# PRODUCT RECALL, INFORMATION AND SAFETY MODERNIZATION ("PRISM") ACT

Note: CPSC = Consumer Product Safety Commission;
CPSA = Consumer Product Safety Act;
FHSA = Federal Hazardous Substances Act;
FFA = Flammable Fabrics Act.

## Title I. Improved Enforcement Tools

### *Section 1. Additional Prohibited Acts*

(a) Make it unlawful (under Section 19 of CPSA) to knowingly sell to a consumer a recalled product after the date of public announcement of the recall;

Rationale: Creates incentive to halt sales of recalled products quickly.

(b) Make it unlawful for a recalling firm to fail to provide notice to any retailer or distributor to whom it has previously distributed the recalled product at least 24 hours before notification to the general public or purchasers of the product (Section 19 of CPSA and relevant sections of other statutes);

Rationale: Assures recalling firm's distributors/retailers have advance notice so that they can comply with "stop sale" requirement.

(c) Clarify that it is a prohibited act to manufacture *etc*. a product which violates a voluntary standard upon which the CPSC has relied under Section 9(b) of the CPSA or other statute administered by the Commission;

Rationale: Makes clear that once the Commission has formally relied upon a voluntary standard, its stature is equal to a mandatory standard for enforcement purposes. Makes requirement uniform across all CPSC statutes.

(d) Make it unlawful to fail to furnish a certificate of compliance with a mandatory standard under any statute administered by CPSC or any voluntary standard relied upon by the Commission or to issue a false certificate of compliance (CPSA Section 19 and relevant sections of other statutes);

Rationale: Applies CPSA certificate requirement uniformly across all CPSC statues, and treats voluntary standards formally relied upon by the Commission as equivalent to mandatory product safety standards for certification purposes.

(e) Make it unlawful to fail to provide information in timely response to a subpoena from the Commission (CPSA Section 19 and relevant sections of other statutes);

Rationale: Provides explicit enforcement mechanism for failure to respond to a Commission subpoena in timely fashion.

(f) Prohibit stockpiling under all statutes administered by the Commission to the same extent as under the CPSA (Section 9(g)).

Rationale: Conforms other CPSC statutes to anti-stockpiling provisions of CPSA

## *Section 2. Civil and Criminal Penalties and Other Remedies*

(a) Add asset forfeiture as a potential additional criminal remedy under any statute administered by the Commission (Section 21 of CPSA and relevant sections of other statutes);

Rationale: Allows CPSC to act to assure that any gain from criminally violative activity is not retained by perpetrator.

(b) Give the CPSC the authority to impose penalties of up to $2 million administratively (without need for Department of Justice referral and initiation of federal court action) under CPSA, FHSA and FFA (penalty would still be subject to judicial review);

Rationale: Streamlines civil penalty process by allowing CPSC to proceed administratively rather than via judicial action in many cases

(c) Increase the cap on civil penalties under the CPSA, FHSA, and FFA to $10 million, to be phased in over 4 years. (Section 20 of CPSA; Section 5 of FHSA; Section 5 of FFA);

Rationale: Gradual phase-in reduces likelihood of unmanageable surge in unnecessary reports from firms or that some firms may stop submitting necessary reports. Uniformity across all statutes makes enforcement tools consistent for all products under Commission jurisdiction.

(d) Clarify that the list of 5 statutory factors to be considered by the CPSC in determining a civil penalty amount under the CPSA, FHSA or FFA is not

exclusive [Section 20(b),(c) of CPSA; Section 5(c)(3),(4) of FHSA; Section 5(e)(2),(3) of FFA].

Rationale: Makes clear that while Commission must consider factors enumerated in the statute, it may in its discretion address other factors as appropriate to the particular matter under consideration.

## *Section 3. Recalls*

(a) Clarify that the CPSC must approve the consumer remedy (refund, repair or replacement) proposed by a firm in a mandatory recall under Section 15 of the CPSA or section 15 of the FHSA;

Rationale: Makes clear that Commission is the final arbiter of the remedy in rare instances of mandatory recalls (recalls that are mandated after failed negotiation, an administrative law hearing, Commission review and subject to judicial review).

