CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

December 19, 2007

S. 2045
CPSC Reform Act of 2007

As reported by the Senate Committee on Commerce, Science, and Transportation on December 5, 2007

SUMMARY

S. 2045 would authorize the appropriation of funds to the Consumer Product Safety Commission (CPSC), for fiscal years 2009 through 2015, for the purpose of implementing an array of consumer protection laws, including the Consumer Product Safety Act. Certain amounts authorized by the bill would be used to fund CPSC's operating expenses, while other funds would be designated specifically for the Office of Inspector General, capital improvements to the agency's testing facility, and research into the use of nanotechnology in consumer products.

CBO estimates that implementing S. 2045 would increase spending subject to appropriation by $447 million over the 2009-2012 period, assuming appropriation of the specified amounts. In addition, CBO estimates the bill would increase federal revenues by $17 million over the 2008-2012 period, and $48 million over the 2008-2017 period by increasing civil penalties levied by CPSC. CBO estimates the bill would not affect direct spending.

S. 2045 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would require state and local governments to comply with whistleblower protections authorized in the bill. CBO estimates that the costs to governments of complying with the mandate would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation).

S. 2045 would impose private-sector mandates, as defined in UMRA, on manufacturers, retailers, distributors, and importers of consumer products subject to CPSC enforcement. Because of the large volume of consumer products that would be affected by the mandates, CBO expects that the total cost of complying with them would exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2045 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By Fiscal Year, in Millions of Dollars						
	2008	2009	2010	2011	2012	2008-2012	2008-2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Authorization Level	0	123	131	99	109	462	n.a.
Estimated Outlays	0	107	129	103	108	447	n.a.
CHANGES IN REVENUES							
Estimated Revenues	2	3	4	4	4	17	48

Note: n.a. = not applicable.

BASIS OF ESTIMATE

Spending Subject to Appropriation

Assuming that the specified amounts would be provided for each year, and that spending would follow historical patterns, CBO estimates that implementing S. 2045 would increase discretionary spending by $447 million over the 2009-2012 period.

S. 2045 would amend and reauthorize several consumer protection laws, including the Consumer Product Safety Act. It would authorize appropriations for CPSC starting with funding levels for fiscal year 2009. The bill would authorize separate amounts for CPSC's general operating expenses, the Office of the Inspector General, capital improvements to the agency's research, development, and testing facility, and for research into the use of nanotechnology in consumer products.

The bill would require CPSC to modify and expand regulations regarding levels of lead paint in children's toys, for safety standards for all-terrain vehicles, and standards for portable gasoline containers. The bill also would require CPSC to make changes to rules regarding public notification of safety standards and recalls, its tracking of potentially hazardous products, and its enforcement responsibilities. In addition, the bill would direct the commission to employ at least 500 full-time workers by October 2013. Currently, CPSC employs just over 400 full-time workers.

Revenues

S. 2045 would increase the maximum civil penalty for violations of consumer product safety standards and applicable rules under the Consumer Product Safety Act. CBO estimates that by raising the maximum penalty, the bill would increase revenues by $17 million over the 2008-2012 period and $48 million over the 2008-2017 period.

Those safety standards, which are enforced by CPSC, currently stipulate that any person who knowingly manufactures or sells products that fail to comply with applicable safety standards faces civil penalties up to $1.825 million for each violation in 2007. The bill would increase the maximum penalty to $100 million for each violation.

Since 2001, civil penalties assessed by CPSC have averaged $4.7 million annually. The average penalty collected during that time was $525,000, or less than 30 percent of the maximum amounts. About 25 percent of the penalties exceeded $1 million.

Based on an analysis of historical assessments, CBO expects that a small number of cases would be directly affected by the higher maximum penalty. Specifically, only a few fines per year were assessed at more than 50 percent of the maximum amount. However, the fines collected over the past several years may have been constrained by the current-law limit. CBO expects that increasing the cap would change the dynamics of litigating and settling large cases and estimates that the average penalty for larger cases would eventually double, while the average penalty for smaller cases would be about 20 percent higher.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 2045 would extend whistleblower protection to employees of state and local governments who provide information about violations of safety standards enforceable by the CPSC. State and local governments would be prohibited from discharging or discriminating against those employees and would be subject to an order by the Secretary of Labor that could require reinstating the employee and providing damages. The requirement to comply would be an intergovernmental mandate as defined in UMRA. Because compliance with the protections likely would involve only adjustments to administrative procedures, CBO estimates that the mandate costs would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation).

