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85/11/76

APPROVED

MAY 11 1976

Statement issued  
5/12/76

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: May 11

May 10, 1976

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

S. 644 - Consumer Product Safety Commission Improvements Act of 1976

Posted  
5/12/76  
to archives  
5/12/76

Attached for your consideration is S. 644, sponsored by Senators Moss and Magnuson, which amends the Consumer Product Safety Act by clarifying and extending the powers, jurisdiction and independence of the Consumer Product Safety Commission and authorizes appropriations for the Commission through FY 1978.

A detailed analysis of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill and the proposed signing statement which has been cleared by the White House Editorial Office. (Smith)

RECOMMENDATION

That you sign S. 644 at Tab B.

That you approve the signing statement at Tab C.

Approve

*JR7*

Disapprove \_\_\_\_\_





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

MAY 5 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 644 - Consumer Product Safety  
Commission Improvements Act of 1976  
Sponsor - Sen. Moss (D) Utah and Sen. Magnuson (D)  
Washington

Last Day for Action

May 11, 1976 - Tuesday

Purpose

To amend the Consumer Product Safety Act (CPSA) by clarifying and extending the powers, jurisdiction, and independence of the Consumer Product Safety Commission (CPSC) and by authorizing appropriations for CPSC through fiscal year 1978.

Agency Recommendations

Office of Management and Budget	Approval
Consumer Product Safety Commission	Approval
Civil Service Commission	Approval
Department of Health, Education, and Welfare	Approval(Informally)
Environmental Protection Agency	No objection(Informally)
Department of Commerce	No objection
General Services Administration	No objection(Informally)
Department of Justice	Defers

Discussion

The major provisions of S. 644 are described below:

Limits on CPSC's jurisdiction and other restrictions

S. 644 would

- exclude pesticides, tobacco and tobacco products,  
and firearms, ammunition, or ammunition components

from the jurisdiction of the Commission. CPSC's jurisdiction to regulate fireworks would be preserved.

- direct that no consumer product safety standards may be based upon any sampling plan, except for standards applicable to fabric or product flammability or to glass containers.
- require CPSC to transmit to its congressional authorizing committees its proposed product safety regulations 30 days prior to adoption (a "notify and wait" provision).
- stipulate that any potential adverse impact on the elderly or handicapped be considered in the promulgation of a consumer product safety rule.

In addition the enrolled bill would amend the Federal Tort Claims Act to allow civil suits against the United States where the Commission or an employee is charged with misrepresentation or deceit, or gross negligence in the exercise of, or failure to exercise, a discretionary function. No claim could be brought which did not arise before January 1, 1978. In the case of a claim based on the performance or non-performance of a discretionary function, the court must find, as a matter of law and based upon all relevant considerations, that such action or inaction is unreasonable. Claims awarded or agreed to under this provision are to be paid from the general funds of the Treasury and not from CPSC appropriations.

In its views letter the Justice Department objects to this provision because the standards on which liability for discretionary action are predicated, i.e., "gross negligence" and "unreasonableness" are (1) inconsistent and (2) depart significantly "from the normal tort standard of 'negligent or wrongful act of omission'." The Department further notes that it is a "well-established doctrine that discretionary governmental functions would not be challenged through the guise of a tort action," and concludes that there is "no need to rewrite the law of governmental liability to cover isolated instances where adequate remedies exist by litigation in the court of claims or by private relief legislation."

A second troublesome provision would provide that courts may award the costs of civil suits brought under the CPSA, including reasonable attorney fees and reasonable expert witness fees. Notwithstanding prohibitions in existing laws, such costs could be assessed against the United States where it is party to the suit. The Justice views letter argues that it is unduly simplistic to claim that because the loser asserts an erroneous position, he should be responsible for the entire costs of both sides of a suit. The Department believes that the monetary costs of litigation act as a sufficient bar to frivolous suits and defenses and thus the present balance of litigation incentives and deterrents should not be upset.

#### Preemption of State laws

S. 644 would amend the Federal Hazardous Substance Act, the Poison Prevention Packaging Act, the Flammable Fabrics Act and the CPSA to provide that any non-identical State or local laws may be preempted when a Federal regulation pursuant to these laws is in effect. Exceptions to this provision are permitted where (1) Federal, State or local governments require products which they procure for their own use to comply with a higher standard than the Federal requirement -- so long as there is no conflict between the two requirements, and (2) a State or local government desires to put into effect a standard that is higher than a Federal safety standard and CPSC determines that such exemption does not unduly burden interstate commerce. In addition, fireworks are categorically excluded from the preemption provision, so that States may set whatever fireworks regulations they wish. The preemption provision is strongly supported by a broad cross-section of labor, consumer, and industry groups (e.g., the U.S. Chamber of Commerce, American Apparel Manufacturers Association, Consumer Federation of America, Communications Workers of America, Marcor and Sears) because it would provide needed uniform standards and thus protection from diverse and inconsistent State product safety regulations.

