Senate was not able to prevail in its efforts to upgrade the quality of Government regulation of foods and drugs by transferring the Food and Drug Administration to this new, independent regulatory agency. Those of us concerned about the safety of products in the marketplace realize that we have more work to do with respect to the safety of foods, drugs, cosmetics, and medical devices. I share the frustration expressed by Senator PERCY that we have created a new, independent regulatory agency to watch out over consumer products but have done nothing to upgrade the performance of the agency responsible for the safety of foods and drugs. We must fight that battle again next year.

I understand the distinguished Senator from New Hampshire (Mr. COTTON) will be on the floor shortly and would like to be present before final action is taken on the conference report.

I also intend to insert a floor statement by the chairman of the Commerce Committee (Mr. MAGNUSON).

Mr. President, I would like to offer the following remarks concerning specific provisions of the product safety bill agreed to by the committee of conference. My comments will expand the joint statement of managers in those areas where I believe greater comment is appropriate:

First. Establishment of Federal agency to regulate consumer product safety: The Senate bill would have established a comprehensive program to regulate foods, drugs, cosmetics, medical devices, and other consumer products. The House bill provided only for the regulation of consumer products. In the Senate bill proper staffing of the agency was assured by a provision authorizing the appointment of 25 supergrades. In agreeing to the House amendment which contained no similar provision, the Senate did not in any way recede from its commitment to a properly staffed agency. It is my hope that sufficient supergrade positions will be allocated to this important new regulatory agency.

Second. Consumer information: The Senate bill provided for the establishment of a "public information room" designed to insure all interested parties access to consumer safety information. The House amendment had no specific provision requiring the establishment of a public information room. Although the Senate conferees agreed to the general language of the House bill, I am hopeful that the new independent regulatory agency will take appropriate steps to assure the public access to consumer safety information so as to prevent injury and make consumer participation in agency proceedings meaningful.

Third. Meaning of phrase "Unreasonable risk of injury associated with a consumer product": The Senate bill defined the phrase "unreasonable risk of injury presented by a consumer product." The definition set forth a balancing test which emphasized the primacy of health and safety over other factors. Two particular measures of public health and safety were to be considered: the degree of anticipated injury and the frequency of such injury. In those situations where either the degree of anticipated injury or the frequency of such injury could be reduced without affecting the "performance" or "availability" of that class of consumer product, then almost any risk capable of producing injury would become unwarranted. When "performance" or "availability" were affected, then a

balancing of competing interests would have to be undertaken. The House bill did not contain a specific definition of "unreasonable hazard." Note that the House bill defined "hazard" as "risk of injury." The report accompanying the House amendment to S. 3419 set forth the same kind of balancing test which was incorporated in the definition of "unreasonable risk of injury presented by a consumer product" in the Senate bill.

While the full reach of the term "unreasonable risk" will be left for the courts to decide, it is my hope that they will be guided by this important legislative history which sets forth an important balancing test. It is also my hope that the courts will take notice of the fact that the word "associated" was chosen so as to convey the fact that the risk of injury did not have to result from "normal use" of the consumer product but could also result from such things as "exposure to or reasonable foreseeable misuse of the consumer product." See, for example, the definition of "use" in the Senate bill.

Fourth. Title V of the Senate bill: Title V of the Senate bill amended the Federal Hazardous Substances Act to strengthen that act by requiring submission of product formulas, the results of screening tests for hazards, and antidote and treatment information. Title V also deleted the present exemption from the Federal Hazardous Substances Act for food, drugs, and cosmetics in certain fields. The House amendment did not contain an express provision for the collection of this information. But under section 27(e), the House amendment authorized the Commission to require any manufacturer—

To provide to the Commission such performance and technical data related to performance of safety as may be required to carry out the purposes of the Act.

In agreeing to the deletion of title V, the Senate conferees were hopeful that the Commission under authority of section 27(e) would obtain formulation, information and toxicological test data on consumer products so as to aid the poison prevention activities of the Consumer Product Safety Commission.

