Consumer Product Safety Improvement Act of 2008
H.R. 4040
Section-by-Section Analysis

H.R 4040 Final Conference Report Key Provisions Analysis	
Title I – Children's Product Safety	

Sec. 101 – Children's Products containing lead; lead paint rule	• Establishes new lead limits for children's products under the Federal Hazardous Substances Act. Products not meeting the new lead limits will be treated as a banned hazardous substance.
	  o 600 parts per million (ppm) total lead content by weight for any part of the product beginning 180 days after date of enactment.
	  o 300 ppm total lead content by weight for any part of the product beginning 1 year after date of enactment
	  o 100 ppm total lead content by weight for any part of the product beginning 3 years after the date of enactment, unless the CPSC determines 100 ppm is not technologically feasible. If CPSC determines that 100 ppm is not technologically feasible, they must establish an amount lower than 300 ppm by regulation.
	  o CPSC shall, based on the best available scientific and technical information, periodically review and revise the lead limits.
	
	• Exemptions
	  o CPSC may exclude certain products from the prohibition by regulation if after notice and hearing the CPSC determines on the basis of best-available, objective, peer reviewed, scientific evidence that the lead in the product or material will neither:
	  ▪ Result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child; nor
	  ▪ Have any other adverse impact on public health or safety.
	  o Inaccessible Parts – The new lead limits shall not apply to a component of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse as determined by the CPSC. Inaccessible is defined as a component part that is not physically exposed by reason of a sealed covering or

	casing and does not become physically exposed though reasonably foreseeable use and abuse of the product. CPSC must promulgate a rule within 1 year of enactment providing guidance as to what product components or classes of components will be considered inaccessible. Paint, coatings and electroplating are not considered a barrier that would render a substrate inaccessible. o Electronic Devices – If CPSC determines that it is not technologically feasible for certain electronic devices to comply with new lead limits, they must by regulation issue requirements to eliminate or minimize the potential for exposure and accessibility of lead in such devices and establish a schedule by which such devices will be in compliance with the new requirements. • Mandates that pending rulemaking will not delay effective dates or enforcement. • Lead paint is now restricted to 90 ppm within 1 year of enactment. Children's products are defined in Sec. 245 as a consumer product designed or intended primarily for children 12 years of age or younger.
Sec. 102 Mandatory Third Party Testing for Certain Children's Products	• Every manufacturer (and private labeler) of a product subject to a consumer product safety rule under this Act or similar rule, ban, standard or regulation under any other Act enforced by CPSC and which is imported for consumption, warehousing or distribution in commerce shall issue a certificate which: o Certifies, based on a test of each product or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product; and o Specify each such rule, ban, standard or applicable regulation. • Implementation – Applicable to products manufactured more than 90 days after the CPSC has established and published notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule. • Timelines – o Lead Paint – CPSC shall publish notice of

	requirements for accreditation of third party assessment bodies no later than 30 days after enactment. ○ Cribs and pacifiers - CPSC shall publish notice of requirements for accreditation of third party assessment bodies no later than 60 days after enactment. ○ Small Parts - CPSC shall publish notice of requirements for accreditation of third party assessment bodies no later than 90 days after enactment. ○ Children's Metal Jewelry - CPSC shall publish notice of requirements for accreditation of third party assessment bodies no later than 120 days after enactment. ○ Baby Bouncers, Walkers and Jumpers - CPSC shall publish notice of requirements for accreditation of third party assessment bodies no later than 210 days after enactment. ○ All Other - CPSC shall publish notice of requirements for accreditation of third party assessment bodies no later than 10 months after enactment. When a rule takes effect or is revised after 1 year after enactment, CPSC must publish 90 days prior to the rule or revision becoming effective. • Accreditation may be conducted by CPSC or an independent accreditation organization designated by CPSC. CPSC must maintain a list of accredited entities on its website. • CPSC may extend certification deadline by 60 days if there is an insufficient number of accredited third party conformity assessment bodies. • Within 10 months after enactment, CPSC must issue a regulation with requirements for the periodic audit of third party testers. • Within 15 months after enactment, the CPSC shall issue a regulation that initiates a program for a manufacturer or private labeler to be considered a third party tester. • CPSC may withdraw accreditation after notice and investigation. • Third Party Conformity Assessment Body is defined as a conformity assessment body that is not owned, managed, or controlled by the

	manufacturer or private labeler. Government entities may be included in the definition. CPSC may accredit a manufacturer or private labeler is they would provide equal or greater consumer safety protection than an independent third party and meets other requirements established by the CPSC. • Certificates must include date and place of manufacture, date and place of testing, each party's name, full mailing address, phone number and contact information for person responsible for maintaining records of results. Certificates must accompany the applicable product or shipment and must be given to each distributor or retailer. CBP may allow for the electronic filing of certificate 24 hours prior to arrival.

