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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } } No. 94-325

CONSUMER PRODUCT SAFETY COMMISSION
IMPROVEMENTS ACT OF 1975

JUNE 24, 1975.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

MR. STAGGERS, from the Committee on Interstate and Foreign Com-
merce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 6844]

The Committee on Interstate and Foreign Commerce, to whom was
referred the bill (H.R. 6844) to amend the Consumer Product Safety
Act, and for other purposes, having considered the same, report favor-
ably 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 in lieu thereof
the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Consumer Product Safety Com-
mission Improvements Act of 1975".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081
(a)) is amended to read as follows:

"(a) There are authorized to be appropriated for the purposes 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) \$51,000,000 for the fiscal year ending June 30, 1976;
- "(2) \$14,000,000 for the period beginning July 1, 1976, and ending
September 30, 1976;
- "(3) \$60,000,000 for the fiscal year ending September 30, 1977; and
- "(4) \$68,000,000 for the fiscal year ending September 30, 1978."

LIMITATIONS OF JURISDICTION

SEC. 3. (a) Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended (1) by striking out subparagraph (B), and (2) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Section 3(a)(1)(D) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(D)) is amended by striking out "economic poisons" and inserting in lieu thereof "pesticides".

(c)(1) Section 2(f)2 of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by inserting before "but such term" the following: "and nor to tobacco and tobacco products,".

(2) Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) is amended (A) by inserting "other" than "limitations" in the last sentence thereof and (B) by inserting before such sentence the following: "Except for the regulation under this Act or the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (B) or (E) of this paragraph, or described, without regard to quantity, in section 845(a)(5) of title 18 of the United States Code."

(d) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) striking out "of the Administrator of the Environmental Protection Agency and"; and (2) striking out "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)".

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission."

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended (1) by striking out "full-time" in paragraph (2) and inserting in lieu thereof "regular", and (2) by adding after such paragraph the following new paragraphs:

"(3)(A) The Chairman may, subject to subparagraph (B), establish non-career positions in grades GS-16, GS-17, and GS-18 the principal duties of which will involve—

"(i) significant participation in the determination of major Commission policies, or

"(ii) service as a personal assistant or adviser to the Chairman or other Commissioner.

"(B) The Chairman may not establish a position under subparagraph (A)—

"(i) without the approval of—

"(I) the Commission, and

"(II) the Civil Service Commission, as prescribed by chapter 51 of title 5, United States Code; or

"(ii) if the Civil Service Commission determines the principal duties of the position will not involve the duties described in clause (i) or (ii) of subparagraph (A).

The Civil Service Commission shall approve or disapprove, under such chapter, a position proposed to be established by the Chairman under subparagraph (A) within 20 days (excluding Saturdays, Sundays, and legal public holidays (as prescribed by section 6103 of title 5, United States Code)) after the date it receives from the Chairman a letter of intent to establish such position; and a determination by the Civil Service Commission described in clause (ii) of this subparagraph respecting such a position shall not prevent the Chairman from establishing the position if the determination is made after the expiration of such 20 days.

"(4) Appointments to and removals from positions established under paragraph (3)—

"(A) shall be made by the Chairman, subject to the approval of the Commission; except that appointments to and removals from positions of per-

sonal assistants or advisors to the Chairman or other Commissioners shall be made by the Commissioner concerned and shall not be subject to the approval of any other Commissioner;

"(B) may be made without regard to any provision of title 5 of the United States Code (other than section 3324) which governs only appointments to and removal from positions in the competitive service; and

"(C) shall not be subject to approval by any officer or entity within the Executive Office of the President.

The Civil Service Commission shall approve or disapprove the qualifications of a proposed appointee to a position established under paragraph (3) (A) within 20 days (excluding Saturdays, Sundays, and legal public holidays (as prescribed by section 6103 of title 5, United States Code)) after the date it receives from the Chairman (or other Commissioner proposing such appointee) a letter of intent to appoint such proposed appointee."

STANDARDS DEVELOPMENT

SEC. 5. (a) The last sentence of section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended to read as follows: "An invitation under paragraph (4) (B) for an offer to develop a proposed consumer product safety standard shall specify the period in which the offeror of an accepted offer is to develop the proposed standard, which period shall be a period ending 150 days after the date the offer is accepted unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate."

(b) Section 7(e)(2) of such Act (15 U.S.C. 2056(e)(2)) is amended by adding at the end thereof the following new sentence: "If the Commission accepts one or more offers to develop a proposed consumer product safety standard and the Commission determines that the standard developed by each offeror whose offer for the development of such standard was accepted is not satisfactory, the Commission may develop proposals for such standard or contract with third parties for such development."

(c) Section 7(f) of such Act (15 U.S.C. 2056(f)) is amended by striking out "Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b)" and inserting in lieu thereof "Not more than 60 days after receiving the proposed standard from the offeror".

PROHIBITED ACTS AND ENFORCEMENT

SEC. 6. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended—

(1) by inserting "or fail or refuse to establish or maintain records," immediately after "copying of records," in paragraph (3); and

(2) by striking out "or" at the end of paragraph (6), by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; or", and by adding after paragraph (7) the following new paragraphs:

"(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

(9) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data)."

(b) Section 20(a)(1) of such Act (15 U.S.C. 2069) is amended by striking out "or (7)" and inserting in lieu thereof "(7), (8), or (9)".

INFORMATIONAL DISCLOSURE TO OTHER GOVERNMENTAL BODIES

SEC. 7. Section 29 of the Consumer Product Safety Act (15 U.S.C. 2078) is amended by adding at the end thereof the following new subsection:

"(e) The Commission may provide to another Federal agency or a State or local authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a)(2) is to be considered confidential is not included in any copy of any report provided under this subsection; and (2) each Federal agency and State and local authority which receives under this subsection a copy of a report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

"(A) any copy of any such report, or

"(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local authority may disclose to any member of the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b)."

TITLE 18 PROTECTION

SEC. 8. Section 1114 of title 18, United States Code, is amended by inserting "the Consumer Product Safety Commission," immediately after "Department of Health, Education, and Welfare".

ADVANCE PAYMENTS; RENT AND SEMINAR EXPENSES

SEC. 9. (a) Section 7(d)(2) of the Consumer Product Safety Act (15 U.S.C. 2056(d)(2)) is amended by adding at the end thereof the following: "Payments under agreements entered into under this paragraph may be made without regard to section 3648 of the Revised Statutes (31 U.S.C. 529)."

(b) Section 27(b) of such Act (15 U.S.C. 2076(b)) is amended—

(1) by striking out "and" at the end of paragraph (7), and

(2) by redesignating paragraph (8) as paragraph (10) and by inserting after paragraph (7) the following new paragraphs:

"(8) to lease, without regard to the Act of March 3, 1877 (40 U.S.C. 34), buildings or parts of buildings in the District of Columbia for the use of the Commission;

"(9) to pay travel and subsistence expenses incurred in connection with safety education seminars of the Commission by participants in the seminars; and"

SUBSTANTIAL PRODUCT HAZARD

SEC. 10. (a) Section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)) is amended by adding at the end the following: "An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States (or from doing any combination of such actions) the product with respect to which the order was issued."

(b) Section 19(a)(5) of such Act (15 U.S.C. 2068(a)(5)) is amended (1) by striking out "and to" and inserting in lieu thereof "to", and (2) by inserting "and to prohibited acts" after "refund".

(c) Section 22 of such Act (15 U.S.C. 2071) is amended—

(1) by striking out in subsection (a) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(a) The United States district courts shall have jurisdiction to take the following action:

"(1) Restrain any violation of section 19.

"(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

"(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.";

(2) by striking out in subsection (b) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(b) Any consumer product—

"(1) which fails to conform with an applicable consumer product safety rule, or

"(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d),

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."

COMPLIANCE TESTS

SEC. 11. Section 7(a) of the Consumer Product Safety Act (15 U.S.C. 2056(a)) is amended (1) by inserting "(1)" after "(a)", (2) by redesignating paragraphs

(1) and (2) as subparagraphs (A) and (B) respectively, and (3) by adding at the end the following new paragraph:

"(2) No consumer product safety standard or other agency action of the Commission may provide that a consumer product is in compliance with such standard by reason of the fact that the product is part of a class (or other grouping) of consumer products which class (or other grouping) was tested for compliance with such standard on a sample or other basis which does not require that each product in the class (or other grouping) be (A) tested for compliance, and (B) found to comply with the standard."

CIVIL LITIGATION

SEC. 12. (a) Section 11(a) of the Consumer Product Safety Act (15 U.S.C. 2060(a)) is amended by (1) striking out "and to the Attorney General" in the second sentence; and (2) striking out "transmit to the Attorney General, who shall file in the court," in the third sentence and inserting in lieu thereof "file in the court".

(b) The second sentence of section 22(a) of such Act (15 U.S.C. 2071(a)) is amended by striking out "(with the concurrence of the Attorney General)".

(c) Section 27(b)(7) of such Act (15 U.S.C. 2076(b)(7)) is amended to read as follows:

"(7) to (A) initiate, prosecute, defend, or appeal (other than to the United States Supreme Court), through its own legal representative, any civil action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, and (B) initiate, prosecute, defend, or appeal any criminal 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."

(d) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by striking out "with the concurrence of the Attorney General".

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 13. Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to read as follows:

"(d) In the case of a risk of injury—

"(1) which is associated with a consumer product, and

"(2) which may be regulated under—

"(A) this Act, and

"(B) the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act,

the Commission may take action under this Act to regulate such risk of injury only if the Commission, by order published in the Federal Register, finds that it is in the public interest to regulate such risk of injury under this Act."

EFFECT ON STATE LAW

SEC. 14. (a) Section 18(b) of the Federal Hazardous Substances Act is amended to read as follows:

"(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

"(B) Except as provided in paragraphs (2) and (3), if under regulations of the Secretary promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

"(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement appli-

cable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (for packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

"(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

"(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the effect of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

"(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(4) As used in this subsection, the term 'Commission' means the Consumer Product Safety Commission."

(b) Section 16 of the Flammable Fabrics Act is amended to read as follows:

"PREEMPTION

"Sec. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect the public against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

"(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

"(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, a flammability standard or other regulation of such State or political subdivision applicable to a fabric, regulated material, or product subject to a standard or other regulation in effect under this Act, if—

"(A) compliance with the requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

"(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the effect of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

"(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(d) For purposes of this section—

"(1) a reference to a flammability standard or other regulation for a fabric, related material, 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

"(2) the term 'Commission' means the Consumer Product Safety Commission."

(c) Section 8 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1476) is amended (1) by striking out "Whenever" and inserting in lieu thereof "(a) Except as provided in subsections (b) and (c), whenever", and (2) by adding at the end thereof the following:

"(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirements in effect under this Act.

"(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, a standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

"(A) compliance with the standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

"(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the effect of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

"(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation."

(d) Subsections (b) and (c) of section 26 of the Consumer Product Safety Act (15 U.S.C. 2075) are amended to read as follows:

"(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuity in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.

"(c) Upon application of a State or political subdivision of a State, 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 which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation (1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and (2) does not unduly burden interstate commerce. In determining the effect of a State or political subdivision requirement on interstate commerce, the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the consumer product to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar requirement, and the need for a national, uniform requirement under this Act for such consumer product."

PURPOSE

The principal purposes of H.R. 6844, as reported, are: (1) To extend the authorization of appropriations for the Consumer Product Safety Act and the other Acts administered by the Consumer Product Safety Commission, not to exceed \$51 million for fiscal year 1976, \$14 million for the interim period, \$60 million for fiscal year 1977, and \$68 million for fiscal year 1978; (2) to eliminate the regulation of tobacco and tobacco products and ammunition and firearms from the Commission's jurisdiction; (3) to strengthen the prohibited acts and enforcement sections of the Act; (4) to authorize the Commission to conduct its civil litigation through its own legal representative; and (5) to amend the Consumer Product Safety Act and the other three major Acts administered by the Commission (namely, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act of 1970) to provide for uniformity of administration on Federal preemption of state and local requirements.

SUMMARY

H.R. 6844 has been reported by the committee with amendments. The following summary is of the reported bill.

Under the provisions of this bill:

(1) For the purposes of carrying out the provisions of the Consumer Product Safety Act and the other Acts administered by the Commission (the Federal Hazardous Substances Act, the Flammable Fabrics

Act, the Poison Prevention Packaging Act of 1970, and the Refrigerator Safety Act) sums not to exceed \$51 million for fiscal year 1976; \$14 million for the transition period to the new fiscal year beginning October 1, 1976; \$60 million for fiscal year 1977; and \$68 million for fiscal year 1978 are authorized to be appropriated.

(2) The Commission's jurisdiction over the regulation of pesticides under the Poison Prevention Packaging Act of 1970 is eliminated. The enactment of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516) gave the Environmental Protection Agency effective regulatory and enforcement authority in this area, including issuance of packaging standards for the purpose of child protection. Therefore, the residuary authority of the Consumer Product Safety Commission to issue such standards is deemed unnecessary for effective Federal regulation.

(3) Authority to regulate tobacco and tobacco products and firearms and ammunition under the Federal Hazardous Substances Act is specifically eliminated from the Commission's jurisdiction. Under the Consumer Product Safety Act, as enacted, the Commission has had no authority to regulate these products.

(4) The Commission may establish noncareer positions to super-grade levels with specific principal duties, subject to Civil Service Commission disapproval within a specified time period. Appointments to such positions are not subject to approval or disapproval by the White House.

(5) The 150 days normally allowed for the development of a consumer product safety standard shall begin on the date an offer to develop a proposed standard is accepted. Under existing law, the period of time for development begins with the date of publication in the Federal Register of an invitation for offerors to develop a proposed standard.

(6) Prohibited acts now include failing or refusing to establish or maintain records required by Commission rule; and failing to comply with any rule relating to new products or performance and technical data.

(7) The Commission is permitted to disclose copies of any accident or investigation report to another Federal agency or State or local authority engaged in activities relating to health, safety, or consumer protection. However, any information deemed confidential under the Act may not be so disclosed. Any proposed subsequent disclosure to the public of such Commission report by such Federal or State agency or authority would be dependent on the Commission complying with applicable statutory notice and consent requirements.

(8) A Commission order relating to a substantial product hazard may prohibit the person to whom the order applies from manufacturing for sale, offering for sale, distributing, or importing a product determined to present a substantial product hazard. The U.S. district courts have jurisdiction to restrain any person from manufacturing, offering for sale, distributing, or importing a product in violation of such order.

(9) An amendment to the section defining a consumer product safety standard re-emphasizes the original intent of the Consumer Product Safety Act that each consumer product manufactured for sale, offered

for sale, distributed in commerce, or imported into the United States comply with an applicable consumer product safety standard.

(10) The Commission has the power to initiate, prosecute, defend, or appeal (other than to the Supreme Court) through its own legal representative any civil action for the enforcement of the laws its administers. Existing law requires concurrence of the Attorney General prior to the Commission's conduct of its own civil and criminal litigation. Under this bill criminal actions will continue to be conducted by the Attorney General or by the Commission's legal representative with the concurrence of the Attorney General.

(11) A risk of injury associated with a consumer product which may be regulated under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, or the Poison Prevention Packaging Act of 1970 may be regulated under the Consumer Product Safety Act only if the Commission finds, by order published in the Federal Register, that it is in the public interest to do so.

(12) Uniformity of administration of Federal preemption of State and local requirements is provided by amendments to existing sections in the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act of 1970. State or local requirements have to be identical to Federal requirements unless the State or locality applies to and receives from the Commission an exemption. To obtain an exemption, a State or locality has to show that its own requirement (a) would not cause a product to be in violation of a federal requirement relating to the same risk, (b) provides a significantly higher degree of protection from the same risk, and (c) does not unduly burden interstate commerce. In determining the effect of a State or local requirement on interstate commerce, the Commission is required to consider and make appropriate findings specified in the bill.

BASIS FOR THE LEGISLATION

The Consumer Product Safety Act was enacted on October 27, 1972, the culmination of 5 years of investigation and legislative efforts. The National Commission on Product Safety had been established in 1967 with a mandate to investigate and report to Congress on the scope of existing measures to protect consumers against unreasonable risks associated with consumer products. Their report, submitted to Congress in 1970, recommended the establishment of a new, independent, regulatory agency due to the inadequacy of existing protection from risks of injury, illness, or death associated with consumer products. Congressional consideration confirmed the need to establish a single independent agency with authority sufficient to regulate the full spectrum of consumer products sold to or used by the public.

The Consumer Product Safety Act contains many innovative provisions to insure both its independence from political control and the broadest possible input into agency activities from all interested per-

sons. Thus, section 27(k) of the Act requires the concurrent submittal of legislative recommendations to the President and to the Congress.

The committee bill arises from the submittal of legislative recommendations to the Congress by the Consumer Product Safety Commission in March 1975. These recommendations developed from the experience and problems of the Commission in establishing a new and comprehensive agency program for the purpose of protecting the public from unreasonable risks associated with consumer products. Discussion of specific reasons for the legislative changes embodied in the committee bill is found in the analysis of its separate provisions.

The specific areas addressed by the Commission's legislative recommendations included the extension of authorization of appropriations; the removal from the Commission's jurisdiction of the authority to regulate tobacco and tobacco products and firearms and ammunition under the laws administered by the Commission; the authority to establish noncareer positions at supergrade levels with specified principal duties not subject to approval or disapproval by any office or entity within the Executive Office of the President; the change in the specified statutory date on which the 150-day period begins for development of a proposed consumer product safety standard; strengthening of the prohibited acts and enforcement provisions; the authority to conduct civil and criminal litigation through its own legal representatives; general rulemaking authority; disclosure of accident and investigation reports under specified conditions to State or local authorities; and a change in the standard by which the Commission may decide to regulate a risk of injury associated with a consumer product under the Consumer Product Safety Act or the transferred Act.

As the summary of the committee bill indicates, most of these proposed statutory revisions were adopted, although several were modified in the course of Subcommittee and full Committee consideration. The most important addition made to the introduced bill was the amendment adopted by the full committee to provide uniformity of administration under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act of 1970 on Federal preemption of State and local requirements relating to protection of the public from a risk associated with a consumer product. The need for clarification of this issue was amply demonstrated by witnesses at the Subcommittee hearings. The full Committee amendment is intended to achieve a rational balance between, first, the need for Federal preemption in order to prevent a proliferation of differing State and local requirements which may be overly burdensome and, second, the need to permit a State or locality to establish different requirements under certain circumstances to provide a significantly higher degree of protection for its own citizens.

The need for a higher level of appropriated funds has been amply set out in the Committee's records. A chart of the Commission's authorization appropriation history to date is set out below.

CONSUMER PRODUCT SAFETY COMMISSION
SUMMARY OF AUTHORIZATIONS AND APPROPRIATIONS

Fiscal year:	Amount authorized	Appropriation request	House appropriation	Total appropriated	Adjustment	Total available	Amount obligated
1973 ¹	\$55,000,000				\$13,439,000	\$13,439,000	\$13,413,000
1974	59,000,000	\$30,900,000	\$30,900,000	\$30,900,000	² +3,876,000	34,776,000	29,012,000
1975	64,000,000	42,819,000	³ 36,219,219	⁴ 38,269,000			
1975	64,000,000	42,819,000	⁵ 37,454,000	37,454,000	⁷ -500,000	36,954,000	

¹ No appropriation. Budget authority transferred from existing appropriations of predecessor agencies as follows, \$11,100,000 from FDA, \$3,000,000 from the Department of Commerce and \$1,500,000 from FTC.

² Funds transferred from FDA as Bureau of Product Safety share of impounded supplemental appropriations.

³ H.R. 15472.

⁴ H.R. 15472 was vetoed by President Nixon.

⁵ H.R. 36901.

⁶ Funding reduced by \$815,000 as savings from operations under the continuing resolution.

⁷ Reflects final action on rescission request.

In order to accomplish its statutory goals in a timely fashion, the Committee is convinced that appropriations more nearly approaching the conservative levels authorized in this legislation are essential.

COMMITTEE CONSIDERATION

The Subcommittee on Consumer Protection and Finance held hearings on H.R. 5361, introduced by Mr. Staggers and Mr. Devine, from April 21 through 24, 1975.

Testimony was presented by the Chairman and the other four Commissioners of the Consumer Product Safety Commission, members of the House of Representatives, the Department of Justice, and consumer, industry, and university groups. These witnesses represent the groups which interface with and impact on Commission activities on a regular basis.

The Subcommittee, after executive session, unanimously reported a clean bill, H.R. 6844, sponsored by the Subcommittee Chairman, Mr. Van Deerlin, Mr. Metcalfe, and Mr. McCollister, on May 6, 1975, to the full committee with amendments.

During executive session a Subcommittee amendment deleted the provision in the introduced bill which would have given the Commission general rulemaking authority. This provision was deleted, because the Subcommittee believed it might be construed as giving the Commission general substantive rulemaking authority. Similar provisions in the Federal Food, Drug, and Cosmetic Act and the Federal Trade Commission Act have been held to do so in recent decisions by circuit courts of appeal. The Commission did not seek substantive rulemaking authority through this provision, because the Consumer Product Safety Act contains specific rulemaking authority in many specified areas, for example, promulgating consumer product safety rules, requiring product certification by manufacturers and private labelers, and prescribing reasonable product testing programs. The Committee believes the authority to issue procedural and interpretive regulations is inherent in the authority contained in the Consumer Product Safety Act and, therefore, that the provision is unnecessary.¹

¹ See authorities cited in *Morrow v. Clayton*, 326 F. 2d 36, 44 (1963).

The full Committee favorably ordered the bill reported to the House with further amendments, after three days in executive session, by voice vote, a quorum being present, on June 9, 1975.

OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the committee issues the following oversight findings:

In the 93rd Congress oversight hearings were held by the Subcommittee on Commerce and Finance of this Committee (see Serial No. 93-83), reviewing the operations of the Consumer Product Safety Commission since its inception on May 14, 1973. Statements and reports were received from the Consumer Product Safety Commission, members of Congress, government agencies involved in activities of the Commission, consumer groups, the American Society for Testing and Materials, and the Association of Trial Lawyers of America. Both the achievements and the problems of the new Commission were explored. No legislative changes were then recommended due to the fact that the Commission had been in existence for less than one year.

The reorganization of subcommittee jurisdiction of this committee in the 94th Congress resulted in the formation of the Subcommittee on Consumer Protection and Finance, whose chairman is Lionel Van Deerlin. This Subcommittee held hearings on the bill representing the legislative recommendations of the Commission in April 1975. Substantial information on the experience of the Consumer Product Safety Commission in administering the statutes under its jurisdiction was received, including both favorable and adverse reactions. The need to establish consumer product safety standards remains unfulfilled; the establishment of the Commission's basic administrative procedures is also incomplete but progressing. The Committee recognizes the difficulties inherent in establishing a comprehensive scheme for the regulation of a multitude of complex, diverse consumer products. The committee also specifically intends that the legislative changes made by this bill in the underlying statutes provide a framework for more consistent administration of these laws and for the early development of consumer product safety standards in areas where the need to regulate the risk of injury has been manifested.

The committee has not received oversight reports from either its own recently organized Subcommittee on Oversight and Investigations or the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the committee makes the following statement regarding the inflationary impact of the reported bill:

The committee is unaware of any inflationary impact on the economy which would result from the passage of H.R. 6844. As the authorization and appropriation history chart in the section on the basis for this legislation shows, the level of appropriated funds has been substantially below the level of authorized funds. The oversight findings of the Committee do not reveal evidence of increases in costs of

manufacture or prices to consumers as a result of the administration of the Consumer Product Safety Act.

The Director of the Office of Congressional Relations, Consumer Product Safety Commission, received the following memorandum from the Executive Director of the Bureau of Economic Analysis of the Commission regarding the inflationary impact of H.R. 6844:

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., June 12, 1975.

Memorandum to: Thomas A. McKay, Director, OCR.

Thru: The Executive Director.

From: Walter R. Hobby, Director, BEA.

Subject: Draft House Authorization Bill for CPSC.

The Bureau of Economic Analysis has reviewed the House draft bill titled, "Consumer Product Safety Commission Improvements Act of 1975." This bill provides new authorization of appropriations and contains technical and perfecting amendments to improve the efficiency and effectiveness of the Consumer Product Safety Commission.

Section 2 authorizes appropriations for Fiscal Years 1976, 1977, and 1978. The sums authorized to be appropriated in Fiscal Years 1976 and 1977 are less than the current authorization for Fiscal Year 1975. For Fiscal Year 1978, the authorization exceeds the 1975 authorization by 6%.

Sections 3 through 16 concern Commission jurisdiction, budget determination and employee appointments, timing of standards development, enforcement, disclosure of information, advance payments, sale of products constituting a substantial hazard, compliance testing limitations, litigation, effect on state law, and pre-emption. We find that none of these amendments would lead to significant increases in costs of manufacture or prices to consumers.

In view of these considerations, we believe that the bill, if enacted, would have no inflationary impact.

COST ESTIMATE

In accordance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the committee estimates that the following costs will be incurred in carrying out the functions under H.R. 6844:

Fiscal year:	Millions
1976 -----	\$51
Transition quarter -----	14
1977 -----	60
1978 -----	68

The Consumer Product Safety Commission, which administers these programs, has transmitted its projected resource requirements for purposes of the authorization of appropriations contained in H.R. 6844:

Fiscal year:	Millions
1976 -----	\$51
Transition quarter -----	14
1977 -----	60
1978 -----	68

EXPLANATION OF THE REPORTED BILL BY SECTION

SECTION 1—SHORT TITLE

The first section of the bill provides that the bill may be cited as the "Consumer Product Safety Commission Improvements Act of 1975".

SECTION 2—AUTHORIZATION OF APPROPRIATIONS

Section 2 authorizes appropriations for the purposes of carrying out the provisions of the Consumer Product Safety Act (other than the provisions of section 27(h) [relating to the planning and construction of certain facilities]) and for the purpose of carrying out the functions, powers, and duties transferred to the Consumer Product Safety Commission (hereinafter in this analysis referred to as the "Commission") under section 30 of the Act. Section 30 of the Consumer Product Safety Act transfers to the Commission the administration and enforcement of the Flammable Fabrics Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Act of August 2, 1956 (relating to refrigerator safety). Thus, an extension of the authorization for the Consumer Product Safety Act is an extension of the transferred Acts.

There is authorized \$51,000,000 for the fiscal year ending June 30, 1976; \$14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976; \$60,000,000 for the fiscal year ending September 30, 1977; and \$68,000,000 for the fiscal year ending September 30, 1978.

SECTION 3—LIMITATIONS ON JURISDICTION

Pesticides.—Subsections (a) and (d) of section 3 make amendments which remove from the Consumer Product Safety Commission jurisdiction over pesticides under the Poison Prevention Packaging Act of 1970. Section 30(a) of the Consumer Product Safety Act transferred to the Commission the functions of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) to the extent such functions related to the administration and enforcement of the Poison Prevention Packaging Act of 1970. However, the Federal Environmental Pesticide Control Act of 1972 (Public Law 92-516), enacted October 21, 1972, six days prior to the enactment of the Consumer Product Safety Act, repealed the provision in the Federal Insecticide, Fungicide, and Rodenticide Act relating to the enforcement of the Poison Prevention Packaging Act of 1970. As a result, the Commission received the authority to issue child protection packaging standards for pesticides, but it did not receive any authority to enforce such standards. Further, the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by the 1972 Act) authorizes the Administrator of the Environmental Protection Agency to adequately promulgate and enforce child protection packaging standards for pesticides. Therefore, the Commission requested to have removed and the Committee agreed to remove the Commission's authority in this area. Subsection (b) of section 3 makes a conforming amendment.

Tobacco and Tobacco Products.—A Federal district court in *American Public Health Association v. Consumer Product Safety Commission* (Civil Action No. 74-1222 (D.D.C. 1975)) has ordered the Commission to consider a petition to ban certain cigarettes under the Federal Hazardous Substances Act. The amendments made by subsection (c) of section 3 would remove the Commission's jurisdiction to take such action, or to exercise any regulatory authority over tobacco and tobacco products, under the Act or any other Act administered by the Commission.

Ammunition.—Similarly, a second Federal district court in *Committee for Handgun Control v. Consumer Product Safety Commission*, 388 F. Supp. 216 (D.D.C. 1974), has ordered the Commission to consider a petition to ban ammunition for handguns under the Federal Hazardous Substances Act. The amendment made by subsection (c) (2) of section 3 removes the Commission's jurisdiction to exercise any regulatory authority over handguns or ammunition under that Act or any Act administered by the Commission. To the extent that black powder is intended as a component of fireworks devices, the Commission retains its jurisdiction over it (as well as fireworks devices) under the Federal Hazardous Substances Act and the Consumer Product Safety Act.

SECTION 4—BUDGET AND EMPLOYEE PROVISIONS

Subsection (a) of section 4 requires the approval of the Commission prior to the submission of requests or estimates for regular, supplemental, or deficiency appropriations by the Chairman on behalf of the Commission.

Subsection (b) is a technical amendment.

In writing the Consumer Product Safety Act, the Congress took considerable care to see that the Consumer Product Safety Commission became a truly independent Commission, free from political pressure and influence. However, in the two years of its existence, the Commission has been subjected to one form of political pressure which the Congress did not anticipate. The Civil Service Commission refused to approve noncareer executive appointments of the Commission until the appointment was submitted to and received political approval from the White House.

Such political clearance is totally inappropriate for an independent regulatory agency. To remedy this situation, subsection (c) of section 4 authorizes the Chairman, subject to the approval of the Commission, to establish noncareer positions in grades GS-16, GS-17, and GS-18 whose principal duties will involve (1) significant participation in the determination of major Commission policies, or (2) service as a personal assistant or advisor to the Chairman or other Commissioner. The Chairman may not establish such a position if the Civil Service Commission determines that the principal duties of the position will not involve the duties described above. Such a determination by the Civil Service Commission must be made within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a letter of intent to establish the position from the Chairman of the Commission. Establishment of the position is also subject to Civil Service Commission approval in accordance with the provisions of

Chapter 51 of Title 5 of the United States Code. However, the Civil Service Commission must take action under Chapter 51 of Title 5 to approve or disapprove the establishment of a position within 20 days (excluding Saturdays, Sundays and legal public holidays).

Appointments to and removals from the noncareer positions shall be made by the Chairman, subject to the approval of the Commission. Appointments to and removals from positions of personal assistants or advisors to the Chairman or other Commissioners shall be made by the Commissioner concerned and shall not be subject to the approval of any other Commissioner. Further, such appointments to and removals from the noncareer positions shall not be subject to approval by any officer or entity within the Executive Office of the President.

Because the positions authorized by subsection (b) are noncareer positions, appointments to and removals from the positions are specifically exempted from the provisions of Title 5 of the United States Code (other than section 3324) governing appointments to and removal from positions in the competitive service. Section 3324 of Title 5 requires approval by the Civil Service Commission of the qualifications of any proposed appointee to a position in grades GS-16, 17, or 18. However, the Civil Service Commission must act to approve or disapprove the qualifications within twenty days (excluding Saturdays, Sundays and legal public holidays) after the date it receives from the Chairman or other Commissioner a letter of intent to make such appointment. Such letter of intent shall include such documentation as may be necessary for the Civil Service Commission to act on the proposed appointment. Removals from the positions are not exempted from the provisions of sections 7511, 7512 and 7701 of Title 5, United States Code, relating to adverse actions against preference eligibles which apply to noncareer positions as well as to positions in the competitive service.

