



H.R. 4040: Consumer Product Safety Improvement Act of 2008

110th Congress: 2007-2008

To establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.

SUMMARIES

CONGRESSIONAL RESEARCH SERVICE SUMMARY

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8/14/2008--Public Law. (This measure has not been amended since the Conference Report was filed in the House on July 29, 2008. The summary of that version is repeated here.)

Consumer Product Safety Improvement Act of 2008 -

Title I - Children's Product Safety

Section 101 -

Treats as a banned hazardous substance under the Federal Hazardous Substances Act (FHSA) any children's product (a consumer product designed or intended primarily for children 12 years of age or younger) containing more than specified amounts of lead. Allows alternate limits if the specified limits are not technologically feasible. Requires periodic review and, when technologically feasible, more stringent limits. Makes the limits inapplicable to any component that is not accessible to a child through such use and abuse.

Allows exclusion of specific products or materials if the products or materials will neither: (1) result in the human lead absorption, taking into account reasonably foreseeable use and abuse by a child; nor (2) have any other adverse impact on public health or safety. Prohibits considering paint, coatings, or electroplating to be a barrier rendering substrate lead inaccessible to a child, or to prevent human absorption of lead. Provides for special regulations for certain electronic devices.

Establishes a more stringent limit on the amount of lead allowed in paint. Requires the Consumer Product Safety Commission (CPSC) to: (1) evaluate the effectiveness, precision, and reliability of x-ray fluorescence technology and other alternative methods for measuring lead in paint or other surface coatings when used on a children's product or furniture article in order to determine compliance with specified regulations; and (2) conduct an ongoing effort to study and encourage the further development of alternative methods for measuring lead in paint and other surface coatings.

Considers such ban on lead in children's products and such limit on lead in paint to be CPSC regulations under the FHSA.

Section 102 -

Amends the Consumer Product Safety Act (CPSA) to revise requirements regarding manufacturer certification of products subject to a safety rule as being compliant with safety standards with provisions requiring a manufacturer of a product that is subject to a safety rule to certify that, based on a test of each product or on a reasonable testing program, the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other CPSC-enforced Act.

Requires a manufacturer of a children's product, before importing any children's product that is subject to a safety rule, to have the product tested by an accredited third party for compliance with such rule and to certify that such product complies. Requires the CPSC to: (1) publish accreditation requirements and a list of accredited entities; (2) initiate a program by which a manufacturer may label a product as complying with the certification requirements; and (3) establish protocols and standards relating to the testing of children's products. Provides for accreditation withdrawal. Allows the CPSC, on request, to accredit an assessment body that is owned, managed, or controlled by a manufacturer if certain conditions are met. (Bodies that meet those requirements are sometimes referred to as being firewalled.) Authorizes the CPSC to prescribe reasonable testing programs for products that are subject to a safety rule under the CPSA or under any other CPSC-enforced Act. (Current law authorizes such programs regarding the CPSA but does not mention other CPSC-enforced Acts.)

Section 103 -

Requires the manufacturer of a children's product to label the product and its packaging, to the extent practicable, to identify the product's location and date of production and cohort information.

Prohibits advertising, labeling, and packaging for a product subject to a safety rule from containing a reference to the rule or a voluntary safety standard unless the product conforms with the requirements of such rule or standard.

Section 104 -

Danny Keysar Child Product Safety Notification Act - Requires the CPSC to assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler products and promulgate consumer product safety standards that are substantially the same as or more stringent than the voluntary standards.

Makes it a violation of the CPSA for certain commercial entities (including, but not limited to manufacturers, distributors, hotels, motels, or similar transient lodging facilities and day care centers) to manufacture, sell, lease, or otherwise place in the stream of commerce any crib that is not in compliance with such standard.

Requires each manufacturer of a durable product for infants or toddlers under five years to provide consumers with a postage-paid consumer registration form, maintain a record of consumer contact information to improve recall effectiveness, and permanently label the product with the manufacturer's name and contact information, model name and number, and the manufacturing date.

Requires the CPSC to study and report to specified congressional committees regarding: (1) consumer registration form effectiveness in facilitating recalls and whether such forms should be required for other children's products; and (2) recall notification technology. Allows the CPSC to authorize the use of recall notification technology in lieu of registration forms when the technology becomes at least as effective as the forms.

Section 105 -

Amends the FHSA to require, when a product's packaging or retail display must, under current law, include a choking warning (as with balloons, small balls, or marbles), that associated advertising (including on Internet sites or in catalogs or other distributed materials) also bear the warning. Treats that requirement as a consumer product safety standard.