Fifth. Safety analysis: The Senate bill authorized the Commissioner of Product Safety to require the manufacturer of a consumer product to subject such product to a detailed safety analysis. The purpose of the safety analysis study was to identify and thereby eliminate risks associated with the use of consumer products short of promulgating a consumer product safety standard. The House amendment did not contain specific provisions relating to safety analysis. However, a House provision agreed to in conference—section 27(e)—does authorize the Commission to obtain information to the same extent as if the safety analysis provisions of the Senate bill had been included.

Sixth. Retention of the names of first purchasers: The Senate bill authorized the Product Safety Commissioner to establish procedures to be followed by those persons in the distribution chain and consumers themselves in securing and maintaining the names and addresses of first purchasers of consumer products. In determining whether or not to require the maintenance of the names and addresses of first purchasers, the Commissioner would be required to consider the severity of the injury that could result if the consumer product was manufactured not in compliance with an applicable standard, the likelihood that a particular type or class of consumer product would be manufactured not in compliance, and the burden imposed upon the manufacturer, and ultimately the consumer, in requiring the maintenance of the names. Although the names of first purchasers would not be required to be maintained for all consumer products subject to consumer product safety standards, the recall of noncomplying consumer products would be very difficult without the names of the first purchasers.

The House amendment did not contain a specific provision relating to the maintenance of the names and addresses of first purchasers. However, in section 16(d) of the House amendment, which was accepted by the committee of conference, the Commission is authorized to require any manufacturer, private labeler, or distributor—but not retailer—to establish and maintain such records as may be reasonably required for the purpose of implementing the act. Therefore, there is authority to require the maintenance of the names and addresses of first purchasers within the bill as reported by the committee of conference. It is my hope that retailers will cooperate with manufacturers, private labelers, or distributors who are requested by the Commission to maintain the names and addresses of first purchasers. It is also my hope that the Commission looks to the guidelines set forth in the Senate bill in order to determine which manufacturers, private labelers, or distributors should be required to retain such information.

Seventh. Submission of Legislative Recommendations: The Senate bill authorized and directed the Administrator of the Food, Drug, and Consumer Product Agency to submit legislative recommendations directly to the Congress without prior review of the Office of Management and Budget or any other Federal officer or Agency. The House amendment contained no comparable provision. The committee of conference agreed to the Senate provision authorizing and directing the direct submission of legislative recommendations. One might ask: "Why is this necessary?"

A recent situation involving administration proposed amendments to the Auto Safety Act illustrates the need for this provision. The agency responsible for implementing the Auto Safety Act, namely, the National Highway Traffic Safety Administration, submitted to the Secretary of Transportation, which in turn submitted to the Office of Management and Budget, a proposed amendment to the auto safety law to require automobile manufacturers to repair without charge vehicles which had been recalled because they contained a safety-related defect. The Department of Commerce communicated to the Office of Management and Budget their opposition to this amendment to the auto safety law. The Office of Management and Budget refused to submit the legislative recommendations for free repair of safety-related defects. In other words, the agency charged with responsibility of preventing death and carnage on our Nation's highways was precluded from communicating to Congress its desires concerning improvement of this legislation.

Only good fortune enabled the Congress to find out that there had been a difference of opinion and that, in fact, the National Highway Traffic Safety Administration endorsed legislation authorizing them to require the free repair of defective automobiles subject to recall. On the basis of this experience and similar experiences, those of us interested in a viable safety program want to know what the agency responsible for implementing the safety program thinks they need in the way of new authority to protect the health and safety of the American consumer. Therefore, we have required submissions of legislative recommendations to Congress, without prior review of OMB or anyone else.

Eighth. Private remedies: Both the Senate bill and the House amendment authorize an individual who has been injured by a consumer product that has been produced by a manufacturer who knows that the product does not meet an applicable product safety standard to sue such manufacturer in Federal court if the person's injuries were alleged to be greater than $10,000. In creating this Federal right but limiting the access to the Federal courts to injuries causing damage alleged to be greater than $10,000, the Senate and House conferees did not mean to preclude State courts from concurrent jurisdiction in enforcing the Federal right in those situations where the extent of injury was less than $10,000.