SECTION 5—STANDARDS DEVELOPMENT

Subsections (a) and (c) of section 5 extend the period provided under the Act for the development of consumer product safety standards. Subsection (a) amends section 7(b) of the Act to provide that the period in which the offeror of an accepted offer is to develop the proposed standard shall be a period ending 150 days after the date the offer is accepted, unless the Commission for good cause finds that a different period is appropriate. Thus each offeror will have the same period during which to develop a proposed standard, regardless of when the offer is accepted. Present law provides that the development period shall be a period ending 150 days after the publication of the notice commencing the proceeding for the development of a consumer product safety standard. Subsection (c) makes a conforming amendment.

The amendment made by subsection (b) makes it clear that the Commission may itself develop a standard or contract with third parties for the development of a standard if the Commission determines that no offeror of an accepted offer to develop such a standard has submitted an acceptable proposed standard. If the Commission determines that only a particular aspect of a proposed standard is not acceptable, the Commission may take action to develop that aspect of the

standard, or if it determines that a revision of that aspect requires review and possible revision of the remainder of the standard, it may take action to develop the entire standard.

SECTION 6—PROHIBITED ACTS AND ENFORCEMENT

Section 6 amends the Act to enforce, through section 19 (relating to prohibited Acts) and section 20 (relating to civil penalties), the failure to comply with certain rules which the Commission is presently authorized to issue. Presently, the Commission has authority to issue rules requiring the establishment and maintenance of records (section 16(b)), rules prescribing procedures to insure that the manufacturer of any new consumer product furnish notice and a description of the product to the Commission prior to its distribution in commerce (section 13), and rules requiring any manufacturer of a consumer product to provide performance and technical data to the Commission and to prospective purchasers and first purchasers of such product (section 27(e)). Section 6(a) amends section 19(a) of the Act to make it unlawful for any person to fail to comply with such rules. Section 6(b) amends section 20(a) (1) of the Act to provide that a violation of the rules respecting new consumer products or the rules respecting performance and technical data shall constitute a separate offense with respect to each consumer product involved.

SECTION 7—INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

Section 7 authorizes the Commission to provide under prescribed conditions accident or investigation reports to another Federal agency or a State or local authority engaged in activities relating to health, safety, or consumer protection. Such reports may be provided to such an agency or authority only if information which under section 6(a) (2) of the Act is considered confidential is not included in any copy of such report provided such an agency or authority and only if the agency or authority which receives the report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in any copy of such report or any information contained in any such report which the agency or authority makes available to any member of the public.

No such Federal agency or State or local authority may disclose to any member of the public any information contained in a report received from the Commission unless the Commission has complied with the applicable requirements of section 6(b) of the Act (relating to notice to manufacturers and private labelers and opportunity to respond).

SECTION 8—TITLE 18 PROTECTION

Section 8 amends section 1114 of Title 18, United States Code, to provide protection for Commission employees assigned to perform investigative, inspection, or law enforcement functions. Section 1114 of Title 18 provides penalties for any person who kills such an employee engaged in the performance of the employees' official duties.

SECTION 9—ADVANCE PAYMENTS; RENT AND SEMINAR EXPENSES

Under section 7(d) (2) of the Act, if an offer to develop a standard is accepted, the Commission may contribute to the offeror's costs in developing such standard. The amendment made by subsection (a) of section 9 of the bill permits the Commission to make such contributions in advance.

Subsection (b) of section 9 authorizes the Commission to lease buildings or parts of buildings in the District of Columbia and to pay travel and subsistence expenses incurred in connection with safety education seminars of the Commission by participants in the seminars.

SECTION 10—SUBSTANTIAL PRODUCT HAZARD

Section 15 of the Consumer Product Safety Act provides means for notifying the public of products distributed in commerce which present a substantial product hazard and for removing such products from the hands of consumers. Under section 15(d), the Commission may require manufacturers, distributors or retailers of a product presenting a substantial product hazard to repair it, replace it, or refund the purchase price. Subsection (a) of section 10 of the bill amends section 15(d) of the Act to authorize the Commission to include in orders issued under section 15(d) a prohibition against the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States of products with respect to which an order is issued under section 15(d).

Under existing law, the Commission's only authority to prevent dissemination of a product containing a defect which constitutes a substantial product hazard is found in section 17(a) (4) of the Act. Under that section, any consumer product offered for import into the United States which has a product defect which constitutes a substantial product hazard shall be refused admission into the United States. It is not necessary that a determination that a product contains a defect constituting a substantial product hazard be made under section 15 prior to refusal of admission of a product under section 17(a) (4), for section 17(b), like section 15(e) provides an adjudicatory hearing under section 554 of Title 5 of the United States Code during which the Commission's assertion that a product contains a defect constituting a substantial product hazard may be challenged. The amendment made by section 10(a) does not change the current authority under section 17(a) (4). The addition to section 15(d) of the Act made by section 10(a) of the bill supplements the authority to prevent dissemination of products containing defects which constitute substantial product hazards by authorizing the Commission to prohibit the further manufacture for sale, offering for sale, distribution in commerce, or importation of products subject to an order under section 15(d). Any person who violates such an order will be subject to civil and criminal penalties in accordance with sections 20 and 21 of the Act.

Subsection (b) of section 10 makes a conforming amendment.

Subsection (c) amends section 22 of the Act to give the United States district courts jurisdiction to restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into

the United States a product in violation of an order in effect under section 15(d). Subsection (c) also makes any consumer product the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States of which has been prohibited by an order in effect under section 15(d) subject to seizure.

SECTION 11. COMPLIANCE TESTS

Section 11 amends section 7(a) of the Act to provide that no consumer product safety standard or other agency action relating to a consumer product safety standard may provide that a consumer product is in compliance with a safety standard by reason of the fact that the product is part of a class or other grouping of consumer products which was tested for compliance with the safety standard on a sample or other basis which does not require that each product in the class or grouping be tested and be found to comply with the standard.

The amendment reiterates the original intention of the Act that each consumer product manufactured for sale, offered for sale, distributed in commerce, or imported into the United States comply with an applicable consumer product safety standard under the Consumer Product Safety Act. The amendment would prohibit any sampling or other testing plan permitting less than one hundred per cent compliance with a safety standard from being either incorporated or referenced in a safety standard promulgated under section 7. It does not preclude the use of guidelines for reasonable testing programs under section 14 of the Act. However, any such testing programs under section 14 of the would be in addition to and not in substitution for the requirements of a consumer product safety standard under section 7.

SECTION 12—CIVIL LITIGATION

Section 12 authorizes the Commission to initiate, prosecute, defend, or appeal (other than to the Supreme Court), through its own legal representative, any civil action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction. Presently the Commission may, without the concurrence of the Attorney General, direct attorneys employed by it to appear and represent it in actions against an imminently hazardous consumer product under section 12 of the Act, but in all other civil actions the Commission must have the concurrence of the Attorney General in order to act through its own legal representative.

Section 12 does not alter the provisions of current law relating to the initiation, prosecution, defense, or appeal of any criminal action.

Section 12 does not prohibit the Commission from requesting the Attorney General to represent it in civil actions, and your Committee anticipates that the Commission may frequently wish to utilize the resources of the Attorney General.

SECTION 13—JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

Section 13 provides the Commission with greater flexibility in determining which one of the Acts it administers will be used to regulate a risk of injury associated with a consumer product which could be regulated under either the Consumer Product Safety Act or one of

the other Acts administered by the Commission. Section 30(d) of the Consumer Product Safety Act allows the Commission to regulate a risk of injury which is associated with a consumer product 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 only in accordance with the provisions of those Acts.

Such a requirement is unnecessarily restrictive. Your Committee would permit the Commission to take action under the Consumer Product Safety Act to regulate a risk of injury associated with a consumer product which could also be regulated under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act if the Commission finds that it is in the public interest to regulate such risk of injury under the Consumer Product Safety Act. The Commission's finding must be by order and must be published in the Federal Register.

SECTION 14—EFFECT ON STATE LAWS

Section 14 amends the preemption provisions of the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act of 1970, and the Consumer Product Safety Act to make them uniform with each other. The preemption provision would apply anytime there is in effect a Federal requirement under one of the Acts designed to protect against a risk of injury or illness. (For purposes of this analysis the term "Federal requirement" shall include a cautionary labeling requirement under section 2(p) or 3(b) of the Federal Hazardous Substances Act, a regulation promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act, a flammability standard or other regulation for a fabric, related material, or product under the Flammable Fabrics Act, a standard for special packaging or related requirement under the Poison Prevention Packaging Act of 1970, and a consumer product safety standard under the Consumer Product Safety Act.)

The provision added to the four Acts provides that with two exceptions, if a Federal requirement for a product is in effect under one of the laws administered by the Commission, no State or political subdivision of a State may establish or continue in effect a requirement applicable to the same product and designed to protect against the same risk of injury or illness unless the State or local subdivision requirement is identical to the Federal requirement. As a general rule it is intended that Federal authority—once exercised—with respect to a risk of injury or illness broadly preempt State authority to regulate the same risks of injury except through requirements which are identical to the Federal requirements. Two exceptions to the general rule are provided by section 14. First, a State or local government may establish a requirement applicable to a product for its own use so long as the State or local requirement provides a higher degree of protection than the Federal requirement. Likewise, the Federal Government may establish such a requirement for products which are used by the Federal Government.

The second exception to the general rule recognizes the traditional role of the State in providing for the safety of its citizens. Under

this exception, the Commission may permit a State or local subdivision to establish its own requirement designed to protect against the same risk of illness or injury as a Federal requirement if (1) compliance with the State requirement would not cause a product to be in violation of the Federal requirement, (2) if the State requirement provides a significantly higher degree of protection from the risk of injury or illness and (3) if the State requirement does not unduly burden interstate commerce.

In determining whether a State requirement would have an effect on interstate commerce, the Commission must consider and make findings on the technological and economic feasibility of complying with the State requirement, the cost of complying with the requirement, the geographic distribution of the product to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption for a similar requirement, and the need for a national, uniform requirement. If the Commission determines that the State requirement would have an effect on interstate commerce, it must then decide whether such effect would constitute an undue burden on interstate commerce. It is anticipated that in making this determination, the Commission will weigh the extent of the burden against the need of the State to provide its citizens with a significantly higher degree of protection than is provided by the Federal requirement.

Presently all four of the Acts amended by section 14 of the bill contain preemption provisions. However, the provisions are highly dissimilar and set forth different policies toward preemption where such differences are not warranted. Under existing law, section 18 of the Federal Hazardous Substances Act preempts all differing State laws pertaining to precautionary labeling of hazardous substances. However, the Federal Hazardous Substances Act makes no provisions for preemption of State laws by regulations issued under or for the enforcement of section 2(q) of the Act. As a result, manufacturers subject to safety requirements issued under or for the enforcement of section 2(q) receive no protection from a proliferation of unnecessary differing State standards.

Section 16 of the Flammable Fabrics Act provides that the Flammable Fabrics Act is intended to supersede any inconsistent law of any State or political subdivision. Use of the term "inconsistent" has resulted in some confusion as to the degree of Federal preemption intended by the Act. Adoption of the Committee amendment would eliminate such confusion.

Section 26 of the Consumer Product Safety Act contains a preemption provision similar to that contained in the Committee bill. Presently under section 26, a State may be permitted to put into effect a safety standard which is not identical to the Federal standard if the proposed State standard imposes a higher level of performance than the Federal standard, is required by compelling local conditions, and does not unduly burden interstate commerce. The amendment made by section 14 would eliminate the requirement that a State standard impose a higher level of performance and would substitute in its place the requirement that a State standard provide a significantly higher degree of protection from the risk of injury with respect to which the Federal standards are promulgated. Since not all consumer product safety standards are performance standards, it may be impossible to

judge whether a state standard imposes a higher level of performance. However, the Commission should be able to determine whether a State standard provides a significantly higher degree of protection.

Section 26 requires that there be a compelling local condition before a State may establish a standard different from a consumer product safety standard. So long as the existence of a differing State safety standard which provides a significantly higher level of protection does not impose an undue burden on interstate commerce, the lack of a compelling local condition should not preclude a State from affording its citizens such higher level of protection.

Section 8 of the Poison Prevention Packaging Act of 1970 provides that State standards for safety packaging must be identical to Federal standards. No flexibility for higher State standards is provided.

Your committee has carefully considered the nature and purpose of the Acts administered by the Commission in fashioning a uniform preemption policy for them. Adoption of the amendments made by section 14 of the committee bill will eliminate confusion and provide uniformity of administration by the Commission.

AGENCY REPORTS

CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., June 2, 1975.

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 request for the views of the Consumer Product Safety Commission on H.R. 5361, a bill cited as the "Consumer Product Safety Commission Improvements Act of 1975."

The bill, drafted by the Commission and introduced at its request, contains various statutory revisions recommended by the Commission for effective implementation of its mandate.

The Commission urges favorable action by Congress on all the amendments contained in the bill.

Sincerely,

RICHARD O. SIMPSON, *Chairman.*

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., April 24, 1975.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is a volunteer report on the draft bill to amend the Consumer Product Safety Act, H.R. 5361.

The bill contains several personnel provisions which are highly objectionable. These are directed toward resolving issues through legislative remedies that arose regarding noncareer executive assignments in the agency. The provisions of this bill are apparently intended to apply only to supergrade positions in the noncareer category. As written, however, they would apply to all grade levels and would also

impact on the application of Government-wide competitive rules and regulations in staffing the agency's career positions. We object to these sections and recommend that they be deleted. A detailed discussion follows.

DISCUSSION

Section 2(a) of the bill would provide for the employment of experts and consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the equivalent per diem rate for GS-18. This provision is in consonance with other legislation authorizing the employment of experts and consultants, and we have no objection to it.

Section 4(b)(3) would authorize the Chairman, Consumer Product Safety Commission, to establish "noncareer executive assignment positions." The Chairman's exercise of this authority would be subject to the approval of the (CPSC) Commission and the Civil Service Commission based upon criteria established by this section. The section further provides that this authority may be exercised without regard to chapter 51 of title 5, United States Code. The criteria set forth by the section, which parallel those presently established for noncareer executive assignments under the Executive Assignment System are:

"(A) be deeply involved in the advocacy of Commission programs and support of their controversial aspects;

"(B) participate significantly in the determination of major Commission policies; or

"(C) serve principally as a personal assistant or advisor to the Chairman or other Commissioner."

The technical aspects of this section are so convoluted that it is difficult to judge all of their implications. However, it clearly would allow the agency to establish positions not subject to the General Schedule that (1) may be compensated at any pay rate through the equivalent of GS-18, (2) are not subject to position classification criteria, (3) are not numerically controlled, and (4) are excepted from the competitive service, meaning the CSC has no jurisdiction over the qualifications of individuals selected for the positions. Our rationale for this opinion is as follows:

The positions authorized by this section are referred to as "noncareer executive assignment positions." This terminology was apparently derived from the Executive Assignment System which provides that supergrade (General Schedule) positions may be excepted from the competitive service by noncareer executive assignment. This section in the proposed bill, however, authorizes the establishment of these positions without regard to chapter 51, of title 5, United States Code. This means that they are not subject to the classification plan (§ 5101), the General Schedule (§ 5108), or numerical controls (§ 5108 pertaining to supergrades), and are in the excepted service since the bill designates them as "noncareer." It follows from this that the CSC would not have jurisdiction regarding the qualifications of individuals selected for the positions as is now the case with noncareer executive assignments authorized under the Executive Assignment System. The section does provide for CSC approval but *only* to the extent of determining that the selected criterion is met. (Even this relatively minor role for CSC is limited by the exclusion of CSC from approval of positions filled under criterion (C) provided by section 4(b)(4) which follows.) We recommend that this section be deleted.

Section 4(b)(4) provides that individual CPSC Commissioners may make appointments to the positions described above based on criterion (C) i.e., "personal assistants" without the approval of the Chairman or the other Commissioners. This, in part, extends the authorities described under section 4(b)(3) to individual Commissioners. It has the added objectionable dimension of omitting provision for CSC approval. We recommend that this section be deleted along with section 4(b)(3).

Notwithstanding the implications of the technical personnel aspects of these provisions, we strongly object to them on philosophical grounds. The purpose of the noncareer criteria provided by the Executive Assignment System are to place positions with politically oriented policy and advocacy responsibilities outside the competitive service. Through this system, career employees are not forced to perform duties that are directly concerned with advancement of the political philosophies of a particular Administration. The "noncareer" provisions of this bill are oriented strictly toward the management of CPSC programs which, according to statements by Chairman Simpson, may at times be controversial but are apolitical in nature and are not reflective of the political policies of a given Administration. Sections 4(b)(3) and (4) appear to say that agencies with controversial programs or with agency heads who do not want to force their key policy personnel on their successors (which Chairman Simpson voiced as a concern) should have essentially unrestricted authority to establish positions which are, in effect, in an entirely new noncareer category—with none of the controls to which noncareer positions under the Executive Assignment System are subject. As written this would set an undesirable precedent by giving authority to exclude positions from the competitive service to someone other than the President, the Congress, or the Civil Service Commission.

Section 4(b)(5) of the bill authorizes the Chairman to abolish a noncareer executive assignment position with the approval of the (CPSC) Commission. We recommend that this section be deleted along with sections 4(b)(3) and (4).

Section 4(b)(6) authorizes the agency to establish 25 GS-16, 17, and 18 positions "without regard to chapter 51 of title 5, U.S.C." except for section 5114. (Section 5114 is the reporting requirement for supergrade positions.)

This would give the agency 25 quota spaces that are in the General Schedule but are not subject to provisions of law covering the classification of such positions. We feel that the legislation of supergrade spaces for specific positions or agencies is contrary to the effective management of supergrade spaces on a Government-wide basis. It is our opinion that if supergrade spaces are legislated they should be assigned to the Government-wide pool from which they may be allocated on the basis of a system of program priorities and national needs. For this reason alone, we feel this section should be deleted. As written, the section has the additional negative aspect of removing the positions from the coverage of chapter 51, title 5, United States Code. This means the positions, even though they are in the General Schedule, are not subject to the laws governing position classification. While the Civil Service Commission would have the responsibility for reviewing the qualifications of candidates for these positions (i.e., they would

be subject to § 3324 of title 5, United States Code), this review would apply only to an analysis of the individuals' qualifications against those of the position. There would be no Civil Service Commission analysis in terms of the grade worth of the duties assigned to the positions. We recommend that this section be deleted.

Section 4(b)(7) states that: "No officer or agency of the United States, other than the Civil Service Commission for the purpose of evaluating professional qualification, shall have any authority to require the Chairman or the Commission to obtain approval for the appointment, employment, or promotion of any individual by the Commission."

This section is apparently aimed at eliminating White House involvement in the appointment of the agency's noncareer candidates. As written, however, it would not only limit the Civil Service Commission's role to "evaluating *professional* qualifications" but, it appears it would in effect remove CPSC positions *at all levels* from many of the rules and regulations administered by the Civil Service Commission. For example, it could be used to except the CPSC from Civil Service Commission requirements governing competitive appointments to positions at all grade levels, on areas of consideration for promotion, on approvals for excepted appointments under Schedules A, B, and C, and other special types of appointments, and on details and reassignments. We see no reason why the Consumer Product Safety Commission should be authorized any special exemption from our authority over its staffing system. Further, the term "professional" is unclear in its coverage and is often given a much narrower definition than might be the intent here.

Section 4(c) amends section 5108, title 5, United States Code (quota provisions) to include the 25 positions discussed above. We recommend that this section be deleted along with section 4(b)(6) which would create the 25 quota spaces.

We defer to other agencies more directly concerned on the other provisions of this bill.

This report is identical to the one submitted to the Senate Committee on Commerce on a similar bill, S. 1000, which was cleared by the Office of Management and Budget. That office advises there is no objection to the submission of this report and that enactment of H.R. 5361 would not be consistent with the Administration's objectives.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE CONSUMER PRODUCT SAFETY ACT

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] *pesticides* (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.S. 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 action taken under any statute referred to in this subparagraph,

(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 Inspection Act), meat, meat food products (as defined in section 1 (j) of the Federal Meat Inspection Act), and egg and egg products (as defined in section 4 of the Egg Products Inspection Act).

Except for the regulation under this Act or the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (B) or (E) of this paragraph, or described without regard to quantity, in section 845 (a) (5) of title 18 of the United States Code. See sections 30 (d) and 31 of this Act, for other limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer products 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 appear on such label.

(8) The term "manufactured" 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" means 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 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.

(3) *Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.*

(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] regular 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.

(3) *The Chairman may, subject to subparagraph (B), establish noncareer positions in grades GS-16, GS-17, and GS-18 the principal duties of which will involve—*

(i) *significant participation in the determination of major Commission policies, or*

(ii) *service as a personal assistant or advisor to the Chairman or other Commissioner.*

(B) *The Chairman may not establish a position under subparagraph (A)—*

(i) *without the approval of—*

(I) *the Commission, and*

(II) *the Civil Service Commission, as prescribed by chapter 51 of title 5, United States Code; or*

(ii) *if the Civil Service Commission determines the principal duties of the position will not involve the duties described in clause (i) or (ii) of subparagraph (A).*

The Civil Service Commission shall approve or disapprove, under such chapter, a position proposed to be established by the Chairman under subparagraph (A) within 20 days (excluding Saturdays, Sundays, and legal public holidays (as prescribed by section 6103 of title 5, United States Code)) after the date it receives from the Chairman a letter of intent to establish such position; and a determination by the Civil Service Commission described in clause (ii) of this subparagraph respecting such a position shall not prevent the Chairman from establishing the position if the determination is made after the expiration of such 20 days.

(4) *Appointments to and removals from positions established under paragraph (3)—*

(A) *shall be made by the Chairman, subject to the approval of the Commission; except that appointments to and removals from positions of personal assistants or advisors to the Chairman or other Commissioners shall be made by the Commissioner concerned and shall not be subject to the approval of any other Commissioner;*

(B) *may be made without regard to any provision of title 5 of the United States Code (other than section 3324) which governs only appointments to and removal from positions in the competitive service; and*

(C) *shall not be subject to approval by any officer or entity within the Executive Office of the President.*

The Civil Service Commission shall approve or disapprove the qualifications of a proposed appointee to a position established under paragraph (3) (A) within 20 days (excluding Saturdays, and legal public holidays (as prescribed by section 6103 of title 5, United States Code)) after the date it receives from the Chairman (or other Commissioner proposing such appointee) a letter of intent to appoint such proposed appointee."

(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)."

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CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) (1) 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)](A) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

[(2)](B) 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.

(2) *No consumer product safety standard or other agency action of the Commission may provide that a consumer product is in compliance with such standard by reason of the fact that the product is part of a class (or other grouping) of consumer products which class (or other grouping) was tested for compliance with such standard on a sample or other basis which does not require that each product in the class (or other grouping) be (A) tested for compliance, and (B) found to comply with the standard.*

(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) for an offer to develop a proposed consumer product safety standard shall specify [a] the period [of time, during which the standard is to be developed, which] in which the offeror of an accepted offer is to develop the proposed standard, which period shall be a period ending 150 days after [the publication of the notice] the date the offer is accepted 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 stand-

ard 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. *Payments under agreements entered into under this paragraph may be made without regard to section 3648 of the Revised Statutes (31 U.S.C. 529).*

(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. *If the Commission accepts one or more offers to develop a proposed consumer product safety standard and the Commission determines that the standard developed by each offeror whose offer for the development of such standard was accepted is not satisfactory, the Commission may develop proposals for such standard or contract with third parties for such development.*

(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 be 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.

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,] *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.

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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. *An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States (or from doing any combination of such actions) the product with respect to which the order was issued.*

(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).

* * * * *
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, and to prohibited acts);

(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) [or]; or

(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

(9) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).

* * * * *
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), (8), or (9) 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.

* * * * *

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.] *The United States district courts shall have jurisdiction to take the following action:*

(1) *Restrain any violation of section 19.*

(2) *Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).*

(3) *Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.* 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.]

(b) *Any consumer product—*

(1) *which fails to conform with an applicable consumer product safety rule, or*

(2) *the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d), 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.

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.]

(b) *Subsection (a) of this section does not prevent the Federal government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.*

(c) Upon application of a State or political subdivision [thereof] of a State, 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 *which is 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.] and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation (1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and (2) does not unduly burden interstate commerce. In determining the effect of a State or political subdivision requirement on interstate commerce, the Commission shall consider and make appropriate findings on the technological and economic feasibility complying with such requirement, the cost of complying with such requirement, the geographic distribution of the consumer product to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under*

this subsection for a similar requirement, and the need for a national, uniform requirement under this Act for such consumer product.

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 subpoena 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) in 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]

(7) to (A) initiate, prosecute, defend, or appeal (other than to the United States Supreme Court), through its own legal representative, any civil action in the name of the Commission for the purpose of enforcing the laws subject to its jurisdiction, and (B) initiate, prosecute, defend, or appeal any criminal 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;

(8) to lease, without regard to the Act of March 3, 1877 (40 U.S.C. 34), building or parts of buildings in the District of Columbia for the use of the Commission;

(9) to pay travel and subsistence expenses incurred in connection with safety education seminars of the Commission by participants in the seminars; and

[8] (10) to delegate any of its functions or powers, other than the power to issue subpoenas 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 subpoena 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.

* * * * *

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

SEC. 29. (a) * * *

* * * * *

(e) The Commission may provide to another Federal agency or a State or local authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a) (2) is to be considered confidential is not included in any copy of any report provided under this subsection; and (2) each Federal agency and State and local authority which receives under this subsection a copy of a report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local authority may disclose to any member of the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b).

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] Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.), to the extent such functions relate to the Administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

* * * * *

[(d) A risk of injury which is associated 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.]

(d) *In the case of a risk of injury—*

(1) *which is associated with a consumer product, and*

(2) *which may be regulated under—*

(A) *this Act, and*

(B) *the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act,*

the Commission may take action under this Act to regulate such risk of injury only if the Commission, by order published in the Federal Register, finds that it is in the public interest to regulate such risk of injury under this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are [hereby] authorized to be appropriated for the [purpose] purposes 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.]

(1) *\$51,000,000 for the fiscal year ending June 30, 1976;*

(2) *\$14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;*

(3) *\$60,000,000 for the fiscal year ending September 30, 1977;*

and

(4) *\$68,000,000 for the fiscal year ending September 30, 1978.*

POISON PREVENTION PACKAGING ACT OF 1970

SEC. 2. For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (f));

[(B) a pesticide as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 (a));]

[(C)] (B) a food, drug, or cosmetic as those terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

[(D)] (C) a substance intended for use as a fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

SEC. 8. [Whenever] (a) *Except as provided in subsections (b) and (c), whenever a standard established by the Secretary under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 3 (and any exemption therefrom and requirement related thereto) of this Act.*

(b) *The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.*

(c) (1) *Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, a standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—*

(A) *compliance with the standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and*

(B) *the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.*

In determining the effect of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement the graphic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, a flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this Act if—

(A) compliance with the requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the effect of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

FLAMMABLE FABRICS ACT

[PREEMPTION]

[SEC. 16. This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions.]

PREEMPTION

Sec. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect the public against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the

State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) For purposes of this section—

(1) a reference to a flammability standard or other regulation for a fabric, related material, 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

(2) the term "Commission" means the "Consumer Product Safety Commission."

THE FEDERAL HAZARDOUS SUBSTANCES ACT

Section 1. This Act may be cited as the "Federal Hazardous Substances Act".

DEFINITIONS

Sec. 2. For the purposes of this Act—

(a) * * *

(f) The term "hazardous substance" means:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 3(a), meet the requirements of subparagraph 1(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is suf-

ficiently hazardous to require labeling in accordance with this Act in order to protect the public health.

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 3(e) of this Act, presents an electrical, mechanical, or thermal hazard.

2. The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, 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, cooking, or refrigeration system of a house, and nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison.

3. The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

* * * * *

EFFECT UPON FEDERAL AND STATE LAW

SEC. 18. (a) Nothing in this Act shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1200), or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder, or under sections 204(a) (2) and 204(a) (3) of the Interstate Commerce Act, as amended (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 or regulations promulgated under section 601 of the Federal Aviation Act of 1958 (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act; or of the Public Health Service Act; or of the Federal Insecticide, Fungicide, and Rodenticide Act; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled "An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes", approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19.

[(b) It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in sections 2(f) (2) and (3) of this Act) which differs from the requirements or exemptions of this Act or the regulations or interpretations promulgated pursuant thereto. Any law, regulation, or ordinance purporting to establish such a labeling requirement shall be null and void.]

(b) (1) (A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

(B) Except as provided in paragraphs (2) and (3), if under regulations of the Secretary promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the effect of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivision applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided in accord-

ance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(4) As used in this subsection, the term "Commission" means the Consumer Product Safety Commission.

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TITLE 18, UNITED STATES CODE

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Part 1.—CRIMES

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Chapter 51.—HOMICIDE

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Chapter 51.—HOMICIDE

§ 1114. Protection of officers and employees of the United States.

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty, in the field service of the Bureau of Land Management, any employee of the Bureau of Animal Industry of the Department of Agriculture, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, *the Consumer Product Safety Commission*, or

of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

* * * * *

MINORITY VIEWS TO H.R. 6844—AMENDMENTS TO THE CONSUMER PRODUCT SAFETY ACT

Although the bill, for the most part, clarifies and perfects the Consumer Product Safety Act, it does contain several provisions of questionable wisdom.

Section 11 of H.R. 6844 prohibits the Commission from incorporating or referencing a sampling plan in a safety standard. Proponents state that this amendment is necessary since, without it, the use of sampling plans would allow a certain percentage of noncomplying items to be marketed.

We believe that such a simplistic view fails to take into consideration the problems and complexities of the manufacturing process. It is virtually impossible to produce a product which is totally in compliance with a standard. The costs inherent in 100% testing are obvious. Further, 100% testing is impossible when destructive testing is necessary. If a manufacturer sets fire to or breaks every product he manufactures, he will have none to sell. No matter how well a product is designed, some noncomplying items will get into commerce occasionally. This is true because a number of variables such as materials and workmanship are not totally within the control of the manufacturer. Consequently, unless the standard incorporates a sampling plan, a manufacturer can be assured that he is not necessarily in compliance with a standard. The only unknown factor is if and when he will be caught. Further, this provision raises the spectre of the Commission being able to initiate an action against virtually any manufacturer merely by persistently searching until a noncomplying item is found.

We fully concur with the sentiments of the proponents of this provision in wishing to provide a safer marketplace for American consumers. We believe, however, that this provision loses sight of the real purpose of the Consumer Product Safety Commission. The Commission was established not to guarantee consumers a perfectly safe world, but to protect consumers against unreasonable risks of injury. In the real world, where absolute perfection cannot be achieved, sampling plans provide the best means of guaranteeing that the amount of noncomplying product reaching the marketplace is as small as possible.

