

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS22821>

February 2, 2009

Congressional Research Service

Report RS22821

Consumer Product Safety Commission: Current Issues

Bruce Mulock, Government and Finance Division

June 17, 2008

Abstract. The CPSC is but one part of growing congressional concern about the protection being afforded American consumers from unsafe imports. Food (pet food as well as that intended for human consumption), drugs, and products fall under the jurisdictions of other federal regulatory agencies.

WikiLeaks



CRS Report for Congress

Consumer Product Safety Commission: Current Issues

Bruce Mulock
Specialist in Government and Business
Government and Finance Division

Summary

The Consumer Product Safety Commission (CPSC), one of the agency's two current Commissioners stated recently, is at a crossroads. According to CPSC Commissioner Thomas Moore, either Congress will reverse the agency's steady decline or the CPSC will become so weakened as to be irrelevant.

Created in the early 1970s, the CPSC is a small agency by Washington standards (slightly more than 400 employees and a \$62.5 million FY2007 appropriation) charged with a seemingly overwhelming responsibility: to protect American consumers against death or injury from unsafe products, including imported products. A series of high-profile product recalls — most notably of children's toys imported from China — has focused attention on the CPSC's resources, including its legal authority, for the task at hand. Legislation (H.R. 4040 and S. 2663) to strengthen the Commission is being considered.

The CPSC is but one part of growing congressional concern about the protection being afforded American consumers from unsafe imports. Food (pet food as well as that intended for human consumption), drugs, and products fall under the jurisdictions of other federal regulatory agencies. This report will be updated as events warrant.

About the Agency

The Consumer Product Safety Commission is perhaps best understood in the context of the surge of the consumer protection movement of the 1960s. Beginning with Ralph Nader's efforts to dramatize the problems of auto safety, a general interest in product safety was stimulated. The Congress responded by passing a series of laws dealing with auto safety, toy safety, radiation safety, fabric flammability, and child resistant packaging for hazardous household substances. These laws — as well as several dating from the 1950s — were, in the opinion of some observers, neither comprehensive in scope with respect to the wide range of consumer products nor adequate in protection.

While industry was originally opposed to a federal regulatory approach, by the early 1970s, the National Association of Manufacturers agreed there was a need for Congress

to pass a product safety law.¹ A key reason was because manufacturers were increasingly having to contend with a complex and confusing assortment of state laws, and the prospect of having to deal with a unified regulatory approach appeared attractive.

Although there are other historical factors, the CPSC owes its existence primarily to the work of the National Commission on Product Safety (NCPS). Legislation was introduced in 1966 and the following year P.L. 90-146 authorizing the NCPS was approved. In March 1968, President Lyndon Johnson appointed the seven-member, bipartisan Commission to “conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products.”²

The agency’s statutory purposes are to (1) protect the public against unreasonable risks of injury associated with consumer products; (2) assist consumers in evaluating the comparative safety of consumer products; (3) develop uniform safety standards for consumer products and minimize conflicting state and local regulations; and (4) promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

In addition to the authority assigned to the CPSC by its enabling legislation, major consumer programs were transferred to the new agency from the Food and Drug Administration, the Health, Education and Welfare Department (now known as Health and Human Services), and the Commerce Department. Included were the Federal Hazardous Substances Act of 1960, as amended by the Toy Safety Acts of 1969 and 1984 and the Child Protection Amendments of 1966, the Poison Prevention Packaging Act of 1970, the Flammable Fabrics Act of 1953, and the Refrigerator Safety Act of 1956.

The CPSC was designed to be relatively small. Rather than relying on thousands of inspectors, the agency relies on the onus placed on firms by its enabling statute. Section 15(b), for example, requires manufacturers to report unsafe products to the Commission. This general approach appears to have worked reasonably well for domestically produced consumer products, because of the nation’s regulatory regime. When it comes to imported products, however, the absence of key factors may make safety oversight more problematic. In China, for example, inspections cannot — with anything approaching confidence — be left to Chinese factory owners. China reportedly suffers from the absence of a rigorous regulatory system, endemic problems of corruption, and a lack of a free press.³

Recent Recalls

Beginning in spring 2007, newspaper stories began appearing with increasing regularity about dangerous and sometimes deadly defects in imported products —

¹“Product Safety: Stricter Law in Congressional Mill,” *Congressional Quarterly*, Dec. 18, 1971, p. 2629.

² P.L. 90-146, Section 2(a), Nov. 20, 1967.

³ Edwin S. Steinfeld, “The Rogue That Plays by the Rules,” *The Washington Post*, Sept. 2, 2007, p. B3.

principally products produced in China.⁴ First came reports about toothpaste manufactured in China containing chemicals unsafe for human consumption. Then, awareness of unsafe products was brought home to millions of pet owners when it was discovered that some pet food manufactured in China contained melamine contamination, which was blamed for causing kidney failure in hundreds of animals. Subsequently, health and safety concerns were raised about seafood, tires, and chemical and pharmaceutical products.⁵

Throughout the summer of 2007, additional recalls of toys appeared. Some involved danger because of loose magnets, some because of beads containing a toxic chemical if ingested, and toy ovens with the potential for finger entrapment and burn hazards. A large number of recalls involved jewelry and painted toys containing unsafe levels of lead.