Sec. 103 Tracking Labels for Children's Products	• Effective one year after enactment, manufacturers must place permanent or distinguishing marks on the product or its packaging, to the extent practicable, that will enable:
	  o The manufacturer to ascertain the location and date of production, cohort information (batch, run number, etc.) any other information that will allow the manufacturer to identify the specific source of the product; and
	  o The ultimate purchaser to ascertain the manufacturer or private labeler, location and date of production and cohort information.
	
	• Advertisements may not contain a reference to a consumer product safety rule or voluntary consumer product safety standard unless the product meets the rule or standard.

Sec. 104 Standards and Consumer Registration of Durable Nursery Products	• CPSC must promulgate consumer product safety standards, in accordance with Sec. 553 of title 5 of the US Code, that are substantially the same as such voluntary standards or are more stringent if the CPSC determines that more stringent standards will further reduce the risk of injury associated with such products. • It will be a violation to sell such products not in compliance with the standards. • Within 1 year, CPSC must issue a final rule that requires each manufacturer of durable infant or toddler products to: 1) provide consumers with a postage-paid registration form with each product; 2) maintain a record of the names, addresses, email and other information for each consumer

	who registers (record must be maintained for 6 years); and 3) permanently place the manufacturer name, contact information, model name and number and date of manufacture on each product. • Requires CPSC to review recall notification technology and assess the effectiveness of such technology in facilitating recalls of durable infant and toddler products. • Defines durable infant or toddler product as a product intended for use, or that may be reasonably expected to be used by children under the age of 5.

Sec. 105 Labeling Requirements for Advertising Toys and Games	• Advertisements (Internet, catalogue or other printed materials) that provide a direct means for the purchase or order of a product for which a cautionary statement is required, shall include the appropriate cautionary statement displayed on or adjacent to the advertisement.
	  ○ Retailer must be informed of the cautionary statement by the manufacturer, importer, distributor or private labeler.
	  ○ Retailer is not in violation if the retailer asked if the cautionary statement is required and is either given false information or is not provided with the required statement.
	  ○ Cautionary statement shall be prominently displayed:
	  ▪ In the primary language of the ad
	  ▪ In conspicuous and legible type
	  ▪ In a manner consistent with part 1500 of title 16, Code of Federal Regulations
	
	• Requirements are effective 120 days after date of enactment for Internet websites and 180 days after enactment for catalogues and other printed materials.
	
	• CPSC must promulgate regulations within 90 days of enactment to effectuate this section with respect to catalogues and other printed materials. CPSC may provide a grace period of no more than 180 days for catalogues and other printed materials printed prior to the effective date.
	
	• Advertising requirements under this section shall be treated as a consumer product safety standard promulgated under Section 9 of the CPSA (15 U.S.C. 2056).

Sec. 106 Mandatory Toy Safety	• ASTM International Standard F963-07 Consumer

Standards	Safety Specifications for Toys (ASTM F963) shall be considered a consumer product safety standard issued by the CPSC 180 days after enactment. • Not later than 1 year after enactment, the CPSC shall examine and assess the effectiveness of the ASTM F963 or successor as it relates to safety requirements, safety labeling requirements and test methods. CPSC must then issue a rule within 1 year of the completion of the assessment. The rule will be considered a consumer product safety standard. • CPSC may grant an exemption of state laws from preemption after notice and opportunity for oral presentations if the State or political subdivision standard 1) provides significantly higher degree of protection from such risk of injury than the consumer product safety standard or rule under this section and 2) does not unduly burden interstate commerce. CPSC must consider findings on the technological and economic feasibility of complying with the standard or regulation, geographic distribution of the product, probability of other states applying for an exemption, and the need for a national, uniform standard under the Act for such consumer product. • Act does not prevents a state or political subdivision from continuing in effect a safety requirement applicable to a toy or other children's product established by this section that is in effect on the day before the date of enactment, if such Sate or political subdivision has filed such requirements with the CPSC within 90 days after enactment.
Sec. 108 Prohibition on Sale of Certain Products Containing Specified Phthalates	• 180 days after enactment, it will be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the US any children's toy or child care article that contains concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate (BBP). • 180 days after enactment and until a final rule is promulgated by the CPSC, it will be unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import into the US any children's toy or child care article that contains concentrations of more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