We are also concerned that the language "or other agency action" be construed to prohibit the use of statistical samples in Commission enforcement activity. We would reject such an interpretation, for it could lead to most unfortunate results, including a merely cosmetic enforcement of the Act and little more. If the government can prove noncompliance with the standard merely by showing one failing product, how will a remedy be fashioned? Without using a sampling plan how will a seizure or injunction proceeding be conducted? How will a section 15 order be fashioned? How will the amount of civil penalties to be assessed be determined? Without using sampling plans to deter-

mine both compliance and the scope of noncompliance, the government's ability to prove technical violations of the Act has been enhanced but its ability to fashion meaningful remedial orders has been considerably diminished. We do not believe that the public is well served by such a result, nor do we believe that the committee could have intended such a result.

Finally, Section 11 might be construed to prohibit the use of sampling plans in standards promulgated under one of the other acts administered by the Commission. It is our understanding that such a result is not intended.

Section 12 of the bill gives the Consumer Product Safety Commission authority to represent itself by its own attorneys in any civil proceeding except an appeal to the Supreme Court. We strongly oppose this provision. The Department of Justice is the agency charged with the responsibility of supervising federal litigation. It is the one agency which, because of its broad overview of all federal litigation, can determine when an issue involving one agency will impact on others. By vesting litigating authority in the various agencies it will be impossible to avoid inconsistencies in the positions taken by the Federal government and incompatible or conflicting decisions on important Federal issues: We believe that it is vitally important that the positions to be taken by a single agency on a question of general concern to the Federal government and all of its agencies reflect the overall best interests of the entire Federal government, and not just the interest of a particular agency in winning a particular case.

Further, no agency, including the Consumer Product Safety Commission, can hope to duplicate the litigation expertise and experience of the Department of Justice without a significant allocation of resources. The Justice Department has established a national network of U.S. Attorneys, all skilled litigators. It is illogical at best to unnecessarily duplicate these existing resources without compelling reasons to do so. In addition, the Commission has not been able to show a need for independent litigating authority. To date, the Department of Justice has not declined to bring any civil case referred to it by the Commission.

Finally, we are concerned that the inclusion of such a provision will encourage other agencies to ask for similar authority. During the 93rd Congress, the Federal Trade Commission was given authority to litigate its own cases under certain conditions. The National Labor Relations Board and the Securities and Exchange Commission have similar authority. There is no reason why some agencies should have this authority and some should not. As pointed out above, we doubt the wisdom of vesting in the various regulatory agencies authority to bring their own cases. However, we also believe that this question is too important to be addressed on a piecemeal basis as this Committee is apparently prone to do. This question should be resolved in comprehensive legislation rather than in the *ad hoc* fashion in which we have addressed this issue in the past.

We also find troublesome section 13 of H.R. 6844 which would amend section 30(d) of the Consumer Product Safety Act. At the present time, section 30(d) states that if a risk of injury could be "eliminated or reduced to a sufficient extent" by action under the Flammable Fabrics Act, the Federal Hazardous Substances Act or the Poison Prevention Packaging Act (the transferred acts), then the Commission must

regulate under those acts rather than under the Consumer Product Safety Act. H.R. 6844 would amend section 30(d) to allow the Commission to use the Consumer Product Safety Act rather than the transferred acts if it determines that such action is in the public interest.

When the Consumer Product Safety Commission was created, the committee considered and rejected the notion of abolishing all the transferred acts and allowing the Commission to regulate under only the Consumer Product Safety Act. Despite the committee's conscious decision to retain the transferred acts, this provision of H.R. 6844 will allow the Commission to pick and choose the legislative scheme under which it will regulate. We fear that such a provision may result in a *de facto* repeal of the transferred acts by the Commission. The viability of the transferred acts is a question which should be faced and decided by this committee rather than delegating the decision to the Commission through a provision such as that found in H.R. 6844.

Further, we fear that such a provision could result in unfairness to those regulated by the Commission. A large body of law has been developed under each of the transferred acts. Business, especially small business, is aware of these requirements and can conduct its affairs in accordance therewith. We take little solace in the requirement that the Commission base its decision on a public interest determination. This is especially true since H.R. 6844 does not require the Commission to solicit the views of the public or those being regulated when making this public interest determination.

We are pleased that the committee has addressed the problem of preemption. During hearings before the Subcommittee on Consumer Protection and Finance, the inadequacies of the present preemption provisions of the Federal Hazardous Substances Act and the Flammable Fabrics Act were continually highlighted. We believe that the language of preemption provisions of H.R. 6844 represents a good effort to deal with this problem.

However, we do not believe that need has been shown to also amend the preemption provisions of the Consumer Product Safety Act and the Poison Prevention Packaging Act. The Consumer Product Safety Act now states that state standard will not be granted an exemption from the preemption provisions unless it can show that its standard offers a higher level of performance, is required by compelling local conditions and does not unduly burden interstate commerce. This language was carefully considered during the Committee's deliberation on the Consumer Product Safety Act 3 years ago. The provision has never been used. There is little logic in amending a provision before we have an opportunity to determine whether or not it is workable.

The Poison Prevention Packaging Act provides for total preemption. During the hearings we heard no suggestions that the preemption provisions of this Act should be amended. Since no need to legislate has been shown, we believe that the amendment to the Poison Prevention Packaging Act is not warranted.

SAMUEL L. DEVINE.
 JAMES T. BROYHILL.
 JAMES F. HASTINGS.
 JAMES M. COLLINS.
 JOHN Y. MCCOLLISTER.
 NORMAN F. LENT.

CONSUMER PRODUCT SAFETY COMMISSION IMPROVE-
MENTS ACT OF 1976

APRIL 8, 1976.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 644]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 644) to amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, 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

Sec. 1. This Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1976".

AUTHORIZATION OF APPROPRIATIONS

Sec. 2. Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081(a)) is amended to read as follows:

"(a) There are authorized to be appropriated for the purposes 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) \$51,000,000 for the fiscal year ending June 30, 1976;

"(2) \$14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;

"(3) \$60,000,000 for the fiscal year ending September 30, 1977;
and

"(4) \$68,000,000 for the fiscal year ending September 30, 1978."

LIMITATIONS ON JURISDICTION

SEC. 3. (a) Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended by (1) striking out subparagraph (B), and (2) redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Section 3(a)(1)(D) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(D)) is amended by striking out "economic poisons" and inserting in lieu thereof "pesticides".

(c) Section 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by inserting immediately before "but such term" the following: "nor to tobacco and tobacco products."

(d) Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) is amended by (1) inserting "other" before "limitations" in the last sentence, and (2) inserting before such sentence the following: "Except for the regulation under this Act of the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18, United States Code."

(e) The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms.

(f) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) striking out "of the Administrator of the Environmental Protection Agency and"; and (2) striking out "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)."

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission."

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended by (1) striking out "full-time" in paragraph (2) and inserting in lieu thereof "regular", and (2) adding after such paragraph the following new paragraphs:

"(3) In addition to the number of positions authorized by section 5108(a) of title 5, United States Code, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, may place a total of twelve positions in grades GS-16, GS-17, and GS-18.

"(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President."

ACCOUNTABILITY

SEC. 5. (a) Section 4 of the Consumer Product Safety Act (15 U.S.C. 2053) is amended by adding at the end the following new subsection:

"(i) Subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which—

"(1) is based upon—

"(A) misrepresentation or deceit before January 1, 1978, on the part of the Commission or any employee thereof, or

"(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof before January 1, 1978, which exercise, performance, or failure was grossly negligent; and

"(2) is not made with respect to any agency action (as defined in section 551(13) of title 5, United States Code).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable."

(b) Section 32 of such Act (15 U.S.C. 2081) is amended by adding at the end the following new subsection:

"(c) No funds appropriated under subsection (a) may be used to pay any claim described in section 4(i) whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, United States Code, or under any other provision of law."

SAMPLING PLANS

SEC. 6. Section 7(a) of the Consumer Product Safety Act (15 U.S.C. 2056(a)) is amended by (1) inserting "(1)" immediately after "(a)", (2) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and (3) adding at the end the following new paragraph:

"(2) No consumer product safety standard promulgated under this section shall require, incorporate, or reference any sampling plan. The preceding sentence shall not apply with respect to any consumer product safety standard or other agency action of the Commission under this Act (A) applicable to a fabric, related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act, or (B) which is or may be applicable to glass containers."

STANDARDS DEVELOPMENT

SEC. 7. (a) The last sentence of section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended to read as follows: "An invitation under paragraph (4)(B) shall specify the period of time in which the offeror of an accepted offer is to develop the proposed standard. The period specified shall be a period ending 150

days after the date the offer is accepted unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.”

(b) Section 7(e)(1) of such Act (15 U.S.C. 2056(e)(1)) is amended to read as follows:

“(e)(1) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard for a consumer product and if—

“(A) the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, or

“(B) the development period (specified in paragraph (3)) for such standard ends,

the Commission may develop a proposed consumer product safety rule respecting such product and publish such proposed rule.”

(c) Section 7(f) of such Act (15 U.S.C. 2056(f)) is amended to read as follows:

“(f) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard and if—

“(1) no offer to develop such a standard is submitted to, or, if such an offer is submitted to the Commission, no such offer is accepted by, the Commission within a period of 60 days from the publication of such notice (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor), the Commission shall—

“(A) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

“(B) develop proposals for a consumer product safety rule for a consumer product identified in the subsection (b) notice and within a period of 150 days (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor) from the expiration of the 60-day (or longer) period—

“(i) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

“(ii) publish a proposed consumer product safety rule;

or

“(2) an offer to develop such a standard is submitted to and accepted by the Commission within the 60-day (or longer) period, then not later than 210 days (or such later time as the Commission may prescribe by notice published in the Federal Register stating good cause therefor) after the date of the acceptance of such offer the Commission shall take the action described in clause (i) or (ii) of paragraph (1)(B).”

ADVANCE PAYMENTS; RENT

SEC. 8. (a) Section 7(d)(2) of the Consumer Product Safety Act (15 U.S.C. 2056(d)(2)) is amended by adding at the end thereof the following: “Payments under agreements entered into under this paragraph may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).”

(b) Section 27(b) of such Act (15 U.S.C. 2076(b)) is amended by—

(1) striking out “and” at the end of paragraph (7), and

(2) redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following new paragraph:

“(8) to lease buildings or parts of buildings in the District of Columbia, without regard to the Act of March 3, 1877 (40 U.S.C. 34), for the use of the Commission; and”.

CONSIDERATION OF THE NEEDS OF ELDERLY AND HANDICAPPED PERSONS

SEC. 9. Section 9(b) of the Consumer Product Safety Act (15 U.S.C. 2058(b)) is amended by adding at the end the following new sentence:

“In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.”

ATTORNEYS' AND EXPERT WITNESSES' FEES

SEC. 10. (a) Section 10(e) of the Consumer Product Safety Act (15 U.S.C. 2059(e)) is amended by adding after paragraph (3) the following new paragraph:

“(4) In any action under this subsection the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law. For purposes of this paragraph and sections 11(c), 23(a), and 24, a reasonable attorney's fee is a fee (A) which is based upon (i) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this subsection, and (ii) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (B) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.”

(b) Section 11(c) of such Act (15 U.S.C. 2060(c)) is amended by inserting after the first sentence the following: “A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law.”

(c) Section 23(a) of such Act (15 U.S.C. 2072(a)) is amended (1) by striking out “and shall” and inserting in lieu thereof “shall”, and (2) by striking out “, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.” and inserting in lieu thereof “, and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees.”

(d) Section 24 of such Act (15 U.S.C. 2073) is amended by striking out the last sentence and inserting in lieu thereof the following: “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 10(e)(4)) and reasonable expert witnesses' fees."

CIVIL LITIGATION

SEC. 11 (a) The third sentence of section 11(a) of the Consumer Product Safety Act (15 U.S.C. 2060(a)) is amended to read as follows: "The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28, United States Code."

(b) The second sentence of section 22(a) of such Act (15 U.S.C. 2071(a)) is amended by striking out "(with the concurrence of the Attorney General)" and inserting in lieu thereof "(without regard to section 27(b)(7)(A))".

(c) Section 27(b)(7) of such Act (15 U.S.C. 2076(b)(7)) is amended to read as follows:

"(7) to—

"(A) initiate, prosecute, defend, or appeal (other than to the Commission in such civil action, and legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

"(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction."

(d) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by striking out "with the concurrence of the Attorney General" and inserting in lieu thereof "(subject to subsection (b)(7))".

SUBSTANTIAL PRODUCT HAZARD

SEC. 12. (a) (1) Section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)) is amended by adding at the end the following: "An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, the product with respect to which the order was issued."

(2) Section 15 of such Act (15 U.S.C. 2064) is amended by adding at the end thereof the following new subsection:

"(g) (1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 27(b)(7)) or the Attorney General may, in accordance with section 12(e)(1), apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in com-

merce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

"(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

"(3) The amount in controversy requirement of section 1331 of title 28, United States Code, does not apply with respect to the jurisdiction of a district court of the United States to issue or extend a preliminary injunction under this subsection."

(b) Section 19(a)(5) of such Act (15 U.S.C. 2068(a)(5)) is amended by (1) striking out "and to" and inserting in lieu thereof "to", and (2) inserting "and to prohibited acts" after "refund".

(c) Section 22 of such Act (15 U.S.C. 207) is amended by—

(1) striking out in subsection (a) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(a) The United States district courts shall have jurisdiction to take the following action:

"(1) Restrain any violation of section 19.

"(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

"(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule."; and

(2) striking out in subsection (b) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(b) Any consumer product—

"(1) which fails to conform with an applicable consumer product safety rule, or

"(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d),

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 district court of the United States within the jurisdiction of which such consumer product is found."

PROHIBITED ACTS AND ENFORCEMENT

SEC. 13. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended by—

(1) inserting "or fail or refuse to establish or maintain records," immediately after "copying of records," in paragraph (3); and

(2) striking out "or" at the end of paragraph (6), striking out the period at the end of paragraph (7) and inserting in lieu thereof "; or", and adding after paragraph (7) the following new paragraphs:

"(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

"(9) fail to comply with any rule under section 27 (e) (relating to provision of performance and technical data)."

(b) Section 20 (a) (1) of such Act (15 U.S.C. 2069) is amended by striking out "or (7)" and inserting in lieu thereof "(7), (8), or (9)".

CONGRESSIONAL REVIEW OF PROPOSED ADMINISTRATIVE ACTIONS OF
THE COMMISSION

SEC. 14. Section 27 of the Consumer Product Safety Act (15 U.S.C. 2076) is amended by adding at the end thereof the following new subsection:

"(l) (1) Except as provided in paragraph (2)—

"(A) the Commission shall transmit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives each consumer product safety rule proposed after the date of the enactment of this subsection and each regulation proposed by the Commission after such date under section 2 or 3 of the Federal Hazardous Substances Act, section 3 of the Poison Prevention Packaging Act of 1970, or section 4 of the Flammable Fabrics Act; and

"(B) no consumer product safety rule and no regulation under a section referred to in subparagraph (A) may be adopted by the Commission before the thirtieth day after the date the proposed rule or regulation upon which such rule or regulation was based was transmitted pursuant to subparagraph (A).

"(2) Paragraph (1) does not apply with respect to a regulation under section 2 (q) of the Federal Hazardous Substances Act respecting a hazardous substance the distribution of which is found under paragraph (2) of such section to present an imminent hazard or a regulation under section 3 (e) of such Act respecting a toy or other article intended for use by children the distribution of which is found under paragraph (2) of such section to present an imminent hazard."

INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

SEC. 15. Section 29 of the Consumer Product Safety Act (15 U.S.C. 2078) is amended by adding at the end thereof the following new subsection:

"(e) The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by and officer, employee, or agent of the Commission only if (1) information which under section 6 (a) (2) is to be considered confidential is not included in any copy of

such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

"(A) any copy of any such report, or

"(B) any information contained in any such report, which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6 (b)."

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 16. Section 30 (d) of the Consumer Product Safety Act (15 U.S.C. 2079 (d)) is amended to read as follows:

(d) 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 Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act. Such a rule shall identify the risk of injury proposed to be regulated under this Act and shall be promulgated in accordance with section 553 of title 5, United States Code; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule."

EFFECT ON STATE LAW

SEC. 17. (a) Section 18 (b) of the Federal Hazardous Substances Act is amended to read as follows:

"(b) (1) (A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2 (p) or 3 (b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2 (p) or 3 (b).

"(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2 (q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

"(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

"(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

"(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

"(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

"(5) As used in this subsection, the term 'Commission' means the Consumer Product Safety Commission."

(b) Section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) is amended to read as follows:

"PREEMPTION

"Sec. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

"(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which flammability standard or other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

"(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this Act, if—

"(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

"(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

"(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5 United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(d) For purposes of this section—

"(1) a reference to a flammability standard or other regulation for a fabric, related material, 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

"(2) the term 'Commission' means the Consumer Product Safety Commission."

(c) Section 8 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1476) is amended (1) by striking out "Whenever" and inserting in lieu thereof "(a) Except as provided in subsections (b) and (c), whenever", and (2) by adding at the end thereof the following:

"(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

"(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

"(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

"(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would

apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

"(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation."

(d) Subsections (b) and (c) of section 26 of the Consumer Product Safety Act (15 U.S.C. 2075) are amended to read as follows:

"(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.

"(c) Upon application of a State or political subdivision of a State, 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 in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation—

"(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and

"(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product."

TITLE 18 PROTECTION

SEC. 18. Section 1114 of title 18, United States Code, is amended by inserting "the Consumer Product Safety Commission." immediately after "Department of Health, Education, and Welfare".

FLAMMABLE FABRICS ACT ADVISORY COMMITTEE

SEC. 19. Section 17(a) of the Flammable Fabrics Act (15 U.S.C. 1204(a)) is amended by inserting after the first sentence the following new sentence: "The members of the Committee who are appointed to represent manufacturers shall include representatives from (1) the natural fiber producing industry, (2) the manmade fiber producing industry, and (3) manufacturers of fabrics, related materials, apparel, or interior furnishings."

FLAMMABILITY STANDARDS AND REGULATIONS

SEC. 20. (a) (1) Subsection (d) of section 4 of the Flammable Fabrics Act (15 U.S.C. 1193(d)) is amended to read as follows:

"(d) Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, United States Code, except that interested persons shall be given 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."

(2) Subsection (e) (3) of section 4 of such Act is amended by adding at the end thereof the following: "The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term 'record' means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation."

(b) The amendments made by subsection (a) shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act the proceedings for the promulgation of which were begun after the date of the enactment of the Act.

And the House agree to the same.

HARLEY O. STAGGERS,
LIONEL VAN DEERLIN,
BOB ECKHARDT,
RALPH H. METCALFE,

Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN O. PASTORE,
VANCE HARTKE,
PHILLIP A. HART,
FRANK E. MOSS,
WENDELL H. FORD,
TED STEVENS,
LOWELL WEICKER,
JAMES L. BUCKLEY,

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. 644) to amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, 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 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 agreements reached by the conferees, and minor drafting and clarifying changes.

AUTHORIZATION OF APPROPRIATIONS

Senate bill.—The Senate bill authorized to be appropriated \$51 million for the fiscal year ending June 30, 1976; \$14 million for the transitional quarter ending September 30, 1976; and \$55 million for the fiscal year ending September 30, 1977. The Senate bill contained no authorization for the fiscal year ending September 30, 1978.

House amendment.—The House amendment authorized \$51 million for the fiscal year ending June 30, 1976; \$14 million for the transitional quarter ending September 30, 1976; \$60 million for the fiscal year ending September 30, 1977; and \$68 million for the fiscal year ending September 30, 1978.

Conference substitute (§ 2).—The conference substitute adopts the provision contained in the House amendment.

LIMITATIONS ON JURISDICTION

Senate bill.—The Senate bill modified the Commission's jurisdiction in several respects. First, it eliminated pesticides from the Commission's jurisdiction under the Poison Prevention Packaging Act of 1970. This authority to regulate packaging for pesticides is now within the scope of the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (as amended by the Federal Environmental Pesticide Control Act of 1972). Second, it amended the Federal Hazardous Substances Act to provide that the term "hazardous substance", as used in that Act, does not include

"tobacco and tobacco products". Third, it amended the Consumer Product Safety Act to remove the Consumer Product Safety Commission's jurisdiction to exercise any regulatory authority over firearms, firearms ammunition, or components of firearms ammunition under the Federal Hazardous Substances Act. The amendment did not affect the Commission's authority to regulate fireworks devices or components of fireworks devices under either the Consumer Product Safety Act or the Federal Hazardous Substances Act. Fourth, the Senate bill further amended the Consumer Product Safety Act to provide that the Commission could regulate tobacco and tobacco products to the extent that such products present an unreasonable risk of injury as a source of ignition. The Senate bill further provided, however, that the Commission could take no action under this authority which would add to any health hazards posed by tobacco or tobacco products.

House amendment.—The House amendment was similar to the Senate bill except it did not contain the amendment to the Consumer Product Safety Act which empowered the Commission to regulate tobacco or tobacco products as a source of ignition.

Conference substitute (§ 3).—The conference substitute adopts the provisions which were contained in both the Senate bill and the House amendment removing any jurisdiction of the Commission to regulate pesticides under the Poison Prevention Packaging Act of 1970, to regulate tobacco and tobacco products under the Federal Hazardous Substances Act and to regulate firearms, firearms ammunition, or components of firearms ammunition. The conference substitute does not authorize the Consumer Product Safety Commission to regulate tobacco and tobacco products as a source of ignition.

The amendment removing the Commission's jurisdiction to exercise any regulatory authority over firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms, does not affect the Commission's jurisdiction to regulate fireworks devices and components of such devices under either the Consumer Product Safety Act or the Federal Hazardous Substances Act.

BUDGET AND EMPLOYEE PROVISIONS

Senate bill.—The Senate bill amended section 4(f) of the Consumer Product Safety Act to require the approval of the Commission prior to the submission of requests or estimates for regular, supplemental, or deficiency appropriations by the Chairman on behalf of the Commission.

The bill also sought to remedy the ongoing dispute between the Commission and the Civil Service Commission in which the Commission refused to submit the names of their nominees for non-career executive appointment positions (NEA) to the White House for political clearance. Under the Senate bill, the Chairman, subject to the approval of the Commission, was empowered to designate up to 25 positions within the Commission as "non-career" positions. Non-career positions were to be ones whose duties involved (1) significant participation in the determination of major Commission policies; or (2) service as a personal assistant or advisor to the

Chairman or any other Commissioner. No appointment to or removal from one of these positions was to be subject to approval by the Executive Office of the President (including the Office of Management and Budget).

Finally, the Senate bill authorized the Chairman, subject to the approval of the Commission, to place a total of 15 positions in grades GS-16, GS-17, and GS-18. These positions were to be in addition to any professional engineering positions primarily concerned with research and development and any professional position in the physical and natural sciences and medicine, and in addition to any such positions that are authorized by section 5108(a) of title 5, United States Code.

House amendment.—The House amendment contained a provision similar to the one contained in the Senate bill with respect to submission of the Commission's budget. Additionally, the House amendment authorized the Chairman, subject to the approval of the Commission, to place a total of 10 positions in grades GS-16, GS-17, and GS-18, subject to the standards and procedures described by chapter 51 of title 5, United States Code. These were in addition to any positions authorized by section 5108(a) of title 5, United States Code and in addition to any professional positions in the physical and natural sciences, medicine, and engineering.

Conference substitute (§ 4).—In addition to incorporating the provision on budget submissions, the conference substitute authorizes the Chairman, subject to the approval of the Commission, to place a total of 12 positions in grades GS-16, GS-17, and GS-18. Such appointments are to be made subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, but are in addition to any positions authorized by section 5108(a) of title 5, United States Code, and in addition to any professional positions in the physical and natural sciences, medicine, and engineering.

Additionally, the conferees agreed to amend section 4(g) of the Consumer Product Safety Act to provide that the appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. This policy once again expresses Congressional intent that this Commission be an independent regulatory agency unfettered by political influence. Appointments of officers or employees of the Commission shall be based only on professional merit and qualification.

The problem confronting the Consumer Product Safety Commission with respect to its NEA employees is an issue confronting all independent regulatory agencies. Most agencies have, and need, non-career executive assignment (NEA) personnel. To qualify to be designated as a non-career executive assignment position, the Civil Service Commission's regulations, (5 CFR 305.601(b)) provide that such a position must be one whose incumbent will—

- (1) be deeply involved in the advocacy of Administration programs and support of their controversial aspects;
- (2) participate significantly in the determination of major political policies of the Administration; or
- (3) serve principally as a personal assistant to or adviser of a Presidential appointee or other key political figure.

Thus, according to the Civil Service Commission's regulations, no individual will be approved for an NEA position unless the incumbents' duties include "advocacy of Administration programs and support of their controversial aspects" and significant participation "in the determination of major political policies of the Administration". This is not consistent with the purpose or function of an independent agency, and the regulations are inappropriate as they are applied to these agencies.

While the conferees agreed not to incorporate the Senate provisions establishing an NEA category for the Consumer Product Safety Commission, we believe that there is a need for the creation of such positions not only for this agency, but for all independent regulatory agencies. Accordingly, we urge our colleagues on the Post Office and Civil Service Committees in the Senate and the House to give this matter their considered attention.

ACCOUNTABILITY

Senate bill.—The Senate bill amended the Federal Tort Claims Act to allow a suit against the Consumer Product Safety Commission for a claim based upon a misrepresentation, deceit, or the exercise or performance or failure to exercise or perform a discretionary function or duty which was determined, as a matter of law, to be unreasonable with respect to the discretionary function or duty involved. In making such a determination, the court was required to consider the statutory responsibilities of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion. Additionally, no such claim could be made with respect to any agency action as defined in section 551(13) of title 5, United States Code. Finally, the provision was experimental in nature and was drafted to cover only an asserted misrepresentation, deceit, or exercise or performance or failure to exercise or perform a discretionary function or duty that occurred prior to January 1, 1978.

House amendment.—The House amendment contained no comparable provision.

Conference substitute (§ 5).—The conference substitute amends the Consumer Product Safety Act to provide that subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which is based upon misrepresentation or deceit on the part of the Consumer Product Safety Commission or any employee thereof, or any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Consumer Product Safety Commission or an employee thereof which was grossly negligent. As in the Senate bill, such claim cannot be made with respect to any agency action as that term is defined in section 551(13) of title 5, United States Code. That section defines an "agency action" as including the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act. In the case of a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, the court must find, as a matter of law and based upon consideration of all the relevant circumstances (including the statutory responsibility of the Commission and the public interest in

encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable. Like the Senate bill, the provision is experimental and no claim can be brought which did not arise before January 1, 1978.

The Federal Tort Claims Act defines the limited circumstances under which the United States consents to be sued. Section 2680 of title 28, United States Code, enumerates those circumstances to which that consent does not extend. By waiving subsection (a) of section 2680 (relating to claims based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty) and subsection (h) of such section (relating to claims based upon misrepresentation or deceit) suits may be brought on those claims to the extent authorized by the other provisions of the Federal Tort Claims Act and other provisions of Federal law applicable to suits against the United States. Thus, the statute of limitations and similar requirements would still apply.

Finally, the conferees agree that funds appropriated under section 32(a) of the Consumer Product Safety Act may not be used to pay any claim arising under this section whether pursuant to a judgment of a court or under an award, compromise, or settlement of such claim under section 2672 of title 28, United States Code, or any other provision of law. Such claims are to be paid from the general treasury.

The conferees do not intend that this provision chill the Commission from exercising its statutory responsibility to protect the public from dangerous products. The Commission must continue to exercise vigorous regulatory activities to accomplish its mandated responsibilities. In considering claims brought pursuant to this section, courts shall take into account the facts available to the Commission and the circumstances existing at the time of the event upon which the claim is based.

SAMPLING PLANS

Senate bill.—The Senate bill contained no provision with respect to sampling plans.

House amendment.—The House amendment provided that no consumer product safety standard promulgated under section 7(a) of the Consumer Product Safety Act shall require, incorporate, or reference any sampling plan. The House amendment provided that this limitation did not apply with respect to any consumer product safety standard or other agency action of the Commission under the Consumer Product Safety Act applicable to a fabric, a related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act or which is or may be applicable to glass bottles.

Conference substitute (§ 6).—The conference substitute incorporates the House amendment with one minor alteration which would allow a consumer product safety standard under section 7(a) to incorporate a sampling plan applicable to glass "containers" rather than to glass "bottles" as provided in the House amendment. This provision relating to sampling plans does not prohibit a manufacturer from using a sampling plan as a part of its own quality control procedures. Similarly, the Consumer Product Safety Commission is not prohibited

from incorporating sampling plans in a compliance testing program under section 14 of the Consumer Product Safety Act.

STANDARDS DEVELOPMENT

Senate bill.—The Senate bill amended section 7(e)(2) of the Consumer Product Safety Act to explicitly provide that whenever the Commission determined that no offeror was making satisfactory progress in the development of a standard or that the proposed standard developed by the offeror was not satisfactory in whole or in part, that the Commission itself could develop the standard or contract with third parties for such development.

House amendment.—The House amendment made several modifications to section 7 of the Consumer Product Safety Act regarding standards development. The amendment made clear that the Commission may itself develop a standard or contract with a third party for the development of a standard if the Commission determined that no offeror had submitted an acceptable proposed standard. Additionally, the House amendment extended the period provided under the Consumer Product Safety Act for the development of consumer product safety standards. The modification would have allowed the offeror 150 days after the date the offer is accepted (unless the Commission for good cause found that a different period was appropriate) to develop the proposed consumer product safety standard.

Conference substitute (§ 7).—The conference substitute incorporates the provisions of the House amendment and conforms the existing statutory timetable for the development and promulgation of consumer product safety standards accordingly.

Section 7(e) of the Consumer Product Safety Act is amended to provide that if the Commission has published a notice under section 7(b) of the Act stating its determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury associated with a consumer product and inviting persons to offer to develop a proposed standard, and either (1) the Commission has not accepted an offer to develop a standard within 30 days or (2) the development period for the standard has expired, then the Commission itself may develop a proposed consumer product safety rule. Additionally, section 27(g) of the Act would allow the Commission, in lieu of developing the proposed consumer product safety rule itself, to contract with third parties for the development of the rule. Under existing law, the Commission may develop the proposed rule itself if no offeror whose offer is accepted is making satisfactory progress in the development of the standard or the standard submitted is not satisfactory in whole or in part.

The conference substitute modifies existing law by granting to an offeror who is selected to develop a proposed consumer product safety standard 150 days within which to conduct its work. Thus, the new timetable for the development of a consumer product safety standard would be as follows:

First, the Commission under section 7(b) issues the notice of determination of need for a consumer product safety standard and invites offerors to submit proposals for the development of a standard.

Second, within 60 days, the Commission must either (1) accept an offer or offers to develop a proposed standard; or (2) publish a notice in the Federal Register terminating the proceeding; or (3) itself develop a proposed consumer product safety rule. If an offer to develop a proposed standard is accepted or the Commission itself proceeds with the development of the proposal, 150 days are allotted for such development.