#### Expanded CPSC powers

Among the new and expanded powers granted to the Commission, the enrolled measure would

- authorize the Commission or the Attorney General to seek a preliminary injunction to restrain the distribution of a product which presents a substantial hazard. Before seeking such an injunction,

a prior action to compel the repurchase, repair, or replacement of a product must have been initiated.

- permit the Commission to provide, subject to strict privacy and disclosure standards, accident and investigatory reports to other Federal or State health, safety, or consumer protection agencies.
- establish new procedures and timetables for the development (either by third parties or by the Commission) and promulgation of consumer product safety standards.
- authorize the Commission to make advance payments to third parties selected to develop such product safety standards and to lease space in the District of Columbia in connection with safety education seminars conducted by the Commission.
- provide that risks of injury associated with a consumer product may be regulated under the CPSA, if the Commission finds it in the public interest, even if such risks could otherwise be regulated under the Federal Hazardous Substance Act, the Poison Prevention Packaging Act or the Flammable Fabrics Act.
- prohibit clearance of the appointment of any Commission employee (other than a Commissioner) by the Executive Office of the President.

S. 644 would also authorize 12 new supergrade staff positions. These positions would be in addition to those GS 16 through 18 positions now provided to the Commission from the Civil Service's government-wide pool. In its views letter, the Civil Service Commission notes its general opposition to legislation authorizing spaces outside the supergrade pool, which Congress set up with the expressed intent of ensuring the allocation of supergrade positions among agencies on the most efficient and equitable basis.

The most controversial feature in the bill is the provision to permit the Commission to represent itself in a civil action (other than injunctive actions or appeals to the Supreme Court) if the Attorney General declines, within a 45-day period following a request, to represent the Commission. With respect to a criminal action, existing law -- which requires that the CPSC obtain the concurrence of the Attorney General before instituting such an action -- is retained.

Justice's opposition to the civil litigation provision is based on the belief that a further "diminution of the Department's ability to perform its basic and traditional function of coordinating Government litigation" would result. In contrast, the CPSC views letter asserts that in cases requiring a rapid response, e.g., temporary injunctions, the existing requirement to work through the Attorney General can be a cumbersome process which sometimes hampers CPSC enforcement of the law.

#### Appropriations Authorizations

S. 644 would authorize 1976, transition quarter, 1977, and 1978 appropriations in excess of the Administration's requests, as shown below.

	(\$ in millions)			
	<u>1976</u>	<u>TQ</u>	<u>1977</u>	<u>1978</u>
S. 644 Authorization	\$51	\$14	\$60	\$68
Administration Requests	\$37	\$ 9	\$37	\$37

The authorization levels contained in S. 644 were protested by Director Lynn in letters last July to the Senate and House Minority leaders. These letters also urged repeal of Section 27 (k) of the CPSCA, which mandates simultaneous submission to Congress and OMB of all budget requests and legislative recommendations. The enrolled bill does not repeal this Section.

#### Analysis

As noted earlier, there are a number of undesirable or controversial provisions in the enrolled bill -- permitting certain civil suits against the United States; authorizing the court to award the costs of suit, including attorney and expert witness fees; establishing 12 new supergrade positions outside the government-wide pool; authorizing excessive appropriations; preempting non-identical State and local product safety laws by Federal statute; and granting CPSC independent civil litigation authority.

In our view, only the last two of these provisions are key issues. With respect to the first four:

- The authority to bring a civil suit against the United States because of negligence or fraud on

the part of the Commission is limited, since no claim could be brought after January 1, 1978.

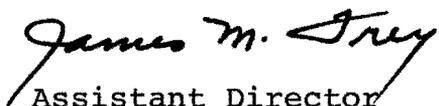
- The authority for the court to award the costs of suit including attorney and expert witness fees will not necessarily encourage frivolous suits as Justice fears, since a potential plaintiff would normally be constrained by the fact that he could be saddled with his costs in bringing the suit, if he should lose.
- The authority to create 12 new supergrade positions outside the pool is, in the view of the Civil Service Commission, not "sufficient reason for a veto in view of the precedents in this regard and in view of the retention of CSC purview in other personnel matters."
- The authorization levels proposed in S. 644, even if enacted, are ultimately controlled by the appropriation process. For example, the 1976 appropriation for the Commission is \$39.6 million, in contrast to the \$51 million authorization level proposed in the enrolled bill.