Ninth. Legal action by Commission: The Senate bill authorized the Administrator of the Food, Drug, and Product Safety Agency to "initiate, prosecute, defend, or appeal any court action in the name of the Agency for the purpose of enforcing the laws subject to its jurisdiction, through his own legal representative or through the Attorney General, and direct the course of all litigation." The House amendment had no similar authorization. The committee of conference agreed to a provision which gives the Commission the authority to initiate, prosecute, defend, or appeal any court action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction. But the Commission may not use its own legal representatives if the Attorney General notifies him that he does not concur. In the event of such notice the action would be handled by the Attorney General in the name of the Commission.

Mr. President, this concludes my detailed remarks concerning S. 3419. I

urge my colleagues to report its passage in the Senate and I urge the President to sign this important consumer measure into law as soon as possible.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the chairman of the Committee on Commerce (Mr. MAGNUSON).

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR MAGNUSON

Mr. President, today is truly a momentous day for the American consumer. The enactment of the Consumer Product Safety Act will mark the culmination of five very long and intensive years of study and analysis of the problem of safety presented by the growing number of consumer products in the marketplace. The formulation of this bill is the result of work by many segments of the society: engineers, lawyers, businessmen, consumers, economists, statisticians and medical personnel, just to name a few.

The bill which the Senate and House conferees have agreed upon is an adequate start towards protecting the American consumer from unsafe products. The new Consumer Product Safety Commission has been given a strong mandate from Congress to drastically reduce losses from product-related injuries. We have armed the Commission with an administrative procedure which will enable it to act "before the bodies stack up" while at the same time, insuring affected industries due process. Finally, we have afforded consumers an opportunity to actively become involved in the regulatory process.

The great disappointment of the bill which the Conference Committee has produced is its failure to effect any change in the federal regulatory structure of foods, drugs, cosmetics and medical devices. It is a well known fact that the American people have lost faith in the Food and Drug Administration's ability to provide the required measure of protection against adulterated foods and drugs.

A recent G.A.O. report revealed that 40 per cent of the food plants in the United States operate under unsanitary conditions and that only 3 of every 10 plants are in compliance with existing sanitary standards. It was also of little comfort to learn of the totally inadequate "filth tolerance standards" that F.D.A. has adopted for the food industry.

The Senate adopted by a vote of 69–10 the recommendation of three Committees that responsibility for foods and drugs should be transferred to the new Product Safety Agency. Even when that provision was defeated in Conference, Senators Kennedy, Percy, Ribicoff and Javits persisted in attempting to create a more functionally independent F.D.A. within H.E.W. It was only when the entire product safety bill was threatened, that they receded in their efforts. To these colleagues, and to the American people, I pledge that next year we shall begin the badly needed work of revitalizing food and drug regulation in the federal government.

With the enactment of S. 3419, we begin a new era in the cause of the consumer. In 1962, President Kennedy told consumers that they had an inalienable "Right to Safety" in the products they purchase in the marketplace. Today, one decade later, we have finally crafted the machinery to begin insuring that right.

Mr. MOSS. I am very happy to yield to the ranking Republican member of the committee, the Senator from New Hampshire (Mr. COTTON).

Mr. COTTON. Mr. President, S. 3419—the Food, Drug and Consumer Product Safety Act of 1972—was considered and passed by the Senate this past June. At that time I voted against passage of the bill because:

First, there was no demonstrated need for the establishment of an independent food, drug, and product safety agency which would have had transferred to it the Food and Drug Administration now lodged within the Department of Health, Education, and Welfare;

Second, the impact of including "an electronic product" in the definition of "consumer product," coupled with the repeal of the Radiation Control for Health and Safety Act, was not clear; and

Third, the confusion arising out of the legislative interpretation given to the term "subject to regulation."

Mr. President, although there still exists opposition to the establishment of an independent product safety regulatory agency, I am pleased to note that my three principal concerns have, in large measure, been met by the conference report on S. 3419 now pending before the Senate.