Third, at the expiration of the 150 day period, either (1) the offeror must submit its proposal to the Commission; or (2) if the Commission itself has proceeded to develop the standard, the Commission must, by notice published in the Federal Register, withdraw the notice of determination of need or it must publish a proposed consumer product safety rule.

If an offeror has submitted a proposal for a consumer product safety standard, the Commission must, within 60 days (i.e. 210 days after the acceptance of the offer), proceed to publish a proposed consumer product safety rule or terminate the proceedings.

While the Commission is authorized to extend each of the above time periods by a notice published in the Federal Register stating good cause therefor, time is of the essence in the development of product safety standards and such extensions should not be made lightly.

ADVANCE PAYMENTS; RENT

Senate bill.—The Senate bill contained no provisions with respect to advance payments, rent and seminar expenses.

House amendment.—The House bill amended section 7(d)(2) of the Consumer Product Safety Act to provide that if an offer to develop a consumer product safety standard was accepted, the Commission could contribute to the offeror's cost in developing such standard. This amendment permitted the Commission to make such contributions in advance. The amendment further authorized the Commission to lease buildings or parts of buildings in the District of Columbia and to pay travel and subsistence expenses incurred in connection with safety education seminars of the Commission by participants in the seminars.

Conference substitute (§ 8).—The conference substitute adopts the advance payments provision and the provision on leasing buildings in the District of Columbia that was included in the House amendment. The House recedes to the position of the Senate on the amendment authorizing the Commission to pay travel and subsistence expenses incurred in connection with safety education seminars of the Commission.

CONSIDERATION OF THE NEEDS OF ELDERLY AND HANDICAPPED PERSONS

Senate bill.—The Senate bill amended section 9(b) of the Consumer Product Safety Act to provide that the Commission shall consider the needs of elderly and handicapped persons to determine whether they would be adversely affected by the promulgation of any rule.

House amendment.—The House amendment amended section 9(b) of the Consumer Product Safety Act to provide that in the promulgation of a consumer product safety rule, the Commission shall consider

the special needs of elderly and handicapped persons to determine the extent to which such persons would be adversely affected by such rule.

Conference substitute (§ 9).—The conference substitute adopts the House provision with a technical amendment.

ATTORNEYS' AND EXPERT WITNESSES' FEES

Senate bill.—The Senate bill amended section 10 of the Consumer Product Safety Act relating to petitions for rulemaking. Under that section, if the Commission denies a petition or fails to act within a 120 day period, the petitioner may seek a court review. The Senate bill provided that any interested person who was involved in such an action could recover the costs of suit, reasonable attorneys' fees and expert witnesses' fees, if considered appropriate by the court and in the interest of justice. Such attorneys' fees were to be based upon the actual time expended by such attorney and his or her staff in advising and representing his or her client (at prevailing rates for such services, including any reasonable risk factor component). Additionally, the Senate bill amended section 11 of the Consumer Product Safety Act relating to judicial review of consumer product safety rules. Under the Senate bill, a petitioner seeking judicial review of a consumer product safety rule could also have recovered the award of reasonable attorneys' fees, expert witnesses' fees, and costs of suit where the court determined that such award was appropriate and in the interest of justice. Such attorneys' fees were to be based upon the actual time expended by such attorney and his or her staff in advising and representing his or her client (at prevailing rates for such services, including any reasonable risk factor component).

House amendment.—The House amendment amended section 23(a) of the Consumer Product Safety Act relating to suits for damages by persons injured by a non-complying consumer product and section 24 of the Act relating to private enforcement of product safety rules and section 15 orders. Each such provision of existing law currently allows in certain circumstances the recovery of a reasonable attorney's fee. The House amendment provided that in addition to conferring the attorney's fee, a reasonable expert witness' fee could also be recovered.

Conference substitute (§ 10).—The conference substitute incorporates the provisions of both the Senate bill and the House amendment. The conference substitute amends sections 10(e), 11(c), 23(a), and 24 to allow the court, in the interest of justice, to award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees. A reasonable attorney's fee is a fee (1) which is based upon (A) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under such sections, and (B) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (2) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

The purpose of these provisions is to enable interested persons who have rights under the Consumer Product Safety Act to vindicate those rights. They are intended to insure that the governmental system functions properly and that the great costs of litigation do not pre-

vent the Consumer Product Safety Act from being properly administered and enforced. The provisions should be liberally construed to effectuate the purpose of these provisions.

In determining whether it is in the interest of justice to award such costs, there are various factors which the court should consider, including but not limited to the resources of the party or parties seeking such costs and the benefit which has accrued to the public by the litigation.

The provisions do not require the entry of a final order before costs may be recovered. Costs could be awarded to a successful plaintiff under these provisions where there was a final court order granting the relief requested, or as a matter of interim relief pending the outcome of the case. See *Bradley v. School Board of the City of Richmond*, 416 U.S. 696 (1974); *Mills v. Electric Auto-Lite Co.*, 396 (U.S. 375 (1970)).

Nor do the provisions require that a party prevail in the action in order to recover costs. Such awards may be especially important where a party has prevailed on an important matter in the course of the litigation, even though they do not prevail on all the issues. See *Bradley, supra*, and *Mills, supra*. For purposes of the award of costs, it is appropriate to make awards where the parties have vindicated rights through a consent judgment, or without formally obtaining relief, or where such award is in the public interest without regard to the outcome of the litigation. *Citizens Assn. v. Washington*, Civ. Action No. 1944-73, Sept. 30, 1974 (U.S. Dist. Ct., D.C.); *Parham v. Southwestern Bell Telephone Co.*, 433 F. 2d 421 (8th Cir. 1970); *Richards v. Griffith Rubber Mills*, 300 F.Supp. 338 (D. Ore. 1969); *Thomas v. Honeybrook Mints, Inc.*, 428 F. 2d 981 (3d Cir. 1970).

The standard for awarding costs to a prevailing defendant is not the same as for a plaintiff because, if it were, the risk of bringing suit under these sections could be so great as to frustrate the purposes of the sections. However, in exceptional circumstances, costs might be awarded to defendants where they must "defend against unreasonable, frivolous, meritless, or vexatious actions * * *". *United States Steel Corp. v. United States*, 385 F. Supp. 346, 348 (W.D. Pa. 1974). Where plaintiff's proceeding is brought in good faith or on the advice of competent counsel, costs would ordinarily be denied to a prevailing defendant. *Richardson v. Hotel Corporation of America*, 332 F. Supp. 519 (E.D. La. 1971), aff'd 468 F.2d 951 (5th Cir. 1972).

Reasonable attorneys' fees should not be reduced merely because the attorneys are salaried employees of public interest or foundation-funded law firms. Nor should the fee award be limited to the amount actually paid or owed to an attorney. It may well be that counsel will agree to take a case because counsel believes the case furthers a public interest and litigation of this sort should not have to rely on the charity of counsel. The fee should represent the reasonable value of the services rendered, taking into account all the surrounding circumstances, including, but not limited to, the time and labor required on the case, the benefit to the public, the skill demanded by the novelty or complexity of the issues, and the incentive factor.

Costs awarded under these provisions may be assessed against the United States when it is a party. Thus, for purposes of these provisions, the prohibition in 28 U.S.C. 2412 forbidding the assessment of attorneys' fees against the United States is specifically made inappli-

cable. The conferees intend that any costs of suit, including attorneys' and expert witnesses' fees, be paid from the general treasury.

CIVIL LITIGATION

Senate bill.—The Senate bill broadened the authority of the Commission to represent itself in civil and criminal actions. Under present law, the Commission must (except in the case of a civil action under section 12 respecting an imminent hazard) secure the concurrence of the Attorney General before it may use its own attorneys to represent itself. The Senate bill changed the Act's requirements in two respects. First, it removed from section 22 of the Act the requirement that the Commission have the concurrence of the Attorney General before representing itself in actions for injunctive enforcement (including preliminary injunctions pending section 15 hearings). Second, with respect to all other court actions (other than an action under section 12 wherein the law remainder unchanged), the Senate bill authorized the Commission to initiate, prosecute, defend, or appeal civil or criminal actions through its own attorneys if the Attorney General did not agree to represent the Commission within 45 days after receipt of a request for representation from the Commission.

House amendment.—The House amendment contained no similar provision.

Conference substitute (§ 11).—The conference substitute retains the provisions of the Senate bill authorizing the Commission to represent itself in injunction actions under section 22 of the Act. With respect to other civil actions, the conference substitute authorizes the Commission to initiate, prosecute, defend, or appeal such actions through its own attorneys if the Attorney General does not agree to represent the Commission within 45 days of a request for representation. However, the Commission is not authorized to represent itself in appeals to the United States Supreme Court. The Solicitor General will continue to handle such appeals. The conference substitute retains existing law with respect to criminal actions.

SUBSTANTIAL PRODUCT HAZARD

Senate bill.—The Senate bill authorized the Commission to seek an injunction to restrain any person from distributing a consumer product subject to an order issued under section 15(d) of the Act. It also authorized the Commission to seize any consumer product subject to an order issued under section 15(d). Further, it made it a prohibited act for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product subject to an order under section 15(d). Identical authorities were granted to the Commission respecting products which had been refused admission into the customs territory of the United States under section 17.

The Senate bill also granted the district courts of the United States authority to grant a preliminary injunction prohibiting the distribution in commerce of a consumer product which the Commission had sufficient grounds to believe contained a substantial product hazard. The Commission was authorized to bring a suit for such a preliminary injunction or to request that the Attorney General bring such a suit.

The bill required that the Commission show that enjoining the distribution of the consumer product was necessary to protect the public from substantial risk of injury pending the completion of a hearing under section 15(f), and that, weighing the inequities and considering the Commission's likelihood of ultimate success, the granting of a preliminary injunction would be in the public interest.

House amendment.—The House amendment provided that an order issued under section 15(d) of the Act could prohibit the person to whom the order applied from manufacturing for sale, offering for sale, distributing in commerce, or importing the product with respect to which the order was issued. Section 19(a) was amended to make it unlawful for any person to fail to comply with such an order. The district courts of the United States were granted jurisdiction to restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing a consumer product in violation of an order under section 15(d). A consumer product whose manufacture, offering for sale, distribution in commerce, or importation had been prohibited by an order under section 15(d) was subject to seizure.

The House amendment contained no preliminary injunction authority respecting products believed to contain a substantial product hazard.

Conference substitute (§ 12).—The conference substitute is the same as the provisions of the House amendment respecting the scope of a section 15(d) order and its enforcement through section 19 (prohibited acts) and section 22 (injunctions and seizure). It revises the provision of the Senate bill respecting preliminary injunctions.

The conferees are of the opinion that the provision in the House amendment, combined with the authorities presently found in section 15 of the Act, adequately protect the public from continued exposure to products determined to present a substantial product hazard. Presently all manufacturers, distributors, or retailers of a specific product (or a specific class of products) alleged to present a substantial product hazard may be made subject to an order issued under section 15 if such manufacturers, distributors, or retailers have had an opportunity to participate in the hearing under section 15 for the issuance of such order. Notice of such a hearing may be provided by actual notice to manufacturers, distributors, or retailers or by any other notice to such persons which meets constitutional due process requirements.

The conference substitute authorizes the Commission (or the Attorney General) to seek a preliminary injunction to restrain the distribution in commerce of a consumer product which the Commission has reason to believe presents a substantial product hazard. The Commission must have already initiated a proceeding under section 15 for the repurchase, repair, or replacement of the product. The preliminary injunction may not be in effect for longer than either 30 days or the date of the completion or termination of the section 15 proceeding, whichever occurs first. However, the Commission (or the Attorney General) may seek extensions of the preliminary injunction. Any extension is subject to the same time limitation as the original preliminary injunction. The conferees intend that the traditional standards used by the Federal courts in determining whether to issue a preliminary injunction under their equity jurisdiction shall apply. Such

standards include consideration of whether irreparable harm is likely to occur if the preliminary injunction is not issued, any injury which granting the injunction would inflict on the defendant, the probability that the Commission will succeed on the merits, and the public interest. Although the Commission may represent itself in such preliminary injunction actions (without regard to section 27(b)(7)), the conferees wish to emphasize that a civil action for enforcement of an order issued under section 15 must be brought in accordance with the procedures specified in section 27(b)(7).

CONGRESSIONAL REVIEW OF PROPOSED ADMINISTRATIVE ACTIONS OF THE COMMISSION

Senate bill.—The Senate bill contained no provision with respect to congressional review of proposed administrative action of the Commission.

House amendment.—The House amendment required the Commission to transmit to the Congress each rule, regulation, and order promulgated by the Commission under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act. If neither House of Congress passed a resolution disapproving the rule, regulation, or order within a period of 30 calendar days of continuous session after the date of transmittal, the rule, regulation, or order could become effective upon the expiration of the period. The Congress could by concurrent resolution authorize a rule, regulation, or order to take effect before the expiration of the 30-day period.

Conference substitute (§ 14).—The conference substitute requires the Commission to transmit to the Commerce Committee of the Senate and the Interstate and Foreign Commerce Committee of the House of Representatives each proposed consumer product safety rule under the Consumer Product Safety Act, and each proposed regulation under section 2 or 3 of the Federal Hazardous Substances Act (except for regulations under section 2(q) or section 3(e) regarding imminent hazards), section 3 of the Poison Prevention Packaging Act of 1970 or section 4 of the Flammable Fabrics Act. No consumer product safety rule and no such regulation may be adopted by the Commission before the thirtieth day after the proposed rule or regulation upon which it was based is transmitted as required to the respective Committees of Congress.

INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

Senate bill.—The Senate bill contained no provision with respect to information disclosure to other governmental bodies.

House amendment.—The House amendment prescribed conditions under which the Commission may provide accident and investigation reports to other Federal agencies or State or local authorities engaged in activities relating to health, safety, or consumer protection. Copies of such reports may be provided only if confidential trade secret information is not included in such copies. Further, the agency or authority receiving the report must provide satisfactory assurance that the identity of injured persons or any one who treats an injured

person will not be released to the public without the consent of the identified person. The Commission must comply with the requirements of section 6(b) of the Act before any Federal agency or State or local authority may disclose to the public any information obtained under the Act.

Conference substitute (§ 15).—The conference substitute retains the House provision. The requirement that the Commission comply with section 6(b) prior to another Federal agency's public disclosure of information obtained under the Act is not intended by the conferees to supersede or conflict with the requirements of the Freedom of Information Act (5 U.S.C. 552 (a) (3) and (a) (6)). The former relates to public disclosure initiated by the Federal agency while the latter relates to disclosure initiated by a specific request from a member of the public under the Freedom of Information Act.

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

Senate bill.—The Senate bill amended section 30(d) of the Consumer Product Safety Act to provide that a risk of injury which is associated with a consumer product and which may be regulated under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may instead be regulated under the provisions of the Consumer Product Safety Act upon a determination by the Commission that such action is in the public interest.

House amendment.—The House amendment contained no corresponding provision.

Conference substitute (§ 16).—The conference substitute provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under the Consumer Product Safety Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under the Consumer Product Safety Act. The rule must identify the risk of injury proposed to be regulated. Further, the rule must be issued in accordance with section 553 of title 5, United States Code, except that the period provided by that section for the submission of data, views, and arguments is not to exceed 30 days from the date a notice respecting the rule is published in the Federal Register.

EFFECT ON STATE LAW

Senate bill.—The Senate bill amended the Flammable Fabrics Act and the Consumer Product Safety Act to make the preemption provisions in each consistent with the other. A similar uniform preemption provision was added to the Federal Hazardous Substances Act with respect to regulations issued to determine when a hazardous substance or article shall be a banned hazardous substance or article. The preemption provision regarding precautionary labeling contained in the Federal Hazardous Substances Act was not changed.

The provision added to the three Acts provided that, with two exceptions, if a Federal requirement for a product were in effect, no

State or political subdivision could continue in effect or establish a requirement applicable to the same product and designed to protect against the same risk of injury or illness unless the State or political subdivision requirement were identical to the Federal requirement. The first exception permitted a State or political subdivision to have a different requirement applicable to products procured for its own use. The second exception permitted the Commission, upon application, to grant a State or local subdivision an exemption from the preemption provision if compliance with the State or local requirement would not cause the product to be in violation of the Federal requirement, if the State or local requirement provided a significantly higher degree of protection than the Federal requirement, and if the State or local requirement would not place an undue burden upon the manufacture or distribution of products in interstate commerce.

House amendment.—The House amendment was the same as the Senate bill with the following exceptions:

1. The House amendment also amended the preemption provisions of the Poison Prevention Packaging Act of 1970 and the preemption provision of the Federal Hazardous Substances Act respecting precautionary labeling to make them uniform with the other preemption provisions.

2. The House amendment permitted the States and political subdivisions to establish or continue in effect, without obtaining an exemption from the Commission, requirements designed to protect against a risk of illness or injury associated with fireworks devices or components if the requirements provided a higher degree of protection than a Federal requirement.

3. Where the Senate bill required that a State or local requirement not place an undue burden upon the manufacture or distribution of products in interstate commerce, the House amendment required that the State or local requirement not unduly burden interstate commerce. In determining if the State or local requirement will affect interstate commerce, the Commission was instructed to consider and make appropriate findings on the technological and economic feasibility of complying with such requirements, the cost of complying, the geographic distribution of the product to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption, and the need for a national uniform requirement.

Conference substitute (§ 17).—The conference substitute is the same as the House amendment with a clarifying change in the provision respecting the findings required to be made in determining if a State or local requirement will burden interstate commerce. Under the provision, the Commission is required to consider and make appropriate findings. However, the Commission in its discretion determines the appropriateness of the findings. Under section 701 of title 5, United States Code, matters committed to agency discretion are not subject to judicial review. Thus, if the Commission grants an exemption and an action is brought to determine if the Commission granted the exemption in accordance with the exemption authority, the determination of the Commission that a requirement does not unduly burden interstate commerce is subject to review, but the statutory findings made in determining if a requirement affects interstate commerce may not be

reviewed to determine if they are appropriate since the decision as to their appropriateness is to be made by the Commission in its discretion. Since a determination of appropriateness of a finding necessarily includes a consideration of the nature and adequacy of the factual basis of the finding, these issues are not subject to judicial review. The decision to deny an application for an exemption is also committed to agency discretion, and findings regarding whether there is an effect on interstate commerce need not be made.

The purpose of the enumerated findings is to direct the Commission as to those factors to consider in evaluating whether there is a burden on interstate commerce. In determining whether the burden is undue, the Commission must weigh the extent of the burden against the benefit to public health and safety provided by the proposed State standard.

The conferees wish to emphasize that in determining whether a Federal requirement preempts State or local requirements, the key factor is whether the State or local requirement respecting a product is designed to deal with the same risk of injury or illness associated with the product as the Federal requirement. Even though the State or local requirement is characterized in different terms than the Federal requirement or may have different testing methods for determining compliance, so long as the Federal and State or local requirements deal with the same risk of injury associated with a product, the Federal requirement preempts a different State or local requirement. For example, a Federal requirement with respect to bicycles would preempt a different State requirement for bicycles so long as they were both designed to protect against the same risk of injury, even though the State characterized its requirement as a "motor vehicle" standard. Or a State standard designed to protect against the risk of injury from a fabric catching on fire would be preempted by a Federal flammability standard covering the same fabric even though the Federal standard called for tests using matches and the State standard called for tests using cigarettes. When an item is covered by a Federal flammability standard (including a standard continued in effect by section 11 of Public Law 90-189), a different State or local flammability requirement applicable to the same item will be preempted since both are designed to protect against the same risk, that is the occurrence of or injury from fire. If a State or local government desires to continue or put into effect its own requirement, it would have to seek an exemption from the Commission.

TITLE 18—PROTECTION

Senate bill.—The Senate bill contained no provision with respect to title 18 protection.

House amendment.—The House amendment provided protection for Commission employees assigned to perform investigative, inspection or law enforcement functions. Section 1114 of title 18, United States Code, was amended to provide penalties for any person who kills such employees when they are engaged in the performance of their official duties.

Conference substitute (§ 18).—The conference substitute adopts the House provision.

FLAMMABLE FABRICS ACT ADVISORY COMMITTEE

Senate bill.—The Senate bill contained no provision with respect to the Flammable Fabrics Advisory Committee.

House amendment.—The House amendment amended section 17(a) of the Flammable Fabrics Act to assure that members of the National Advisory Committee representing manufacturers would include representatives from the national fiber producing industry, the manmade fiber producing industry, and manufacturers of fabrics, related materials, apparel or interior furnishings.

Conference substitute (§ 19).—The conference substitute adopts the House provision.

FLAMMABILITY STANDARDS AND REGULATIONS

Senate bill.—The Senate bill contained no provision with respect to flammability standards and regulations.

House amendment.—The House amendment amended section 4(d) of the Flammable Fabrics Act to require that standards, regulations, and amendments to standards and regulations under section 4 be made in accordance with section 553 of title 5 of the United States Code, except that an opportunity for the oral presentation of data, views, or arguments was to be provided. Section 4(e)(3) of the Flammable Fabrics Act was amended to require that upon judicial review, such standards or regulations were not to be affirmed unless the findings required to be made by section 4(b) were supported by substantial evidence on the record. The Senate bill did not contain a similar provision.

Conference substitute (§ 20).—The conference substitute adopts the House provision.

COST AND BENEFIT ASSESSMENT STATEMENTS

Senate bill.—The Senate bill required the Commission to prepare an evaluation of each rulemaking proceeding analyzing the estimated costs and benefits that were foreseeable as a result of the effective implementation of a consumer product safety rule and the apparent relationship, if any, between such costs and benefits. The Commission was also granted subpoena power to obtain cost information.

House amendment.—The House amendment contained no comparable provision.

Conference substitute.—The Senate recedes to the House position. The conferees agreed that the provision contained in the Senate bill was unnecessary because section 9(c)(1) of the Consumer Product Safety Act now requires the Commission, prior to promulgating a consumer product safety rule, to evaluate the possible effect of the rule on the cost of the product and any means of achieving the objectives of the rule while minimizing adverse effects on competition or dislocation of the manufacturing processes consistent with public health and safety.

REPORTING SUBSTANTIAL PRODUCT HAZARDS

Senate bill.—The Senate bill required a product liability insurer or independent testing laboratory which obtained information that a

product may contain a substantial product hazard to report that fact to its client (not to the Commission) and to inform the client of its obligations under the Consumer Product Safety Act. The Act currently requires a manufacturer, distributor, or retailer who obtains information which reasonably supports the conclusion that his or her product contains a substantial product hazard to immediately report to the Commission. No part of the notice from the insurer or test laboratory could be admitted as evidence or used in any suit or action for damages.

House amendment.—The House amendment contained no comparable provision.

Conference substitute.—The Senate recedes to the position of the House.

HARLEY O. STAGGERS,
LIONEL VAN DEERLIN,
BOB ECKHARDT,
RALPH H. METCALF,

Managers on the Part of the House.

WARREN G. MAGNUSON,
JOHN O. PASTORE,
VANCE HARTKE,
PHILLIP A. HART,
FRANK E. MOSS,
WENDELL H. FORD,
TED STEVENS,
LOWELL WEICKER,
JAMES L. BUCKLEY,

Managers on the Part of the Senate.

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CONSUMER PRODUCT SAFETY COMMISSION
IMPROVEMENTS ACT OF 1975

REPORT

together with

ADDITIONAL VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 644

TO AMEND THE CONSUMER PRODUCT SAFETY ACT TO
IMPROVE THE CONSUMER PRODUCT SAFETY COMMISSION,
TO AUTHORIZE NEW APPROPRIATIONS, AND FOR OTHER
PURPOSES



JUNE 24 (legislative day, JUNE 6), 1975.—Ordered to be printed

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JUNE 24 (legislative day, JUNE 6) 1975.—Ordered to be printed

Mr. Moss, from the Committee on Commerce,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 644]

The Committee on Commerce, to which was referred the bill (S. 644) to amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

SUMMARY AND DESCRIPTION

The purpose of this legislation is to authorize additional appropriations to implement the Consumer Product Safety Act and to make certain changes and improvements in light of 2 years experience since the Consumer Product Safety Commission (CPSC) was created.

For the purpose of implementing the Consumer Product Safety Act, the bill authorizes the appropriation of \$51 million for the fiscal year ending June 30, 1976; \$14 million for the transitional quarter ending September 30, 1976; and \$55 million for the fiscal year ending September 30, 1977.

The legislation also is designed to clarify the jurisdiction of the Commission in several respects. First, it eliminates pesticides from the Commission's jurisdiction under the Poison Prevention Packaging Act of 1970. Second, it clarifies the Commission's jurisdiction with respect to tobacco and tobacco products. It provides that the Commission has no jurisdiction to regulate tobacco or tobacco products as a "hazardous substance" under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.). However, it provides that the Commission may regulate tobacco and tobacco products under the Consumer Product Safety Act

to the extent that such products present an unreasonable risk of injury as a source of ignition. In regulating tobacco and tobacco products as an ignition source, the Commission may take no action which adds to any health hazards posed by such products.

Third, the legislation provides that the Commission, under the Hazardous Substances Act, may not ban ammunition as a "hazardous substance." The Commission may, however, continue to establish and enforce such cautionary labeling requirements as are necessary relating to the storage of such ammunition in or around the household and may regulate firearms ammunition to the extent that such ammunition is defective or presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from a firearm. However this amendment to the Hazardous Substances Act does not affect the Commission's jurisdiction to regulate fireworks, and expressly provides that the term "hazardous substance" shall include fireworks devices and components thereof.

S. 644 also amends the Consumer Product Safety Act to provide that whenever the Commission submits a budget to Congress, it must have the approval of the Commission, rather than merely the approval of the Chairman. Additionally, the bill prohibits political clearance by the Executive Office of the President, the Office of Management and Budget, or any other agency of the Federal Government for any employee whose principal duties would involve (1) significant participation in the determination of major Commission policies, or (2) service as a personal assistant or adviser to any Commissioner. The Civil Service Commission would still approve the qualifications of individuals appointed to such positions. Additionally, the Commission may place a total of 15 positions in the GS-16, GS-17 and GS-18 categories.

The bill also amends section 15(b) of the Consumer Product Safety Act to increase the likelihood that a substantial product hazard will come to the attention of the Commission. The bill requires that a product liability insurer or an independent testing laboratory which discovers a substantial product hazard in the course of its business must report that finding to its insured or its client and inform him of his obligations, if any, under the law. So as not to impair an insurer's ability to defend his insured in private litigation, the legislation provides that no part of any notice submitted in compliance with this provision shall be admitted as evidence or used in any suit or action for damages.

The legislation clarifies section 7 of the Consumer Product Safety Act with regard to the options available to the Commission if an offeror whose offer is accepted is not making satisfactory progress in the development of the standard. The section provides that, in such a case, the Commission itself may develop the standard or, in the alternative, contract with third parties for such development.

S. 644 also amends the Consumer Product Safety Act by designating certain acts as "prohibited acts." Those are as follows: First, the failure or refusal to establish or maintain records as may be required by the Commission under section 15 of the Act. Second, the manufacture for sale, offer for sale, distribution in commerce, or importation into the United States of any consumer product which the

Commission has declared to contain a substantial product hazard or that has been refused admission into the customs territory of the United States pursuant to section 17 of the Act. Third, the failure to comply with any rule established under section 13 requiring that the Commission be supplied with prior notice before the introduction of new consumer products into commerce. Fourth, the failure to comply with any rule promulgated by the Commission under section 27(e) relating to providing consumers with performance or technical data about consumer products. Fifth, with the amendment to section 15(b) of the Act contained in S. 644, relating to the responsibilities of a product liability insurer or an independent test laboratory, the failure of such insurer or laboratory to meet its obligations imposed by that new provision.

Additionally, the bill gives the Commission jurisdiction to restrain any person from distributing in commerce a product which contains a substantial product hazard or which has been refused admission into the customs territory of the United States. Likewise, the bill would allow the Commission to seek a court order to seize a product which contains a substantial product hazard or which has been refused admission into the customs territory of the United States. This legislation also would allow the Commission, when it has reason to believe that a product contains a substantial product hazard and that enjoining distribution of the product is necessary to protect the public from substantial risk of injury, to bring suit in a district court of the United States to enjoin the distribution of such product. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, the court would be empowered to issue a preliminary injunction without bond.

The bill also establishes a new relationship between the Commission and the Department of Justice. Whenever the Commission intends to initiate, prosecute, defend or appeal any court action for the purpose of enforcing laws subject to its jurisdiction, or when the Commission seeks to enforce an order or subpoena of the Commission, it must request representation from the Attorney General. If, after 45 days, the Attorney General fails to indicate that he will represent the Commission, such representation may be made by attorneys designated by the Commission. The bill further provides that the Commission may be represented by attorneys designated by the Commission to restrain any violation of the "prohibited acts" enumerated in section 19 of the Act, or to restrain any person from distributing in commerce a product which (1) fails to comply with a product safety rule, (2) contains a substantial product hazard, or (3) has been denied entry into the customs territory of the United States.

The bill also modifies the relationship between the Acts which were transferred to the Commission (the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act) and the Consumer Product Safety Act. The legislation provides that a risk of injury associated with a consumer product which may be regulated by the Commission under one of the transferred acts may instead be regulated under the provisions of the Consumer Product Safety Act upon a determination by the Commission that such action is in the public interest.

Finally, this legislation addresses the question of the preemptive effect of Federal safety standards. For the first time, it would provide a uniform Federal preemption clause for the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Consumer Product Safety Act. The general rule would be that, if the Consumer Product Safety Commission has in effect a requirement for a product established to deal with a risk of illness or injury associated with that product, no State or political subdivision may establish or continue in effect a requirement applicable to that product and designed to deal with the same risk of illness or injury unless it is identical to the Federal requirement. The exception to this general rule is that a State may maintain such a requirement if (a) compliance with the requirement would not cause the product to be in violation of the Federal standard; and (b) the State or local requirement provides a significantly higher degree of protection than the Federal requirement and it does not place an undue burden upon the manufacture or distribution of products in interstate commerce. Finally, the legislation provides that the Federal Government or a State or local government may establish or continue in effect, *for its own use*, a requirement not identical with the Federal requirement if it provides a higher degree of protection than the Federal requirement.

BACKGROUND AND NEED

In October 1972, Congress created the Consumer Product Safety Commission in response to a 2-year study which disclosed that each year 20 million Americans are injured in the home as a result of incidents connected with consumer products. The annual cost to the Nation of product-related injuries was found to be in excess of \$5.5 billion. The Consumer Product Safety Commission has now been in existence for over 2 years and these amendments to the Act represent the result of a comprehensive review by the Committee to determine where the Commission's authority needs strengthening or clarification.

Authorization

The Committee conducted comprehensive oversight hearings into the implementation of the Consumer Product Safety Act as well as legislative hearings on S. 644. In 5 days of hearings, the Committee received testimony from a variety of interested parties including trade associations, consumer groups, lobbying organizations, manufacturers, national retailers, independent testing laboratories, and the Consumer Product Safety Commission itself. Almost every aspect of the Commission's activities and responsibilities were reviewed in detail.

The Committee action provides an authorization for appropriations for the next 2 years and the fiscal year transitional quarter. The 2-year period was chosen because it is a long enough period of time to allow the Commission to engage in long-term program planning but it will enable the Committee, when considering future authorizations for appropriations, to assess thoroughly the Commission's performance.