With respect to the two key issues -- Federal preemption of State product safety laws and the granting of independent civil litigation authority to CPSC:

As a general rule, the Administration has been reluctant to seek preemption of State laws. Although several Federal health and safety laws do preempt State statutes, it should be noted that the preemption provision in S. 644 would have the effect, in some cases, of narrowing rather than broadening existing preemption provisions contained in other Federal product safety acts. There is broad support for this bill's provision by industry, consumer and organized labor. These groups view the proposed bill as an essential piece of legislation that would provide uniform standards and protection from the many existing and conflicting State product safety laws. It is particularly important to companies with a nationwide market. Given this breadth of support for this provision, the existing mixed situation regarding Federal preemptive statutes, and the fact that the bill narrows Federal preemption in some cases, we believe that the provision is acceptable.

The authority for CPSC to litigate on its own behalf does, as claimed by Justice, constitute a further erosion of the Department's role as the Government's lawyer. However, the granting of civil litigation authority to CPSC would not be a precedent; SEC, FPC, ICC and other independent agencies have as great or greater litigation freedom. Moreover, the Justice Department has not, to date, refused to litigate a civil case for the Commission, when requested.

On balance, we do not believe that the undesirable provisions of the bill present serious enough problems to warrant disapproval and, therefore, recommend that you approve S. 644.

  
Assistant Director  
for Legislative Reference

Enclosures





C



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

May 4, 1976

Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lynn:

This letter is in response to the Office of Management and Budget's request for the views and recommendations of the Consumer Product Safety Commission on S. 644, an enrolled bill

"To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations and for other purposes."

Section 2 of S. 644 amends section 32(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2081(a)) to authorize appropriations for fiscal years 1976, 1977, and 1978 and the transition quarter between July 1 and September 30, 1976.

Section 3 of S. 644 resolves certain jurisdictional questions. Subsections (a) and (f) specifically eliminate pesticides from the Commission's jurisdiction under the Poison Prevention Packaging Act of 1970 (PPPA). Enactment of the Federal Environmental Pesticide Control Act of 1972 (P.L. 92-516), in effect, obstructs subsequently enacted Commission authority to enforce any special packaging standards for pesticides under the PPPA, but does not affect the Commission's authority to promulgate such standards. The Environmental Protection Agency's authority under P.L. 92-516 enables that agency to adequately promulgate and enforce pesticide-related packaging standards for the purpose of child protection. Subsection (b) contains a technical

amendment reflecting provisions of P.L. 92-516.

Section 3(c) resolves the existing controversy over the jurisdictional question involving tobacco and tobacco products. Specific exclusion of these products from the Commission's jurisdiction under the Federal Hazardous Substances Act (FHSA) would be consistent with their exclusion from authority under the CPSA.

Section 3(d) resolves the existing controversy over jurisdictional questions involving firearms, ammunition and components thereof. Specific exclusion of those products from the Commission's jurisdiction under the FHSA would be consistent with their exclusion from authority under the CPSA. Provision is made, however, for retaining jurisdiction over fireworks devices under the FHSA. In addition, section 3(e) contains a general prohibition on the Commission issuing any ruling or order that restricts the manufacture or sale of firearms, firearms ammunition or components thereof.

Section 4 of S. 644 relates to submission of the Commission's budget requests or estimates and to certain matters involving its employees. Section 4(a) amends section 4(f) of the CPSA to add a provision to require the Commission, in lieu of the Chairman exclusively, to approve budget requests or estimates submitted to OMB and the Congress.

Section 4(b)(1) amends section 4(g) of the CPSA to substitute the term "regular" for the term "full-time" to conform the term to the language of other conflict of interest statutes that distinguish regular employees from "special Government employees" (as defined by 18 U.S.C. 202).

Section 4(b)(2) amends section 4(g) of the CPSA to add two paragraphs. Section 4(g)(3) of the enrolled bill enables the Chairman, subject to approval of the Commission, to establish and fill twelve positions in grades GS-16, 17, and 18. These positions would be subject to the standards and procedures prescribed by Chapter 51 of title 5, U.S.C. but would be in addition to those positions authorized in 5 U.S.C. 5108(a). Section 4(g)(4) provides that the appointment of any individual by the Commission shall not be subject to the review of any officer or entity within the Executive Office of the President.

