



Legislative Bulletin.....July 30, 2008

**Conference Report to H.R. 4040—Consumer Product Safety
Modernization Act (*Rush, D-IL*)**

Order of Business: The conference report to H.R. 4040 is scheduled for consideration on Wednesday, July 30, 2008, under a motion to suspend the rules and pass the bill.

Background Information: The Consumer Product Safety Modernization Act was introduced on November 1, 2007, in response to a spike in the number of recalled children’s toys manufactured in China. The vast majority of the toys were recalled because they contained dangerously high levels of lead. The House considered the bill on December 19, 2007, and passed it under a suspension of the rules by a vote of 407-0. The Senate version of the legislation, S. 2663, was passed on March 6, 2008, by a vote of 79-13. Though the specific provisions of the two bills were different, in general both bills:

- Tightened the ban on hazardous lead in products specifically made for children.
- Required manufacturers to place identifiable tracking labels on recalled children’s products.
- Reauthorized and funded the Consumer Product Safety Commission (CPSC) at different levels.
- Increased standards on manufacturers for corrective action plans in the event of a hazardous product threat.
- Increased civil penalties against people who violate consumer product laws.

During the conference to resolve the differences between the House and Senate versions of the legislation, a number of key provisions became points of contention. Namely, the conferees wrangled over the specific amounts of lead that would be allowed in the manufacture of toys and other products; whether or not certain phthalates would be banned from children’s products; whether federal laws regarding consumer product safety would preempt state regulations; and the age threshold used to define a children’s product. The final conference report language summarized in this bulletin is supported by Rep. Joe Barton, RSC Member and Ranking Republican on the Energy and Commerce Committee.

Summary: What follows is a summary of the highlights of the House and Senate compromise.

Children's Product Safety

Lead Content in Toys: The bill limits the amount of lead allowed in children's products and phases in the limitation over two years. The legislation would require that the amount of lead is limited to 600 parts per million (ppm) within six months, 300ppm within one year, and 100ppm within 2 years. The CPSC would be authorized to lower the amount in the future, if it were determined necessary.

Lead Content in Paint: The bill limits the amount of lead in paint to 90ppm.

Phthalates Content in Toys: The legislation would completely prohibit the use of three phthalates in children's products—DEHP, DBP, and BBP. The bill would also temporarily ban the use of three more phthalates—DINP, DIDP, and DnOP—until an expedited study is completed, reviewing the safety concerns related to those phthalates. Phthalates are plastics softeners used in injection-molded products which, some contended, may damage the reproductive system. The Chamber of Commerce was opposed to the phthalates ban when it was included in the Senate version of the legislation. The House version of H.R. 4040 did not include a ban on phthalates.

ASTM Toy Standards: The bill requires the CPSC to adopt the voluntary ASTM International (formerly known as the "American Society for Testing and Materials") toy standards as mandatory standards.

Preemption of State Standards: The bill would preempt state toy safety standards with regard to lead and phthalate contents in children's products and apply one uniform standard across the country. This provision was opposed by Members from states with stringent consumer safety standards (like California) and supported by industries that wanted to comply with one standard as opposed to fifty. In the case of the mandatory adoption ASTM toy standards, the bill would preempt state standards unless the state notifies the CPSC within 90 days of enactment.

Children's Age: The conference report language would use the House standard to determine a children's product as any product designed for use by a person aged 12 or younger. The Senate version of the bill would have set the standard at age seven or younger.

Third Party Testing: The measure mandates that the CPSC have an independent third party test children's products that is reviewed by the Commission.

Tracking: The bill requires manufacturers to place identifiable tracking labels on children's products in the event of a recall.

ATV: The bill puts additional regulations on the sale of All Terrain Vehicles (ATVs) and, essentially, bans the sale of three-wheel ATVs.

Consumer Product Safety Commission Enhancement

Reauthorization: The measure reauthorizes the CPSC through FY 2014 at the following authorized levels of appropriation:

- \$118 million in FY 2010;
- \$115 million in FY 2011;
- \$123 million in FY 2012;
- \$131 million in FY 2013; and
- \$136 million in FY 2014.

Criminal and Civil Penalties: The bill increases criminal and civil penalties for CPSC violations. The legislation increases the penalty cap for civil violations to \$100,000 for one incident and \$15 million for multiple incidents. The criminal penalty would also be increased to up to \$500,000 and 5 years in prison for willful violations of CPSC regulations. In addition, the bill includes asset forfeiture as a criminal penalty for violating consumer product laws.

Whistleblower Protection: The legislation would provide protection for employees who report violations of CPSC regulations by their employers.

Expedited Rulemaking: The bill streamlines the CPSC's ability to make rules and requirements regarding consumer product safety by allowing the Commission to make the requirement of an "Advanced Notice of Proposed Rulemaking" effectively optional. The bill would cut in half the amount of time that is currently required for the CPSC to publish a recall.

Product Database: The legislation requires the CPSC to identify and keep a record of every manufacturer, importer, retailer, or distributor of a consumer product that is called into question under the Consumer Product Safety Act. The measure would create an electronically accessible database containing the information on recalled products as well as consumer submitted reports about consumer product safety.

Studies and Report: The legislation would require numerous studies and reports regarding consumer product safety and the CPSC's ability to quickly and accurately respond to safety emergencies.

Possible Conservative Concerns: Some conservatives may be concerned that H.R. 4040 would apply new regulations on private manufacturers of children's products. Some conservatives may also be concerned that Senate language included in the conference report would ban phthalates from children's products. Though they have already been banned by the State of California and the European Union (EU), the EU's

own assessment concluded that phthalates are “unlikely to pose a risk for consumers (adults, infants and newborns).”

Committee Action: H.R. 4040 was introduced on November 11, 2007, and was referred to the Committee on Energy and Commerce, which held a mark-up and reported the bill, as amended, by voice vote. The House considered the bill on December 19, 2007, and passed it under a suspension of the rules by a vote of 407-0. The Senate version of the legislation, S. 2663, was passed on March 6, 2008, by a vote of 79-13. The House and Senate then appointed conferees to reconcile the two versions of the bill.

Cost to Taxpayers: A CBO score for the conference report to H.R. 4040 was not available. However, the bill would authorize \$115 million in FY 2010 and \$623 million over the FY 2010—FY 2015 period.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, H.R. 4040 would create new regulatory power under the Consumer Product Safety Act.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? Yes, the bill includes numerous mandates on manufacturers of children’s products.

Constitutional Authority: A Conference Report citing constitutional authority was not available. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” [*emphasis added*]

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