Jurisdiction

The legislation clarifies the Commission's jurisdiction in several areas. First, it eliminates pesticides from the Commission's jurisdic-

tion under the Poison Prevention Packaging Act of 1970. Enactment of the Federal Environmental Pesticide Control Act of 1972, in effect, enables the Environmental Protection Agency to enforce adequately pesticide-related packaging standards for the purpose of child protection. Thus, it would have been duplicative for the Consumer Product Safety Commission to maintain this jurisdiction.

Second, the Committee voted to amend the Federal Hazardous Substances Act to provide that the term "hazardous substance" as used in that Act does not include "tobacco products." The American Public Health Association and Consumer Subcommittee Chairman Moss had petitioned the Commission to ban all cigarettes which emitted tar residues in excess of 21 mg. The Commission denied the petition on the ground that it had no jurisdiction to consider such a petition under the Federal Hazardous Substances Act. The petitioners appealed the case, and the Federal District Judge ruled that the Commission did in fact have jurisdiction under that Act and ordered it to consider the petition on the merits. This legislation amends the Federal Hazardous Substances Act to reflect Congress' intent that "tobacco and tobacco products" may not be considered "hazardous substances under the Hazardous Substances Act.

The Committee's action should not be interpreted as reflecting any new judgment on smoking and health.

The Committee action in clarifying the Congressional intent to remove tobacco and tobacco products from the jurisdiction of the Consumer Product Safety Commission also reflects the Committee's concern that, if the Commission were to consider this issue, it would exhaust its resources and it would be unable to address the other safety issues with which it must be concerned.

The Committee amended the Consumer Product Safety Act to provide that a "tobacco or tobacco product" constituted a "consumer product" within the meaning of that Act to the extent that such products present an unreasonable risk of injury as a source of ignition. The Consumer Product Safety Commission is currently considering safety standards addressing the flammability of upholstered furniture under the Flammable Fabrics Act, pursuant to which standards for other products have been adopted. Some have argued that it would be more cost-effective to regulate the source of ignition of furniture fires rather than to regulate the construction standards for the furniture itself. They have petitioned the Commission to take this approach, which was denied on a 4-0 vote on the ground that it had no jurisdiction to consider such a petition under the Flammable Fabrics Act. The petitioners have appealed the case. It is contended that this amendment would be particularly appropriate in view of the fact that a prospective furniture flammability standard would do little to protect furniture already in the home. This amendment would allow the Commission to assess which approach would be the most cost effective and best protect consumers from the hazard of furniture fires. We do not, however, intend by this amendment to delay the adoption of flammable standards under the Flammable Fabrics Act. That activity should continue unimpeded.

The legislation provides for a limitation on the Commission's regulation of tobacco and tobacco products as an ignition source. The Com-

mission may not, by its action, add to any health hazard posed by such products. It would make little sense for the Commission, on the one hand, to regulate tobacco and tobacco products as a source of ignition, while, at the same time increase tar and nicotine content. If, for example, regulation of cigarettes as a source of ignition would result in the increase of the "tar" and nicotine content of cigarettes, such regulations would not be permitted under the amendment.

Finally, the Committee action clarifies the Commission's jurisdiction with respect to ammunition. A Chicago-based handgun control group petitioned the Commission to ban handgun ammunition as a "hazardous substance" under the Federal Hazardous Substances Act. The Commission denied the petition, arguing that to impose such a ban would have the effect of banning firearms—a matter not within the Commission's jurisdiction. The decision was appealed and the Federal district court reasoned that, since the Commission admitted having jurisdiction over handgun ammunition, it must consider the petition on the merits.

The Committee's action makes clear that, except as otherwise provided in the amendment, the Consumer Product Safety Commission has no jurisdiction under the Federal Hazardous Substances Act to restrict the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition. However, the amendment does not affect the Commission's jurisdiction with respect to fireworks devices or components of fireworks — the Commission would maintain the authority it has always had to regulate these products under the Hazardous Substances Act. Additionally, the Commission's jurisdiction under that Act to require cautionary labeling necessary to the storage of such ammunition in or around the household is maintained. These regulations were originally published in the Federal Register on December 15, 1961, and the labeling requirements include (1) the common or usual name of the ammunition in the container; (2) the statement "Warning — Keep Out of the Reach of Children" or its practical equivalent; and (3) the name and place of business of the manufacturer, packer, or seller or distributor.

The amendment also retains jurisdiction for the Consumer Product Safety Commission to ban firearms ammunition which is identified by manufacturer, caliber, load, quantity and manufacturer's lot number to the extent that such ammunition is defective and presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from a firearm. By including such a provision, the Committee seeks to protect users of firearms ammunition from unintended hazards presented because of a defect in the way in which the ammunition was manufactured, the components of the ammunition, or the way in which it was packaged or shipped. It is in the interest of the public health and safety to have a Federal agency such as the Consumer Product Safety Commission which can act to ensure that such defective ammunition is recovered expeditiously.

Personnel

The amendments relating to the hiring of Commission employees whose principal duties will involve participation in determination of major Commission policies or serve as a personal assistant to a Com-

missioner are designed to resolve the ongoing dispute between the Consumer Product Safety Commission and the Civil Service Commission. On April 3 and 11, 1974, the Senate Commerce Committee and the Senate Government Operations Committee held joint hearings on the inability of the Consumer Product Safety Commission to obtain Civil Service Commission approval of CPSC non-career executive appointment positions (NEA). Until recently, Civil Service Commission approval was never obtained because of the Consumer Product Safety Commission's refusal to submit the names of their nominees to the White House for political clearance. This refusal was based on the theory that the Commission, as an independent regulatory agency and an arm of Congress, need not seek executive branch political clearance of its personnel in policymaking positions.

These amendments would allow the Commission to designate up to 25 positions as "non-career" positions. Such positions could include, for example, the Executive Director, the General Counsel, the Director of Congressional Relations and the Director of Compliance. Appointments to, and removals from, these positions shall be made by the Chairman, subject to the approval of the Commission (except those appointments and removals involving service as a personal assistant or as an adviser to the Chairman or another Commissioner). No appointments or removals from these non-career positions may be subject to the approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Consumer Product Safety Commission and except as provided in section 3324 of Title 5, United States Code. That section requires the Civil Service Commission to approve the qualifications of an appointee to a GS-16, GS-17 and GS-18 position. The section also ensures that, in addition to any position that the Commission is authorized to have under section 5108(a) of Title 5, United States Code, the Commission may place a total of 15 positions in categories GS-16, GS-17 and GS-18.

Substantial Product Hazard Identification

One of the most important safeguards for the public are the provisions contained in the Consumer Product Safety Act relating to the identification and remedy of consumer products which are found to contain a substantial product hazard. A substantial product hazard is defined to mean a failure to comply with an applicable consumer product safety rule which poses a substantial risk of injury to the public or a product defect which creates a substantial risk of injury to the public. Under section 15 of the Act, whenever a manufacturer, distributor or retailer which obtains information which reasonably supports the conclusion that a product contains a defect which could create a substantial product hazard is obligated to report that conclusion to the Commission.

In order to facilitate the identification of potential substantial product hazards, this legislation would require a product liability insurer or an independent testing laboratory which obtains information which reasonably supports the conclusion that a consumer product may contain such a hazard to report that fact to its insurer or the client on whose behalf it has tested the product. The notice must also

inform the insured or the client of his obligations, if any, under section 15 of the Act. While the section is designed to increase the likelihood that the Commission will become aware of a substantial product hazard, it is not intended to shift any of the existing statutory duties or responsibilities in the Act from the insured or client to the insurer or independent testing laboratory. The Committee recognizes that a voluntary cooperative relationship presently exists between insureds and insurers and testing laboratories and clients, and this relationship contributes to product safety. The Committee does not intend to interfere with, or disturb, this long-standing beneficial relationship.

In determining whether an independent testing laboratory or product liability insurer has complied with the requirements of this provision, the Commission must examine what information was known by the laboratory or insurer at the point in time when it is being claimed and must find that there was sufficient information to reasonably support the conclusion that a product contains a substantial product hazard. Before subjecting an insurer or laboratory to a civil or criminal sanction, the Commission must have actually determined a substantial product hazard to exist. These two provisions are designed to reduce "second guessing" by the Commission.

Standards Development

Section 7 of the Consumer Product Safety Act contains a unique "offeror" procedure which provides for public participation in the development of consumer product safety rules. The Act current provides that if the Commission accepts an offer to develop a proposed consumer product safety rule, the Commission may not 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. The legislation makes clear that the Commission, upon a determination that no offeror is making progress in the development of this standard, may itself develop the standard or contract with third parties for such development. The Committee anticipates that the Commission will monitor its offerors closely and will exercise its authority to develop the standard itself or by contract where the Commission determines that the offeror is not going to complete satisfactorily the task for which it was selected.

Prohibited Acts

The legislation amends section 19 of the Consumer Product Safety Act by making certain acts "prohibited acts". Section 16 of the Consumer Product Safety Act authorizes the Commission, by rule, to require manufacturers, private labelers, or distributors of consumer products to establish or maintain records as the Commission may, by rule, reasonably require for purposes of implementing the Act. While it is currently a "prohibited act" to fail or refuse access to or copying of records, Congress failed to make it a prohibited act to "fail to establish or maintain records." This legislation would make such failure or refusal to establish or maintain records a prohibited act.

The legislation also makes it a "prohibited act" to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product that has been declared to contain a sub-

stantial product hazard or that has been refused admission into the customs territory of the United States. Under existing law, the basis for refusing admission of such a product is that it fails to comply with an applicable consumer product safety rule, it has been determined to be imminently hazardous, or it has been determined to contain a product defect which constitutes a substantial product hazard. The existing provisions of the Act provide full due process procedures for the manufacturer, distributor or retailer of a product which the Commission believes to contain a substantial product hazard. The Commission is required to hold a hearing in accordance with the adjudicatory provisions of section 554 of Title 5, United States Code. It is only after the Commission has held such a hearing and declared the product to contain such a substantial product hazard would it be a "prohibited act" to manufacture, offer for sale, sell, distribute or import that product.

The legislation also makes it a prohibited act to fail to comply with any rule under section 13 of the Act (15 U.S.C. 2062). Section 13 authorizes the Commission by rule, to prescribe procedures for the purpose of ensuring that the manufacturer of any new consumer product furnishes notice and a description of such product to the Commission before its distribution in commerce. Similarly, it would be a prohibited act to fail to comply with any rule issued under section 27(e) of the Act. This section authorizes the Commission, by rule, to require any manufacturer of consumer products to provide to the Commission such performance and technical data related to safety performance which may be required to carry out the purposes of the Act. The Commission may also, by rule, require that notice be given of such performance and technical data to first purchasers. If the Commission is to obtain compliance with the rules which it promulgates, it must have meaningful enforcement authority.

Enforcement

The bill also refines the enforcement authority of the Consumer Product Safety Commission under the Consumer Product Safety Act. Under existing law, the United States district courts have jurisdiction to restrain any violation of section 19 of the Act ("Prohibited Acts") or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule. These amendments would expand that injunctive authority to include restraining the distribution of a product which contains a substantial product hazard or which has been refused admission into the customs territory of the United States. Similarly, the Act currently allows a seizure action where a consumer product fails to conform to an applicable consumer product safety rule. This legislation would expand that authority to allow for seizure where a product contains a substantial product hazard or has been refused admission into the customs territory of the United States.

The Act currently requires that, before a product can be declared to contain a substantial product hazard or before it can be refused admission into the customs territory of the United States, a hearing must be afforded complying with the requirements of section 554 of Title 5, United States Code. This section is designed to afford the same protec-

tion to consumers from products containing substantial product hazards as is currently provided for products which fail to comply with a federal product safety rule.

The hearing which must be held by the Commission to determine whether a substantial product hazard exists can, at times, be a lengthy proceeding. In order to protect the public during the pendency of this proceeding, the bill would allow the Commission to seek a preliminary injunction in the district court when the court determines that enjoining the distribution in commerce of the product pending completion of the hearing is necessary to protect the public from substantial risk of injury. Upon a proper showing that, weighing the equities and considering the likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, the court would be empowered to grant the preliminary injunction without bond.

This provision is modeled after a similar provision contained in the Federal Trade Commission improvements provisions of the Alaska Pipeline Act (15 U.S.C. 53(b)). In that Act, the FTC is given authority to seek preliminary injunctions when the FTC has reason to believe that any person is violating or is about to violate any provision or law enforced by the Federal Trade Commission. The argument for similar authority for the Consumer Product Safety Commission is even more compelling since the health and safety of American consumers are at issue.

This legislation defines a new relationship between the Consumer Product Safety Commission and the Department of Justice. It provides that if the Consumer Product Safety Commission seeks to bring an action to enforce the Act, it must first request the Attorney General to represent the Commission in court. If, after 45 days, the Attorney General fails to notify the Commission that he will represent the Commission, the Commission may designate its own attorneys for such purpose. The bill would also allow the Commission to go directly to court for injunctive relief.

This 45-day provision has several benefits. Unlike the Commission's proposed legislation (S. 1000) which would have allowed the Commission to go directly to court, under this provision, the Attorney General could choose to represent the Commission in the court action. It also provides the flexibility to allow the Commission to go to court on its own behalf if the Attorney General, for example, is experiencing a particularly heavy caseload and is unable to dedicate the resources necessary to bring the Commission's action. With the authority for the Commission to designate its own attorneys to go into court, an even-handed and consistent enforcement policy for the Commission is assured. Finally, it provides a more efficient enforcement program because the agency with the expertise—the Consumer Product Safety Commission—is authorized to present its own case rather than relying on the Justice Department attorneys who may not be as intimately familiar with the Commission's case as the Commission's own attorneys.

It should be noted that the provisions contained in this bill allowing the Commission to represent itself in court are not unique. For example the Magnuson-Moss FTC/Warranty Act (P.L. 93-637) allows the Federal Trade Commission to go into court on its own behalf.

Relationship Between Consumer Product Safety Act and the Transferred Acts

The amendment to section 30(d) of the Consumer Product Safety Act would afford the Commission greater flexibility in its regulatory activities. In addition to the Consumer Product Safety Act, the Commission is responsible for implementing the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Flammable Fabrics Act. These Acts were transferred to the Commission when it was established in October 1972. The bill would allow products which may be regulated by the Commission under one of the transferred Acts to be regulated instead under the provisions of the Consumer Product Safety Act upon a determination by the Commission that such action is in the public interest.

In some circumstances, the Consumer Product Safety Act may provide a more preferable regulatory scheme. For example, that Act contains the section 7 "offeror" procedures which assure industry participation in the development of standards. Likewise, the Consumer Product Safety Act contains a broader provision on standing to challenge product safety rules and a prohibition against stockpiling noncomplying products before a standard becomes effective.

Preemption

The final issue addressed by the Committee in the bill concerns the preemptive effect of standards or regulations promulgated under the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Consumer Product Safety Act.

With respect to the Flammable Fabrics Act, the Committee action repeals the preemption provision contained in the 1967 amendments because of the uncertainties which it has created. Section 16 of the Flammable Fabrics Act currently provides that "This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions." The term "inconsistent" has been given varying interpretations by legal authorities and this legislation is intended to resolve any ambiguity in the preemptive effect of the Federal flammability standards.

With regard to the Federal Hazardous Substances Act, that legislation does not contain a preemption clause applicable to regulations used to determine when a hazardous substance or article shall be a banned hazardous substance or article. While the promulgation of such standards under the Hazardous Substances Act will assist manufacturers in complying with the Act and will assist the Commission in enforcing its provisions, the Committee action will clarify the preemptive effect of these regulations.

The Consumer Product Safety Commission has promulgated standards applicable to bicycles under the Hazardous Substances Act. Several States have also adopted safety regulations applicable to bicycles that are sold within the State. In some cases, those standards are identical to the Federal requirements. However, others would require non-compliance with the Federal standard in order to comply with a State standard. Still others, while not inconsistent with the Federal standard, address the same risk of injury but offer a different safety solution than the Federal requirement. In some cases, this may burden manu-

facturers in complying with both Federal and State standards to meet the same problem, providing little additional safety benefit and adding to the cost for the ultimate consumer. These amendments would specify when a State or political subdivision may maintain its own standards when Federal standards are in effect.

The preemption scheme adopted for all three Acts would be as follows: First, if the Consumer Product Safety Commission has in effect a requirement established to alleviate a risk of illness or injury associated with a product, no State or political subdivision may establish or continue in effect a requirement designed to alleviate the same risk of illness or injury unless such requirement is identical to the Federal requirement. Second, the provision allows the Federal Government or the government of the State or political subdivision thereof to establish and continue in effect *for its own use* a requirement if it provides a higher degree of protection than the Federal requirement. These criteria would be applicable, for example, to a State hospital, institution, or old age facility. Third, upon the application of a State or political subdivision, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for oral presentation of views allows that State or political subdivision to continue in effect its own requirement if (1) compliance with the State or local requirement would not cause the product to be in violation of the Federal requirement; and (2) the State or local requirement provides a significantly higher degree of protection than the Federal requirement and it does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

This preemption scheme is designed to meet the competing interests of those who view Federal requirements as merely minimum standards and those who would opt for uniform national requirements. For those who adopt the former view, it would allow a State to maintain its own requirement as long as that requirement will have the effect of protecting consumers to a significantly higher degree than the protection from the specific risk of illness or injury which is addressed by the Federal requirement. Thus, for example, if both the Federal Government and a State government were to adopt a standard for rear reflectors for bicycles, in order for the State to maintain its standard in effect, it would have to prove to the Commission, *inter alia*, that its standard provides a significantly higher degree of protection than the Federal standard. Otherwise, the State standard would be preempted.

Another example relates to fireworks devices. Many States have banned the distribution, sale or possession of fireworks devices to private citizens. The Consumer Product Safety Commission is currently considering a regulation under the Hazardous Substances Act relating to fireworks devices. If the Commission's regulation ultimately allows the distribution of some types of fireworks, a State would have the burden of showing that its ban provides consumers a significantly higher degree of protection than the Federal requirement which allows the distribution of some fireworks.

In addition to the level of protection factor, the Committee is acutely aware of the potential for increased costs to consumers and burden on manufacturers that could result when States are allowed to maintain different standards over and above the uniform Federal standard. It is for this reason that the preemption clause contained in these amend-

ments requires that the State standard not place an undue burden upon the manufacture or distribution of products in interstate commerce. The Commission, therefore, in ruling on the preemptive effect of a Federal standard, must balance the protective benefits derived from the State's maintaining its own standards against the burden that standard may impose upon the manufacture or distribution of products in interstate commerce. In this context, such factors, among others, as increased cost of the product and complexity of the required changes in the manufacturer's production or distribution system would constitute a burden.

In choosing the phrase "undue burden upon the manufacture or distribution of products in interstate commerce" it is the Committee's intention to establish a standard different from the general constitutional test of the commerce clause. The "burden" referred to in these amendments is that which falls upon the manufacturing process or the distribution system for goods moving in interstate commerce. Thus, it is intended, for example, to be distinguished from those cases in which the courts have held that cost is not a factor in determining whether there is a burden on commerce. These criteria effect only the preemption provisions of the Consumer Product Safety Act, the Hazardous Substances Act and the Flammable Fabrics Act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The short title of this Act is the "Consumer Product Safety Commission Improvements Act of 1975."

SECTION 2. AUTHORIZATION FOR APPROPRIATIONS

Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081 (a)) is amended to authorize for appropriation \$51 million for the fiscal year ending June 30, 1976; \$14 million for the transitional quarter ending September 30, 1976; and \$55 million for the fiscal year ending September 30, 1977.

SECTION 3. LIMITATIONS ON JURISDICTION

Section 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended to provide that the term "hazardous substance" does not include tobacco and tobacco products.

That section is further amended by providing that the term "hazardous substance" shall not include 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 (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 article. Thus, except as provided below, the Consumer Product Safety Commission may make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder, under the Federal Hazardous Substances Act.

However, the term "hazardous substance" does include (1) fireworks devices and components thereof (except certain components intended to be used solely for sporting, recreational, or cultural purposes in antique firearms); (2) firearms ammunition, to the extent that cautionary labeling is necessary relating to the storage of such ammunition in or around the household; and (3) firearms ammunition which is defined by manufacturer, caliber, load, quantity, and manufacturer's lot number to the extent that such ammunition is defective and presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from firearms.

Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended by deleting from the definition of "household substance" the words "an economic poison" as that term is defined in section 135(a) of Title 7 United States Code.

Finally, section 3(a)(1)(B) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(B)) is amended by providing that the term "consumer product" does not include tobacco and tobacco products, except to the extent that such products present an unreasonable risk of injury as a source of ignition. No action taken by the Commission in regulating tobacco or tobacco products as an ignition source shall add to any health hazard posed by such product.

SECTION 4. BUDGET AND EMPLOYEE PROVISIONS

Subsection (a) amends section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) by providing that requests for estimates for regular, supplemental or deficiency appropriations submitted on behalf of the Commission shall require the approval of the Commission before they are submitted.

Subsection (b) amends section 4(g) of the Consumer Product Safety Act (15 U.S.C. 2053(g)) by adding several new provisions. The Chairman, subject to the approval of the Commission, may designate up to 25 positions within the Commission as "non-career" positions. Individuals may be appointed to these "non-career" positions if their principal duties will involve (1) significant participation in the determination of major Commission policies; or (2) service as a personal assistant or advisor to the Chairman or any other Commissioner. Appointments to, and removals from, such non-career positions shall be made by the Chairman, subject to the approval of the Commission. Where the position involves service as a personal assistant or as an advisor to the Chairman or any other Commissioner, only the Chairman or that Commissioner has the authority to appoint or remove an individual from that position. Any such appointment or removal may be made without regard to any provision of Title 5 of the United States Code other than section 3324 where applicable, governing appointments to and removal from positions in the competitive service. No appointment or removal shall be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Consumer Product Safety Commission, except as otherwise provided. The Chairman, subject to the approval of the Commission, may abolish a non-career position established under this authority.

The Chairman, subject to the approval of the Commission, may place a total of 15 positions in categories GS-16, GS-17 and GS-18, in addition to any professional engineering position primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed at these grades, and in addition to any such positions that are authorized by section 5108 (a) of Title 5, United States Code. Section 5108 (c) of Title 5, United States Code, is amended to provide for these 15 positions in categories GS-16, GS-17 and GS-18.

SECTION 5. SUBSTANTIAL PRODUCT HAZARDS

Subsection (a) adds two paragraphs to the definitions section of the Consumer Product Safety Act. First, it defines a "product liability insurer" as a legally constituted and authorized entity that (1) has entered into a contract or agreement or that is otherwise legally obligated to pay or compensate an injured person for losses associated with a consumer product distributed in commerce or (2) has insured a manufacturer of a consumer product distributed in commerce against risks involving such products.

Second, the term "independent testing laboratory" is defined to mean "a person who, in accordance with professional standards and objective test protocols, tests consumer products and evaluates them for safety and other characteristics and who is not owned or controlled, in whole or in part, directly or indirectly, by the manufacturer of such products."

Subsection (b) provides that each product liability insurer or each independent testing laboratory which obtains information which reasonably supports the conclusion that a consumer product distributed in commerce which may contain a substantial product hazard shall, as soon as practicable, submit to its insured, or to the person on whose behalf it has tested such consumer product, whichever is applicable, a notice of such conclusion, and inform such person of his obligations under the Act. No part of any notice submitted in compliance with this paragraph shall be admitted as evidence in any suit or action for damages. Before a product liability insurer or independent testing laboratory may be subject to a civil or criminal penalty for failure to comply with the requirements of this provision, the Commission must determine that the product liability insurer or independent testing laboratory failed to act upon information available to him at the time which should have reasonably supported the conclusion that the consumer product contained a substantial product hazard. Additionally, the consumer product in question must have been determined to actually contain a substantial product hazard.

SECTION 6. STANDARDS DEVELOPMENT

Section 7 (e) (2) of the Consumer Product Safety Act (15 U.S.C. 2056 (e) (2)) is amended by providing that, whenever the Commission determines (1) that no offeror whose offer is accepted under section 7 of the Act is making progress in the development of the standard for which he was selected to develop, or (2) that the proposed standard developed by the offeror is not satisfactory in whole or in part, the

Commission itself may develop the standard or may contract with third parties for such development.

SECTION 7. PROHIBITED ACTS AND ENFORCEMENT

Subsection (a) amends section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068 (a)) by making it unlawful for any person to (1) fail or refuse to establish or maintain records that may be required by the Commission; (2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product that is subject to an order issued under section 15(d) or that has been refused admission into the customs territory of the United States pursuant to section 17; (3) fail to comply with any rule under section 13 relating to prior notice or description of new consumer products; or (4) fail to comply with any rule under section 27(d) relating to providing performance and technical data.

Subsection (b) amends section 22 of the Act in several respects. First, it provides that the district courts of the United States shall have jurisdiction to restrain any person from distributing in commerce a product that is subject to an order issued under section 15(d) relating to substantial product hazards or that has been refused admission into the customs territory of the United States pursuant to section 17. Second, section 22(b) is amended to provide that any consumer product that is subject to an order issued under section 15(d) relating to substantial product hazards or that has been refused admission into the customs territory of the United States pursuant to section 17 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.

Third, section 22 is amended by adding a new subsection which provides that whenever the Commission has reason to believe that any person is manufacturing, offering for sale, selling, or distributing in commerce or importing any consumer product which contains a substantial product hazard and that enjoining the distribution of that product pending completion of the hearing required by section 15(f) is necessary to protect the public from substantial risk of injury, the Commission or the Attorney General may bring suit in a district court of the United States to enjoin the distribution of such product. Upon a proper showing that, weighing the equities and considering the Commission's or the Attorney General's likelihood of success, such action would be in the public interest, and after notice to the defendant, a preliminary injunction may be granted without bond.

SECTION 8. LITIGATION

Subsection (a) amends section 22 of the Act by no longer requiring the Commission to seek the concurrence of the Attorney General before it brings an action for injunction.

Subsection (b) provides that, when the Commission seeks (1) 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 or (2) to enforce a subpoena or order which it has issued, the Attorney General must notify the Commission within 45 days of re-

quest for representation that he will represent the Commission. If such notification is not forthcoming, the Commission representation may be made by attorneys designated by the Commission, for that purpose.

SECTION 9. JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to provide that a risk of injury which is associated with a consumer product and which may be regulated by the Commission under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act may instead be regulated under the provisions of the Consumer Product Safety Act upon a determination by the Commission that such action is in the public interest.

SECTION 10. PREEMPTION

Subsection (a) amends section 18 of the Federal Hazardous Substances Act (74 Stat. 380; 15 U.S.C. 1251 note) by adding a new subsection providing for preemption of regulations, adopted by the Consumer Product Safety Commission used to determine when a hazardous substance or article shall be a banned hazardous substance or article. When such a regulation is adopted to deal with a risk of illness or injury associated with a hazardous substance or article, no State or political subdivision thereof may establish or continue in effect a regulation applicable to such substance or article designed to deal with the same risk of illness or injury, unless such requirement is identical to the requirement established by the Federal regulation. The Federal Government and the government of the State or political subdivision thereof may establish and continue in effect, for its own use, a requirement applicable to a hazardous substance or article if such requirement has been established to deal with the risk of illness or injury associated with such a substance or article, even though such requirement is not identical to the requirement if the Federal, State or local requirement provides a higher degree of protection from the risk of illness or injury than the Federal requirement.

Upon application of a State or political subdivision thereof, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for oral presentation of views, allow a State or political subdivision thereof to have in effect its own requirement designed to deal with risk of illness or injury associated with a hazardous substance if (a) compliance with the requirement would not cause the hazardous substance to be in violation of the Federal requirement; and (b) the State or political subdivision requirement provides a significantly higher degree of protection from the risk of such illness or injury than the Federal requirement and does not place an undue burden on the manufacture or distribution of products in interstate commerce.

Subsection (b) amends section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) to provide for a preemption provision similar to that proposed for the Federal Hazardous Substances Act. Except as otherwise provided, if a flammability standard or any other regulation is in effect under the Flammable Fabrics Act, section 11 of Public Law

90-189 (which provides that standards of flammability in effect on December 13, 1967 shall continue in effect), or any other regulation in implementation of those Acts for a fabric, related material or product, no State or political subdivision of a State may establish or continue in effect its own flammability standard or regulation against the same risk of occurrence of fire with respect to which the Federal standard or regulation was adopted unless the State or local flammability standard is identical to the Federal standard or regulation.

The Federal Government and the government of a State or political subdivision thereof may, however, establish and continue in effect, for its own use, a flammability standard if it provides a higher degree of protection from the risk of occurrence of fire than the Federal standard or regulation provides. Upon the application of a State or of a political subdivision of a State, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for oral presentation of views, allow a State or subdivision thereof to maintain its own flammability standard or regulation if (1) compliance with the requirement would not cause a fabric, related material or product to be in violation of a Federal standard and (2) the State or local standard or regulation provides a significantly higher degree of protection from the risk of occurrence of fire than the Federal standard or other regulation and does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

Subsection (c) amends section 26(c) of the Consumer Product Safety Act (15 U.S.C. 2073(c)) by providing the same standards for preemption of State standards as is provided by these amendments in the Federal Hazardous Substances Act and the Flammable Fabrics Act. Specifically, upon application of a State or political subdivision thereof, the Commission may, by rule, after notice and opportunity for presentation of views, allow the State or political subdivision to maintain its own standard where (1) it imposes a significantly higher level of performance than the Federal standard and (2) it does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

AMENDMENTS TO THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2051 ET SEQ.)

SECTION 3 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2052)

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, *except to the extent that such products present an unreasonable risk of injury as a source of ignition: Provided, however, That no action taken by the Commission shall add to any health hazards posed by such 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] *pesticides* (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 subparagraph,

(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) * * *

(15) The term 'product liability insurer' means a legally constituted and authorized entity that—

(A) has entered into a contract or agreement, or that is otherwise legally obligated, to pay or compensate an injured person for losses associated with a consumer product distributed in commerce; or

(B) has insured a manufacturer of a consumer product distributed in commerce against risks involving such product.

(16) The term 'independent testing laboratory' means a person who, in accordance with professional standards and objective test protocols, tests consumer products and evaluates them for safety and other characteristics, and who is not owned or controlled, in whole or in part, directly or indirectly, by the manufacturer of such products.

SECTION 4 OF THE CONSUMER PRODUCT SAFETY ACT
(15 U.S.C. 2053)

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) * * *

(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.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations submitted on behalf of the Commission shall require the approval of the Commission, pursuant to section 27(k)(1), prior to their submission.

(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] regular 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.

(3) The Chairman, subject to the approval of the Commission, may designate certain positions (not to exceed 25) within the Commission as 'noncareer positions'. Individuals may be appointed to such noncareer positions if their principal duties will involve—

"(A) significant participation in the determination of major Commission policies; or

"(B) service as a personal assistant or as an adviser to the Chairman or any other Commissioner.