Section 5 of S. 644 amends the CPSA to provide that subsection (a) and (h) of 28 U.S.C. 2680 (the Federal Tort Claims Act) would not prohibit the bringing of a civil action against the United States (i.e., the Commission)

which is based upon misrepresentation or deceit on the part of the Commission or an employee thereof; or based upon an exercise or performance or failure to exercise or perform a discretionary function by the Commission or an employee thereof which was grossly negligent. The latter provision regarding discretionary functions requires that the court find, as a matter of law (taking into account all relevant circumstances including the statutory responsibility of the Commission and the public interest in encouraging rather than discouraging the exercise of discretion) that the action was unreasonable. The provision further limits such claims to those arising before January 1, 1978 and provides that such claims are to be paid from the general treasury and not from appropriated funds of the Commission.

The provisions contained in section 5 change existing law by permitting civil actions, otherwise barred by the exceptions to the Federal Tort Claims Act, to be brought against the Commission.

Section 6 of S. 644 prohibits the Commission from incorporating or referencing a sampling plan in a consumer product safety standard, except in a standard or other regulation regarding flammability of fabrics or related materials or applicable to glass containers. The present language does not contain any reference to sampling plans.

Section 7 of S. 644 relates to development of consumer product safety standards under section 7 of the CPSA (15 U.S.C. 2056). Section 7(e) of the CPSA is amended to provide that if the Commission has published a notice under section 7(b) stating its determination that a consumer product safety standard is necessary and inviting persons to offer to develop such a proposed standard, and either (1) the Commission has not accepted an offer within 30 days, or (2) the development period for the standard has expired, then the Commission itself may develop a proposed standard or, pursuant to its authority under section 27(g) of the CPSA (15 U.S.C. 2076(g)), contract with third parties for the development of the standard. This provision clarifies existing law under which the Commission may develop the proposed standard itself if no offeror whose offer has been accepted is making satisfactory progress or if the standard submitted is not satisfactory in whole or in part. (See 15 U.S.C. 2056(e) (2) (B) and (e) (3)).

Section 7 of S. 644 also modifies the existing time period in which an offeror may develop a proposed standard by allowing the period to end 150 days after the date of

acceptance of an offer to develop such standard. At present, the 150-day period begins with the publication in the Federal Register of an invitation for offerors to develop a standard.

Section 7(c) contains amendments which revise the timetable for development of a standard to conform to the provisions contained in sections 7(a) and (b). These provisions would provide the Commission more flexibility in the standards development process.

Section 8 of S. 644 provides authority for the Commission to contribute, in advance, to the costs of an offeror selected to develop a consumer product safety standard by permitting such contribution to be made without regard to 31 U.S.C. 529. Section 8 also provides that the Commission may lease buildings or parts of buildings in the District of Columbia without regard to 40 U.S.C. 34.

Section 9 of S. 644 establishes the requirement that the Commission, when promulgating a consumer product safety rule, consider and take into account the special needs of the elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.

Section 10 of S. 644 amends four sections of the CPSA relating to: (1) suits to compel the initiation of a rulemaking proceeding (section 10(e), 15 U.S.C. 2059(e)); (2) petitions for review of a consumer product safety rule (section 11(c), 15 U.S.C. 2060 (c)); (3) suits for damages by persons injured by a knowing violation of a consumer product safety rule (section 23(a), 15 U.S.C. 2072(a)); and (4) suits for private enforcement of a consumer product safety rule or order under section 15 (section 24, 15 U.S.C. 2073), to allow the court in the interest of justice to award costs of suit, including reasonable attorneys' fees and reasonable expert witness' fees. In determining whether it is in the interest of justice to award such costs, factors to be considered include the resources of the party or parties seeking such costs and the benefit which has accrued to the public by the litigation. For purposes of this provision, 28 U.S.C. 2412, forbidding assessment of attorneys' fees against the United States, is specifically made inapplicable. Such costs are intended to be paid out of the general treasury.

The purpose of these provisions relating to costs of suit is to enable interested persons who have rights under the CPSA to vindicate those rights by insuring that the costs of litigation do not prevent the CPSA from being properly administered and enforced.

Section 11 of S. 644 broadens the authority of the Commission to represent itself in injunction actions by removing from section 22 of the CPSA (15 U.S.C. 2071) the requirement that the Commission have the concurrence of the Attorney General before it may use its own attorneys to represent itself. Section 11 slightly alters the current authority of the Commission to represent itself in other civil actions (other than an action under section 12 relating to imminent hazards) by permitting the Commission to initiate, prosecute, defend or appeal (except to the Supreme Court) civil actions through its own attorney if the Attorney General does not agree to represent the Commission within 45 days of a request for representation. Existing law with respect to criminal actions is retained, requiring that the Commission have the concurrence of the Attorney General to initiate, prosecute or appeal such action through its own legal representative.