	• CPSC must appoint a Chronic Hazard Advisory Panel after 180 days of enactment to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles. Panel shall conclude findings within 18 months and report finding to the CPSC within 180 days. CPSC will then promulgate a final rule to determine whether or not to continue the interim prohibition on DINP, DIDP or DnOP • Rules issued under this section shall be considered a product safety standard and shall not be construed to preempt or otherwise affect any State requirement with regards to phthalate alternative not specifically regulated in a consumer product safety standard under the CPSA.
Title II – CPSC Reform	
Sec. 201 Reauthorization of the Commission	• Authorizes the CPSC and provides funding for 2010 – 2014. • Requires a Congressional report from the CPSC on how funding will be allocated including efforts to develop standards for training product safety inspectors and technical staff and efforts by the CPSC to reach out to educate retailers of second hand products and informal sellers.
Sec. 202 Full Commission Requirement; Interim Quorum; Personnel	• Provides that 2 Commissioners shall constitute a temporary quorum as long as they are not from the same political party. • CPSC must increase full-time personnel to at least 500 by October 1, 2013. Part of this must include personnel to be assigned to duty stations at U.S. ports of entry or to inspect overseas manufacturing facilities, subject to the availability of appropriations.
Sec. 204 Expedited Rulemaking	• Provides CPSC with expedited rulemaking authority.
Sec. 206 Industry-Sponsored Travel Ban	• Bans CPSC Commissioners and employees from accepting travel, subsistence or related expenses from a person 1) seeking official action, doing business with or conducting activities regulated by the CPSC and 2) whose interests may be substantially affected by the performance or non-performance of the CPSC.
Sec. 207 Sharing of Information with Federal, State, Local and Foreign Government Agencies	• CPSC may provide information to any Federal, State, local or foreign government agency upon the prior certification of an appropriate official of any such agency either by prior agreement or memorandum of understanding or other written certification. The information must be maintained in confidence and used for official law enforcement

	or consumer protection purposes. • When notified of a voluntary corrective action by a manufacturer or retailer selling under its own label, the CPSC shall notify each State's health department or designated agency of such actions.
Sec. 211 Public Disclosure of Information	• This section decreases the current timelines under Sec. 6 of the CPSA for information disclosure. • Allows further expedited consideration if the CPSC determines that the public health and safety requires such action.

Sec. 212 Establishment of a Public Consumer Product Safety Database	• CPSC must establish and maintain a database on the safety of consumer products, and other products or substances regulated by the CPSC. The database must be publicly available, searchable and available through the CPSC website. It is also subject to appropriations.
	
	• CPSC must submit plan for database to Congress within 6 months of enactment and have the database available within 18 months of report being submitted.
	
	• Database shall include:
	  o Reports of harm relating to the use of consumer products or other products/substances regulated by the CPSC received from consumers; local, State or Federal government agencies; health care professionals; child service providers; and public safety entities.
	  o Information derived by CPSC from notice under Sec. 15(c) or any notice to the public relating to voluntary corrective action taken by a manufacturer.
	
	• Complaints shall be received through electronic, telephonic or paper means. Reports must include at a minimum:
	  o Description of consumer product
	  o Identification of the manufacturer or private labeler or the product
	  o Description of the harm relating to the use of the product
	  o Contact information from the person submitting the report
	  o Verification by the person submitting the complaint that the information is true and accurate to the best of that person's knowledge
	
	• CPSC may not provide consumer contact

	information without express written consent of consumer. Consumer contact information provided to manufacturer may not be used or disseminated to any other purpose than verifying a report. • CPSC shall to the extent practicable, within 5 days of receiving a report, transmit the report to the identified manufacturer/private labeler for an opportunity to comment. The manufacturer/private labeler may request inclusion of comments in the report. CPSC must redact information before it is placed in the database if it determines the information contains or relates to a trade secret or other matter referred to in section 1905 of Title 18, US Code or that is subject to section 552(b)(4) of title 5, US Code. • CPSC must make reports available within 10 days of receipt. • If CPSC determines that information in a report is materially inaccurate before being published, it shall decline to add the inaccurate information to the database; correct the materially inaccurate information in the report or comment and add the report to the database; or add information to correct the inaccurate information in the database. • If the CPSC determines, after investigation, that the information in the database is materially inaccurate or duplicative, the CPSC shall within 7 days remove the information from the database; correct the information; or add information to correct the inaccurate information in the database.
Sec. 214 Enhanced Recall Authority and Corrective Action Plans	• Amends Sec. 15(b) of the CPSA to expand CPSC authority over "other products and substances" which the Act gives CPSC jurisdiction over. • CPSC must indicate approval of a corrective action plan in writing. • If the CPSC determines that an approved action plan is not effective or appropriate or that the manufacturer/retailer/distributor is not executing the plan, the CPSC may amend or require amendment of the plan. • If the CPSC determines after notice and comment that a manufacturer/retailer/distributor has failed to comply substantially with the obligations under the plan, the CPSC may revoke its approval of the action plan.