Appointments to, and removals from, such noncareer positions shall be made by the Chairman, subject to the approval of the Commission, except that appointments to, and removals from, any such position that involves service as a personal assistant or as an adviser to the Chairman or any other Commissioner shall be made by the Commissioner concerned and shall not be subject to the approval of any other Commissioner. Any such appointment or removal may be made without regard to any provision of title 5 of the United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service, and shall not be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Commission, except as otherwise provided in this section. The Chairman, subject to the approval of the Commission, may abolish any particular noncareer position, that was designated as such under this paragraph, upon a determination that such position is no longer needed.

"(4) The Chairman, subject to the approval of the Commission, may place a total of 15 positions in categories GS-16, GS-17, and GS-18, in addition to any professional engineering position primarily concerned with research and development and professional positions in the physical and natural sciences and medicine which may be placed in these grades, and in addition to any such positions that are authorized by section 5108(a) of title 5, United States Code.

(h) * * *

SECTION 7 OF THE CONSUMER PRODUCT SAFETY ACT
(15 U.S.C. 2056)

SEC. 7. (a) * * *

(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. Whenever the Commission determines that no offeror whose offer is accepted is making progress in the development of such standard, or that the proposed standard developed by each offeror whose offer for the development of such standard was accepted is not satisfactory in whole or in part, the Commission itself may develop such standard or it may contract with third parties for such development.

(3) * * *

SECTION 15 OF THE CONSUMER PRODUCT SAFETY ACT
(15 U.S.C. 2064)

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

[(2)] (B) 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.

(2) Each product liability insurer and each independent testing laboratory which obtains information which reasonably supports the conclusion that a consumer product distributed in commerce may contain a substantial product hazard shall, as soon as practicable, submit to its insured, or to the person on whose behalf it has tested such consumer product, whichever is applicable, a notice of such conclusion, and inform such person of his obligations under this section. No part of any notice submitted in compliance with this paragraph, shall be admitted as evidence or used in any suit or action for damages. No such product liability insurer or independent testing laboratory shall

be subject to a civil or criminal penalty for failure to comply with the provisions of this paragraph unless the Commission first determines (i) that such consumer product contains a substantial product hazard pursuant to the provisions of this section and (ii) that such product liability insurer or independent testing laboratory failed to act upon information which, at the time, should have reasonably supported the conclusion that such product hazard existed.

(c) * * *

SECTION 19 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2068)

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) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product (A) that is subject to an order issued under section 15(d), or (B) that has been refused admission into the customs territory of the United States pursuant to section 17;

[(3)] (4) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain 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)] (5) fail to furnish information required by section 15(b);

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

[(6)] (7) 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)] (8) fail to comply with any rule under section 9(d) (2) (relating to stockpiling) [.] ;

(9) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

(10) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).

SECTION 20 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2069)

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)] *Section 19(a) (1), (2), (3), (5), (6), (7), (8), (9), or (10)* 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)], (2), or (3) 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) * * *

SECTION 22 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2071)

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.]

Sec. 22. (a) The district courts of the United States shall have jurisdiction to—

(1) restrain any violation of section 19; or

(2) restrain any person from distributing in commerce a product—

(A) that does not comply with a consumer product safety rule or that is subject to an order issued under section 15(d),

or

(B) that has been refused admission into the customs territory of the United States pursuant to section 17. 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] *that—*

(1) fails to comply with an applicable consumer product safety rule or that is subject to an order issued under section 15(d), or

(2) has been refused admission into the customs territory of the United States pursuant to section 17, 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.

(c) Whenever the Commission has reason to believe—

(1) that any person is manufacturing offering for sale, selling, distributing in commerce, or importing into the United States any consumer product that contains a substantial product hazard as defined in section 15(a); and

(2) that enjoining the distribution in commerce of such product, pending completion of the hearing required by section 15(f), is necessary to protect the public from a substantial risk of injury—the Commission or the Attorney General may bring suit in a district court of the United States to enjoin the distribution of such a product. Upon a proper showing that, weighing the equities and considering the Commission's or the Attorney General's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a preliminary injunction may be granted without bond.

SECTION 26 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2075)

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 standards, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce] (1) imposes a significantly higher level of performance than the Federal standard, and (2) does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

SECTION 27 OF THE CONSUMER PRODUCT SAFETY ACT
(15 U.S.C. 2076)

ADDITIONAL FUNCTIONS OF THE COMMISSION

SEC. 27. (a) * * *

(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 subpoena 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 subpoenas 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 subpoena 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. For purposes of this subsection and of subsection (b) (7) of this section, unless the Attorney General notifies the Commission within 45 days of a request for representation that he will represent the Commission,

such representation may be made by attorney designated by the Commission.

(d) * * *

SECTION 30 OF THE CONSUMER PRODUCT SAFETY ACT (15 U.S.C. 2079)

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] Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.), 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) * * *

[(d) A risk of injury which is associated 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.]

(d) A risk of injury which is associated with consumer products and which may be regulated by the Commission under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act may instead be regulated under the provisions of this Act upon a determination by the Commission that such action is in the public interest.

(e) * * *

SECTION 32 OF THE CONSUMER PRODUCT SAFETY ACT
(15 U.S.C. 2081)

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) \$51,000,000 for the fiscal year ending June 30, 1976;

(2) \$14,000,000 for the transitional quarter ending September 30, 1976; and

(3) \$55,000,000 for the fiscal year ending September 30, 1977.

AMENDMENTS TO THE FEDERAL HAZARDOUS
SUBSTANCES ACT (15 U.S.C. 1261 ET SEQ.)

SECTION 2 OF THE FEDERAL HAZARDOUS SUBSTANCES ACT
(15 U.S.C. 1261)

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) * * *

(f) The term "hazardous substance" means:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 3(a), meet the requirements of subparagraph 1(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this Act in order to protect the public health.

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 3(e) of this Act, presents an electrical, mechanical, or thermal hazard.

2. The term "hazardous substance" shall not apply to economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act, 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, cooking, or refrigeration system of a house, *nor to tobacco and tobacco products*, but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison.

3. The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(4) (A) Except as provided in subparagraph (c), the term 'hazardous substances' shall not include 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:

(B) *Except as provided in subparagraph (C), the Consumer*

Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearm ammunition or components of firearms ammunition, including blackpowder or gunpowder.

(C) Such term shall include—

(i) *fireworks devices and components thereof (other than commercially manufactured black powder, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921 (a) (16) of title 18 of the United States Code, or in antique devices as exempted from the term 'destructive device' in section 921 (a) (4) of title 18 of the United States Code);*

(ii) *firearms ammunition to the extent that cautionary labeling is necessary relating to the storage of such ammunition in or around the household; and*

(iii) *firearms ammunition which is identified by manufacturer, caliber, load, quantity, and manufacturers' lot number to the extent that such ammunition is defective and presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from a firearm.*

(g) * * *

SECTION 18 OF THE FEDERAL HAZARDOUS SUBSTANCES ACT (74 STAT.
380; 15 U.S.C. 1261 NOTE)

EFFECT UPON FEDERAL AND STATE LAW

SEC. 18 (a) Nothing in this Act shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1200), or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder, or under sections 204(a) (2) and 204(a) (3) of the Interstate Commerce Act, as amended (relating to the transportation of dangerous substances and explosives by surface carrier); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 or regulations promulgated under section 601 of the Federal Aviation Act of 1958 (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act; or of the Public Health Service Act; or of the Federal Insecticide, Fungicide, and Rodenticide Act; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled "An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes", approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19.

(b) It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in sections 2(f) (2) and (3) of this Act) which differs from the requirements or exemptions of this Act or the regulations or interpretations promulgated

pursuant thereto. Any law, regulation, or ordinance purporting to establish such a labeling requirement shall be null and void.

(c) (1) Except as provided in paragraphs (2) and (3), if a regulation of the Consumer Product Safety Commission, that is used to determine when a hazardous substance or article shall be a banned hazardous substance or article, is in effect and if such regulation has been established to deal with a risk of illness or injury associated with a hazardous substance or article, no State and no political subdivision of a State may establish or continue in effect a requirement applicable to such substance or article and designed to deal with the same risk of illness or injury, unless such requirement is identical to the requirement established under such regulation.

(2) The Federal Government and the government of a State or the government of a political subdivision of a State may establish and continue in effect, for its own use, a requirement applicable to a hazardous substance or article if such requirement has been established to deal with a risk of illness or injury associated with such a substance or article, even though such requirement is not identical to an applicable requirement described in paragraph (1), if the Federal, State, or local requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

(3) Upon the application of a State or of a political subdivision of a State, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for the oral presentation of views, exempt from paragraph (1), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision designed to deal with a risk of illness or injury associated with a hazardous substance if—

(A) compliance with the requirement would not cause the hazardous substance to be in violation of the applicable requirement described in paragraph (1), and

(B) the State or political subdivision requirement (i) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (ii) does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

AMENDMENTS TO THE FLAMMABLE FABRICS ACT (15 USC 1191 ET SEQ.)

SECTION 16 OF THE FLAMMABLE FABRICS ACT (15 U.S.C. 1203)

PREEMPTION

SEC. 16. This Act is intended to supersede any law of any State or political subdivision thereof inconsistent with its provisions.]

PREEMPTION

SEC. 16 (a) Except as provided in subsections (b) and (c), if a flammability standard or any other regulation is in effect under this Act, section 11 of Public Law 90-189, or any other regulation in implementation of such Acts for a fabric, related material, or product, no State or political subdivision of a State may establish or continue in effect

a flammability standard or other regulation for such fabric, related material, or product designed to protect the public against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act, Section 11 of Public Law 90-189, or other regulation in implementation of such Acts was promulgated unless the flammability standard or other regulation of the State or political subdivision involved is identical to the Federal standard or other regulation.

(b) The Federal Government and the government of a State or the government of a political subdivision of a State may establish and continue in effect, for its own use, a flammability standard or other regulation applicable to a fabric, related material, or product if such requirement is established to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation was promulgated under this Act, Section 11 of Public Law 90-189, or other regulation in implementation of such Acts and which is not identical to such standard or other regulation if the Federal, State, or local standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation promulgated under this Act, Section 11 of Public Law 90-189, or other regulation in implementation of such Acts.

(c) Upon the application of a State or of a political subdivision of a State, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for the oral presentation of views, exempt from the requirements of subsection (a), upon such terms and conditions as may be prescribed therein, a flammability standard or any other regulation of such State or political subdivision that is applicable to a fabric, related material, or product that is subject to a standard or other regulation promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts if—

(1) compliance with the requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts, and

(2) the standard or other regulation of the State or political subdivision involved (i) provides a significantly higher degree of protection from the risk of occurrence of fire than the Federal standard or other regulation, and (ii) does not place an undue burden upon the manufacture or distribution of products in interstate commerce.

AMENDMENTS TO THE POISON PREVENTION PACKAGING ACT (15 U.S.C. 1471 ET SEQ.)

SECTION 2 OF THE POISON PREVENTION PACKAGING ACT OF 1970 (15 U.S.C. 1471)

DEFINITIONS

For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 1261 (f) of this title;

[(B) an economic poison as that term is defined in section 135 (a) of Title 7;]

[(C) (B) a food, drug, or cosmetic as those terms are defined in section 321 of Title 21; or

[(D) (C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) * * *

AMENDMENTS TO TITLE 5, UNITED STATES CODE

SECTION 5108 OF TITLE 5, UNITED STATES CODE

§ 5108 CLASSIFICATION OF POSITIONS AT GS-16, 17, AND 18

(a) * * *

(c) In addition to the number of positions authorized by subsection (a) of this section—

(1) * * *

(12) *The Chairman of the Consumer Product Safety Commission, subject to the approval of that Commission, may place a total of 15 positions in GS-16, GS-17, and GS-18, without regard to the provisions of this chapter, except section 5114 hereof.*

ESTIMATED COSTS

In accordance with section 252 (a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the cost of the legislation, in the form of authorization for appropriations, is \$51 million for the fiscal year ending June 30, 1976; \$14 million for the transitional quarter ending September 30, 1976; and \$55 million for the fiscal year ending September 30, 1977.

RECORDED VOTES IN COMMITTEE

Senator Hart's amendment to section 3 (a) (1) (B) of the Consumer Product Safety Act to include in the definition of "consumer product" tobacco or tobacco products as a source of ignition:

Yea	Nay
Magnuson	Hartke
Pastore	Long
Hart	Hollings
Moss	Ford
Tunney	Pearson
Stevenson	Stevens
Griffin	
Weicker	
Buckley	

TEXT OF S. 644, AS REPORTED

A BILL To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1975".

AUTHORIZATION FOR APPROPRIATIONS

SEC. 2. Paragraphs (1), (2), and (3) of section 32 (a) of the Consumer Product Safety Act (15 U.S.C. 2081 (a)) are amended to read as follows:

"(1) \$51,000,000 for the fiscal year ending June 30, 1976;

"(2) \$14,000,000 for the transitional quarter ending September 30, 1976; and

"(3) \$55,000,000 for the fiscal year ending September 30, 1977."

LIMITATIONS ON JURISDICTION

SEC. 3. (a) Section 2 (2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 (2)) is amended by (1) deleting subparagraph (B) thereof in its entirety; and (2) redesignating subparagraphs "(C)" and "(D)" thereof as "(B)" and "(C)", respectively.

(b) Section 3 (a) (1) (D) of the Consumer Product Safety Act (15 U.S.C. 2052 (a) (1) (D)) is amended by deleting "economic poisons" and inserting in lieu thereof "pesticides".

(c) (1) Section 2 (f) (2) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (f) (2)) is amended by inserting before "but such term" the following: "nor to tobacco and tobacco products."

(c) (2) Section 2 (f) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (f)) is amended by adding the following new paragraph:

"(4) (A) Except as provided in subparagraph (C), the term 'hazardous substance' shall not include 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.

"(B) Except as provided in subparagraph (C), the Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder.

"(C) The term 'hazardous substance' shall include—

"(i) fireworks devices and components thereof (other than commercially manufactured black powder, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, intended to be used (I) solely for sporting, recreational, or cultural purposes in antique firearms as defined in section 921 (a) (16) of title 18, United States Code, or (II) in a device which

is found to be an antique pursuant to section 921(a)(4) of title 18, United States Code);

"(ii) firearms ammunition to the extent that cautionary labeling is necessary relating to the storage of such ammunition in or around the household; and

"(iii) firearms ammunition which is identified by manufacturer, caliber, load, quantity, and manufacturers' lot number to the extent that such ammunition is defective and presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from a firearm."

(d) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) deleting "of the Administrator of the Environmental Protection Agency and"; and (2) deleting "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)."

(e) Section 3(a)(1)(B) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(B)) is amended by adding after "products" the following: "except to the extent that such products present an unreasonable risk of injury as a source of ignition: *Provided, however,* That no action taken by the Commission shall add to any health hazards posed by such products".

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations submitted on behalf of the Commission shall require the approval of the Commission pursuant to section 27(k)(1) prior to their submission."

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended by (1) striking out "full-time" in paragraph (2) and inserting "regular" in lieu thereof; and (2) adding at the end thereof the following two new paragraphs:

"(3) The Chairman, subject to the approval of the Commission, may designate certain positions (not to exceed 25) within the Commission as 'noncareer positions'. Individuals may be appointed to such noncareer positions if their principal duties will involve—

"(A) significant participation in the determination of major Commission policies; or

"(B) service as a personal assistant or as an adviser to the Chairman or any other Commissioner.

Appointments to, and removals from, such noncareer positions shall be made by the Chairman, subject to the approval of the Commission, except that appointments to, and removals from, any such position that involves service as a personal assistant or as an adviser to the Chairman or any other Commissioner shall be made by the Commissioner concerned and shall not be subject to the approval of any other Commissioner. Any such appointment or removal may be made with-

out regard to any provision of title 5 of the United States Code, other than section 3324 thereof where applicable, governing appointments to, and removals from, positions in the competitive service, and shall not be subject to approval by the Executive Office of the President or the Office of Management and Budget, or any officer thereof, or by any office or agency of the Federal Government other than the Commission, except as otherwise provided in this section. The Chairman, subject to the approval of the Commission, may abolish any particular noncareer position, that was designated as such under this paragraph, upon a determination that such position is no longer needed.

"(4) The Chairman, subject to the approval of the Commission, may place a total of 15 positions in categories GS-16, GS-17, and GS-18, in addition to any professional engineering position primarily concerned with research and development and any professional position in the physical and natural sciences and medicine which may be placed in such categories, and in addition to any such positions that are authorized by section 5108(a) of title 5, United States Code."

(c) Section 5108(c) of title 5, United States Code, is amended by adding the following new paragraph at the end thereof:

"(12) The Chairman of the Consumer Product Safety Commission, subject to the approval of that Commission, may place a total of 15 positions in GS-16, GS-17, and GS-18, without regard to the provisions of this chapter, except section 5114 hereof."

SUBSTANTIAL PRODUCT HAZARDS

SEC. 5. (a) Section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) is amended by adding at the end thereof the following two new paragraphs:

"(15) The term 'product liability insurer' means a legally constituted and authorized entity that—

"(A) has entered into a contract or agreement, or that is otherwise legally obligated, to pay or compensate an injured person for losses associated with a consumer product distributed in commerce; or

"(B) has insured a manufacturer of a consumer product distributed in commerce against risks involving such product.

"(16) The term 'independent testing laboratory' means a person who, in accordance with professional standards and objective test protocols, tests consumer products and evaluates them for safety and other characteristics, and who is not owned or controlled, in whole or in part, directly or indirectly, by the manufacturer of such products."

(b) Section 15(b) of such Act (15 U.S.C. 2064(b)) is amended by (1) deleting "(1)" at the beginning of the first subparagraph thereof and inserting in lieu thereof "(A)"; (2) deleting "(2)" at the beginning of the second paragraph thereof and inserting in lieu thereof "(B)"; (3) inserting "(1)" immediately after "(b)" and before "Every manufacturer"; and (4) adding at the end thereof the following new paragraph:

"(2) Each product liability insurer and each independent testing laboratory which obtains information which reasonably supports the

conclusion that a consumer product distributed in commerce may contain a substantial product hazard shall, as soon as practicable, submit to its insured, or to the person on whose behalf it has tested such consumer product, whichever is applicable, a notice of such conclusion, and inform such person of his obligations under this section. No part of any notice submitted in compliance with this paragraph, shall be admitted as evidence or used in any suit or action for damages. No such product liability insurer or independent testing laboratory shall be subject to a civil or criminal penalty for failure to comply with the provisions of this paragraph unless the Commission first determines (i) that such consumer product contains a substantial product hazard pursuant to the provisions of this section and (ii) that such product liability insurer or independent testing laboratory failed to act upon information which, at the time, should have reasonably supported the conclusion that such product hazard existed."

STANDARDS DEVELOPMENT

SEC. 6. Section 7(e)(2) of such Act (15 U.S.C. 2056 (e)(2)) is amended by inserting the following new sentence before the last sentence thereof: "Whenever the Commission determines that no offeror whose offer is accepted is making progress in the development of such standard, or that the proposed standard developed by each offeror whose offer for the development of such standard was accepted is not satisfactory in whole or in part, the Commission itself may develop such standard or it may contract with third parties for such development."

PROHIBITED ACTS AND ENFORCEMENT

SEC. 7. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended by—

(1) redesignating paragraphs "(3)" through "(7)" thereof as "(4)" through "(8)", respectively;

(2) inserting in newly designated paragraph (4) thereof the clause "or fail or refuse to establish or maintain records," immediately after "copying of records,";

(3) inserting after paragraph (2) thereof the following new paragraph:

"(3) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product (A) that is subject to an order issued under section 15(d), or (B) that has been refused admission into the customs territory of the United States pursuant to section 17;"

(4) deleting "or" at the end of newly designated paragraph (7) thereof;

(5) deleting the period at the end of newly designated paragraph (8) thereof and inserting in lieu thereof a semicolon; and

(6) adding at the end thereof the following two new paragraphs:

"(9) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

"(10) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data)."

(b) Section 20 of such Act (15 U.S.C. 2069) is amended by (1) deleting "section 19(a) (1), (2), (4), (5), (6), or (7)" in the second sentence of subsection (a) (1) thereof and inserting in lieu thereof "section 19(a) (1), (2), (3), (5), (6), (7), (8), (9), or (10)"; and (2) deleting "or (2)" in subsection (a) (2) thereof and inserting in lieu thereof "(2), or (3)".

(c) Section 22 of such Act (15 U.S.C. 2071) is amended—

(1) by deleting the first sentence of subsection (a) thereof and inserting in lieu thereof the following:

"SEC. 22. (a) The district courts of the United States shall have jurisdiction to—

"(1) restrain any violation of section 19; or

"(2) restrain any person from distributing in commerce a product—

"(A) that does not comply with a consumer product safety rule or that is subject to an order issued under section 15(d), or

(B) that has been refused admission into the customs territory of the United States pursuant to section 17;"

(2) by deleting "which fails to conform to an applicable consumer product safety rule" in subsection (b) thereof and inserting in lieu thereof:

"that—

"(1) that any person is manufacturing, offering for sale, or distributing in commerce any consumer product that is subject to an order issued under section 15(d), or

"(2) has been refused admission into the customs territory of the United States pursuant to section 17;" and

(3) by adding at the end thereof the following new subsection:

"(c) Whenever the Commission has reason to believe—

(1) that any person is manufacturing, offering for sale, selling, distributing in commerce, or importing into the United States any consumer product that contains a substantial product hazard as defined in section 15(a); and

"(2) that enjoining the distribution in commerce of such product, pending completion of the hearing required by section 15(f), is necessary to protect the public from a substantial risk of injury.

the Commission or the Attorney General may bring suit in a district court of the United States to enjoin the distribution of such a product. Upon a proper showing that, weighing the equities and considering the Commission's or the Attorney General's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a preliminary injunction may be granted without bond."

LITIGATION

SEC. 8. (a) Section 22(a) of the Consumer Product Safety Act (15 U.S.C. 2071(a)) is amended by deleting the words "(with the concurrence of the Attorney General)" in the second sentence thereof.

(b) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by

adding the following new sentence at the end thereof: "For purposes of this subsection and of subsection (b) (7) of this section, unless the Attorney General notifies the Commission within 45 days of a request for representation that he will represent the Commission, such representation may be made by attorneys designated by the Commission."

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 9. Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to read as follows:

"(d) A risk of injury which is associated with consumer products and which may be regulated by the Commission under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, or the Flammable Fabrics Act may instead be regulated under the provisions of this Act upon a determination by the Commission that such action is in the public interest."

PREEMPTION

SEC. 10. (a) Section 18 of the Federal Hazardous Substances Act, as amended (74 Stat. 380; 15 U.S.C. 1261 note) is amended by adding at the end thereof the following new subsection:

"(c) (1) Except as provided in paragraphs (2) and (3), if a regulation of the Consumer Product Safety Commission, that is used to determine when a hazardous substance or article shall be a banned hazardous substance or article, is in effect and if such regulation has been established to deal with a risk of illness or injury associated with a hazardous substance or article, no State and no political subdivision of a State may establish or continue in effect a requirement applicable to such substance or article and designed to deal with the same risk of illness or injury, unless such requirement is identical to the requirement established under such regulation.

"(2) The Federal Government and the government of a State or the government of a political subdivision of a State may establish and continue in effect, for its own use, a requirement applicable to a hazardous substance or article if such requirement has been established to deal with a risk of illness or injury associated with such a substance or article, even though such requirement is not identical to an applicable requirement described in paragraph (1), if the Federal, State, or local requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3) Upon the application of a State or of a political subdivision of a State, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for the oral presentation of views, exempt from paragraph (1), under such conditions as may be prescribed in such regulation, a requirement of such State or political subdivision designed to deal with a risk of illness or injury associated with a hazardous substance if—

"(A) compliance with the requirement would not cause the hazardous substance to be in violation of the applicable requirement described in paragraph (1), and

"(B) the State or political subdivision requirement (i) provides a significantly higher degree of protection from such risk

of illness or injury than the requirement described in paragraph (1), and (ii) does not place an undue burden upon the manufacture or distribution of products in interstate commerce."

(b) Section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) is amended to read as follows:

"PREEMPTION

"SEC. 16. (a) Except as provided in subsections (b) and (c), if a flammability standard or any other regulation is in effect under this Act, section 11 of Public Law 90-189, or any other regulation in implementation of such Acts for a fabric, related material, or product, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product designed to protect the public against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts was promulgated unless the flammability standard or other regulation of the State or political subdivision involved is identical to the Federal standard or other regulation.

"(b) The Federal Government and the government of a State or the government of a political subdivision of a State may establish and continue in effect, for its own use, a flammability standard or other regulation applicable to a fabric, related material, or product if such requirement is established to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation was promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts and which is not identical to such standard or other regulation if the Federal, State, or local standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts.

"(c) Upon the application of a State or of a political subdivision of a State, the Consumer Product Safety Commission may, by rule promulgated after notice and opportunity for the oral presentation of views, exempt from the requirements of subsection (a), upon such terms and conditions as may be prescribed therein, a flammability standard or any other regulation of such State or political subdivision that is applicable to a fabric, related material, or product that is subject to a standard or other regulation promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts if—

"(1) compliance with the requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation promulgated under this Act, section 11 of Public Law 90-189, or other regulation in implementation of such Acts, and

"(2) the standard or other regulation of the State or political subdivision involved (i) provides a significantly higher degree of protection from the risk of occurrence of fire than the Federal standard or other regulation, and (ii) does not place an undue

burden upon the manufacture or distribution of products in interstate commerce.”

(c) Section 26(c) of the Consumer Product Safety Act (15 U.S.C. 2075(c)) is amended by deleting the words “(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”, and inserting in lieu thereof the following: “(1) imposes a significantly higher level of performance than the Federal standard, and (2) does not place an undue burden upon the manufacture or distribution of products in interstate commerce.”

AGENCY COMMENTS

Agency comments were requested but none were received by the time the bill was reported.

SEPARATE VIEWS OF MR. MOSS

The Committee's amendments to the Federal Hazardous Substance Act, which clarifies the Consumer Product Safety Commission's jurisdiction over firearms, firearms ammunition, and components of firearms ammunition, represents a major victory for those Americans who believe in the Constitutional right to bear arms. When Congress enacted the Hazardous Substances Act, I doubt that any Member of the Senate or the House had any thought that that legislation would be a vehicle to regulate ammunition.

Congress created the Consumer Product Safety Commission in response to President John F. Kennedy's declaration that Americans had a *right* to safety. But in point of fact, while Americans had a *right* to safety, they were being injured and even killed by the thousands by consumer products available in the marketplace. It was to these products that the Commission was mandated to address its efforts. We in Congress never intended the Commission to regulate guns or ammunition: in fact, a specific provision of the Consumer Product Safety Act explicitly excluded guns and ammunition from the term “consumer product.” I vigorously supported this exclusion in Committee. Only by quirk of a Federal Court ruling was ammunition held to be in the jurisdiction of the Product Safety Commission.

The Committee's action now, if adopted by the Congress, will mean that never again will the Commission be required to ban sale of firearms ammunition. Each of the statutes for which the Commission is responsible and under which firearms or firearms ammunition could possibly be regulated, now contains a specific provision prohibiting such regulation.

The amendment carves out two narrow areas where the Commission would be authorized to take limited action to warn the users of firearms ammunition. First, the Commission would be authorized to continue the general labeling program that has been in effect for almost a decade and a half. That program calls for cautionary labeling which may be necessary relating to the safe storage of ammunition in or around the household. The labeling regulations require an ammunition container label to contain (1) the common or usual name of the ammunition in the container; (2) the statement “Warning—Keep out of the reach of children” or its practical equivalent; and (3) the name and place of business of the manufacturer, packer, seller, or distributor. This information is particularly important because it would facilitate a recall of the product if it became necessary due to some unintended defect.

The second area where the Commission would be authorized to act relates to defective ammunition. If it should ever be determined that certain ammunition is defective and presents a hazard to the user by failing to perform in a normal or reasonably foreseeable manner when fired from a firearm, then the Commission could order that specific ammunition, identified by manufacturer, caliber, load, quantity, and

manufacturer's lot number to be banned from sale. This provision has been carefully and artfully drafted simply to protect gun users from the unexpected and unintended hazards which result from defectively manufactured ammunition.

In my conversations with retailers of firearms ammunition, I have found enthusiastic support for such a provision. They inform me that such a provision will serve to protect firearms users because it will insure an orderly recovery of ammunition which has the potential of misfiring and possibly injuring or killing its user.

In short, the Committee's action in this area will finally resolve a long-standing controversy which has threatened the rights of millions of Americans to own and use firearms for recreational and sporting purposes.

FRANK E. MOSS.

ADDITIONAL VIEWS OF MESSRS. HARTKE, HOLLINGS, FORD, STEVENS, and BEALL

These comments are directed to the sections of the bill which relate to tobacco and tobacco products. S. 1000 as introduced reflected the Consumer Product Safety Commission's considered judgment that Congress should specifically confirm that the Commission possesses no jurisdiction over tobacco and tobacco products under any of the acts it administers.

We fully support this Commission proposal, which is reflected in Sec. 3(c)(1) of the bill. It would unmistakably reaffirm the clear mandate of the Congress that the basic regulation of tobacco and tobacco products is governed by the legislation dealing with the subject, the Cigarette Labeling and Advertising Act of 1969, and that any further regulation in this sensitive and complex area must be reserved for specific Congressional action. Moreover, the bill reflected the Commission's recognition that its limited resources should be devoted to the many pressing matters plainly within its jurisdiction and that these resources should not be dissipated in an area far from its central responsibilities and in which it possesses no special expertise.

Consequently, we are in accord with Sec. 3(c)(1) which, by specifically exempting tobacco and tobacco products from the Federal Hazardous Substance Act, confirms that the Commission lacks jurisdiction over tobacco and tobacco products under any of the acts it administers.

We regret, however, that a majority of the Committee went beyond this useful confirmation by proposing an amendment, found in sec. 3(e), to the Consumer Product Safety Act, which now flatly exempts tobacco and tobacco products from its coverage. This amendment would authorize the Commission to deal with tobacco and tobacco products in one limited area, namely, as a source of ignition. There are a number of reasons why this amendment is unwise and undesirable.

I

The amendment stems from efforts of the upholstered furniture industry to stop or delay the on-going proceeding before the Consumer Product Safety Commission to determine whether flammability standards should be established for upholstered furniture pursuant to the Flammable Fabrics Act. This proceeding is similar to others that have led to the establishment of flammability standards for mattresses, children's sleepwear, and other products. Unlike these industries, however, the upholstered furniture industry is seeking to avoid its responsibilities by improperly trying to make a scapegoat of cigarettes and tobacco. Instead of addressing the issue of the improvements that can and should be made in upholstered furniture to reduce its flammability problems, the furniture makers suggest that the Commission should

ignore furniture flammability and should turn its attention instead to an attempt to develop a so-called "self-extinguishing" cigarette.

Adoption of the amendment giving the Commission jurisdiction over tobacco products as an ignition source would permit any industry whose products are subject to the Flammable Fabrics Act to impede or endlessly delay the establishment of flammability standards for those products by arguing that the Commission must study tobacco products as an ignition source before any flammability standards could be considered. Under the amendment, it is likely that enforcement of the Flammable Fabrics Act would grind to a halt and that no flammability standards would be established. The program to develop flammability standards for rugs and carpets, various types of wearing apparel, and any number of other products could be hopelessly delayed.