It has become apparent to the Commission that the requirement to work through the Attorney General can be a cumbersome process which, in some situations, hampers the proper enforcement of the laws administered by the Commission. For example, the rapid response required in matters such as temporary restraining orders is severely hampered when a significant amount of time is needed to brief the Assistant U.S. Attorneys who have not been involved with Commission matters previously or, more specifically, with the matter at hand. Further, the Commission believes that it is inconsistent to charge an independent regulatory agency with enforcement of specific laws and then remove the final decision from that agency as to which cases are tried and upon what grounds to base the case strategy. Other agencies, such as the National Labor Relations Board, have functioned efficiently through their own attorneys without adversely affecting overall Federal litigation activities.

Section 12 of S. 644 relates to products presenting a substantial hazard. Section 12(a) broadens the scope of an order which may be issued under section 15(d) of the CPSA (15 U.S.C. 2064(d)) by providing that such an order may prohibit the person to whom the order applied from manufacturing for sale, offering for sale, distributing in commerce, or importing the product with respect to which the order was issued. Section 12(b) amends section 19(a) of the CPSA to make it unlawful for any person to fail to comply with such order.

In addition, section 22 of the CPSA is amended to give the district courts of the United States jurisdiction to restrain any person from manufacturing for sale, offering for sale, distributing in commerce or importing a consumer product in violation of an order issued under section 15(d).

It is further provided that products whose manufacture, offer for sale, distribution in commerce or importation has been prohibited by an order issued under section 15(d) are subject to seizure.

Section 12(a) of S. 644 also authorizes the Commission through its own legal representative (or the Attorney General) to seek a preliminary injunction to restrain the distribution in commerce of a consumer product which the Commission has reason to believe presents a substantial product hazard. Such a preliminary injunction can be granted only if a proceeding under section 15 of the CPSA for the repurchase, repair or replacement of the product has been initiated. The injunction is limited to a period of 30 days or until the completion or termination of the section 15 proceeding, whichever occurs first. Determinations of whether to issue such injunction are subject to the standards traditionally used by the Federal courts under their equity jurisdiction.

These provisions will allow the Commission to better protect the public by proceeding more effectively and expeditiously against products presenting a substantial hazard.

Section 13 of S. 644 amends section 19 of the CPSA to provide that failure or refusal to establish and maintain records under Section 16 of the CPSA (relating to record-keeping); failure or refusal to comply with an order issued under section 13 (relating to prior notice and description of new consumer products); and failure to comply with any rule under section 27(e) (relating to provision of performance and technical data) shall constitute additional prohibited acts under the CPSA.

Section 14 of S. 644 establishes a procedure for Congressional review of proposed administrative actions of the Commission. The Commission is required to transmit to the Commerce Committee of the Senate and the Interstate and Foreign Commerce Committee of the House of Representatives each proposed consumer product safety rule under the CPSA and each proposed regulation under sections 2 or 3 of the FHSA (except for those regulations under the FHSA relating to imminent hazards), section 3 of the PPPA and section 4 of the FFA. No such rule or regulation may be adopted by the Commission before the thirtieth day after the proposed rule or regulation was transmitted to Congress.

Section 15 of S. 644 amends section 29 of the CPSA to permit the Commission, under specified circumstances, to provide accident and investigation reports to other Federal agencies or State or local authorities engaged in activities relating to health, safety or consumer protection. Copies of such reports may be provided only if confidential trade secret information is not included in such copies and only if the agency or authority receiving the report provides satisfactory assurance that the identity of injured persons or anyone who treats an injured person will not be released to the public without the consent of the identified person. The Commission must comply with the requirements of section 6(b) of the CPSA before any Federal agency or State or local authority may disclose to the public any information obtained under the Act.

Section 16 relates to the relationship between the Consumer Product Safety Act and the other acts administered by the Commission. It provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act or the Flammable Fabrics Act (collectively known as the "Transferred Acts ") may be regulated under the Consumer Product Safety Act only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under the CPSA. Such rule must identify the risk of injury proposed to be regulated and must be issued in accordance with 5 U.S.C. 553, except that the period provided by that section for public comment may not exceed 30 days.

This provision represents a change from existing law, whereby the Commission may not regulate a risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by action taken under one of the "Transferred Acts." This provision is desirable in that it grants necessary flexibility to the Commission to proceed under the broader and more viable provisions of the CPSA.