Thus, it is not surprising that there is a concern among many American consumers: If all these problems have been detected or uncovered in spite of various underfunded and understaffed inspection systems, have we been seeing just the tip of the iceberg?

CPSC Funding Reflects Increasing Congressional Concern

Throughout the summer and fall of 2007, appropriators took note of the growing concerns about the adequacy of the agency's funding. At oversight and appropriations hearings in both the House and Senate, witnesses from consumer organizations, industry, and the agency were among those who advocated providing CPSC with more money to get the job done. The CPSC's FY2007 budget was \$62.27 million. The House, following the recommendation of the Appropriations Committee, proposed increasing the agency's appropriation to \$66.83 million for FY2008. For its part, the Senate proposed \$70 million. In the end, under the omnibus funding measure (H.R. 2764), CPSC received \$80 million for FY2008, an increase of \$17.7 million for FY2008, or 28%.

The appropriators directed CPSC to use its additional funding to increase staff, workspace, and information technology resources. In particular, appropriators instructed the agency to hire in the areas of hazard identification and reduction as well as compliance and field operations.

Consumer groups and others have repeatedly expressed concerns over the CPSC's staffing level. In 1977, three years after the Commission opened its doors, it had a staff of 900. The staffing level has declined sharply over the past three decades from a high of 978 in 1980. The budget for FY2007 culminated a two-year reduction of full-time positions (FTEs) from 471 to 420. The Commission's request for FY2008 anticipated a decrease of an additional 19 FTEs. All indications are that the CPSC will substantially increase its staffing level over the next few years. In the House, H.R. 4040, the Consumer Product Safety Commission Modernization Act, passed unanimously (407-0) in December 2007. That bill would authorize \$80 million for FY2009, \$90 million for

⁴ For more information, see CRS Report RS22713, *Health and Safety Concerns Over U.S. Imports of Chinese Products: An Overview*, by Wayne M. Morrison.

⁵ For an overview of issues concerning U.S. food imports from China, see CRS Report RL34080, *Food and Agricultural Imports from China*, by Geoffrey S. Becker.

FY2010, and \$100 million for FY2011. S. 2045, currently pending in the Senate (discussed below), also calls for substantially increased authorizations.

Import Safety Working Group

As noted earlier, the CPSC is but one agency involved in the problem of unsafe imports. Food (pet food as well as that intended for human consumption), drugs, and products (e.g., tires and goods associated with business and commercial application) fall under the jurisdictions of other federal regulatory agencies.

On July 18, 2007, President Bush issued an Executive Order (E.O. 13439) establishing the Interagency Working Group on Import Safety.⁶ The working group comprises senior administration officials. It includes the Secretaries of Agriculture, Commerce, Health and Human Services, Transportation, and Homeland Security; the Administrator of the Environmental Protection Agency; and the Chairman of the CPSC.

HHS Secretary Michael Leavitt, who chairs the working group, presented an *Import Safety Action Plan* to President Bush on November 6, 2007. Noting the sheer magnitude of the import-export enterprise, the plan concludes that the United States cannot inspect its way to safety. Rather, the plan presented a number of short- and long-term recommendations designed to improve the safety of imports entering the country. The recommendations include creating a stronger certification process, encouraging various “best practices,” increasing transparency, exchanging import data, increasing U.S. presence overseas, enhancing standards, and strengthening penalties.

The Working Group presented President Bush with a “Strategic Framework” to increase import safety that called for several immediate steps. One of these steps was a directive to federal agencies to accelerate their participation in an automated “single window” system for reporting imports electronically. The aim is to achieve better coordination and efficiency, thus facilitating information exchange among government agencies and between the government and the importing community in real time.

Legislative Proposals to Strengthen the CPSC

Although major consumer groups such as the Consumer Federation of America, Consumers Union, and U.S. Public Interest Research Group had been voicing concern about the CPSC’s declining budgets (in real terms) and staffing for decades, and had tried for years to persuade Congress to amend and strengthen the agency’s powers, until the recent uproar over dangerous imported products, they had made little headway.⁷

Last year’s spate of recalls of products that poisoned pets, endangered infants and children from lead-painted toys and small magnets, and posed potential health threats to

⁶ For information on the efforts of the working group, including fact sheets and its “Action Plan for Import Safety,” see [<http://www.importsafety.gov/>].

⁷ The pattern of legislation being driven by a sudden increase in public awareness is well established. More than a century ago, for example, Upton Sinclair’s book *The Jungle* (1906), which dealt with conditions in the U.S. meat packing industry and caused a public uproar, contributed to the passage of the Pure Food and Drug Act and the Meat Inspection Act of 1906.

millions who consumed imported fish and other foods has led to major CPSC reform bills in both houses of Congress.