(b) Authorize CPSC to order further notification of consumers and additional corrective action if consumers are not adequately protected by the original corrective action.

Rationale: Provides clear authority to the Commission to take additional action if remedy as initially implemented proves insufficient to adequately protect consumers.

## *Section 4. Information and Reporting*

(a) Require reports under section 15 whenever a manufacturer, distributor or retailer obtains information which reasonably supports the conclusion that a product fails to comply with (i) a mandatory standard or ban adopted by the Commission under any statute it administers; or (ii) a voluntary standard relied upon by the Commission under any statute it administers;

Rationale: Adds reporting requirements for violations of mandatory standards under all statutes, as well as voluntary standards upon which the Commission may rely.

(b) Require any retailer or distributor of any consumer product to provide, to the extent practicable, the name and address of any company who supplied the product to such retailer or distributor (would amend Section 16 of CPSA);

Rationale: Such information should be in the hands of the retailer or distributor. Access to it would allow CPSC to reach other possible routes for product to get to consumers.

(c) Require any manufacturer, importer or distributor of a consumer product to provide, to the extent practicable, the name and address of any entity to which it sold or otherwise made available such product for resale (CPSA Section 16).

Rationale: Such information should be in the hands of the manufacturer, importer or distributor. Access to it would allow CPSC to identify other possible routes for the product to get to consumers.

## *Section 5. Bonding of Violative Imports*

(a) Permit the Commission or Customs to require the posting of a bond sufficient to pay for the destruction of a shipment of consumer products where the expense may be substantial or there are concerns that a firm may disappear or abandon the shipment.

Rationale: Assures that if CPSC must address disposal of violative products, funds to do so are available from the importer. As an example of the need, disposal of violative fireworks can involve significant costs.

## *Section 6. Foreign Internet Sales*

(a) If a consumer product is sold or offered for sale to consumers on the internet by an entity located outside the United States, that entity shall be deemed the manufacturer/importer and shall maintain the original or a copy of the records relating to such sales within the United States.

Rationale: Allows CPSC to reach extraterritorial internet sellers and assures that records necessary to track such sales are available in the United States.

## *Section 7. Information Disclosure Reform*

(a) Reduce the notice period of CPSA section 6(b) from 30 days to 15 days and allow for electronic notice to a firm by the CPSC;

Rationale: Reduced timeframe facilitates timely recalls and recognizes 21st Century modes of electronic communication.

(b) Expand the exemptions from CPSA section 6(b) to include (i) violations of any CPSC mandatory standard, ban or relied-upon voluntary standard (not just CPSA-promulgated standards); and (ii) prohibited acts under any statute administered by the Commission;

Rationale: Extends application of section 6(b) exemption to relied-upon voluntary standards and clarifies that section 6(b) exemption runs to prohibited acts under any CPSC statute.

(c) Amend Section 29(e) of the CPSA to allow the CPSC to share information with any other federal agency for law enforcement purposes and to share any product safety-related information with any federal, state, local or foreign government who has established the ability to protect such information from premature public disclosure and who agrees to protect such information;

Rationale: Clarifies that CPSC can share any information with government enforcement partners, not just "reports." Adding foreign governments recognizes global marketplace.

(d) Clarify that section 6(b) does not prohibit the disclosure of information to foreign governments concerning products manufactured within their own national territory by companies not subject to U.S. jurisdiction;

Rationale: Recognizes global marketplace and addresses situations where direct U.S. jurisdiction over foreign manufacturer may not lie.

(e) Provide that reports to the Commission under section 15 shall be given the same consideration as reports under section 37.

Rationale: Increases incentive to provide prompt and full information to CPSC. Makes section 15 provisions consistent with existing section 37 provisions.

# Title II. Regulatory Reform

## *Section 1. Streamline Overall Regulatory Process*

Eliminate the requirement (but not the option) of issuing an advance notice of proposed rulemaking (ANPR) prior to the issuance of a notice of proposed rulemaking (NPR) relating to standards or bans under any statute administered by the Commission.

Rationale: Enables Commission to issue and update mandatory standards more efficiently where warranted. Commission could still, in its discretion, issue ANPR with regard to either potential mandatory or relied-upon voluntary standard.