Section 17 of S.644 relates to Federal preemption of State and local product safety requirements. Section 17 amends the Flammable Fabrics, Federal Hazardous Substances, Poison Prevention Packaging and Consumer Product Safety Acts to make the preemption provisions in each consistent with the other.

Section 17 provides that with several exceptions, if a Federal requirement regarding a specific risk of injury in a

product is in effect, no state or political subdivision could continue in effect or establish a requirement applicable to the same product and designed to protect against the same risk of injury or illness unless the State or political subdivision's requirement were identical to the Federal requirement. The first exception permits the Federal Government or a State or political subdivision to have a different requirement applicable to products procured for its own use if such requirement provides a higher degree of protection. The second exception permits the Commission, upon application, to grant a State or local subdivision an exemption from the preemption provision if compliance with the State or local requirement would not cause the product to be in violation of the Federal requirement, if the State or local requirement provided a significantly higher degree of protection than the Federal requirement and if the State or local requirement would not unduly burden interstate commerce. The provision enumerates the findings which the Commission is required to make with respect to the State or local requirement to determine the burden on interstate commerce.

The preemption provision of the FHSA does not prevent a state or local subdivision from continuing in effect, without seeking an exception, a requirement relating to fireworks devices if such requirement provides a higher degree of protection.

The new preemption clauses both expand and contract the preemption effect of affected federal laws. For example, current decisions concerning the preemptive effect of section 18(b) of the FHSA prohibit any labeling of hazardous substances by states even if the Federal Government has no labeling requirement in effect. On the other hand, bans under provisions of the FHSA are not currently preemptive but they would be under S. 644.

A recent decision under the FFA construes section 16 of that act to prohibit States from issuing flammability standards in areas in which the Federal government could regulate, even if the Federal government has not acted. S.644 would narrow the preemption under the FFA to only those cases where a Federal regulation was in existence and then only as to the aspects of risks addressed in the Federal regulation.

Section 18 of S. 644 extends the protection of 18 U.S.C. 1114 to Commission employees assigned to perform investigative, inspection or law enforcement functions, thus providing criminal penalties for any person convicted of killing such employee while they are engaged in the performance of their official duties.

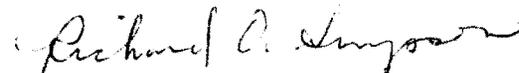
Section 19 of S.644 is designed to assure broad representation among industry representatives on the National Advisory Committee for the Flammable Fabrics Act by requiring that such industry representatives include representatives of the natural and man made fibers industries and manufacturers of fabrics, apparel and interior furnishings.

Section 20 of S.644 amends the Flammable Fabrics Act (FFA) to require that proceedings for the issuance of standards, regulations and amendments thereto under section 4 (15 U.S.C. 1193), promulgated in accordance with 5 U.S.C. 553 include, in addition, the opportunity for oral presentation of data, views and arguments. This provision extends to the public the same opportunity with respect to standards and regulations under the FFA as exists with respect to consumer product safety rules under the CPSA.

Due to the nature of the provisions discussed above, the Commission is unable to estimate the first-year and recurring costs or savings which would result from enactment of S. 644.

On balance, the Commission believes that the amendments to the CPSA and the other acts administered by the Commission contained in S.644 will aid the Commission in accomplishing its mandate and will, in general, serve the public interest. Accordingly, the Commission recommends approval of S.644.

Sincerely,



Richard O. Simpson  
Chairman

cc: The Speaker of the House of  
Representatives

cc: The President of the Senate



UNITED STATES CIVIL SERVICE COMMISSION

IN REPLY PLEASE REFER TO

WASHINGTON, D.C. 20415

May 4, 1976

YOUR REFERENCE

Honorable James T. Lynn  
Director  
Office of Management and Budget

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views and recommendations of the Civil Service Commission on S. 644, an enrolled bill "To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes." The bill is the result of various congressional attempts since early 1975 to revise the Consumer Product Safety Act (S. 1000 and H.R. 5361; S. 644 and H.R. 6844; and amendments).

Relevant personnel provisions are in Section 4(b) of the bill which amends Section 4(g) of the Consumer Product Safety Act.