Section 106 -

Considers a specified ASTM International Standard for toy safety to be a consumer product safety standard. Requires the CPSC to assess the standard's effectiveness as it relates to specified aspects of safety requirements, safety labeling requirements, test methods, and flammability. Considers related rules to be consumer product safety standards.

Allows the CPSC, on application from a state or subdivision, to exempt the state or subdivision if the state's or subdivision's standard or regulation provides more protection and does not unduly burden interstate commerce. Allows a state or subdivision to continue safety requirements that were in effect before enactment of this Act if the state or subdivision files the requirement with the CPSC within 90 days after enactment of this Act.

Section 107 -

Requires the Comptroller General to study disparities in the risks and incidence of preventable injuries and deaths among children of minority populations, including Black, Hispanic, American Indian, Alaska Native, Native Hawaiian, and Asian/Pacific Islander children and report to specified congressional committees.

Section 108 -

Makes it unlawful to manufacture, sell, distribute, or import a children's toy or child care article containing specified concentrations of specified phthalates. Requires the CPSC to begin appointing a Chronic Hazard Advisory Panel to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles. Requires the CPSC to promulgate a final rule to determine whether to continue such prohibition and whether to declare any children's product containing any phthalates to be a banned hazardous product under the CPSA. Considers these requirements to be consumer product safety standards.

Title II - Consumer Product Safety Commission Reform

Subtitle A - Administrative Improvements

Section 201 -

Authorizes appropriations through FY2014 to carry out the CPSA. Requires the CPSC to report to specified congressional committees regarding the allocation of that funding.

Section 202 -

Sets a temporary quorum for the transaction of CPSC business of two CPSC members, so long as they are not of the same political party. Repeals provisions limiting funding to no more than three CPSC commissioners.

Requires, subject to the availability of appropriations: (1) the CPSC to increase the number of its full-time personnel to at least 500 by October 1, 2013; and (2) assigning part of the 500 employees to duty stations at U.S. ports of entry or to inspect overseas manufacturing facilities.

Section 204 -

Allows (current law requires) a proceeding for the development of a consumer product safety rule to be commenced by the publication of an advance notice of proposed rulemaking. Modifies procedures for promulgating rules and regulations under the CPSA, the FHSA, and the Flammable Fabrics Act (FFA).

Section 205 -

Requires the inspector general to assess and report to specified congressional committees on: (1) the CPSC's capital improvement efforts, including improvements and upgrades of the CPSC's information technology architecture and systems and the development of the database of publicly available information on incidents involving injury or death; and (2) the adequacy of procedures for accrediting conformity assessment bodies.

Requires the inspector general to assess: (1) complaints from CPSC employees about failures of other employees to enforce the rules or regulations of the CPSA or any other CPSC-enforced Act or otherwise carry out their responsibilities under such Acts if such alleged failures raise issues of conflicts of interest, ethical violations, or the absence of good faith; and (2) CPSC actions to address such failures and complaints.

Requires the CPSC to establish and maintain a link on its website to its Office of Inspector General and, on that page, a mechanism by which individuals may anonymously report cases of waste, fraud, or abuse.

Requires the inspector general to report to specified congressional committees on the inspector general's activities, any structural barriers which prevent the inspector general from providing robust oversight, and any additional authority or resources needed.

Section 206 -

Prohibits, notwithstanding specified provisions, CPSC commissioners or employees from accepting travel, subsistence, or related expenses with respect to official duties from a person seeking official action from, doing business with, or conducting activities regulated by, the CPSC or whose interests may be substantially affected by the performance or nonperformance of the commissioner's or employee's official duties.

Section 207 -

Authorizes the CPSC to make information obtained by the CPSC under the CPSA available to any government agency, provided there is an agreement that the information will be maintained in confidence and used only for law enforcement or consumer protection.

Requires the CPSC, when it is notified of any voluntary corrective action by a manufacturer or retailer, or when it issues an order under provisions relating to substantial product hazards, to notify each state's health department (or other agency designated by the state) of the recall or order.

Section 208 -

Authorizes the CPSC, with or without reimbursement and with or without reciprocal arrangements, to: (1) retain or employ officers or employees of foreign government agencies on a temporary basis; and (2) detail CPSC officers or employees to work on a temporary basis for appropriate foreign government agencies for the purpose of providing or receiving training. Considers an individual of a foreign agency so retained or employed to be a federal employee only for the purposes of injury compensation, tort claims liability, the Ethics in Government Act, provisions relating to bribery, graft, and conflicts of interest, and any other statute or regulation governing the conduct of federal employees.

Section 209 -

Adds to the CPSC's annual reporting requirements by requiring the inclusion of certain information on recall orders, voluntary corrective actions, action plans, injuries and deaths associated with products that present a substantial product hazard, and consumers' communications to the CPSC.