	• Within 180 days after enactment, the CPSC must by rule establish guidelines for a "uniform class of information" to be included in notices. The information should be helpful to the consumer in identifying the specific product subject to an order; understanding the hazard that has been identified with the product; and understanding the remedy available to the consumer who has purchased the product.
	
	• Unless CPSC determines that information is unnecessary or inappropriate, recall notices must include the following information:
	  ○ Description of the product (model number or SKU, name(s) of the product and photo of product).
	  ○ Description of action being taken
	  ○ Number of units to which the action is being taken
	  ○ Description of the substantial product hazard and reasons for the action
	  ○ Identification of manufacturers and retailers of the product
	  ○ Dates between when product was manufactured and sold
	  ○ Number and description of any injuries or deaths associated with the product, ages of any individuals injured or killed, dates when CPSC received such information
	  ○ Description of any remedy available to a consumer; action a consumer must take to obtain remedy; and information a consumer needs to take to obtain a remedy.
	  ○ Any other information deemed appropriate by the CPSC

Sec. 215 Inspection of Firewalled Conformity Assessment Bodies; Identification of Supply Chain	• Upon request of the CPSC, every importer, retailer or distributor of a consumer product, or other product or substance which the CPSC has jurisdiction over, shall:
	  ○ Identify the manufacturer of that product by name, address, or such identifying information requested to the extent such information is known or can be readily determined by the importer, retailer or distributor.
	  ○ Every manufacturer shall identify by name, address or any other identifying information requested about
	  • Each retailer or distributor to which the manufacturer directly supplied a given consumer product
	  • Each subcontractor involved in the

	production or fabrication of such product or substance • Each subcontractor from which the manufacturer obtained a component thereof

Sec. 216 Prohibited Acts	• Illegal to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the U.S. any consumer product, or other product or substance regulated under the Act that:
	  o Is not in conformity with all applicable consumer product safety rule under this Act, or any similar rule, regulation, standard or ban under any other Act enforced by CPSC.
	  o Is subject to a voluntary corrective action where the CPSC has notified the public or if the seller, distributor, or manufacturer should have known about the corrective action; subject to an order; or is a banned hazardous substance.
	  o Bears a registered safety certification mark used in a manner not authorized by the owner of that certification mark.
	
	• Illegal to exercise, or attempt to exercise undue influence on a third party conformity assessment body with respect to testing, or reporting of the testing results of any product for compliance under this Act or other Acts enforced by the CPSC.

Sec. 217 Penalties	• Increases the maximum civil penalty for individual violations from $5,000 to $100,000.
	
	• Increases the maximum civil penalty for multiple violations from $1,250,000 to $15,000,000.
	
	• CPSC must issue final regulations for penalties within one year.
	
	• Additional factors added to be considered by the CPSC for determining penalties:
	  o Nature, circumstances, extent, and gravity of the violation.
	  o How to mitigate undue adverse economic impacts on small businesses.
	
	• Criminal penalties may include imprisonment for not more than 5 years for a knowing and willful violation; a fine; or both. Criminal penalty might also include the forfeiture of assets associated with the violation.

Sec. 218 Enforcement by State Attorney General	• Attorney general may bring right of action for violations of Sec. 19(a)(1), (2), (5), (6), (7), (9) and 12 of the CPSA that affects or may affect such

	State or its residents in any US district court for the district in which the defendant is found or transacts business to obtain appropriate injunctive relief. • State AG must provide written notice to the CPSC 30 days prior to initiating a civil action by filing a complaint. • State AG may file a complaint immediately after notifying the CPSC if the State AG determines it is a substantial product hazard. • CPSC may intervene in a civil action. • State may not demand or receive information that is covered under attorney-client privilege, nor may it initiate action if another suit for the same violation is pending.
Sec. 219 Whistleblower Protections	• An employee may not be acted against by the company if the individual provides or is about to provide information to the government, attorney general or employer regarding a violation; testifies regarding violations, assists in either providing information or testifying; or does not participate in a task believed to be a violation of CPSC standards. • Whistleblower who feels discriminated against may file complain with Department of Labor (DOL) within 180 days. If a violation is found, the violator must take action to rectify the violation, reemploy the complainant, and provide compensatory damages. • If the DOL fails to issue a final decision within 210 days of filing the complaint, the whistleblower may file suit in federal court for "relief to make the employee whole," including injunctive relief and compensatory damages. • Federal employees are exempt and are covered under the existing whistleblower provisions in other statutes. • Unjustified plaintiff lawsuits may result in no more than $1,000 in attorneys fees awarded to the employer.
Sec. 231 Export of Recalled and Non-Conforming Products	• CPSC may ban the export of a consumer product for sale if is not in conformity with an applicable consumer product safety rule. Importing country may accept the U.S. export if they provide notice of the acceptance to the CPSC within 30 days of being notified by the CPSC of the impending shipment.

