



**EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503**

March 3, 2008  
(Senate)

## **STATEMENT OF ADMINISTRATION POLICY**

### **S. 2663 - CPSC Reform Act** (Sen. Pryor (D) AR and 8 cosponsors)

The Administration is committed to ensuring that Americans continue to be protected by the strongest product safety system in the world. The Administration has already proposed in our Action Plan for Import Safety steps to further ensure the safety of imported products. The Administration is now implementing these measures and looks forward to working with Congress on those steps that require legislation. The House-passed Consumer Product Safety Modernization Act, H.R. 4040, takes positive steps toward further ensuring that Americans are protected from unsafe products. The Administration supports many of the measures in S. 2663, the CPSC (Consumer Product Safety Commission) Reform Act, and the Senate has made significant progress in addressing Administration concerns outlined in our letter of October 29, 2007. However, the Administration still has serious concerns with several provisions in S. 2663. These provisions threaten to burden American consumers and industry in unproductive ways, and may actually harm a well-functioning product safety system.

The Administration is strongly opposed to enforcement of CPSC safety standards by State attorneys general. Although progress has been made from the Committee-reported bill, the Administration continues to believe that safety standards should be exclusively established and then enforced by the CPSC. The CPSC is currently required to cooperate with other State and Federal entities in carrying out its enforcement duties, allowing them to receive input from outside parties. S. 2663, unlike its House counterpart, appears to give State Attorneys General broad powers to interpret what constitutes violations of the various acts enforced by the CPSC and allows States to pursue claims that the CPSC may have already determined are not violations of the Acts under its jurisdiction. This is likely to lead to a confusing patchwork of safety standards that will make it impossible to enforce uniform, national policies. Moreover, there is no apparent justification for the provision in section 20(g) creating a new and separate standard for the award of legal fees to State attorneys general that differs from the Consumer Product Safety Act's existing general standards governing the award of legal fees.

The Administration is pleased to see that provisions weakening public information disclosure protections have been dropped from the bill. However, the Administration is strongly opposed to the bill's provision creating a publicly available database of consumer safety incidents. The Administration believes that such a database will be of limited public safety benefit and will result in a significant increase in wasteful litigation, especially if there are no controls for the quality of data, in addition to placing significant, unnecessary burdens on the CPSC.

The Administration is strongly opposed to Section 21 of the Senate bill, which, unlike the House bill, extends new whistleblower protections in a way that is unnecessary to protect American

consumers and needlessly raises questions about U.S. Government supervision of Federal employees. These provisions are likely to result in serious problems for the CPSC in carrying out its mission and will cause a serious increase in the number of frivolous claims brought against employers. The Administration opposes the additional coverage of Federal employees in this legislation on the grounds that adequate protections for Federal employees exist in current law and that the proposed legislation broadens the definition of whistleblowers in a way that may impede actions done in the normal duty of work. To ensure that enforcement agencies receive the best and most complete information from regulated industries, and to avoid complicating this important legislation with unnecessary legal concerns regarding how and when Federal employees may be authorized to disclose certain types of information, the whistleblower provisions should at the very least be modified to ensure that Federal agencies retain the ability to supervise Federal employee disclosures.

Although there is much to support in this CPSC reform bill, the Administration has concerns with a number of other provisions in the legislation. The Administration opposes direct submission to Congress of all CPSC budgetary documents as an impediment to the operations of the executive branch. The Administration is concerned that a race-based study of product-related risks will not pass the Constitutional requirement of strict scrutiny under the equal protection clause of the Fifth Amendment. The Administration also has concerns about the mandates imposed on manufacturers: such regulations should be pursued not through the legislative process but through a formal rule-making that properly weighs the costs and benefits of each regulation. In addition, while the Administration believes that it should be illegal to sell a banned product, a recalled product, or one that violates a mandatory standard, it has serious concerns about legislation that does not include a standard of willfulness regarding such sales.

The Administration supports enhancing penalties in our current system and private sector-based voluntary certification programs, similar to the risk-based program envisioned in the President's Action Plan for Import Safety. The Administration is strongly concerned about provisions of the bill that would require that the laboratories that test certain children's products for conformity with consumer product safety standards be independent and privately owned. Among those concerns is that the requirement could disrupt imports of children's products from countries where government laboratories are the primary testing entities.

The Administration looks forward to working with the Congress to address these concerns as the legislative process moves forward.

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