## *Section 2. Efficient Enforcement Authority*

Grant CPSC authority to promulgate regulations for the efficient enforcement of any statute it administers (just as the CPSC now has under Section 10 of the FHSA).

Rationale: Clarifies that Commission can issue enforcement regulations in addition to consumer product safety standards under any of its statutes where warranted to carry out mission.

## *Section 3. Eliminate Unnecessary Regulatory Requirement*

Correct disparity in rulemaking process between Sections 2 and 3 of FHSA by eliminating the requirement that the CPSC follow the procedures of the Federal Food, Drug and Cosmetic Act.

> Rationale: Eliminates confusion between rulemaking under Food, Drug and Cosmetic Act and informal rulemaking procedures otherwise called for in these sections.

## *Section 4. Strike Section 30(d) of CPSA*

Eliminate the requirement to make findings, with public notice, before regulating under the CPSA vs. other statutes.

> Rationale: By eliminating two step proceeding, allows for more expedited issuance of CPSA rather than FHSA, FFA, or PPPA standard where warranted.

## *Section 5. Treaty Conformity*

Eliminate the 60 day deadline for publishing final rules. Executive Order 12889 requires minimum 75 day comment period. (Section 9(d) of CPSA).

> Rationale: Conforms rulemaking process to notice requirements under North American Free Trade Agreement.

## *Section 6. Expand Certification Requirements*

Extend existing certification requirement under CPSA (Section 14) to all statutes administered by the Commission.

> Rationale: Avoids confusion among disparate certification and labeling provisions of CPSA, FHSA, FFA, and PPPA.

## *Section 7. Relied-upon Voluntary Standards*

Clarify that informal APA rulemaking requirements are to be followed under the "notice and comment" provisions of Section 9(b) of the CPSA (after other, existing prerequisites to Section 9(b) are met, e.g., that there be an extant mandatory rulemaking underway, etc).

> Rationale: Makes clear that full notice and comment rulemaking using Administrative Procedure Act process is the mechanism for the Commission to make "relied-upon" determinations.

### *Section 8. Rulemaking Authority*

Authorize the Commission to adopt rules implementing any of the provisions of this Act ("PRISM").

Rationale: Explicitly enables the Commission to implement the other provisions of PRISM.

## Title III. Technical Revisions

### *Section 1. CPSC Jurisdiction*

(a) Clarify the jurisdiction of the National Highway Traffic Safety Administration vs. the CPSC over "dual use" motor vehicle equipment (*e.g.*, infant carriers and children's car seats that can be removed and used away from the vehicle) (Section 3 of CPSA; Section 2 of FHSA);

Rationale: Eliminates confusion over which agency can take action depending on whether issue involves in-car or out-of-car problems.

(b) Add "medical devices" to list of products not within CPSC jurisdiction under FHSA (Section 2(f)(2)).

Rationale: Eliminates inconsistency with CPSA and places "medical device" jurisdiction with the Food and Drug Administration.

### *Section 2. Other Technical Revisions*

(a) Under FFA, delete reference to enforcement under the FTC Act and replace with CPSA enforcement mechanisms. (Section 5(b));

Rationale: Modernizes and simplifies FFA enforcement process to be consistent with other CPSC Acts.

(b) Delete section CPSA section 36, FHSA section 21 and FFA section 17;

Rationale: These congressional veto provisions are superseded by the Congressional Review Act.

(c) Add "records" to inspection authority under FHSA to make consistent with CPSA (FHSA Section 11(b));

Rationale: Clarifies that FHSA inspection authority is coincident with that under CPSA.

(d) Strike "dealer" and replace with "retailer" under Section 15 of FHSA;

Rationale: Makes clear in the FHSA that Commission has authority over the last commercial entity before the ultimate consumer.

# Title IV. Reauthorization of CPSC

## *Section 1. Authorization of Appropriations*

CPSC to be authorized to be appropriated such sums as may be necessary to carry out its activities for FY '09 and thereafter. (Amends section 32 of CPSA).

Rationale: Multi-year authorization avoids decade and a half lapse like that which has occurred since 1990.