

**SECTION-BY-SECTION SUMMARY OF CHANGES  
IN THE MANAGERS' AMENDMENT TO H.R. 4040  
THE "CONSUMER PRODUCT SAFETY MODERNIZATION ACT OF 2007"**

**Section 1: *Short Title; Table of Contents.***

- Unchanged.

**Section 2: *References.***

- Unchanged.

**TITLE I – CHILDREN'S PRODUCT SAFETY**

**Section 101: *Ban on Children's Products Containing Lead; Lead Paint Rule.***

The Managers Amendment (MA) makes several changes to Section 101 regarding the way lead is limited in products intended for or marketed to children under 12 years of age:

- It provides more time before the 600 ppm standard becomes effective – from 60 days to 180 days – to allow manufacturers to adapt.
- It makes clear that the basic ppm standards in the bill are for *total lead by weight*.
- It changes the interim standard that goes into effect in 2 years from 250 to 300 ppm – this allows manufacturers who strive for the 250 standard some room for variance above 250 ppm.
- It no longer provides for a solubility standard as a statutory alternative because the testing methods to determine solubility vary widely and thus could allow materials with a lead content significantly in excess of the total weight standards under the bill.
- The lowest and most protective standard of 100 ppm by weight will continue to take effect in 4 years unless the Consumer Product Safety Commission (CPSC), through a rulemaking, determines that such a standard is not feasible. The CPSC will then determine the lowest standard feasible, as well.
- It generally provides that the CPSC by rule may provide an alternative to the 100 ppm standard so long as any such standard is *more protective of human health* and *also feasible* to achieve.
- It permits the CPSC to exclude certain materials from the statutory standard if their total lead weight limit exceeds the statutory limit when it can be demonstrated that *no lead can leach out* from the material when ingested. An example of one such product may be crystal.
- It also makes changes in the application of the limit on lead in paint from the current 600 ppm to 90 ppm and provides that the change will not go into effect for 180 days.
- It permits a measurement of lead in paint and surface coatings to include *unit of mass per area* – this change will permit use of different lead testing technologies, such as XRF machines.

### **Section 102: *Mandatory Third-Party Testing for Certain Children's Products.***

Section 102 changes include the following:

- It expands the age requirement for mandatory testing and certification for children's products to age 12.
- In order to permit manufacturers and the CPSC to make necessary preparations and to allow more labs to build facilities and hire personnel to do mandatory product testing, it provides that the testing and certification requirement will not go into effect until a year after enactment. There is concern that many everyday products will be off the shelves and not available to consumers for many months if this section does not provide sufficient lead-in time.
- It removes the requirement that an independent testing entity must be physically separate from a manufacturer – even though such entity must continue to be separately owned, managed, and controlled – because the current practice of certain independent testing entities is to be imbedded and physically present at the manufacturing facility to supervise and test most efficiently.
- It permits the CPSC to certify (or decertify) proprietary labs – in addition to independent third party labs – to perform the testing if the manufacturer meets certain stringent standards. This allows the CPSC to leverage the resources already available at some top manufacturers for use in testing children's products. As long as such labs meet CPSC's strict standards, it is better to use these sophisticated operations to the consumer's advantage than to discard and waste their potential.
- It continues to permit testing and certification by non-profits for art materials and other products governed by the Federal Hazardous Substances Act (FHSA).
- It makes a technical change to clarify that the pre-testing and certification requirements apply to safety rules under all the statutes that the CPSC enforces.

### **Section 103: *Tracking Labels for Children's Products.***

Unchanged.

### **Section 104: *Standards and Consumer Registration of Durable Nursery Products.***

The MA contains several changes to Section 104:

- It allows more time for the CPSC to complete rulemakings to provide for mandatory standards for the 12 named durable nursery products. The CPSC must start the rulemakings in 1 year and thereafter must complete rulemakings for 2 of the 12 products every 6 months thereafter. This change recognizes the reality that the CPSC will not have added sufficient new staff for several years after the enactment of this Act to complete all the new responsibilities placed on the agency.
- It requires the CPSC to review these standards periodically to ensure that the standards provide for the highest feasible level of safety for these products.
- It is expected that there will be further changes to this section in the full Committee markup to provide more guidance to the CPSC on prioritizing the various requirements imposed by this section.

**Section 105: *Labeling Requirement for Certain Internet and Catalogue Advertising of Toys and Games.***

- Unchanged.

**Section 106: *Study of Preventable Injuries and Deaths in Minority Children Related to Consumer Products.***

Section 106 is a new section. It requires the Government Accountability Office using whatever data already has been gathered by the CPSC, to conduct a study to assess disparities of preventable injuries and deaths among minority children. Completion of the study is due one year after the date of enactment.

**TITLE II – CONSUMER PRODUCT SAFETY COMMISSION REFORM**

**Section 201: *Reauthorization of the Commission.***

The MA enlarges the requirements for CPSC reports under Section 201 to require that the agency perform an assessment of the feasibility of a mandate for import bonds for serious hazards and repeat import offenders, as well as mandatory Commission inspection and certification of foreign third-party and proprietary testing facilities.

**Section 202: *Structure and Quorum.***

As introduced, Section 202 extended the temporary quorum by six months, until August 3, 2008. The MA provides the following:

- If the President nominates a Commissioner prior to August 3, 2008, temporary quorum will continue through that date.
- If the President nominates a Commissioner after August 3, 2008, the temporary quorum would only extend for an additional three months after the date of the nomination (giving the Senate time to act) or until February 3, 2009, whichever is earlier.

**Section 203: *Submission of Copy of Certain Documents to Congress.***

- Unchanged.