- Section 4(g)(2) is amended by substituting the term "regular" for "full-time" officer or employee so that conflict of interest reemployment prohibitions conform to commonly accepted language. This standardization of conflict of interest language is desirable.
- Section 4(g)(3) is added to allow the agency 12 supergrade quota spaces, subject to the standards and procedures of title 5, in addition to any quota spaces they may be authorized from the general pool. We generally oppose the legislation of quota spaces for specific agencies. However, this is not sufficient reason for a veto in view of the precedents in this regard and in view of the retention of Civil Service Commission purview in classification, qualifications approval, and other personnel matters.
- Section 4(g)(4) is added to prohibit any officer or entity within the Executive Office of the President from reviewing or approving the appointment of any officer or employee of the Consumer Product



1883-1973

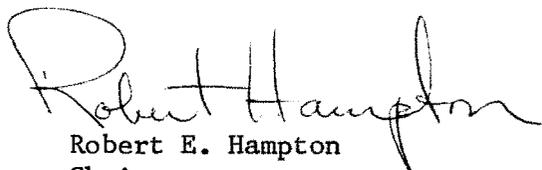
MERIT PRINCIPLES ASSURE QUALITY AND EQUAL OPPORTUNITY

Safety Commission, other than a Commissioner. The prohibition against any Executive Office clearance of Consumer Product Safety Commission employees has the effect of eliminating what is commonly known as White House "clearance" of noncareer employees. We do not object since the basic legal authority and responsibility of the Civil Service Commission in regard to appointments remains unchanged.

We are pleased that the more undesirable personnel provisions of the earlier versions have been deleted and recommend, from the standpoint of the personnel provisions of S. 644, that the President sign the enrolled bill into law.

By direction of the Commission:

Sincerely yours,

A handwritten signature in cursive script that reads "Robert Hampton". The signature is written in dark ink and is positioned above the printed name and title.

Robert E. Hampton  
Chairman



**GENERAL COUNSEL OF THE  
UNITED STATES DEPARTMENT OF COMMERCE**  
Washington, D.C. 20230

**MAY 4 1976**

Honorable James T. Lynn  
Director, Office of Management and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning S. 644, an enrolled enactment

"To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes,"

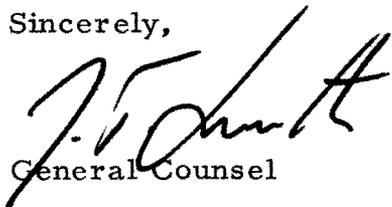
to be cited as the "Consumer Product Safety Commission Improvements Act of 1976".

The principal purposes of S. 644 are: (1) to extend through fiscal year 1978, the authorization of appropriations to carry out provisions under the Consumer Product Safety Act and the other Acts administered by the Consumer Product Safety Commission (namely, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act of 1970); (2) to eliminate the regulation of pesticides, tobacco and tobacco products, and ammunition and firearms from the Commission's jurisdiction; (3) to strengthen the prohibited acts and enforcement sections of the Consumer Product Safety Act; (4) to authorize the Commission to conduct its civil litigation through its own legal representative if the Attorney General does not agree to represent the Commission within 45 days of a request for representation; (5) to amend the Consumer Product Safety Act and the other three Acts administered by the Commission to provide for uniformity of administration on Federal preemption of State and local requirements; and (6) to provide for Congressional review of proposed administrative actions of the Commission.

This Department would have no objection to approval by the President of S. 644.

Enactment of this legislation will not involve any increase in the budgetary requirements of this Department.

Sincerely,

  
General Counsel



**Department of Justice**  
**Washington, D.C. 20530**

May 5, 1976

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 644, the proposed "Consumer Product Safety Commission Improvements Act of 1976."

The enrolled bill would make changes to the Consumer Product Safety Act, the Flammable Fabrics Act, the Poison Act, the Federal Tort Claims Act, and the Federal Criminal Code.

Subsection 11(b) of the bill would amend the subsection 22(a) of the Consumer Product Safety Act (15 U.S.C. 2071(a)) to give the Consumer Product Safety Commission authority to petition United States district courts for injunctive relief without the concurrence of the Attorney General. Subsection (c) would amend section 27(b)(7) of the Act (15 U.S.C. 2076(b)(7)) to authorize the Commission to initiate, prosecute, defend, or appeal (other than to the Supreme Court) through its own legal representative and in its own name, any civil action (other than injunctive actions) if the Commission makes a written request to the Attorney General for representation and the Attorney General does not agree to represent the Commission within 45 days of receiving such a request. Even though section 11 of the bill is labeled "Civil litigation," subsection (c) would also authorize the Commission "to initiate, prosecute or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action."

In our view these litigating arrangements would be unsound and would result in a diminution of the Department's ability to perform its basic and traditional function of coordinating Government litigation.

