

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

April 19, 2010

To: Members of the Subcommittee on Commerce, Trade, and Consumer Protection Members and Staff

Fr: Subcommittee on Commerce, Trade, and Consumer Protection Staff

Re: Subcommittee Markup of H.R. _____, the Consumer Product Safety Enhancement Act

On April 21, 2010, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Trade, and Consumer Protection will meet in open markup session to consider a **Committee Print on H.R. _____**, the Consumer Product Safety Enhancement Act of 2010.

To ensure that all members of the Subcommittee have sufficient time to review and understand amendments before they are offered, Chairman Rush requests that members who wish to offer an amendment submit the amendment via e-mail to Will Cusey (Will.Cusey@mail.house.gov) of the Subcommittee staff at least two hours before offering it at the markup. In addition, 75 copies of the amendment should be submitted to the clerk's table at the markup. Subcommittee staff will make available to all Subcommittee members an electronic copy of each amendment submitted under this process and will distribute hard copies when the amendment is offered at the markup. Each amendment should include the legislative counsel number or another unique identifying number.

I. H.R. _____, CONSUMER PRODUCT SAFETY ENHANCEMENT ACT

In 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA) to strengthen and modernize the consumer product safety system in the United States, with a particular emphasis on improving safety of products designed or intended for children. The legislation to be considered in markup was designed to address several issues that have been raised regarding implementation of CPSIA.

Following is background on CPSIA and the Committee Print on H.R. ____, Consumer Product Safety Enhancement Act of 2010.

A. The Consumer Product Safety Improvement Act of 2008

The development of CPSIA began in 2007 in the 110th Congress, following record numbers of recalls of popular children's toys, many of which were due to unsafe levels of lead. The 2006 lead poisoning death of a four-year-old boy who had swallowed a charm given away with athletic shoes also underscored the need for more effective federal protections.¹

Medical science has shown lead to be a dangerous toxin, and there is no known safe level of lead exposure for children. Chronic exposure to lead has been found to contribute to children's attention problems, learning disabilities, mental retardation, and antisocial and delinquent behaviors. The presence of lead in children's products is invisible – there was and continues to be no way for a parent to know by looking at a toy whether it contains lead. In 2006, the Centers for Disease Control and Prevention (CDC) recommended the restriction or elimination of nonessential uses of lead in consumer products as “part of a proactive strategy that prevents exposure to these products.”²

In 2007, the Subcommittee held 4 days of hearings at which more than 20 witnesses testified on the safety of children's products and the need for increased authority and funds for the Consumer Product Safety Commission (CPSC or Commission) to deal with this problem.³ On November 1, 2007, Subcommittee Chairman Rush, then-Ranking Member Stearns, then-Committee Chairman Dingell, and Ranking Member Barton introduced H.R. 4040, the Consumer Product Safety Modernization Act of 2007. Joining them as original co-sponsors were 46 other members from both parties. The Committee ordered the bill to be reported on December 18, 2007, by a unanimous vote, and the House unanimously approved the bill later that month.

In March 2008, an amended version of the legislation was approved by a strong majority of the Senate. Following an extensive conference, the bill passed both houses with overwhelming majorities and was signed into law by President Bush on August 14, 2008.

¹ Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report Dispatch: Death of a Child after Ingestion of a Metallic Charm -- Minnesota, 2006* (March 23, 2006) (Online at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm55d323a1.htm>).

² *Id.*

³ Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Our Children: Current Issues in Children's Product Safety* (May 15, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Children from Lead tainted Imports: Day 1* (Sept. 19, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Children from Lead tainted Imports: Day 2* (Sept. 20, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Comprehensive Children's Product Safety and Consumer Product Safety Commission Reform Legislation* (Nov. 5, 2007).

CPSIA fundamentally reformed product safety and the Consumer Product Safety Commission. The law established basic safety standards for keeping toxic lead and phthalates out of children's products, gave CPSC vital new resources and authority, and introduced a product testing system designed to ensure that all products are safe. The bill also reestablished a five-member Commission. While the original Consumer Product Safety Act provided for a five-member Commission, appropriations riders starting in 1986 had limited CPSC funding to allow for only three commissioners, which had impeded decisionmaking and rulemaking.

Despite the strong bipartisan support for CPSIA, implementation has not been smooth. The Commission has issued several stays of enforcement of the law's third-party testing requirements and lead content limits in specific products, including children's all terrain vehicles and bicycles.⁴ In addition, many businesses affected by the law have been confused as to its scope and impact, and small businesses have faced unique hurdles in meeting the law's requirements. Consumers also have faced confusion and reduced protections as a result of the stays of enforcement.

On June 19, 2009, the Senate approved new leadership for the Commission by confirming Inez Moore Tenenbaum as the new CPSC Chairman. Two additional commissioners were confirmed on August 7, 2009, restoring the agency to its original size of five commissioners. Since the arrival of Chairman Tenenbaum, the Commission has taken numerous steps to improve implementation of the law, including issuing specific guidance on compliance to businesses facing unique challenges, such as thrift stores and other sellers of used products.⁵ The Commission also has taken regulatory action to clarify the meaning of the law, including such critical steps as publishing guidance to allow component part testing to demonstrate compliance with the lead limits and issuing a final rule determining that certain materials and products do not contain lead and therefore are not subject to the law's lead limits and testing requirements.⁶

B. H.R. _____, Consumer Product Safety Enhancement Act

Despite recent efforts by the Commission to clarify and improve implementation of the law, a number of problems persist. Some affected manufacturers have asserted that there are some products that require lead and do not pose a serious threat to public health or safety. Others have claimed that the law's lead requirements should not apply to used

⁴ Consumer Product Safety Commission, *CPSC Grants One Year Stay of Testing and Certification Requirements for Certain Products* (Jan. 30, 2009); Consumer Product Safety Commission, *Notice of Stay of Enforcement Pertaining to Youth Motorized Recreational Vehicles*, 74 Fed. Reg. 22154 (May 12, 2009); Consumer Product Safety Commission, *Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements*, 74 Fed. Reg. 68588 (Dec. 28, 2009).

⁵ Consumer Product Safety Commission, *CPSC Handbook for Resale Stores and Product Resellers* (Aug. 2009) (online at: <http://www.cpsc.gov/ABOUT/Cpsia/cpsia.HTML>).

⁶ Consumer Product Safety Commission, *Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits*, 74 Fed. Reg. 68593 (Dec. 28, 2009); Consumer Product Safety Commission, *Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products; Final Rule*, 74 Fed. Reg. 43031 (Aug. 26, 2009).

children's clothing. In addition, some affected industry members have asserted that the third party testing requirements are overly burdensome for smaller businesses and that alternative testing could be used without compromising public health or safety.

H.R. ____ seeks to resolve some of these issues by addressing unintended consequences of the legislation. To this end, the legislation provides three major forms of relief:

- New regulatory flexibility for the Commission to exempt certain products, components, and materials from the lead limits in CPSIA, with limitations to ensure protection of the public health;
- Relief for thrift stores and other retailers through an exclusion for certain used children's products from the lead limits and a modification of the lead limit set to take effect in August 2011, so that it will apply only to newly manufactured products; and
- Relief for small batch manufacturers and other businesses by allowing the Commission to approve alternative testing requirements for certain small batch manufacturers, by requiring Commission outreach and assistance to small businesses, and by providing that the law's phthalate limits shall not apply to inaccessible component parts.

The legislation also provides for a narrow set of improved and clarified authorities to allow the Commission to carry out the law.