The conference report on S. 3419 does establish an independent Consumer Product Safety Commission. But, it does not transfer to that Commission the functions of the Food and Drug Administration within the Department of HEW. The conference report in section 31 also provides that "the Commission shall have no authority under this act to regulate any risk of injury associated with electronic product radiation emitted from an electronic product—if such risk of injury may be subjected to regulation under" the Radiation Control for Health and Safety Act. The matter of the legislative interpretation of "subject to regulation," the exclusions from the definition of "consumer product," has been met, in large measure, by following the format of the House provision.

I am pleased to note, also, that as far as cost is concerned the 3-year appropriation authorization provided for the conference substitute is approximately one-fifth that which passed the Senate. It therefore represents a more reasonable and less costly approach.

Finally, Mr. President, the conference substitute in section 10 does provide for interested persons to petition the Product Safety Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule. Quite frankly, I did have some initial concern that such an action against the Commission there might involve money damages to be recovered from the Commission. However, I am pleased to note that the joint explanatory statement of the Committee of Conference makes clear that this is not possible with the following language:

Section 10 does not authorize the petitioner to recover damages from the Commission or any of its employees.

Mr. President, I fought long and hard last June in this very Chamber attempting to structure this organization within the Department of HEW. While I still feel that my proposal represents a more logical first step in approaching the problem of consumer product safety regulation, both this body and the House felt otherwise and, although not agreeing entirely, I can accept that result. If there is to be such an independent Product Safety Commission, then I believe the conference report, which is the result largely of the efforts of the distinguished chairman of our Committee on Commerce (Mr. MAGNUSON), represents a commendable approach.

Mr. President, I therefore urge the adoption by the Senate of the conference report on S. 3419—the Consumer Product Safety Act.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. MOSS. Mr. President, may I say just one further word? I wish to commend the Senator from New Hampshire for his very constructive and able assistance on this matter. It required a great deal of time and committee consideration. He was always very magnanimous during the consideration of the bill; he did not agree with all of it, and stated his position very clearly, but never at any time did he use any restraint on our going ahead. And when the committee finally acted, he cooperated, as he always does, fully and completely, in the presentation of the matter to the Senate for its action.

Mr. COTTON. Mr. President, I thank the distinguished Senator from Utah for his very generous words. We did have rather strong disagreements about the independent agency. As the Senator knows, when the bill passed the Senate I struggled to keep it within the HEW. But I do think the result of the conference is a very constructive one, and I am happy to join in advocating the passage of this measure. I am grateful to the distinguished Senator from Utah for his constant fairmindedness and courtesy throughout the consideration of this long and rather controversial measure.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

FLAMMABLE FABRICS ACT AUTHORIZATIONS, 1973

Mr. MOSS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5066.

The PRESIDING OFFICER (Mr. CHILES) laid before the Senate H.R. 5066, which was read as follows:

Resolved, That the House agree to the amendment of the Senate numbered 1 to the bill (H.R. 5066) entitled "An Act to authorize appropriations for fiscal year 1972 to carry out the Flammable Fabrics Act."

Resolved, That the House insists on its disagreement to the amendment of the Senate numbered 2 to the aforesaid bill.

Resolved, That the House recede from its disagreement to the amendment of the Senate to the title of the aforesaid bill, and concur therein.

Mr. MOSS. Mr. President, this bill has been acted upon by the Senate once before and amended to provide that the children's sleepwear standard which applies only to sizes 0 through 6X be extended to apply to all sleepwear up to size 14. This extension of the sleepwear

Exhibit 117

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.