Sec. 232 Import Safety Management and Interagency Coordination	• CPSC must develop a risk assessment methodology within 2 years of enactment that would identify shipments of consumer products:
	  o Intended for import into the U.S.; and
	  o Likely to include consumer products in violation of 17(a) of the CPSA or other import provisions enforced by the CPSC.
	
	• CPSC must use the International Trade Data System in developing the risk methodology.
	
	• CPSC must work with U.S. Customs and Border Protection to identify ways to share information for the purpose of identifying shipments in violation. A plan must be developed within 1 year that includes the stationing of CPSC personnel at U.S. ports of entry and CBP's National Targeting Center. They must also develop a set of rules for the Automated Targeting System (ATS) and expedited access for the CPSC to the ATS.

Sec. 233 Substantial Product Hazard List and Destruction of Noncompliant Imported Products	• CPSC may specify, by rule, for any consumer product of class of consumer products, characteristics who existence or absence shall be deemed a substantial product hazard if CPSC determines that:
	  o Such characteristics are readily observable and have been addressed by voluntary standards; and
	  o Such standards have been effective in reducing the risk of injury from consumer products and that there is substantial compliance with such standards.
	
	• Products refused admission to the U.S. shall be destroyed unless the Secretary of Treasury permits the export of the product in lieu of destruction. The product will be destroyed if the owner, consignee or importer of record does not export the product with 90 days of approval.
	
	• Manufacturers must be in compliance with recordkeeping requirements. CPSC shall, by rule, condition the manufacturing for sale, offering for sale, distribution in commerce or importation into the U.S. of any consumer product on the manufacturer's compliance with inspection and recordkeeping requirements.

Sec. 234 Financial Responsibility	• CPSC, in consultation with CBP, shall identify consumer products for which the cost of destruction would exceed bond amounts and recommend to CBP a bond amount sufficient to cover the cost of destruction.

	• Comptroller General must conduct a study to determine the feasibility of requiring the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of destruction of both domestically produced and imported products or substances regulated and enforced by the CPSC. Report must be completed within 180 days of enactment and include an assessment of whether such an escrow requirement could be implemented and recommendations for implementation.

Sec. 235 Study and Report on Effectiveness of Authorities Relating to Safety of Imported Consumer Products	• Within 1 year of enactment, the Comptroller General must conduct a study:
	  o Of the authorities and provisions of the CPSA to assess the effectiveness of such authorities and provisions in preventing unsafe products from entering the U.S.
	  o Review and provide recommendations with respect to plans to prevent unsafe consumer products from entering the U.S.
	  o Legislative recommendations related to the inspection of foreign factories by the CPSC and requiring foreign manufacturers to consent to the jurisdiction of the United States courts with respect to enforcement actions by the CPSC.

Sec. 241 Preemption	• Statutory provisions establishing extent to which Federal acts affect any other Federal, state or local law, or rule procedure or regulation under state and local law may not be expanded or contracted in scope by any regulation or rule or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation. CPSC may not construe any such Act as preempting any cause of action under state or local common law or State statutory law regarding damage claims. • Nothing in this act shall preempt or otherwise affect any warning requirements relating to consumer products or substances that is established pursuant to state law in effect before August 1, 2003.
Sec. 244 Study on the Use of Formaldehyde in Manufacturing of Textile and Apparel Articles	• Within 2 years, the Comptroller General, in consultation with the CPSC, shall conduct a study on the use of formaldehyde in the manufacture of textile and apparel articles, or in any component of such articles, to identify any risks to consumers caused by the use of formaldehyde in the manufacturing of such articles or components of such articles.
Sec. 245 Technical and Conforming Changes	• Children's product is defined as a consumer product designed or intended primarily for children

	12 years of age or younger. The following factors must be considered: ○ Statement by manufacturer about intended use of such product; ○ Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 and under; ○ Whether the product is commonly recognized by consumers as being intended for use by children 12 and under.