**Section 204: *Expedited Rulemaking.***

Section 204 makes a technical change to cite regulations promulgated pursuant to the Flammable Fabrics Act (FFA) as eligible for an expedited process. That statute was unintentionally omitted from the list of statutes enforced by the CPSC in the bill as introduced.

**Section 205: *Public Disclosure of Information.***

Section 205 remains unchanged from introduction. Nonetheless, it is important to emphasize the way this section will permit quicker notification to consumers of public health and safety hazards:

- First, the bill generally addresses the backlog in obtaining information on specific products under FOIA by significantly adding to CPSC resources under section 201. The industry has asserted that a major reason that the public often encounters delay in obtaining such information is because the CPSC lacks the necessary staff to move these requests through the process in a reasonable timeframe.
- Second, the section amends the Consumer Product Safety Act (CPSA) section 6(b)(1) to cut the notice period from 30 days to 15 days. It is during this period that the CPSC may not release information about specific products to the public until the manufacturer comments on the accuracy of the information.
- Third, if the CPSC finds the public health and safety requires the Commission to bypass the notice period in section 6(b)(1), it no longer has to publish a finding to that effect in the *Federal Register*. Previously, the CPSC could bypass the notice requirement to issue warnings to the public when the public health and safety required, but only after publishing a finding in the *Federal Register*. This could cause a delay of as much as five days. With the change made under this section, simple publication on the CPSC's Web site will suffice. Section 6(b)(1) covers product information that the CPSC may obtain from a wide range of sources. Normally, it is good policy for the CPSC to first contact the manufacturer and investigate the accuracy of the information so that any information released to the public identifies the correct product and pinpoints the exact problem. But there are times when public safety requires that the CPSC act immediately; accordingly, this change will allow the CPSC to inform the public immediately about product hazards and defects.
- Finally and most critically, section 205 amends section 6(b)(5) to add a public health and safety exception to allow for publication of information that the CPSC receives from the manufacturer itself through a section 15(d) report. As the law currently reads, the CPSC could never release this information to the public without first receiving the manufacturer's permission, issuing a complaint in federal court, or accepting a remedial settlement – all potentially time-consuming conditions. By adding a health and safety exception to section 6(b)(5), the CPSC may issue warnings to consumers about dangerous products *immediately*. The CPSC asserts that the lack of this exception is what has most often delayed it from issuing critical warnings to consumers. Note that section 6(b)(3) – the right of manufacturers to go to court to attempt to stop release of information – has not and will not apply to prevent release of any information pursuant to section 6(b)(5).

**Section 206: *Prohibition on Stockpiling Under Other Commission-Enforced Statutes.***

- Unchanged.

**Section 207: *Notification of Noncompliance with Any Commission-Enforced Statutes.***

The MA makes one change to Section 207 to harmonize all statutes the CPSC enforces on the effect of a manufacturer providing information about product defects under all the statutes enforced by the CPSC. The CPSA currently permits prosecution of a knowing and willful violation committed after a firm has received notice of non-compliance before criminal penalties may be imposed. The Federal Hazardous Substances Act (FHSA), the Poison Prevention Packaging Act (PPPA), and FFA contain

no similar requirements. To encourage reporting of defects and hazards and to ensure there are no constitutional self-incrimination concerns, the section makes clear

that these reports themselves may not serve as the basis for a criminal prosecution. This section does not preclude a criminal prosecution after a full investigation of the circumstances.

**Section 208: *Corrective Action Plans.***

The MA contains one change to Section 208 to ensure that the CPSC assesses that corrective action plans “are appropriate under the circumstances.” This will ensure that repairs or other remedies offered after a recall meet the needs of consumers and provide the functionality that the consumer expected when initially purchasing a product. For example, this would permit the CPSC to reject a plan that corrects a safety hazard on a drop-side crib with a repair kit that immobilizes the drop-side feature – in such a case, the CPSC could be expected to insist upon a refund for affected consumers.

**Section 209: *Website Notice, Notice to Third Party Internet Sellers, and Radio and Television Notice.***

- Unchanged.

**Section 210: *Identification of Manufacturer, Importers, Retailers, and Distributors.***

- Unchanged.

**Section 211: *Export of Recalled and Non-Conforming Products.***

Section 211 now includes language at the request of the CPSC that clarifies the agency’s authority to take action with respect to the disposition of non-compliant products if the importing country has not signaled that it will accept them.

**Section 212: *Prohibition on Sale of Recalled Products.***

- Unchanged.

**Section 213: *Increased Civil Penalty.***

- Unchanged.

**Section 214: *Criminal Penalties to include Asset Forfeiture.***

- Unchanged.

**Section 215: *Enforcement by State Attorneys General.***

The MA creates a new Section 215. Section 215 amends Section 24 of the CPSA to authorize State Attorneys General to bring an action on behalf of the residents of a State to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief. Similar authority already exists under Section (5)(d) of the Federal Hazardous Substances Act under which the lead standard will be implemented and enforced. Existing Section 5(a) of the Flammable Fabrics Act authorizes as well State Attorneys General to enforce standards or regulations under Section 4 of that Act.

**Section 216: *Sharing of Information with Federal, State, Local, and Foreign Government Agencies.***

- Section 216 has been renumbered from the previous Section 215. The MA contains one substantive change to ensure that the CPSC provides directly to State public health agencies all information about product recalls.

**Section 217: *Industry-Sponsored Travel Ban.***

Section 217 is a new section. It bans CPSC Commissioners and employees from accepting travel expenses and other gifts paid for by an organization regulated by the CPSC. It also authorizes an annual appropriation for official travel expenses of \$1.2 million.