Subtitle B - Enhanced Enforcement Authority

Section 211 -

Modifies provisions concerning the public disclosure of information regarding a consumer product where disclosure will permit the public to ascertain readily the identity of the manufacturer or private labeler, including decreasing some waiting periods before the CPSC may disclose information and providing for expedited court actions.

Section 212 -

Requires the CPSC, subject to appropriations, to establish and maintain a consumer product safety database that is publicly available, searchable, and accessible through the CPSC's website. Requires submission to Congress of an implementation plan, including plans to increase consumer awareness of the database. Requires an annual report to specified congressional committees on the database and a report by the Comptroller General. Exempts certain information from disclosure.

Section 213 -

Expands the authority of the CPSC to prohibit the stockpiling of a product for the purpose of circumventing a consumer product safety rule to explicitly include stockpiling to avoid any similar rule, regulation, standard, or ban.

Section 214 -

Expands the definition of "substantial product hazard" to include failure to comply not only with an applicable consumer product safety rule under the CPSA, but also failure to comply with a similar rule, regulation, standard, or ban under any other CPSC-enforced Act. Expands the notification of substantial product hazards requirement to include not only a consumer product, but also any other product or substance over which the CPSC has jurisdiction under any other Act enforced by the agency, except motor vehicle equipment. Disallows the use of such a notification as the basis for criminal prosecution of the reporting person under specified provisions of the FHSA, except for offenses requiring a showing of intent to defraud or mislead.

Authorizes the CPSC, if it determines there is a substantial product hazard, to order the manufacturer, distributor, or retailer to: (1) cease distribution and to notify all persons that transport, store, distribute, or otherwise handle the product to cease distribution immediately; (2) notify state and local public health officials; and (3) post a notice on its website, provide notice to any third party website on which the product was placed for sale, and make announcements in languages other than English and on radio and television.

Modifies requirements regarding action plans of manufacturers, distributors, or retailers to deal with products that present a substantial hazard, including by requiring them to take certain corrective actions. (Current law allows a manufacturer, distributor, or retailer to choose certain corrective actions.)

Requires CPSC rules establishing guidelines for recall notices.

Section 215 -

Allows CPSC designates to enter and inspect any accredited firewalled assessment body that is owned, managed, or controlled by a manufacturer.

Requires manufacturers and their supply chain subcontractors, importers, retailers, or distributors to identify each other on CPSC request.

Section 216 -

Makes a variety of acts unlawful and modifies existing unlawful acts, including regarding: (1) Acts other than the CPSA that are enforced by the CPSC; (2) manufacturers' voluntary corrective actions; (3) the failure to furnish a required certificate; (4) registered safety certification marks owned by an accredited conformity assessment body; (5) undue influence on a third party conformity assessment body; and (6) violation of a CPSC order prohibiting the export of a product.

Revises provisions concerning the refusal of admission into the United States of products not accompanied by the required certifications to expand such coverage to include any CPSC enforced Act.

Section 217 -

Increases the maximum civil and criminal penalties and modifies provisions relating to the determination of penalties under the CPSA, the FHSA, and the FFA.

Section 218 -

Amends the CPSA and the Poison Prevention Packaging Act of 1970 (PPPA) to allow the attorney general of a state to bring an action for injunctive relief.

Section 219 -

Provides whistleblower protections for employees of manufacturers, private labelers, retailers, and distributors regarding alleged violations of any CPSC-enforced product safety requirements.

Subtitle C - Specific Import-Export Provisions

Section 221 -

Amends the CPSA and the FFA to authorize the CPSC to prohibit exportation of any consumer product that is not in conformity with a consumer product safety rule unless the importing country has notified the CPSC that such country accepts the importation.

Section 222 -

Requires the CPSC to develop a risk assessment methodology for identification of shipments of consumer products that are intended for import and are likely to include consumer products in violation CPSC-enforced import provisions, including, as far as practicable, using the International Trade Data System (ITDS) to evaluate and assess information and incorporating the risk assessment methodology.

Requires the CPSC to develop a plan for sharing information and coordinating with U.S. Customs and Border Protection.

Requires a report to specified congressional committees on specified topics, including such plan, the status of the Automated Targeting System rule, the effectiveness of the International Trade Data System in identifying shipments of consumer products in violation CPSC-enforced import provisions, whether the CPSC needs additional statutory authority in order to implement the risk assessment methodology, and the level of appropriations necessary to implement that methodology.

Section 223 -

Authorizes the CPSC to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence must be deemed a substantial product hazard if the characteristics are readily observable and have been addressed by voluntary standards, the standards have been effective in reducing the risk of injury from consumer products, and there is substantial compliance with the standards.