CONTENTS

	Page
Amendment	1
Purpose and Summary	17
Background and Need for Legislation	18
Hearings	21
Committee Consideration	22
Committee Votes	22
Committee Oversight Findings	27
Statement of General Performance Goals and Objectives	27
New Budget Authority, Entitlement Authority, and Tax Expenditures	27
Earmarks and Tax and Tariff Benefits	27
Committee Cost Estimate	27
Congressional Budget Office Estimate	27
Federal Mandates Statement	27
Advisory Committee Statement	27
Constitutional Authority Statement	27
Applicability to Legislative Branch	28
Section by Section Analysis of the Legislation	28
Special Issues	46

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec 1 Shor i e; ab e o con en s
Sec 2 Re erences
Sec 3 Au hori y o issue imp emen ing regu a ions

TITLE I—CHILDREN S PRODUCT SAFETY

Sec 101 Ban on chi dren s produc s con aining ead; ead pain ru e
Sec 102 Manda ory hird-par y es ing or cer ain chi dren s produc s
Sec 103 Tracking abe s or chi dren s produc s
Sec 104 S andards and consumer regis ra ion o durab e nursery produc s
Sec 105 Labe ing requiremen or cer ain in erne and ca a ogue adver ising o oys and games
Sec 106 S udy o preven ab e injuries and dea hs in minori y chi dren re a ed o consumer produc s
Sec 107 Review o genera y-app icab e s andards or oys

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

Sec 201 Reau horiza ion o he Commission
Sec 202 S ruc ure and quorum
Sec 203 Submission o copy o cer ain documen s o Congress
Sec 204 Expedi ed ru emaking
Sec 205 Pub ic disc osure o in orma ion
Sec 206 Pub ic y avai ab e in orma ion on inciden s invo ving injury or dea h
Sec 207 Prohibi ion on s ockpi ing under o her Commission-en orced s a u es
Sec 208 No i ica ion o noncomp iance wi h any Commission-en orced s a u e
Sec 209 Enhanced reca au hori y and correc ive ac ion p ans
Sec 210 Websi e no ice no ice o hird par y in erne se ers and radio and e evision no ice
Sec 211 Inspec ion o cer i ied proprie ary abora ories
Sec 212 Iden i ica ion o manu ac urer impor ers re ai ers and dis ribu ors
Sec 213 Expor o reca ed and non-con orming produc s
Sec 214 Prohibi ion on sa e o reca ed produc s
Sec 215 Increased civi pena y
Sec 216 Crimina pena ies o inc ude asse or ei ure
Sec 217 En orcemen by S a e a orneys genera
Sec 218 E ec o ru es on preemp ion
Sec 219 Sharing o in orma ion wi h Federa S a e oca and oreign governmen agencies
Sec 220 Inspec or Genera au hori y and accessibi i y
Sec 221 Repea
Sec 222 Indus ry-sponsored rave ban
Sec 223 Annua repor ing requiremen
Sec 224 S udy on he e ec iveness o au hori y re a ing o impor ed produc s

SEC. 2. REFERENCES.

(a) COMMISSION. As used in this Act, the term "Commission" means the Con sumer 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 en actment 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 prod ucts 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 Commis sion 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 prod uct" 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 fac tors 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 reason able.

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

(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 estab lished 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 foresee able use and abuse of such product, as determined by the Commission. A com ponent 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 be come 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 deter mines 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 en actment of this Act, the Commission shall, by rule, revise the standard estab lished 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 ex tend, 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 imple mentation 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 para graph (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 insert ing "required by paragraph (1) or (2) (as the case may be)"; and

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

(b) DEFINITION OF CHILDREN'S PRODUCTS AND INDEPENDENT THIRD PARTY. Sec tion 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 in tended primarily for children 12 years of age or younger. In determining wheth er 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 prod uct, including a label on such product if such statement is reasonable.

"(B) Whether the product is represented in its packaging, display or ad vertising 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 pri vate 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 regula tions 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 au thority, 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 con sumer 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 de signed 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 re quired under this section shall require each manufacturer of a durable infant or toddler product to maintain a record of registrants for each product manufac tured 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 vol untary 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 con siders appropriate on the effectiveness of the consumer registration forms in fa cilitating product recalls and whether such registration forms should be re quired for other children's products. Not later than 4 years after the date of en actment of this Act, the Commission shall report its findings to Congress.