The response of the upholstered furniture manufacturers to a proposed flammability standards is in sharp contrast to that of our nation's manufacturers of mattresses. Rather than trying to avoid their responsibilities, the mattress makers properly addressed themselves to the development of flammability standards for bedding. These mattress standards have been finally promulgated and are working well. Faced with the same problem now confronting the upholstered furniture makers, the mattress manufacturers did not attempt to slough responsibility off on other industries, or to plead that the Commission should look beyond mattresses to other "causes" of fires. The attitude of the upholstered furniture manufacturers caused an executive of a major mattress manufacturer to point out in *Home Furnishings Daily* that the upholstered furniture people have "their heads in the sand." He pointed out:

I met with the flammability committee of the National Assn. of Furniture Manufacturers two years ago where I outlined the course of action that the flammability committee had taken in developing their flammability standard.

I strongly recommend to them that they devote the bulk of their energies toward the development of a standard that provided the necessary consumer protection that the Consumer Products Safety Commission (and the Department of Commerce) was looking for and at the same time be consistent with techniques that were reasonable for the upholstered furniture trade.

At that time, they appeared to be spending all of their energies toward the direction of using the courts to stop the development of an upholstered furniture standard or using the Congress to revise the Flammable Fabrics Act.

I strongly suggested to them that they were really wasting their time and would end up either with a standard that did not provide consumer protection, or was not reasonable for the upholstery trade or possibly both.

So, I expand on what Miss Brown said in her article beyond the question "Didn't the upholstered furniture men read any of this?" to "Why didn't they listen to those in the field of

bedding, in terms of their experience in working with the government?" The mattress industry found Government to be firm but fair.

Significantly, the upholstered furniture manufacturers themselves apparently recognize that directing attention to cigarettes as an ignition source would not solve the flammability problems presented by upholstered furniture. In a meeting of upholstered furniture manufacturer representatives with Consumer Product Safety Commission officials on September 4, 1974, the manufacturers acknowledged that 65 per cent of the furniture involved was of a type which ignited quickly, and that the flammability of this furniture would not be affected by the development of a "self-extinguishing" cigarette.

Adoption of the amendment giving the Commission authority to consider tobacco products as a source of ignition would not eliminate upholstered furniture fires. It would only furnish a weapon which could be used in further efforts to impede the proper administration of the Flammable Fabrics Act.

II

Consideration of cigarettes as a source of ignition for fires necessarily involves the question of the basic burning rates of cigarettes. Any so-called "self-extinguishing" cigarette would require alterations in these burning rates, and would involve increases in the "tar" and nicotine and other components of cigarette smoke which have been alleged to have adverse health consequences. This problem is apparently recognized, and an attempt was made to deal with it by the proviso in section 3(e) of the bill that "no action taken by the Commission shall add to any health hazards posed by such products". But this proviso is not an adequate solution. The plain fact is that the Consumer Product Safety Commission does not have the medical and other expertise which must necessarily be involved in any consideration of burning qualities of cigarettes. Cigarettes as a "source of ignition" are only one small aspect of the over-all area of the regulation of tobacco, including the paramount issue of smoking and health.

The Consumer Product Safety Commission lacks the expertise and the resources to deal with this question. It does not have the competence to make the critical judgments as to the relationship between burning rates of tobacco products and the necessarily intertwined and paramously important question relating to the components of cigarette smoke. These are all aspects of the basic regulation of tobacco products, particularly cigarettes, which Congress has retained for final decision, based on input from all agencies of the government. The Congress, being the only body in a position to evaluate all pertinent factors, should continue its fully-considered policy of retaining final authority in this area.

VANCE HARTKE.
ERNEST F. HOLLINGS.
WENDELL H. FORD.
TED STEVENS.
J. GLENN BEALL, JR.

ADDITIONAL VIEWS OF MR. BUCKLEY

When S. 644, the Consumer Product Safety Commission Improvements Act of 1975, was considered in the Commerce Committee, I had the opportunity to briefly discuss two concepts which I feel would significantly strengthen the bill. Although there was significant support for my ideas among the committee members in attendance, they asked that, in the interest of time, I take the amendments to the Floor of the Senate.

My ideas are designed to redress a serious inequity that has developed between the Federal Government and private parties. Government, especially regulatory agencies, are now possessed of vast discretionary powers over private individuals and businesses. When that discretion is improperly used, they can cause grave damage to others who are without recourse for the expenses they have incurred in defending their rights, or for the injury they have sustained as a result of the arbitrary actions or negligence of the Government or a regulatory body.

When a regulatory agency damages an innocent private party as a consequence of inappropriate or incorrect use of its authority, the Government can, in most cases, use its sovereign immunity to shield the agency from the legal responsibility of its actions. Thus, hypothetically, the agency can be unjustifiably aggressive in pursuing its responsibilities without the reasonable fear of being held accountable for damage it may do if it is found to have acted unreasonably.

A private party, on the other hand, is and should be held responsible for damage resulting to an individual from the use of its defective product. If a consumer purchases a poor or dangerous product from a firm, the consumer has and should have the option to go to court to seek redress. The inequity between Government and private parties should be corrected by making these agencies—in this particular case, the Consumer Product Safety Commission—subject to tort action by private parties it has wronged. The Congress should, as a matter of justice, make available to these wronged parties a manner in which to recover damages. If Government is going to make business become more responsible for its actions, then the Government should be willing to apply the same standards to itself.

A second aspect of this problem involves the substantial amount of financial resources required in certain instances to defend against an action brought by an agency. When a private party finds itself the subject of an agency action or decision, it must determine how much it is worth to defend its position. Because of the high costs involved in challenging the decisions of a regulatory body, many private parties who feel themselves aggrieved may, in fact, have no practical alternative but to surrender rather than incur the expense of defending the product or process condemned by the agency. For a small company,

the costs of the legal action alone could mean financial disaster. The agency, on the other hand, has all of its legal expenses paid for by the Government. In the pursuit of justice, the Congress should create conditions where an innocent firm's decision to defend against an action is as easy to make as the agency's decision to pursue the case. It certainly does not serve the interests of justice to have a private party punished for offenses of which it is innocent just because the pursuit of legal action is too expensive.

This situation could be corrected by allowing the private party to recover its legal fees and other expenses related to its defense against actions taken by the United States, or any of its agencies, if the private party ultimately prevails.

A prime example of how an unreasonable action on the part of a Government regulatory agency has led to severe financial injury to a private party is the Marlin Toy Co.

Marlin Toy Products, Inc., was a small firm located in Horicon, Wis. Two of Marlin's products were the Butterfly Flutter Ball and the Birdie Ball. In November of 1972, the Federal Drug Administration (charged with administering the Federal Hazardous Substances Act prior to the enactment of the Consumer Product Safety Act) banned the balls on the grounds that they contained small pellets that presented a hazard to children if the balls were broken. It was charged that, if the balls were dropped from a height of four and one-half feet, they would break and the children could swallow the pellets therein contained.

Marlin claimed that the toys had been tested before marketing and that the balls were found to be unbreakable when dropped from that height. Nevertheless, Marlin took the toys off the market and redesigned them to the Government's specifications. However, the balls were not removed from the list of banned products. Marlin sent letters requesting that the mistake be corrected, but the response was that it was only an editorial error which would be corrected when the next list came out (6 months hence). Marlin contends that because the toys were still on the banned products list throughout the 1973 Christmas season, Marlin suffered great financial loss and was forced to layoff three-fourths of its 85 employees. Marlin further contends that its total costs arising from this governmental mistake were \$600,000, a ruinous loss for a company of its size. Yet, because the FDA and CPSC were protected under the Federal Tort Claims Act, the Marlin Toy Products Co., could not recover its losses from these agencies.

Another firm that has suffered great damage under the CPSC is Pactra Industries which manufactures aerosol paints. This small company has had to spend over \$65,000 in legal costs alone to seek a stay order against the CPSC repurchase provision. In this case, the CPSC had banned all aerosol products containing vinyl chloride as the propellant. Pactra was forced to pursue legal action to avoid this crippling financial blow, all as a consequence of a CPSC action in which it was unable to prove or substantiate its claim that occasional and intermittent use of aerosol paints presents any actual damage to the public. The Courts granted Pactra relief but as a plaintiff they had to stand for the legal fees.

I believe that S. 644 should authorize private parties who successfully challenge Government actions to be reimbursed in full for all reasonable costs incurred in their own defense, and to be compensated for damages incurred by them as a result of malfeasance or negligence on the part of the Commission.

I believe that if this type of provision is incurred in the acts covering all regulatory agencies, we will end up with more responsible Government and regulation, rather than undue regulatory harassment of business. The Consumer Product Safety Commission is a good place to start. I hope the Senate will give this idea its serious consideration.

JAMES L. BUCKLEY.

SCIENCE AND TECHNOLOGY POLICY

APRIL 26, 1976.—Ordered to be printed

Mr. TEAGUE, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 10230]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10230) to establish a science and technology policy for the United States, to provide for scientific and technological advice and assistance to the President, to provide a comprehensive survey of ways and means for improving the Federal effort in scientific research and information handling, and in the use thereof, to amend the National Science Foundation Act of 1950, 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 House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "National Science and Technology Policy, Organization, and Priorities Act of 1976".

TITLE I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

FINDINGS

SEC. 101. (a) The Congress, recognizing the profound impact of science and technology on society, and the interrelations of scientific, technological, economic, social, political, and institutional factors, hereby finds and declares that—

(1) the general welfare, the security, the economic health and stability of the Nation, the conservation and efficient utilization of its natural and human resources, and the effective functioning of government and society require vigorous, perceptive support

and employment of science and technology in achieving national objectives;

(2) the many large and complex scientific and technological factors which increasingly influence the course of national and international events require appropriate provision, involving long-range, inclusive planning as well as more immediate program development, to incorporate scientific and technological knowledge in the national decisionmaking process;

(3) the scientific and technological capabilities of the United States, when properly fostered, applied, and directed, can effectively assist in improving the quality of life, in anticipating and resolving critical and emerging international, national, and local problems, in strengthening the Nation's international economic position, and in furthering its foreign policy objectives;

(4) Federal funding for science and technology represents an investment in the future which is indispensable to sustained national progress and human betterment, and there should be a continuing national investment in science, engineering, and technology which is commensurate with national needs and opportunities and the prevalent economic situation;

(5) the manpower pool of scientists, engineers, and technicians, constitutes an invaluable national resource which should be utilized to the fullest extent possible; and

(6) the Nation's capabilities for technology assessment and for technological planning and policy formulation must be strengthened at both Federal and State levels.

(b) As a consequence, the Congress finds and declares that science and technology should contribute to the following priority goals without being limited thereto:

(1) fostering leadership in the quest for international peace and progress toward human freedom, dignity, and well-being by enlarging the contributions of American scientists and engineers to the knowledge of man and his universe, by making discoveries of basic science widely available at home and abroad, and by utilizing technology in support of United States national and foreign policy goals;

(2) increasing the efficient use of essential materials and products, and generally contributing to economic opportunity, stability, and appropriate growth;

(3) assuring an adequate supply of food, materials, and energy for the Nation's needs;

(4) contributing to the national security;

(5) improving the quality of health care available to all residents of the United States;

(6) preserving, fostering, and restoring a healthful and esthetic natural environment;

(7) providing for the protection of the oceans and coastal zones, and the polar regions, and the efficient utilization of their resources;

(8) strengthening the economy and promoting full employment through useful scientific and technological innovations;

(9) increasing the quality of educational opportunities available to all residents of the United States;

(10) promoting the conservation and efficient utilization of the Nation's natural and human resources;

(11) improving the Nation's housing, transportation, and communication systems, and assuring the provision of effective public services throughout urban, suburban, and rural areas;

(12) eliminating air and water pollution, and unnecessary, unhealthful, or ineffective drugs and food additives; and

(13) advancing the exploration and peaceful uses of outer space.

DECLARATION OF POLICY

SEC. 102. (a) PRINCIPLES.—In view of the foregoing, the Congress declares that the United States shall adhere to a national policy for science and technology which includes the following principles:

(1) The continuing development and implementation of strategies for determining and achieving the appropriate scope, level, direction, and extent of scientific and technological efforts based upon a continuous appraisal of the role of science and technology in achieving goals and formulating policies of the United States, and reflecting the views of State and local governments and representative public groups.

(2) The enlistment of science and technology to foster a healthy economy in which the directions of growth and innovation are compatible with the prudent and frugal use of resources and with the preservation of a benign environment.

(3) The conduct of science and technology operations so as to serve domestic needs while promoting foreign policy objectives.

(4) The recruitment, education, training, retraining, and beneficial use of adequate numbers of scientists, engineers, and technologists, and the promotion by the Federal Government of the effective and efficient utilization in the national interest of the Nation's human resources in science, engineering, and technology.

(5) The development and maintenance of a solid base for science and technology in the United States, including: (A) strong participation of and cooperative relationships with State and local governments and the private sector; (B) the maintenance and strengthening of diversified scientific and technological capabilities in government, industry, and the universities, and the encouragement of independent initiatives based on such capabilities, together with elimination of needless barriers to scientific and technological innovation; (C) effective management and dissemination of scientific and technological information; (D) establishment of essential scientific, technical and industrial standards and measurement and test methods; and (E) promotion of increased public understanding of science and technology.

(6) The recognition that, as changing circumstances require periodic revision and adaptation of title I of this Act, the Federal Government is responsible for identifying and interpreting the changes in those circumstances as they occur, and for effecting subsequent changes in title I as appropriate.

(b) IMPLEMENTATION.—To implement the policy enunciated in subsection (a) of this section, the Congress declares that:

(1) The Federal Government should maintain central policy planning elements in the executive branch which assist Federal

agencies in (A) identifying public problems and objectives, (B) mobilizing scientific and technological resources for essential national programs, (C) securing appropriate funding for programs so identified, (D) anticipating future concerns to which science and technology can contribute and devising strategies for the conduct of science and technology for such purposes, (E) reviewing systematically Federal science policy and programs and recommending legislative amendment thereof when needed. Such elements should include an advisory mechanism within the Executive Office of the President so that the Chief Executive may have available independent, expert judgment and assistance on policy matters which require accurate assessments of the complex scientific and technological features involved.

(2) It is a responsibility of the Federal Government to promote prompt, effective, reliable, and systematic transfer of scientific and technological information by such appropriate methods as programs conducted by nongovernmental organizations, including industrial groups and technical societies. In particular, it is recognized as a responsibility of the Federal Government not only to coordinate and unify its own science and technology information systems, but to facilitate the close coupling of institutional scientific research with commercial application of the useful findings of science.

(3) It is further an appropriate Federal function to support scientific and technological efforts which are expected to provide results beneficial to the public but which the private sector may be unwilling or unable to support.

(4) Scientific and technological activities which may be properly supported exclusively by the Federal Government should be distinguished from those in which interests are shared with State and local governments and the private sector. Among these entities, cooperative relationships should be established which encourage the appropriate sharing of science and technology decisionmaking, funding support, and program planning and execution.

(5) The Federal Government should support and utilize engineering and its various disciplines and make maximum use of the engineering community, whenever appropriate, as an essential element in the Federal policymaking process.

(6) Comprehensive legislative support for the national science and technology effort requires that the Congress be regularly informed of the condition, health and vitality, and funding requirements of science and technology, the relation of science and technology to changing national goals, and the need for legislative modification of the Federal endeavor and structure at all levels as it relates to science and technology.

(c) PROCEDURES.—The Congress declares that, in order to expedite and facilitate the implementation of the policy enunciated in subsection (a) of this section, the following coordinate procedures are of paramount importance:

(1) Federal procurement policy should encourage the use of science and technology to foster frugal use of materials, energy,

and appropriated funds; to assure quality environment; and to enhance product performance.

(2) Explicit criteria, including cost-benefit principles where practicable, should be developed to identify the kinds of applied research and technology programs that are appropriate for Federal funding support and to determine the extent of such support. Particular attention should be given to scientific and technological problems and opportunities offering promise of social advantage that are so long range, geographically widespread, or economically diffused that the Federal Government constitutes the appropriate source for undertaking their support.

(3) Federal promotion of science and technology should emphasize quality of research, recognize the singular importance of stability in scientific and technological institutions, and for urgent tasks, seek to assure timeliness of results. With particular reference to Federal support for basic research, funds should be allocated to encourage education in needed disciplines, to provide a base of scientific knowledge from which future essential technological development can be launched, and to add to the cultural heritage of the Nation.

(4) Federal patent policies should be developed, based on uniform principles, which have as their objective the preservation of incentives for technological innovation and the application of procedures which will continue to assure the full use of beneficial technology to serve the public.

(5) Closer relationships should be encouraged among practitioners of different scientific and technological disciplines, including the physical, social, and biomedical fields.

(6) Federal departments, agencies, and instrumentalities should assure efficient management of laboratory facilities and equipment in their custody, including acquisition of effective equipment, disposal of inferior and obsolete properties, and cross-servicing to maximize the productivity of costly property of all kinds. Disposal policies should include attention to possibilities for further productive use.

(7) The full use of the contributions of science and technology to support State and local government goals should be encouraged.

(8) Formal recognition should be accorded those persons whose scientific and technological achievements have contributed significantly to the national welfare.

(9) The Federal Government should support applied scientific research, when appropriate, in proportion to the probability of its usefulness, insofar as this probability can be determined; but while maximizing the beneficial consequences of technology, the Government should act to minimize foreseeable injurious consequences.

(10) Federal departments, agencies, and instrumentalities should establish procedures to insure among them the systematic interchange of scientific data and technological findings developed under their programs.

TITLE II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SHORT TITLE

SEC. 201. This title may be cited as the "Presidential Science and Technology Advisory Organization Act of 1976".

ESTABLISHMENT

SEC. 202. There is established in the Executive Office of the President an Office of Science and Technology Policy (hereinafter referred to in this title as the "Office").

DIRECTOR; ASSOCIATE DIRECTORS

SEC. 203. There shall be at the head of the Office a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule in section 5313 of title 5, United States Code. The President is authorized to appoint not more than four Associate Directors, by and with the advice and consent of the Senate, who shall be compensated at a rate not to exceed that provided for level III of the Executive Schedule in section 5314 of such title. Associate Directors shall perform such functions as the Director may prescribe.

FUNCTIONS

SEC. 204. (a) The primary function of the Director is to provide, within the Executive Office of the President, advice on the scientific, engineering, and technological aspects of issues that require attention at the highest levels of Government.

(b) In addition to such other functions and activities as the President may assign, the Director shall—

(1) advise the President of scientific and technological considerations involved in areas of national concern including, but not limited to, the economy, national security, health, foreign relations, the environment, and the technological recovery and use of resources;

(2) evaluate the scale, quality, and effectiveness of the Federal effort in science and technology and advise on appropriate actions;

(3) advise the President on scientific and technological considerations with regard to Federal budgets, assist the Office of Management and Budget with an annual review and analysis of funding proposed for research and development in budgets of all Federal agencies, and aid the Office of Management and Budget and the agencies throughout the budget development process; and

(4) assist the President in providing general leadership and coordination of the research and development programs of the Federal Government.

POLICY PLANNING, ANALYSIS, AND ADVICE

SEC. 205. (a) The Office shall serve as a source of scientific and technological analysis and judgment for the President with respect to

major policies, plans, and programs of the Federal Government. In carrying out the provisions of this section, the Director shall—

(1) seek to define coherent approaches for applying science and technology to critical and emerging national and international problems and for promoting coordination of the scientific and technological responsibilities and programs of the Federal departments and agencies in the resolution of such problems;

(2) assist and advise the President in the preparation of the Science and Technology Report, in accordance with section 209 of this Act;

(3) gather timely and authoritative information concerning significant developments and trends in science, technology, and in national priorities, both current and prospective, to analyze and interpret such information for the purpose of determining whether such developments and trends are likely to affect achievement of the priority goals of the Nation as set forth in section 101 (b) of this Act;

(4) encourage the development and maintenance of an adequate data base for human resources in science, engineering, and technology, including the development of appropriate models to forecast future manpower requirements, and assess the impact of major governmental and public programs on human resources and their utilization;

(5) initiate studies and analyses, including systems analyses and technology assessments, of alternatives available for the resolution of critical and emerging national and international problems amenable to the contributions of science and technology and, insofar as possible, determine and compare probable costs, benefits, and impacts of such alternatives;

(6) advise the President on the extent to which the various scientific and technological programs, policies, and activities of the Federal Government are likely to affect the achievement of the priority goals of the Nation as set forth in section 101 (b) of this Act;

(7) provide the President with periodic reviews of Federal statutes and administrative regulations of the various departments and agencies which affect research and development activities, both internally and in relation to the private sector, or which may interfere with desirable technological innovation, together with recommendations for their elimination, reform, or updating as appropriate;

(8) develop, review, revise, and recommend criteria for determining scientific and technological activities warranting Federal support, and recommend Federal policies designed to advance (A) the development and maintenance of broadly based scientific and technological capabilities, including human resources, at all levels of government, academia, and industry, and (B) the effective application of such capabilities to national needs;

(9) assess and advise on policies for international cooperation in science and technology which will advance the national and international objectives of the United States;

(10) identify and assess emerging and future areas in which science and technology can be used effectively in addressing national and international problems;

(11) report at least once each year to the President on the overall activities and accomplishments of the Office, pursuant to section 209 of this Act;

(12) periodically survey the nature and needs of national science and technology policy and make recommendations to the President, for review and transmission to the Congress, for the timely and appropriate revision of such policy in accordance with section 102(a)(6) of this Act; and

(13) perform such other duties and functions and make and furnish such studies and reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

(b)(1) The Director shall establish an Intergovernmental Science, Engineering, and Technology Advisory Panel (hereinafter referred to as the "Panel"), whose purpose shall be to (A) identify and define civilian problems at State, regional, and local levels which science, engineering, and technology may assist in resolving or ameliorating; (B) recommend priorities for addressing such problems; and (C) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs.

(2) The Panel shall be composed of (A) the Director of the Office, or his representative; (B) at least ten members representing the interests of the States, appointed by the Director of the Office after consultation with State officials; and (C) the Director of the National Science Foundation, or his representative.

(3)(A) The Director of the Office, or his representative, shall serve as Chairman of the Panel.

(B) The Panel shall perform such functions as the Chairman may prescribe, and shall meet at the call of the Chairman.

(4) Each member of the Panel shall, while serving on business of the Panel, be entitled to receive compensation at a rate not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime, and, while so serving away from his home or regular place of business, he may be allowed travel expenses, including per diem in lieu of subsistence in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in government service employed intermittently.

FIVE-YEAR OUTLOOK

SEC. 206. (a) Within its first year of operation, the Office shall, to the extent practicable, within the limitations of available knowledge and resources, and with appropriate assistance from the departments and agencies and such consultants and contractors as the Director deems necessary, identify and describe situations and conditions which warrant special attention within the next five years, involving—

(1) current and emerging problems of national significance that are identified through scientific research, or in which scientific or technical considerations are of major significance; and

(2) opportunities for, and constraints on, the use of new and existing scientific and technological capabilities which can make a

significant contribution to the resolution of problems identified under paragraph (1) of this subsection or to the achievement of Federal program objectives or national goals, including those set forth in section 101(b) of this Act.

(b) The Office shall annually revise the five-year outlook developed under subsection (a) of this section so that it takes account of new problems, constraints and opportunities and changing national goals and circumstances, and shall extend the outlook so that it always extends five years into the future.

(c) The Director of the Office shall consult as necessary with officials of the departments and agencies having programs and responsibilities relating to the problems, constraints, and opportunities identified under subsections (a) and (b) of this section, in order to—

(1) identify and evaluate alternative actions that might be taken by the Federal Government, State and local governments, or the private sector to deal with such problems, constraints, or opportunities; and

(2) ensure that alternative actions identified under paragraph (1) of this subsection are fully considered by departments and agencies in formulating their budget, program, and legislative proposals.

(d) The Director of the Office shall consult as necessary with officials of the Office of Management and Budget and other appropriate elements of the Executive Office of the President to ensure that the problems, constraints, opportunities, and alternative actions identified under subsections (a), (b), and (c) of this section are fully considered in the development of the President's Budgets and legislative programs.

ADDITIONAL FUNCTIONS OF THE DIRECTOR; ADMINISTRATIVE PROVISIONS

SEC. 207. (a) The Director shall, in addition to the other duties and functions set forth in this title—

(1) serve as Chairman of the Federal Coordinating Council for Science, Engineering, and Technology established under title IV; and

(2) serve as a member of the Domestic Council.

(b) For the purpose of assuring the optimum contribution of science and technology to the national security, the Director, at the request of the National Security Council, shall advise the National Security Council in such matters concerning science and technology as relate to national security.

(c) In carrying out his functions under this Act, the Director is authorized to—

(1) appoint such officers and employees as he may deem necessary to perform the functions now or hereafter vested in him and to prescribe their duties;

(2) obtain services as authorized by section 3109 of title 5 of the United States Code, at rates not to exceed the rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5 of the United States Code; and

(3) enter into contracts and other arrangements for studies, analyses, and other services with public agencies and with private persons, organizations, or institutions, and make such payments as

he deems necessary to carry out the provisions of this Act without legal consideration, without performance bonds, and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

COORDINATION WITH OTHER ORGANIZATIONS

SEC. 208. (a) In exercising his functions under this Act, the Director shall—

(1) work in close consultation and cooperation with the Domestic Council, the National Security Council, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Management and Budget, the National Science Board, and the Federal departments and agencies;

(2) utilize the services of consultants, establish such advisory panels, and, to the extent practicable, consult with State and local governmental agencies, with appropriate professional groups, and with such representatives of industry, the universities, agriculture, labor, consumers, conservation organizations, and such other public interest groups, organizations, and individuals as he deems advisable;

(3) hold such hearings in various parts of the Nation as he deems necessary, to determine the views of the agencies, groups, and organizations referred to in paragraph (2) of this subsection and of the general public, concerning national needs and trends in science and technology; and

(4) utilize with their consent to the fullest extent possible the services, personnel, equipment, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order to avoid duplication of effort and expense, and may transfer funds made available pursuant to this Act to other Federal agencies as reimbursement for the utilization of such personnel, services, facilities, equipment, and information.

(b) Each department, agency, and instrumentality of the Executive Branch of the Government, including any independent agency, is authorized to furnish the Director such information as the Director deems necessary to carry out his functions under this Act.

(c) Upon request, the Administrator of the National Aeronautics and Space Administration is authorized to assist the Director with respect to carrying out his activities conducted under paragraph (5) of section 205 (a) of this Act.

SCIENCE AND TECHNOLOGY REPORT

SEC. 209. (a) The President shall transmit annually to the Congress, beginning February 15, 1978, a Science and Technology Report (hereinafter referred to as the "Report") which shall be prepared by the Office, with appropriate assistance from Federal departments and agencies and such consultants and contractors as the Director deems necessary. The report shall draw upon the information prepared by the Director pursuant to section 206 of this Act, and to the extent practicable, within the limitations of available knowledge and resources, discuss such issues as—

(1) a review of developments of national significance in science and technology;

(2) the significant effects of current and projected trends in science and technology on the social, economic, and other requirements of the Nation;

(3) a review and appraisal of selected science- and technology-related programs, policies, and activities of the Federal Government;

(4) an inventory and forecast of critical and emerging national problems the resolution of which might be substantially assisted by the application of science and technology;

(5) the identification and assessment of scientific and technological measures that can contribute to the resolution of such problems, in light of the related social, economic, political, and institutional considerations;

(6) the existing and projected scientific and technological resources, including specialized manpower, that could contribute to the resolution of such problems; and

(7) recommendations for legislation on science- and technology-related programs and policies that will contribute to the resolution of such problems.

(b) In preparing the Report under subsection (a) of this section, the Office shall make maximum use of relevant data available from the National Science Foundation and other Government departments and agencies.

(c) The Director shall insure that the Report, in the form approved by the President, is printed and made available as a public document.

TITLE III—PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY

ESTABLISHMENT

SEC. 301. The President shall establish within the Executive Office of the President a President's Committee on Science and Technology (hereinafter referred to as the "Committee").

MEMBERSHIP

SEC. 302. (a) The Committee shall consist of—

(1) the Director of the Office of Science and Technology Policy established under title II of this Act; and

(2) not less than eight nor more than fourteen other members appointed by the President not more than sixty days after the Director has assumed office (as provided in section 203 of this Act).

(b) Members of the Committee appointed by the President pursuant to subsection (a) (2) of this section shall—

(1) be qualified and distinguished in one or more of the following areas: science, engineering, technology, information dissemination, education, management, labor, or public affairs;

(2) be capable of critically assessing the policies, priorities, programs, and activities of the Nation, with respect to the findings, policies, and purposes set forth in title I; and

(3) shall collectively constitute a balanced composition with respect to (A) fields of science and engineering, (B) academic, in-

dustrial, and government experience, and (C) business, labor, consumer, and public interest points of view.

(c) The President shall appoint one member of the Committee to serve as Chairman and another member to serve as Vice Chairman for such periods as the President may determine.

(d) Each member of the Committee who is not an officer of the Federal Government shall, while serving on business of the Committee, be entitled to receive compensation at a rate not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime, and while so serving away from his home or regular place of business he may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in Government service employed intermittently.

FEDERAL SCIENCE, ENGINEERING, AND TECHNOLOGY SURVEY

SEC. 303. (a) The Committee shall survey, examine, and analyze the overall context of the Federal science, engineering, and technology effort including missions, goals, personnel, funding, organization, facilities, and activities in general, taking adequate account of the interests of individuals and groups that may be affected by Federal scientific, engineering, and technical programs, including, as appropriate, consultation with such individuals and groups. In carrying out its functions under this section, the Committee shall, among other things, consider needs for—

(1) organizational reform, including institutional realignment designed to place Federal agencies whose missions are primarily or solely devoted to scientific and technological research and development, and those agencies primarily or solely concerned with fuels, energy, and materials, within a single cabinet-level department;

(2) improvements in existing systems for handling scientific and technical information on a Government-wide basis, including consideration of the appropriate role to be played by the private sector in the dissemination of such information;

(3) improved technology assessment in the executive branch of the Federal Government;

(4) improved methods for effecting technology innovation, transfer, and use;

(5) stimulating more effective Federal-State and Federal-industry liaison and cooperation in science and technology, including the formation of Federal-State mechanisms for the mutual pursuit of this goal;

(6) reduction and simplification of Federal regulations and administrative practices and procedures which may have the effect of retarding technological innovation or opportunities for its utilization;

(7) a broader base for support of basic research;

(8) ways of strengthening the Nation's academic institutions' capabilities for research and education in science and technology;

(9) ways and means of effectively integrating scientific and technological factors into our national and international policies;

(10) technology designed to meet community and individual needs;

(11) maintenance of adequate scientific and technological manpower with regard to both quality and quantity;

(12) improved systems for planning and analysis of the Federal science and technology programs; and

(13) long-range study, analysis, and planning in regard to the application of science and technology to major national problems or concerns.

