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On July 30, 2008, the House passed the compromise conference report of House and Senate version of H.R. 4040, the Consumer Product Safety Commission Reform Act, by a vote of 424 to 1. The following day the Senate passed the compromise by a vote of 89 to 3, paving the way for enactment. The same day, White House spokeswoman Dana Perino said that President Bush would sign the bill.

Amending numerous provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act and the Poison Packaging Prevention Act, the CPSC Reform Act substantially changes the landscape of consumer product regulation in the United States. Touted as a response to the flood of recalls of children's toys due to lead contamination, the CPSC Reform Act includes unprecedented regulations on the manufacture, importation, distribution and sale of children's products. The Act also expands the CPSC's authority with respect to previously authorized regulation of consumer products and increases the CPSC's authority with respect to products formerly regulated by other governmental bodies.

The new law will require certain manufacturers, including manufacturers of durable infant or toddler products, to include postage paid registration forms and Internet registration, and a minimum of six years records retention.

In addition, the Act mandates compliance with certain heretofore voluntary compliance provisions, and exponentially increases applicable civil penalties from \$5,000 to \$250,000 for each violation of the Act and the maximum penalty for multiple violations from \$1,250,000 to \$20,000,000. The Act likewise increases maximum criminal penalties from 1 year to 5 years imprisonment, and authorizes states' Attorneys General to enforce provisions of the Act.

Given the scope of the CPSC Reform Act, an in-depth discussion of its changes is beyond treatment in this article. However, some highlights include provisions to:

- Increase the Consumer Product Safety Commission's budget and staff to better test, monitor and enforce compliance;
- Require manufacturers of children's products to subject the product

to third-party laboratory safety testing and certification

- Require prominent and conspicuous cautionary statements on internet, catalogue and other advertising posted by a manufacturer, retailer, distributor, private labeler, or licensor for certain toys that pose a choking hazard
- Require manufacturers of consumer products (including children's products) to place distinguishing marks on the product and its packaging to allow purchasers to determine the manufacturer, production time period, and cohort of production of the product
- Establish extensive whistleblower protection for employees who initiate or cooperate in proceedings relating to violations of the Act
- Ban as hazardous substances any children's product, defined as a product designed or intended for use by a child of 7 or younger, if any physically exposed and accessible part of the product contains greater than 0.03 percent by weight of the total weight of such part starting one year after enactment, and 0.01 percent starting three years after enactment
- Ban as hazardous substances any children's product, defined as a toy or any other product designed or intended by the manufacturer for use by a child when the child plays, that contains phthalate and certain phthalate substitutes
- Decrease the allowable lead content of paints and coatings from 0.06 percent to 0.009 percent
- Require portable gasoline containers for sale in the United States to conform to child-resistance requirements for closures
- Establish as product safety rules certain ASTM International Standards and Consumer Safety Specifications for Toy Safety
- Require the Commission to establish as a mandatory consumer product safety standard the American National Standard for Four Wheeled All-Terrain Vehicles Equipment Configuration and to make it unlawful for any manufacturer or distributor to import any new ATV if not in compliance with the existing ATV action plan and standard (and bearing the required certification of compliance label)
- Prohibit importation of any Three Wheeled ATV until the Commission promulgates a mandatory consumer product safety rule
- Require all automatic garage door openers to include an "external secondary entrapment protection device" that does not require

contact with a person or object for the garage door to reverse

- Require the Commission to establish safety standards, some within specified deadlines, for equestrian helmets, cigarette lighters and portable generators.

The most broad-sweeping mandate relates to durable infant or toddler products, which the Act defines as a "durable product intended for use by, or that may be reasonably expected to be used by, children younger than the age of 5," including cribs, toddler beds, high chairs and booster chairs, bath seats, gates, play yards, stationary activity centers, infant carriers, strollers, walker, swings and bassinets and cradles. The Act requires the Commission to assess existing voluntary product safety standards for durable infant or toddler products and promulgate safety rules that are more stringent than those standards. The Act also requires the Commission to promulgate safety rules requiring manufacturers of such products to: (1) provide consumers with postage-paid registration forms and a means for Internet registration; (2) maintain a record of the consumers contact information provided through registration for purposes of recall campaigns for a minimum of six years; and (3) permanently affix the manufacturer's name and contact information, model name and number, and date of manufacturer on each durable infant product.

The CSPC Reform Act also includes a myriad of provisions relating disclosure of consumer product safety information, including requiring the Commission to maintain on its website a publicly searchable database of reported injuries, illness, death or risk of such injuries, illness or death received by the Commission related to the use of consumer products; publish a list of product defects; and maintain and share information about violations of consumer product safety rules with the U.S. Customs and Border Protection of the Department of Homeland Security to prevent importation of products that violate safety standards.

The Act also authorizes the Commission to order a manufacturer, distributor, or retailer to issue recall notices when it finds that the subject product presents a substantial hazard. The required notices must include the model number or SKU, product name, product photographs, a description of the action being taken (e.g., recall); the relevant number of units affected; a description of the hazard; an identification of the manufacturers, importers, distributors, and retailers of the products; locations where sold, including websites; the name and location of the factory where the product was produced; the applicable dates of production of the affected products; the number and description of injuries or deaths, the ages of those injured or killed, and the dates the Commission learned of such injuries or deaths; and a description of any remedy available.

In addition, the Act bans importation of toys from manufacturers the Commission determines have shown a persistent pattern of manufacturing toys with defects that constitute substantial product hazards or have manufactured toys that present such a significant risk of injury that a permanent ban on such toys is equitably justified.

The increased authority, enforcement capabilities and resources appropriated by the CSPC Reform Act will inevitably lead to increases in safety rules and resulting enforcement actions. Its broad-based support in Congress on both-sides of the aisles demonstrates a strong commitment towards increased regulation of consumer products, particularly children's consumer products. With an increase in reporting and record-keeping requirements, companies at all points in a products path to the stream of commerce will face new challenges; some specifically defined by the Act, and others necessitated by the inevitable increase in enforcement by both the federal and states governments.

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