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

(1) means a durable product intended for use, or that may be reasonably ex pected 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 amend ed

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

(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, dis tributor, private labeler, or licensor that provides a direct means for the pur chase 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 in clude 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 con spicuous manner consistent with part 1500 of title 16, Code of Federal Regula tions (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 state ment 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 mate rials printed prior to the effective date in paragraph (1) during which time dis tribution 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 popu lations, including Black, Hispanic, American Indian, Alaskan native, and Asian/Pa cific 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 recommenda tions for minimizing such risks;

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

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

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 in gestion 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 con sider the adoption, as a consumer product safety rule, of the voluntary safety stand ards 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 stand ards; and

(2) whether promulgating consumer product safety rules that are substan tially 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 Com mission 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 allo cate 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, con cerning consumer product safety standards and product recalls, especially those relating to durable nursery products, in order to prevent the resale of any prod ucts that have been recalled, including the development of educational mate rials 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 Con sumer 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 Con sumer 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 no tice 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 sub section (a) relating to the product involved," in the third sentence of sub section (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 pur poses 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, amend ment, 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 regula tions 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 pro ceedings, 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 no tice"; and

(C) by striking "unless, not less than 60 days after publication of the no tice 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 "Commis sion" 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 sec tion 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 in formation 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 wheth er additional information, such as consumer complaints, hospital or other medical reports, and warranty claims, should be included in the database. The plan sub mitted 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 Com mission 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), respec tively;

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

"(2) fails to comply with any other rule affecting health and safety promul gated 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 sec tion 5 of the Federal Hazardous Substances Act (15 U.S.C. 1264), except for of fenses 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 para graph (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 ap propriate 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 ap proved 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 Commis sion 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 (in cluding information regarding incidents or injuries known to have occurred in volving 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, ad dress, or such other identifying information as the officer or employee may re quest, 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 identi fying information as the officer or employee may request

"(A) each retailer or distributor to which the manufacturer directly sup plied 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 compo nent 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 no tified 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 Haz ardous 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 COMMIS SION.

(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 Haz ardous 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 speci fied 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 Fed eral 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 Fab rics 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 COMMIS SION.

(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, cir cumstances, extent, and gravity";

(ii) by striking "absence of injury, and" and inserting "absence of in jury,"; 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 Con gress 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 redesig nating 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 non performance of the Commissioner's or employee's official duties.

"(b) AUTHORIZATION OF APPROPRIATIONS FOR OFFICIAL TRAVEL. There are author ized 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 or ders and actions;".

SEC. 224. STUDY ON THE EFFECTIVENESS OF AUTHORITY RELATING TO IMPORTED PROD- UCTS.

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 Commis sion's ability to stop unsafe products from entering the United States. The Commis sion 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

[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 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.

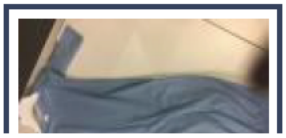
○

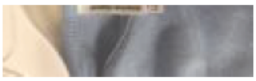
Exhibit 118

United States
CONSUMER PRODUCT
SAFETY COMMISSION

Children's Sleep Sacks Recalled by Gildan Activewear Due to Violation of Federal Flammability Standard; Sold Exclusively at AmericanApparel.com (Recall Alert)

Recalled American Apparel-branded children's sleep sack.





Name of Product:

Children's sleep sacks

Hazard:

The children's sleep sacks fail to meet the flammability standard for children's sleepwear, posing a risk of burn injuries to children.

Remedy:

Refund

Replace

Recall Date:

May 28, 2019

Units:

About 10,600

Consumer Contact

American Apparel toll-free at 833-222-7760 from 7 a.m. to 5 p.m. PT Monday through Friday, email at service@americanapparel.com with Product Recall as the email subject, or online at www.americanapparel.com and click on the Product Recall link located at the bottom of the page for more information.

Recall Details

Description:

This recall involves a American Apparel brand Baby Rib Collection children's 100% cotton and 90% cotton and 10% polyester-blended knit sleep sacks. They were sold in size 6 12 months and in the following colors: Black, green, gray, light blue, navy, pink, red and white. American Apparel and Baby Rib Collection are printed on a neck label. Made in Honduras and the size are printed on another neck label.