In general, state and local governments would benefit from a provision in the bill that would authorize the commission to provide them product information. States also would benefit from other provisions that would give them broader flexibility to implement their own safety standards as well as authority to enforce federal safety standards. Any related costs state and local governments incur to enforce safety standards or to comply with confidentiality agreements tied to information from the commission would be incurred voluntarily.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 2045 contains several private-sector mandates as defined in UMRA. The bill would impose requirements to address the incidence and effects of unsafe products, ban the use of lead in certain products, and establish new product safety standards. Based on information from the CPSC and industry sources, CBO expects that the total cost of complying with the mandates would exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

Addressing the Incidence and Effects of Unsafe Products

The bill would impose requirements aiming to reduce consumers' exposure to unsafe products, including but not limited to:

- Requiring that all children's products manufactured in and imported into the United States be tested by third-party laboratories and certified to meet applicable standards;
- Requiring manufacturers of children's products to display tracking labels with the source, date, and cohort of production on each product and its packaging;
- Requiring manufacturers of durable infant and toddler products to include consumer registration forms with each product, maintain a record of registered consumers to inform them of recalls, and permanently place tracking information on each product; and
- Making it illegal to manufacture, distribute, import, or sell banned, non-compliant, or recalled products.

Both CPSC and industry sources expect that these mandates could impose substantial costs on the private sector. The costs would depend on the specific requirements imposed by CPSC. Manufacturers of children's products would be required to have their products tested and certified by third-party laboratories and include tracking labels on each product and its packaging within one year of the date on which the CPSC Reform Act is enacted.

Toy manufacturers, which account for about $37 billion in toy sales (including video games) each year, could be most affected by these mandates. Though many manufacturers currently test products, requirements that differ from current testing practices would lead to significant costs to the industry due to the volume of toys sold each year and the costs associated with testing products. Also, the certification requirement would likely impose new costs on all manufacturers of children's products since currently manufacturers either self-certify or do not certify products at all.

Additionally, the requirement to display tracking labels with the source, date, and cohort of production would be a new requirement and would consequently impose new costs on all manufacturers, though the cost would vary by product. For example, according to industry sources, manufacturers would have to pay around $5,000 per toy (or other product) for products made in molds to have the molds remanufactured to include the tracking label. For clothes and stuffed toys, the cost to retool would be considerably less.

The Juvenile Products Manufacturers Association (JPMA), which represents makers of products ranging from cribs to car seats for children, expects that its members could experience as much as a 10 percent increase in costs as a result of the testing and certification requirements, including the registration requirements for manufacturers of durable infant and toddler products. For an industry with about $7 billion in sales (excluding diapers), the incremental cost to comply with those mandates could be large relative to UMRA's threshold for private-sector mandates.

The costs associated with the provision that would make it illegal to manufacture, distribute, import, or sell banned, non-compliant, or recalled products would be relatively small. Most manufacturers and retailers stop producing or selling recalled products as soon as the recall is known. Since most recalls are voluntary, however, it is currently legal to sell such goods. Businesses in secondary markets—such as "mom-n-pop" shops, discount stores, and Internet Web sites—that sell such recalled goods would incur costs.

Banning Lead in Consumer Products

S. 2045 would ban children's products that have a lead content that exceeds 200 parts per million (ppm) in children's jewelry and 400 ppm in all other children's products. It also would lower the permissible lead content in paint used by consumers from 600 ppm to 90 ppm. The bill would allow CPSC to temporarily modify the permissible lead levels for electronic products, for which the 400 ppm lead requirement may not be feasible.

A considerable number of manufacturers, especially those that make children's jewelry and electronic devices, are concerned about the feasibility of the lead requirement. According to the Fashion Jewelry Trade Association, metal jewelry cannot be made with a lead content as low as 200 ppm. Though children's jewelry (intended for children 7 and under) only comprises around 5 percent of the sales of the fashion jewelry industry, manufacturers of jewelry products could still experience significant costs, as even plastic jewelry uses metal clasps. Manufacturers of complex and electronic toys might also experience significant costs as a result of the lead requirement, though the costs would depend on future CPSC decisions regarding interim requirements on lead content in electronic children's products. Ultimately, manufacturers of many types of children's products might have to modify operations to comply with this mandate.

Establishing New Product Safety Standards

Finally, the bill would impose private-sector mandates by establishing several consumer product safety rules and standards based on voluntary industry standards set by the American Society for Testing and Materials (ASTM-International), the American National Standards Institute (ANSI) and the Specialty Vehicle Institute of America (SVIA), including standards for:

- Child-resistant closures on portable gasoline containers (ASTM F2517-05),
- Toy safety (ASTM-International Standard F963-07), and
- All-terrain vehicle safety (ANSI/SVIA-1-2007).

The bill also would require all automatic garage door openers that directly drive the door in the closing direction to include an external secondary entrapment protection device that does not require contact with a person or object for the garage door to reverse its movement. CPSC and industry sources expect the cost of compliance with these mandates to be relatively small as most manufacturers already comply voluntarily.

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