In the House, H.R. 4040, “The Consumer Product Safety Modernization Act of 2007,” was favorably reported by the House Energy and Commerce Committee on December 18, 2007, and passed in the House the following day by a vote of 407-0. Among the bill’s major provisions are the following:

- Would require mandatory third-party testing of children’s products, and requires pre-market testing of many children’s products for lead and other hazards by certified laboratories;
- Would prohibit the CPSC from using agency rulemaking actions to preempt state common law claims, and increase the cap on civil penalties to \$10 million (current level: \$1.8 million);
- Would authorize state attorneys general to enforce CPSC standards;
- Would create new lead standards for children’s products; when fully phased in, the bill would lower the standard for lead from 600 parts per million to 100 parts per million or trace amounts. It would mandate that the agency periodically review and revise this standard to require the lowest amount of lead science and technology make feasible to achieve;
- Would require mandatory safety standards for nursery products (e.g., cribs and high chairs); calls for CPSC to examine the current voluntary safety standards for toys, starting with dangerous magnets, and if found to be inadequate, mandatory standards must be adopted;
- Would require manufacturers to place distinguishing marks on products and packaging of children’s products to aid in recalls. It would prohibit the sale and export of recalled products; prohibit the export of products that violate U.S. consumer product safety rules; and
- Would provide CPSC with \$80 million for 2009, \$90 million for FY2010, and \$100 million for FY2011. It would also restore the agency to a full panel of five commissioners, and include \$20 million to modernize the agency’s testing lab.

In the Senate, Commerce, Science and Transportation Committee Chairman Daniel Inouye and the committee’s Ranking Member, Ted Stevens, announced on February 15, 2008, they had joined with Senator Mark Pryor, sponsor of S. 2045, “The CPSC Reform Act of 2007,” to announce a new compromise bill.⁸ The new bill, S. 2663, does not include several of S. 2045’s more controversial provisions, including giving whistleblowers financial incentives for reporting defects and hazards in products made by companies with whom they were employed and giving state attorneys general power to enforce product safety standards. Those two provisions had represented key differences from H.R. 4040, and had been opposed by the Bush Administration. Nevertheless, important differences remain between the House and Senate bills. S. 2663 provides larger authorizations for the agency, for a longer time period. Further, the Senate bill contains higher civil penalties for violations. And, unlike H.R. 4040, the Senate bill contains a number of provisions aimed at single product issues. These include specific provisions

⁸ Daily Report for Executives, “Work Continues on CPSC Legislation: Pryor Hopes for Strong Bipartisan Measure,” Feb. 1, 2008, p. A-16.

focusing on a garage door opener standard, an all-terrain vehicle safety standard, completion of the agency's cigarette lighter rulemaking, and a rule aimed at child resistant portable gasoline containers.

Key provisions contained in the compromise Senate bill include the following:

- Would authorize giving state attorneys general the right to seek injunctive relief for unsafe products, such as the ability to ask a court to remove a product from store shelves — authority not included in H.R. 4040. S. 2663, however, does not allow states to sue for damages as S. 2045 would have;
- Would grant whistleblowers various protections. Unlike S. 2045, however, S. 2663 does not include providing financial rewards for disclosing information about dangerous products;
- Would restore the CPSC to five members, as with H.R. 4040. Quorum requirements for the agency have complicated efforts to conduct business; it has been functioning with only two of the three commissioners since July 2006;
- Would provide CPSC with \$88.5 million in FY2009 and increase funding 10% each year through 2015, i.e., \$96.8 million for FY2010, \$106.5 million for FY2011, \$117.1 million for FY2012, \$128.8 million for FY1013, \$141.7 million for FY2014, and \$155.9 million for FY2015;
- Would ban lead in all children's products;
- Would require third-party safety certification of children's products;
- Would streamline the product safety rulemaking process to be more timely by eliminating a mandatory "Advanced Notice of Proposed Rulemaking" step; and
- Would allow CPSC to expedite the disclosure of industry-provided information in the interest of public health and safety.

Senate and House conferees were appointed on April 29 and May 14, respectively, and, having missed an earlier target date of the week following the Memorial Day recess, now hope to reach a compromise before the July 4 holiday.

Even as the conferees work to reconcile important differences between the two CPSC reform bills, another high-visibility issue has moved to the front burner for several regulatory agencies, including the CPSC: the safety of phthalates and bisphenol (BPA) in children's products. At House Energy and Commerce Committee hearings on June 10, 2008, scientists presented evidence on the toxicity of a class of industrial chemicals known as phthalates, used to make plastic toys and childcare products. The testimony, which was not conclusive with regard to possible harm, may help conferees decide whether to include a ban of these chemicals in the final version of the CPSC reform legislation.⁹ While spokesmen for both CPSC and the Food and Drug Administration said the evidence of danger from BPA was insufficient to corroborate concerns, Canada's health agency announced in April that it planned to put BPA on its list of toxic substances and would ban plastic baby bottles made with the chemical.

⁹ For an overview and analysis of this issue, see CRS Report RS22869, *Bisphenol A (BPA) in Plastics and Possible Human Health Effects*, by Linda-Jo Schierow and Sarah A. Lister.