Remedy:

Consumers should immediately take the recalled sleep sacks away from children, stop using them and contact American Apparel for a full refund or a replacement product of similar value. Gildan Activewear is contacting all known purchasers directly.

Incidents/Injuries:

None reported

Sold At:

Online at www.americanapparel.com from January 2018 through January 2019 for between $15 and $20.

Importer(s):

Gildan Activewear SRL, of Barbados

Manufactured In:

Honduras

Recall number:

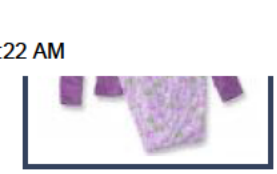
19-747

Exhibit 119

United States
CONSUMER PRODUCT
SAFETY COMMISSION

L.L. Bean Girl's Pajamas Recalled Due to Violation of Federal Flammability Standard

L.L. Bean girl's jersey knit aurora purple pajama sets



Name of Product:

L.L. Bean girl's pajama sets

Hazard:

The pajama sets fail to meet the federal flammability standard for children's sleepwear, posing a risk of burn injuries to children.

Remedy:

Refund

Replace

Recall Date:

November 12, 2013

Units:

About 800

Consumer Contact

L.L. Bean at (800) 555-9717 from 8 a.m. to 10 p.m. ET Monday through Friday or online at www.llbean.com and click the bottom right of the homepage "Product Recall & Safety Info" for more information.

Recall Details

Description:

The recall includes Girl's or Little Girl's jersey knit aurora purple pajama sets sold by L.L. Bean. The sets have a solid purple top with long sleeves and purple pants with a pattern and a solid purple waistband. The pajamas were sold in girls sizes small (size 8) through extra large (size 18) and little girls sizes small (size 4) through large (6X/7). The pajamas product ID numbers included in the recall are 284889 and 284890 printed on the second side seam label under the care label. GPU#6 is also printed on the garment label located on the inside left seam near the bottom of the pajama top. L.L. Bean is printed inside the back of the neck of the garment.

Remedy:

Consumers should immediately take the recalled pajama sets away from children and contact L.L. Bean to receive a free replacement, a full refund or store gift certificate.

Incidents/Injuries:

None reported.

Sold At:

L.L. Bean retail stores nationwide from June 2013 through September 2013 for about $30.

Importer:

L.L. Bean Inc., of Freeport, Maine

Importer

L.L. Bean Inc., of Freeport, Maine

Manufactured In:

China

Recall number:

14-017

Exhibit 120

United States
CONSUMER PRODUCT
SAFETY COMMISSION

Roberta Roller Rabbit Recalls Children's Pajama Sets

Long sleeved Set (Babar)









Name of Product:

Children's Pajama Sets

Hazard:

The children's pajama sets fail to meet federal flammability standards for children's sleepwear, posing a risk of burn injury to children.

Remedy:

Refund

Replace

Recall Date:

April 23, 2015

Units:

About 32,000

Consumer Contact

Roberta Roller Rabbit toll free at (866) 227 6938 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.robertarollerrabbit.com and click on the Recall tab located under the Product Recall section on the bottom left side of the homepage.

Recall Details

Description:

This recall involves children's pajamas from Roberta Roller Rabbit by Roberta Freyman. The pajamas are 100% cotton, two-piece pajama sets sold in toddler size 1 through youth 12. The sets were sold in two styles; long sleeve with pants or short sleeve with shorts. Both styles were sold in eighteen prints in various colors; Babar, Bump, Christopher, Colada, Dino, Elephant, Goby, Hathi, Heart, Heebo, Moby, Monkey, Owl, Rain, Rico, Scotty, Teddy, and Ticochon. Roberta Roller Rabbit is identified on a yellow label sewn into the neck and waist of both the top and bottom. This recall includes all children's sleepwear garments with a sewn in label at the neck. Garments that are screen printed at the neck are not affected.

Remedy:

Consumers should immediately take the recalled pajamas away from children, stop using them and return them to Roberta Roller Rabbit for instructions on receiving a free replacement pajama set or a full refund.