Requires that products refused admission be destroyed unless, on application, the Secretary of the Treasury permits export. (Current law requires export unless, on application, such Secretary permits destruction.)

Requires that manufacturers of imported products be in compliance with all inspection and record keeping requirements. (Current law permits conditioning importation on compliance with such requirements.)

Requires the CPSC, by rule, to condition manufacturing, offering for sale, distribution, or importation of any consumer product or other product on the manufacturer's compliance with the inspection and record keeping requirements of the CPSA and related CPSC rules.

Section 224 -

Requires the CPSC to: (1) identify any CPSC-regulated product or substance for which the cost of destruction would normally exceed bond amounts determined under specified provisions of the Tariff Act of 1930; and (2) recommend to U.S. Customs and Border Protection a bond amount sufficient to cover the cost of destruction of such products or substances.

Requires the Comptroller General to study and report to specified congressional committees on the feasibility of requiring the posting of an escrow, proof of insurance, or security sufficient to cover the cost of: (1) destruction of a domestically-produced product or substance regulated under any CPSC-enforced Act; and (2) an effective recall of a product or substance, domestic or imported, so regulated.

Section 225 -

Requires the Comptroller General to: (1) study CPSA authorities and provisions to assess the authorities' effectiveness in preventing unsafe consumer products from entering U.S. customs territory; (2) review and provide recommendations with respect to plans to prevent unsafe consumer products from entering that territory; and (3) report legislative recommendations regarding CPSC inspection of foreign manufacturing plants and the requirement for foreign manufacturers' consent to U.S. jurisdiction regarding CPSC enforcement actions.

Subtitle D - Miscellaneous Provisions and Conforming Amendments

Section 231 -

Prohibits expanding, contracting, limiting, modifying or extending specified preemption provisions of the CPSA, FHSA, FFA, and PPPA by any rule or regulation or by reference to any statement of policy, executive branch statement, or other matter associated with a rule or regulation. Prohibits the CPSC from construing any such Act as preempting any cause of action under state or local common law or state statutory law regarding damage claims. Prohibits construing this Act or the FHSA to preempt or otherwise affect any warning requirement relating to consumer products or substances established pursuant to state law that was in effect on August 31, 2003.

Section 232 -

Requires the CPSC, notwithstanding any other provision of law, to establish as a mandatory consumer product safety standard a specified American National Standard for four-wheeled all-terrain vehicles developed by the Specialty Vehicle Institute of America. Makes it unlawful for any manufacturer or distributor to import or distribute any new all-terrain vehicle unless: (1) the vehicle complies with the standard, is subject to an all-terrain vehicle action plan, and bears a label certifying such compliance and certain other information; and (2) the manufacturer or distributor is in compliance with the action plan.

Prohibits the importation of new three-wheeled all-terrain vehicles until a mandatory consumer product safety standard applicable to three-wheeled all-terrain vehicles is in effect.

Requires the CPSC to issue a final rule in its proceeding entitled "Standards for All Terrain Vehicles and Ban of Three-wheeled All Terrain Vehicles."

Requires the Comptroller General to study the utility, recreational, and other benefits of certain all-terrain vehicles and the costs associated with accidents and injuries involving all-terrain vehicles.

Section 233 -

Prohibits anything in the PPPA from being construed to require the CPSC, in establishing packaging standards to protect children, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

Section 234 -

Requires the Comptroller General to conduct a study to identify any risks to consumers relating to the use of formaldehyde in the manufacture of textile and apparel articles.

Section 235 -

Defines "third-party logistics provider" as a person who solely receives, holds, or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product. Prohibits deeming a logistics provider to be a manufacturer, distributor, or retailer solely by reason of receiving or transporting a consumer product in the ordinary course of its business.

Revises provisions concerning the CPSC providing copies of accident or investigation reports to other agencies.

Section 236 -

Allows any person adversely affected by a CPSC rule or standard relating to the identification of substantial hazards, all-terrain vehicles, durable infant and toddler products, or mandatory toy safety standards to petition, within 60 days after promulgation of the rule or standard, for review by the U.S. Court of Appeals for the District of Columbia Circuit. Makes that court's judgment final, except for review by the U.S. Supreme Court on certiorari or certification. Makes rules or standards on those topics not subject to judicial review in proceedings under provisions relating to imported products or in civil or criminal enforcement proceedings.

Section 237 -

Repeals a provision allowing a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the FHSA, the PPPA, or the FFA to be regulated under the CPSA only if the CPSC by rule finds it in the public interest.

Section 238 -

Amends the Virginia Graeme Baker Pool and Spa Safety Act to define "state" as it is defined in the CPSA, and includes the Northern Mariana Islands. Applies such Act to the United States and its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

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