(b) (1) Within twelve months from the time the Committee is activated in accordance with section 302(a) of this Act, the Committee shall issue an interim report of its activities and operations to date. Not more than twenty-four months from the time the Committee is activated, the Committee shall submit a final report of its activities, findings, conclusions, and recommendations, including such supporting data and material as may be necessary, to the President.

(2) The President, within sixty days of receipt thereof, shall transmit each such report to each House of Congress together with such comments, observations, and recommendations thereon as he deems appropriate.

CONTINUATION OF COMMITTEE

SEC. 304. (a) Ninety days after submission of the final report prepared under section 303 of this Act, the Committee shall cease to exist, unless the President, before the expiration of the ninety-day period, makes a determination that it is advantageous for the Committee to continue in being.

(b) If the President determines that it is advantageous for the Committee to continue in being, (1) the Committee shall exercise such functions as are prescribed by the President; and (2) the members of the Committee shall serve at the pleasure of the President.

STAFF AND CONSULTANT SUPPORT

SEC. 305. (a) In the performance of its functions under sections 303 and 304 of this Act, the Committee is authorized—

(1) to select, appoint, employ, and fix the compensation of such specialists and other experts as may be necessary for the carrying out of its duties and functions, and to select, appoint, and employ, subject to the civil service laws, such other officers and employees as may be necessary for carrying out its duties and functions; and

(2) to provide for participation of such civilian and military personnel as may be detailed to the Committee pursuant to subsection (b) of this section for carrying out the functions of the Committee.

(b) Upon request of the Committee, the head of any Federal department, agency, or instrumentality is authorized (1) to furnish to the Committee such information as may be necessary for carrying out its functions and as may be available to or procurable by such department, agency, or instrumentality, and (2) to detail to temporary duty with the Committee on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions. Each such detail shall be without loss of

seniority, pay, or other employee status, to civilian employees so detailed, and without loss of status, rank, office, or grade, or of any emolument, perquisite, right, privilege, or benefit incident thereto to military personnel so detailed. Each such detail shall be made pursuant to an agreement between the Chairman and the head of the relevant department, agency, or instrumentality, and shall be in accordance with the provisions of subchapter III of chapter 33, title 5, United States Code.

TITLE IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

ESTABLISHMENT AND FUNCTIONS

SEC. 401. (a) There is established the Federal Coordinating Council for Science, Engineering, and Technology (hereinafter referred to as the "Council").

(b) The Council shall be composed of the Director of the Office of Science and Technology Policy and one representative of each of the following Federal agencies: Department of Agriculture, Department of Commerce, Department of Defense, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of State, Department of Transportation, Veterans' Administration, National Aeronautics and Space Administration, National Science Foundation, Environmental Protection Agency, and Energy Research and Development Administration. Each such representative shall be an official of policy rank designated by the head of the Federal agency concerned.

(c) The Director of the Office of Science and Technology Policy shall serve as Chairman of the Council. The Chairman may designate another member of the Council to act temporarily in the Chairman's absence as Chairman.

(d) The Chairman may (1) request the head of any Federal agency not named in subsection (b) of this section to designate a representative to participate in meetings or parts of meetings of the Council concerned with matters of substantial interest to such agency, and (2) invite other persons to attend meetings of the Council.

(e) The Council shall consider problems and developments in the fields of science, engineering, and technology and related activities affecting more than one Federal agency, and shall recommend policies and other measures designed to—

(1) provide more effective planning and administration of Federal scientific, engineering, and technological programs,

(2) identify research needs including areas requiring additional emphasis,

(3) achieve more effective utilization of the scientific, engineering, and technological resources and facilities of Federal agencies, including the elimination of unwarranted duplication, and

(4) further international cooperation in science, engineering, and technology.

(f) The Council shall perform such other related advisory duties as shall be assigned by the President or by the Chairman.

(g) For the purpose of carrying out the provisions of this section, each Federal agency represented on the Council shall furnish necessary assistance to the Council. Such assistance may include—

(1) detailing employees to the Council to perform such functions, consistent with the purposes of this section, as the Chairman may assign to them, and

(2) undertaking, upon request of the Chairman, such special studies for the Council as come within the functions herein assigned.

(h) For the purpose of conducting studies and making reports as directed by the Chairman, standing subcommittees and panels of the Council may be established.

ABOLITION OF FEDERAL COUNCIL FOR SCIENCE AND TECHNOLOGY

SEC. 402. The Federal Council for Science and Technology, established pursuant to Executive Order 10807, issued March 13, 1959, as amended by Executive Order 11381, issued November 8, 1967, is hereby abolished.

TITLE V—GENERAL PROVISIONS

AUTHORIZATION

SEC. 501. (a) For the purpose of carrying out title II of this Act, there are authorized to be appropriated—

(1) \$750,000 for the fiscal year ending June 30, 1976;

(2) \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) \$3,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

(b) For the purpose of carrying out title III of this Act, there are authorized to be appropriated—

(1) \$750,000 for the fiscal year ending June 30, 1976;

(2) \$500,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) \$1,000,000 for the fiscal year ending September 30, 1977; and

(4) such sums as may be necessary for each of the succeeding fiscal years.

STATUTORY REPEAL

SEC. 502. Sections 1, 2, 3, and 4 of Reorganization Plan Numbered 2 of 1962 (76 Stat. 1253) and section 2 of Reorganization Plan Numbered 1 of 1973 (87 Stat. 1089) are repealed.

AMENDMENT

SEC. 503. Section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) is amended by striking out subsection (g) and by re-

designating subsections (h), (i), and (j), and all references thereto, as subsections (g), (h), and (i), respectively.

And the Senate agree to the same.

OLIN E. TEAGUE,
DON FUQUA,
JIM SYMINGTON,
MIKE McCORMACK,
RAY THORNTON,
C. A. MOSHER,
MARVIN L. ESCH,

Managers on the Part of the House.

TED KENNEDY,
WARREN MAGNUSON,
FRANK E. MOSS,
WALTER F. MONDALE,
JOHN TUNNEY,
WENDELL H. FORD,
BARRY GOLDWATER,
J. GLENN BEALL, JR.,
PAUL LAXALT,

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 Senate to the bill (H.R. 10230) to establish a science and technology policy for the United States, to provide for scientific and technological advice and assistance to the President, to provide a comprehensive survey of ways and means for improving the Federal effort in scientific research and information handling, and in the use thereof, 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 amendment of the Senate struck out all after the enacting clause in the House bill and substituted new language. The Committee of Conference agreed to accept the Senate amendment with certain amendments and stipulations proposed by the conferees.

The substantive changes made by the Senate amendment, together with further amendments and modifications by the Committee of Conference are as follows:

TITLE I—NATIONAL SCIENCE, ENGINEERING AND TECHNOLOGY POLICY AND PRIORITIES

Both versions of the bill contained comprehensive statements designed to establish a national science and technology policy. The statements were similar in many respects and often duplicative.

The Committee of Conference substituted a compromise which (1) follows the Senate title, (2) adopts the House style and format, and (3) contains all the significant substantive elements of the policy findings and declarations of each bill.

TITLE II—THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

This title establishes an Office of Science and Technology Policy within the Executive Office of the President. House and Senate versions differed, and have been resolved, in the following ways.

1. *Associate Directors.*—The House bill authorized the President, at his discretion, to appoint up to four Assistant Directors for the new office. The Senate amendment differed in that it designated the four as "Associate" Directors and required that they be confirmed in office by the Senate. The managers on the part of the House concurred in the Senate change. [Sec. 203]

2. *Annual Report.*—The House required "timely" reports from the new office on its activities and on issues or problems involving important scientific and technological considerations. The Senate amend-

ment required "annual" reports in this area. Managers on the part of the House concurred in the Senate amendment with minor editorial changes. [Sec. 209(a)]

3. *Civil Service Requirements.*—The bill passed by the House stipulated that the appointment of officers and employees by the Director of the Office conform to Civil Service requirements. The Senate amendment contained no such requirement. In conference, the managers on the part of the Senate accepted the House provision. [Sec. 207(c)]

4. *Contract and Hearing Authority.*—The Senate amendment contained broader consultant and contract authority for the new office than did the House bill; it also gave the Director authority to obtain information through the conduct of hearings, which the House bill did not. The managers on the part of the House concurred in the Senate position. [Sec. 208(a) (2) and (3)]

5. *National Security Council and Domestic Council.*—The House bill provided that the Director of the new Office should advise the President on, among other things, scientific and technological considerations involved in national security. The Senate amendment removed this provision, but provided that the Director serve as advisor to the National Security Council when requested by the Council to do so. The Senate amendment also provided that the Director of the Office be made a member of the Domestic Council. The conferees settled these differences by incorporating all three provisions with such editorial changes as were necessary to prevent duplication or conflict. [Sec. 204(b) (1); Sec. 207(a) (2) and (b)]

6. *Five-Year Outlook.*—The Senate amendment contained a provision calling for a five-year outlook, or projection, of scientific and technological issues, situations and conditions likely to warrant special attention within that period, and for appropriate inputs to the Office of Management and Budget and the executive departments and agencies in the formulation of Administration budgets with respect to research and development. The outlook would be up-dated annually. The House bill did not contain a similar provision. Managers on the part of the House agreed to accept the Senate provision with minor modifications. [Sec. 206]

TITLE III—PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY

1. *Title.*—The House bill had entitled this special study group as a "Survey" committee. The Senate amendment re-titled it as an "Advisory" committee. Conferees agreed to compromise on the title indicated above.

2. *Mandatory Provisions.*—The House bill contained a mandatory requirement that the Committee be set up as specified. The Senate amendment made the Committee's creation optional with the President. The managers on the part of the Senate concurred in the House provision. [Sec. 302(a)]

3. *Membership Qualifications.*—Both House and Senate versions specified qualifications for membership on the Committee, but the Senate amendment contained broader language and more specific considerations. The conferees agreed to keep the House language but added

the specific categories for balanced membership as set out in the Senate version. [Sec. 302(b)]

4. *Lifetime and Continuation of Committee.*—The House bill provided that the Committee have a lifetime of two years and that the President review and submit the Committee's report—directed toward the examination and analyzation of the total Federal science and technology effort with appropriate findings and recommendations—to the Congress within 60 days, together with his own comments and recommendations. The Senate amendment was essentially the same, except that it provided for a one-year study and also permitted the President to extend the life of the Committee as he saw fit. The conferees agreed to the two-year House plan, but provided for an interim report after one year and a final report after two years. Conferees also agreed to the Senate provision for extension of the Committee's lifetime at the discretion of the President. [Sec. 303(b) and Sec. 304]

TITLE IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING AND TECHNOLOGY

This title was not in in the House bill but was added by the Senate amendment.

The effect of this title is to make the existing Federal Council for Science and Technology, set up by Executive Order in 1959, a statutory body with the Director of the new Office as chairman. The current Council is an interdepartmental group representing all Federal agencies with significant research and development missions, whose function is to maintain general liaison of the overall government effort in science and technology. The title adds no new functions. It does change the name of the present Council, emphasizes its mission, and places it on a statutory basis. In interpreting this title, reference should be made to the following statement from the Senate Report (94-622): "These functions are purely advisory in nature and involve no exercise of authority over the participating agencies, whose participation is governed by their applicable statutes." Managers on the part of the House agreed to accept this title.

TITLE V—GENERAL REVISIONS

1. *Authorization.*—The House bill provided only general authorization of such sums as might be necessary to carry out the provisions of the Act. The Senate amendment authorized a total of \$1,250,000 for Fiscal Year 1976 and the transitional quarter (July 1, 1976–September 30, 1976), and \$3,000,000 for Fiscal Year 1977 for Title II of the Act; it authorized a total of \$1,250,000 for Fiscal Year 1976 and the transitional quarter, and \$1,000,000 for Fiscal Year 1977 for Title III of the Act. Conferees agreed to the Senate total authorization figures for Titles II and III for Fiscal Year 1976, the transitional quarter, and Fiscal Year 1977. Beyond that period, however, conferees agreed to authorize such sums as might be necessary. [Sec. 501] It should be noted that the sums authorized parallel closely those which the Administration has indicated it plans to expend for these areas in the next two years.

2. *National Science Foundation Act.*—The House bill repealed one clause in the Organic Act of the National Science Foundation which requires an annual report from the National Science Board on the status of science and technology in the United States. The Senate amendment did not contain this provision. Managers on the part of the Senate agreed to the House provision. [Sec. 503]

OTHER SUBSTANTIVE DIFFERENCES

State and Regional Science and Technology

The Senate amendment contained a separate title comprised of two principal elements. The first of these was a 52 member inter-governmental advisory panel to assist the Director of the new Office in his duties by providing special inputs relative to State and local needs and issues. The panel was to be composed of the Director of the Office, the Director of the National Science Foundation, and one member appointed by the Governor of each State. The second element was a Federal grant program, to be administered by the National Science Foundation, to assist the States in forming or strengthening a science, engineering and technology advisory mechanism within State governments. Each State could receive a maximum of \$200,000 for this purpose upon proper application.

The House bill contained no similar title.

The Committee of Conference agreed to drop the title, as such, but to incorporate into title II a scaled-down version of the inter-governmental panel. The panel's function shall be to (1) identify and define civilian problems at the State, regional and local levels which science, engineering, and technology may assist in resolving or ameliorating; (2) recommend priorities for addressing such problems; and (3) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs. [Sec. 205(b)]

At the same time, conferees agreed to express their unanimous conviction (1) of the soundness of the concept that State and local governments would profit from their own science advisory systems; (2) that such systems could be made more effective through appropriate liaison with the Federal government, and (3) that greater cooperation and improved financial arrangements between the States and localities and the National Science Foundation are in order, including adequate additional financial support of programs designed to increase a State's capacity for wise application of science and technology to State and local needs.

Conferees further agreed to recommend to the appropriate committee members of both the Senate and House that immediate consideration be given to effecting these matters at the earliest opportunity. Such consideration should include the current annual authorization for the National Science Foundation, which has not yet been reported from the Committee on Labor and Public Welfare of the Senate.

"Engineering" Terminology

The House bill, in its general terminology, used the phrase "science and technology" throughout as reference to the generic matter with

which it was dealing. The Senate amendment employed the phrase "science, engineering and technology" for the same purpose.

The Committee of Conference agreed that the judicious use of each phrase was appropriate in accordance with the particular subject matter being described. Consequently, the term "engineering" was employed in certain areas and omitted in others, as follows:

1. "Engineering" has been retained in Title I, which deals with general national policy and priorities, and in Title IV which deals with all Federal research and development activities on a government-wide basis. It has not been used in either Title II or Title III, both of which deal with entities that are limited to the functions, administration and discretion of the President's immediate Executive Office.

2. The term "engineering" has also been employed in all instances where the Act is concerned with manpower, with human resources or with education, training or retraining of scientific personnel.

3. Engineering has been included in those critical parts of the Act where qualifications for offices created by the legislation are involved. It has also been incorporated into the State-advisory panel established in the new Policy Office [Sec. 205(b)] and into the operation of the President's Committee on Science and Technology with reference to its two-year survey of Federal science operations. [Sec. 303]

4. The "manpower" clauses, which the Senate amendment contained and which were designed in part to emphasize the Nation's engineering needs, have also been retained by the conferees. [Sec. 101(a) (4) and (5);] An important new clause to ensure appropriate inputs from the engineering community into the Federal policy-making process has been added. [Sec. 102(b) (5)]

5. In most other parts of the Act, the House terminology has been retained.

OLIN E. TEAGUE,
DON FUQUA,
JIM SYMINGTON,
MIKE McCORMACK,
RAY THORNTON,
C. A. MOSHER,
MARVIN L. ESCH,

Managers on the Part of the House.

TED KENNEDY,
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JOHN TUNNEY,
WENDELL H. FORD,
BARRY GOLDWATER,
J. GLENN BEALL, Jr.,
PAUL LAXALT,

Managers on the Part of the Senate

○

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Consumer Product Safety Commission Improvements Act of 1976".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Section 32(a) of the Consumer Product Safety Act (15 U.S.C. 2081(a)) is amended to read as follows:

"(a) There are authorized to be appropriated for the purposes 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) \$51,000,000 for the fiscal year ending June 30, 1976;

"(2) \$14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;

"(3) \$60,000,000 for the fiscal year ending September 30, 1977;

and

"(4) \$68,000,000 for the fiscal year ending September 30, 1978."

LIMITATIONS ON JURISDICTION

SEC. 3. (a) Section 2(2) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)) is amended by (1) striking out subparagraph (B), and (2) redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) Section 3(a)(1)(D) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)(D)) is amended by striking out "economic poisons" and inserting in lieu thereof "pesticides".

(c) Section 2(f)2 of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by inserting immediately before "but such term" the following: "nor to tobacco and tobacco products,".

(d) Section 3(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(1)) is amended by (1) inserting "other" before "limitations" in the last sentence, and (2) inserting before such sentence the following: "Except for the regulation under this Act or the Federal Hazardous Substances Act of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 30 of this Act to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18, United States Code."

(e) The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms.

(f) The second sentence of section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a)) is amended by (1) striking out "of the Administrator of the Environmental Protection Agency and"; and (2) striking out "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970" and inserting in lieu thereof "Federal Food, Drug, and Cosmetic Act (15 U.S.C. 301 et seq.)".

BUDGET AND EMPLOYEE PROVISIONS

SEC. 4. (a) Section 4(f) of the Consumer Product Safety Act (15 U.S.C. 2053(f)) is amended by adding at the end thereof the following new paragraph:

"(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission."

(b) Section 4(g) of such Act (15 U.S.C. 2053(g)) is amended by (1) striking out "full-time" in paragraph (2) and inserting in lieu thereof "regular", and (2) adding after such paragraph the following new paragraphs:

"(3) In addition to the number of positions authorized by section 5108(a) of title 5, United States Code, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, United States Code, may place a total of twelve positions in grades GS-16, GS-17, and GS-18.

"(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President."

ACCOUNTABILITY

SEC. 5. (a) Section 4 of the Consumer Product Safety Act (15 U.S.C. 2053) is amended by adding at the end the following new subsection:

"(i) Subsections (a) and (h) of section 2680 of title 28, United States Code, do not prohibit the bringing of a civil action on a claim against the United States which—

"(1) is based upon—

"(A) misrepresentation or deceit before January 1, 1978, on the part of the Commission or any employee thereof, or

"(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof before January 1, 1978, which exercise, performance, or failure was grossly negligent; and

"(2) is not made with respect to any agency action (as defined in section 551(13) of title 5, United States Code).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encour-

aging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.”.

(b) Section 32 of such Act (15 U.S.C. 2081) is amended by adding at the end the following new subsection:

“(c) No funds appropriated under subsection (a) may be used to pay any claim described in section 4(i) whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, United States Code, or under any other provision of law.”.

SAMPLING PLANS

SEC. 6. Section 7(a) of the Consumer Product Safety Act (15 U.S.C. 2056(a)) is amended by (1) inserting “(1)” immediately after “(a)”, (2) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and (3) adding at the end the following new paragraph:

“(2) No consumer product safety standard promulgated under this section shall require, incorporate, or reference any sampling plan. The preceding sentence shall not apply with respect to any consumer product safety standard or other agency action of the Commission under this Act (A) applicable to a fabric, related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act, or (B) which is or may be applicable to glass containers.”.

STANDARDS DEVELOPMENT

SEC. 7. (a) The last sentence of section 7(b) of the Consumer Product Safety Act (15 U.S.C. 2056(b)) is amended to read as follows: “An invitation under paragraph (4)(B) shall specify the period of time in which the offeror of an accepted offer is to develop the proposed standard. The period specified shall be a period ending 150 days after the date the offer is accepted unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.”.

(b) Section 7(e)(1) of such Act (15 U.S.C. 2056(e)(1)) is amended to read as follows:

“(e)(1) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard for a consumer product and if—

“(A) the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, or

“(B) the development period (specified in paragraph (3)) for such standard ends,
the Commission may develop a proposed consumer product safety rule respecting such product and publish such proposed rule.”.

(c) Section 7(f) of such Act (15 U.S.C. 2056(f)) is amended to read as follows:

“(f) If the Commission publishes a notice pursuant to subsection (b) to commence a proceeding for the development of a consumer product safety standard and if—

“(1) no offer to develop such a standard is submitted to, or, if such an offer is submitted to the Commission, no such offer is accepted by, the Commission within a period of 60 days from the publication of such notice (or within such longer period as the

Commission may prescribe by a notice published in the Federal Register stating good cause therefor), the Commission shall—

“(A) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

“(B) develop proposals for a consumer product safety rule for a consumer product identified in the subsection (b) notice and within a period of 150 days (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor) from the expiration of the 60-day (or longer) period—

“(i) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

“(ii) publish a proposed consumer product safety rule; or

“(2) an offer to develop such a standard is submitted to and accepted by the Commission within the 60-day (or longer) period, then not later than 210 days (or such later time as the Commission may prescribe by notice published in the Federal Register stating good cause therefor) after the date of the acceptance of such offer the Commission shall take the action described in clause (i) or (ii) of paragraph (1) (B).”.

ADVANCE PAYMENTS; RENT

SEC. 8. (a) Section 7(d) (2) of the Consumer Product Safety Act (15 U.S.C. 2056(d) (2)) is amended by adding at the end thereof the following: “Payments under agreements entered into under this paragraph may be made without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529).”.

(b) Section 27(b) of such Act (15 U.S.C. 2076(b)) is amended by—

(1) striking out “and” at the end of paragraph (7), and

(2) redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following new paragraph:

“(8) to lease buildings or parts of buildings in the District of Columbia, without regard to the Act of March 3, 1877 (40 U.S.C. 34), for the use of the Commission; and”.

CONSIDERATION OF THE NEEDS OF ELDERLY AND HANDICAPPED PERSONS

SEC. 9. Section 9(b) of the Consumer Product Safety Act (15 U.S.C. 2058(b)) is amended by adding at the end the following new sentence: “In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.”.

ATTORNEYS' AND EXPERT WITNESSES' FEES

SEC. 10. (a) Section 10(e) of the Consumer Product Safety Act (15 U.S.C. 2059(e)) is amended by adding after paragraph (3) the following new paragraph:

“(4) In any action under this subsection the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law. For purposes of this

paragraph and sections 11(c), 23(a), and 24, a reasonable attorney's fee is a fee (A) which is based upon (i) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this subsection, and (ii) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (B) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee."

(b) Section 11(c) of such Act (15 U.S.C. 2060(c)) is amended by inserting after the first sentence the following: "A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4) and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, United States Code, or any other provision of law."

(c) Section 23(a) of such Act (15 U.S.C. 2072(a)) is amended (1) by striking out "and shall" and inserting in lieu thereof "shall", and (2) by striking out ", and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court." and inserting in lieu thereof ", and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 10(e)(4)) and reasonable expert witnesses' fees."

(d) Section 24 of such Act (15 U.S.C. 2073) is amended by striking out the last sentence and inserting in lieu thereof the following: "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 10(e)(4)) and reasonable expert witnesses' fees."

CIVIL LITIGATION

SEC. 11. (a) The third sentence of section 11(a) of the Consumer Product Safety Act (15 U.S.C. 2060(a)) is amended to read as follows: "The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28, United States Code."

(b) The second sentence of section 22(a) of such Act (15 U.S.C. 2071(a)) is amended by striking out "(with the concurrence of the Attorney General)" and inserting in lieu thereof "(without regard to section 27(b)(7)(A))".

(c) Section 27(b)(7) of such Act (15 U.S.C. 2076(b)(7)) is amended to read as follows:

"(7) to—

"(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

"(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action, for the purpose of enforcing the laws subject to its jurisdiction;"

(d) Section 27(c) of such Act (15 U.S.C. 2076(c)) is amended by striking out "with the concurrence of the Attorney General" and inserting in lieu thereof "(subject to subsection (b) (7))".

SUBSTANTIAL PRODUCT HAZARD

SEC. 12. (a) (1) Section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)) is amended by adding at the end the following: "An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, the product with respect to which the order was issued."

(2) Section 15 of such Act (15 U.S.C. 2064) is amended by adding at the end thereof the following new subsection:

"(g) (1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 27(b) (7)) or the Attorney General may, in accordance with section 12(e) (1), apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

"(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

"(3) The amount in controversy requirement of section 1331 of title 28, United States Code, does not apply with respect to the jurisdiction of a district court of the United States to issue or extend a preliminary injunction under this subsection."

(b) Section 19(a) (5) of such Act (15 U.S.C. 2068(a) (5)) is amended by (1) striking out "and to" and inserting in lieu thereof "to", and (2) inserting ", and to prohibited acts" after "refund".

(c) Section 22 of such Act (15 U.S.C. 2071) is amended by—

(1) striking out in subsection (a) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

"(a) The United States district courts shall have jurisdiction to take the following action:

"(1) Restrain any violation of section 19.

"(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 15(d).

"(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule."; and

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(2) striking out in subsection (b) all that precedes the second sentence of such subsection and inserting in lieu thereof the following:

“(b) Any consumer product—

“(1) which fails to conform with an applicable consumer product safety rule, or

“(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 15(d), 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 district court of the United States within the jurisdiction of which such consumer product is found.”.

PROHIBITED ACTS AND ENFORCEMENT

SEC. 13. (a) Section 19(a) of the Consumer Product Safety Act (15 U.S.C. 2068(a)) is amended by—

(1) inserting “or fail or refuse to establish or maintain records,” immediately after “copying of records,” in paragraph (3); and

(2) striking out “or” at the end of paragraph (6), striking out the period at the end of paragraph (7) and inserting in lieu thereof “; or”, and adding after paragraph (7) the following new paragraphs:

“(8) fail to comply with any rule under section 13 (relating to prior notice and description of new consumer products); or

“(9) fail to comply with any rule under section 27(e) (relating to provision of performance and technical data).”.

(b) Section 20(a)(1) of such Act (15 U.S.C. 2069) is amended by striking out “or (7)” and inserting in lieu thereof “(7), (8), or (9)”.

CONGRESSIONAL REVIEW OF PROPOSED ADMINISTRATIVE ACTIONS
OF THE COMMISSION

SEC. 14. Section 27 of the Consumer Product Safety Act (15 U.S.C. 2076) is amended by adding at the end thereof the following new subsection:

“(1) (1) Except as provided in paragraph (2)—

“(A) the Commission shall transmit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives each consumer product safety rule proposed after the date of the enactment of this subsection and each regulation proposed by the Commission after such date under section 2 or 3 of the Federal Hazardous Substances Act, section 3 of the Poison Prevention Packaging Act of 1970, or section 4 of the Flammable Fabrics Act; and

“(B) no consumer product safety rule and no regulation under a section referred to in subparagraph (A) may be adopted by the Commission before the thirtieth day after the date the proposed rule or regulation upon which such rule or regulation was based was transmitted pursuant to subparagraph (A).

“(2) Paragraph (1) does not apply with respect to a regulation under section 2(q) of the Federal Hazardous Substances Act respecting a hazardous substance the distribution of which is found under paragraph (2) of such section to present an imminent hazard or a regulation under section 3(e) of such Act respecting a toy or other article intended for use by children the distribution of which is found under paragraph (2) of such section to present an imminent hazard.”.

INFORMATION DISCLOSURE TO OTHER GOVERNMENTAL BODIES

SEC. 15. Section 29 of the Consumer Product Safety Act (15 U.S.C. 2078) is amended by adding at the end thereof the following new subsection:

“(e) The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this Act by any officer, employee, or agent of the Commission only if (1) information which under section 6(a)(2) is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

“(A) any copy of any such report, or

“(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 6(b).”.

JURISDICTION UNDER CONSUMER PRODUCT SAFETY ACT

SEC. 16. Section 30(d) of the Consumer Product Safety Act (15 U.S.C. 2079(d)) is amended to read as follows:

“(d) 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 Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated under this Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this Act. Such a rule shall identify the risk of injury proposed to be regulated under this Act and shall be promulgated in accordance with section 553 of title 5, United States Code; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.”.

EFFECT ON STATE LAW

SEC. 17. (a) Section 18(b) of the Federal Hazardous Substances Act is amended to read as follows:

“(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

“(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

“(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

“(3) (A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

“(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

“(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act for such substance (or its packaging).

“(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

“(4) Paragraph (1) (B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

“(5) As used in this subsection, the term ‘Commission’ means the Consumer Product Safety Commission.”

(b) Section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) is amended to read as follows:

“PREEMPTION

“SEC. 16. (a) Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

“(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this Act and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this Act.

“(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this Act, if—

“(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this Act, and

“(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this Act for such fabric, related material, or product.

“(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

“(d) For purposes of this section—

“(1) a reference to a flammability standard or other regulation for a fabric, related material, 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

“(2) the term ‘Commission’ means the Consumer Product Safety Commission.”

(c) Section 8 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1476) is amended (1) by striking out “Whenever” and inserting in lieu thereof “(a) Except as provided in subsections (b) and (c), whenever”, and (2) by adding at the end thereof the following:

“(b) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

“(c) (1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

“(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

“(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

“(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State

may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.”

(d) Subsections (b) and (c) of section 26 of the Consumer Product Safety Act (15 U.S.C. 2075) are amended to read as follows:

“(b) Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this Act if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this Act.

“(c) Upon application of a State or political subdivision of a State, 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 in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this Act if the State or political subdivision standard or regulation—

“(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this Act, and

“(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this Act for such consumer product.”

TITLE 18 PROTECTION

SEC. 18. Section 1114 of title 18, United States Code, is amended by inserting “, the Consumer Product Safety Commission,” immediately after “Department of Health, Education, and Welfare”.

FLAMMABLE FABRICS ACT ADVISORY COMMITTEE

SEC. 19. Section 17(a) of the Flammable Fabrics Act (15 U.S.C. 1204(a)) is amended by inserting after the first sentence the following new sentence: “The members of the Committee who are appointed to represent manufacturers shall include representatives from (1) the natural fiber producing industry, (2) the manmade fiber producing industry, and (3) manufacturers of fabrics, related materials, apparel, or interior furnishings.”

FLAMMABILITY STANDARDS AND REGULATIONS

SEC. 20. (a) (1) Subsection (d) of section 4 of the Flammable Fabrics Act (15 U.S.C. 1193 (d)) is amended to read as follows:

“(d) Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, United States Code, except that interested persons shall be given 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.”.

(2) Subsection (e) (3) of section 4 of such Act is amended by adding at the end thereof the following: “The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term ‘record’ means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.”.

(b) The amendments made by subsection (a) shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act the proceedings for the promulgation of which were begun after the date of the enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from the use of hazardous products. I have therefore signed S. 644, a bill which will enable the Commission to more effectively carry out this important mandate.

The Consumer Product Safety Commission Improvements Act of 1976 expands the Commission's authority by permitting the issuance of preliminary injunctions to prohibit distribution of products which present a substantial hazard, and by establishing new procedures and timetables within which consumer safety standards must be promulgated.

Further, the Act authorizes Federal preemption of State product safety laws in certain enumerated circumstances. This will not only guarantee that consumers have adequate protection, but will free industry from the costly burden of attempting to comply with a bewildering patchwork of State and local safety standards.

If consumer product regulation is to have real meaning, adequate tools must be provided the Commission responsible for protecting the American consumer. The Act I have signed provides such tools.

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April 29, 1976

Dear Mr. Director:

The following bills were received at the White House on April 29th:

S. 644 —
S. 2662

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.