Incidents/Injuries:

None reported

Sold At:

Roberta Roller Rabbit retail stores, online at www.robertarollerrabbit.com and through other retail and wholesale outlets from January 2012 through February 2015 for between $55 and $65.

Importer(s):

Roberta Roller Rabbit, of New York, N.Y.

Manufactured In:

Peru

Recall number:

15-122

Exhibit 121

United States
CONSUMER PRODUCT
SAFETY COMMISSION

Esme Recalls Children's Sleepwear Due to Violation of Federal Flammability Standards and Burn Hazard

Recalled Esme Children's Sleepwear Garments

Name of Product:

Children's Sleepwear Garments

Hazard:

The recalled children's sleepwear garments fail to meet the flammability standards for children's sleepwear, posing a risk of burn injuries to children.

Remedy:

Refund

Refund

Replace

Recall Date:

February 16, 2022

Units:

About 3,600

Consumer Contact

Esme toll-free at 833-961-7011 from 9:30 a.m. to 3 p.m. PT Monday through Friday, email at recall@esmewear.com or online at https://esmewear.com/pages/safety-information or www.esmewear.com and click on Safety Information at the bottom of the webpage for additional information.

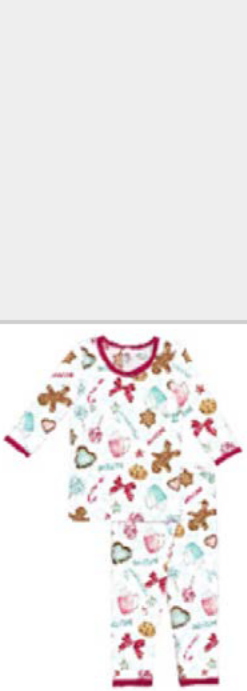
Recall Details

Description:

This recall involves four different styles of children's sleepwear garments; bunny, cherry, unicorn and shimmer sweets prints made of modal, cotton and spandex. The children's sleepwear was sold in sizes 12 months to 14 years. Children's sleepwear with the style number beginning with SF9 and a cut number of 1812, 2730, 7082 or 7104 printed on a label behind the garment's size and care labeling are included in the recall.

Garment	Description	Size Range	Price
	Bunny Print Style Number SF977 Cut Number 7082 Long Sleeve Top/Pant Pajama	12 Months, 18-24 Months, 2T, 3T, 4T, 5, 6, 7, 8, 9, 10, 12, and 14.	$47 $65

	Set 47%Modal 47%cotton 6%spandex		
	Cherry Print Style Number SF937/57 Cut Number 2730 Short Sleeve/Crop Legging Pajama Set 47%Modal 47%cotton 6%spandex	2T, 3T, 4T, 5, 6, 7, 8, 9, 10, 12, and 14.	$50 - $63

	Unicorn Print Style Number SF900/57 Cut Number 1812 Cami/Legging Pajama Set 47%Modal 47%cotton 6%spandex	2T, 3T, 4T, 5, 6, 7, 8, 9, 10, 12, and 14.	$48 - $61
	Shimmer Sweets Print Style Number SF950/57 Cut Number 7104	2T, 3T, 4T, 5, 6, 7, 8, 9, 10, 12, and 14.	$50 - $64

3 /4 Sleeved Top

and Pant Pajama

Set

47%Modal

47%cotton

6%spandex

Remedy:

Consumers should immediately take the recalled sleepwear garments away from children, stop using them and contact the firm for a free replacement garment or a full refund. Esme is contacting all known purchasers and providing prepaid mailers to return the products for a full refund or replacement.

Incidents/Injuries:

None reported

Sold At:

Online at www.esmewear.com and children's boutiques nationwide from May 2021 through August 2021 for between $45 and $65.

Manufacturer(s):

Bottoms R US Inc, d/b/a Esme, of City of Industry, California

Manufactured In:

United States

Recall number:

22-080

Exhibit 122

Filed for in camera review pursuant to protective order.