The Government must speak with one voice on common issues of law and policy arising under diverse statutes. Because court determinations frequently affect more than one agency, the Government should exercise selectivity in the filing and presentation of cases in order to maximize the likelihood of a successful result. The traditional policy of Attorney

General control of Government litigation encourages a sensible division of responsibilities under which agency lawyers concentrate on the intricacies of administrative activities, while Department of Justice attorneys concentrate on the area of their familiarity and expertise -- Federal court litigation. Experience has shown that Government litigation against local defendants in local courts is best conducted by local attorneys from the United States Attorneys' offices.

The Government has a wide range of punitive and remedial responses to persons or corporations who violate agency statutes or regulations. However, the possible target of agency action need not await agency action. He may seek a tactical advantage by proceeding under the Declaratory Judgment Act, the Freedom of Information Act, or any number of statutes which would make the agency a defendant. The point is that Government litigation, even when it concerns only one agency and one litigant, must be coordinated, and such coordination has traditionally been the responsibility of the Attorney General.

Moreover, we suggest that these independent litigating provisions are unnecessary because the Department and the Commission have a formal arrangement whereby the Department has agreed to permit the Commission to represent itself in any civil enforcement matter which the Department declines to file. Every Commission recommendation for a civil enforcement action has been duly filed and prosecuted by the Department with the advice and cooperation of the Commission's General Counsel. Every Commission request for Department representation of the agency as a defendant in Federal court has been honored.

Finally, we think that there would be significant constitutional problems if the Commission were ever to bring a criminal action in its own name, and, although the Attorney General could, by withholding his consent, prevent any unconstitutional result, we believe such a criminal litigation authorization to be unwise.

The bill has other problems. Section 5 would amend the Act to provide that subsections (a) and (h) of section 2680 of title 28, United States Code, the Federal Tort Claims Act, do not prohibit the bringing of a civil action on a claim against the United States which is based upon misrepresentation or deceit on the part of the Commission or any employee thereof, or any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or an employee thereof which was grossly negligent. In the case of a claim based upon the exercise of performance of, or failure to exercise or

perform, a discretionary function, the court must find, as a matter of law and based upon consideration of all the relevant circumstances (including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable. No claim could be brought with respect to an agency action as defined by 5 U.S.C. 551(13) which includes rulemaking, nor could a claim be brought which did not arise before January 1, 1978. Any successful claims arising under section 5 would be paid out of the general treasury and not out of funds appropriated to the Commission.

An immediate question arises as to the standard of negligence which would apply to suits based on a discretionary function. The bill refers to two inconsistent standards: "gross negligence" and "unreasonableness."

Section 5 would make three major changes in the law affecting the liability of the United States as established by the Federal Tort Claims Act. The fundamental departure would be to permit suits challenging the discretionary acts of an administrative agency presently exempted from the waiver of sovereign immunity by 28 U.S.C. 2680(a). Suits could also be maintained for the torts of misrepresentation and deceit, although they are specifically excluded under 28 U.S.C. 2680(h). Whether liability for discretionary actions is to be predicated upon the "unreasonable" or on the "gross negligence" standard, we have a significant departure from the normal tort standard of "negligent or wrongful act of omission." 28 U.S.C. 1346(b).

In waiving sovereign immunity in the Federal Tort Claims Act, Congress was careful to preserve the well-established doctrine that discretionary governmental functions would not be challenged through the guise of a tort action. The Supreme Court, in Dalehite v. United States, 346 U.S. 15, 34, noted that this was "a concept of substantial historical ancestry in American law." We can perceive of no justification for this departure from sound principle, particularly when it applies to a single agency. We see no need to rewrite the law of governmental liability to cover isolated instances where adequate remedies exist by litigation in the Court of Claims, or by private relief legislation. Enactment of this bill would be an invitation to utilize the Federal Tort Claims Act to challenge seizure actions undertaken by the Commission, a result that Congress sought to avoid in the original enactment of the Tort Claims Act. Moreover, one may anticipate litigation to ascertain the intent of the drafters of this provision, thereby subjecting the Government to considerable expense.

The Department of Justice is also opposed to section 10 of the bill which would amend section 10(e), 11(c), 23(a), and 24 to allow the court to award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees.

In the best of circumstances, the process of having one's case determined in court is costly. In the typical case, obtaining a judicial determination is more costly to the loser than to the winner. Moreover, it is unduly simplistic to assert that since the loser--by asserting an erroneous position--was responsible for the entire costs of suit, he should be required to pay the costs for both sides. The monetary costs of litigation act as a sufficient deterrent to frivolous suits and defenses, and the courts have the equitable power to award fees against obdurate and malicious litigants. In the normal case, where neither obduracy nor malice is involved, the present balance of litigation incentives and deterrents should not be upset.

For the reasons set forth above, the Department of Justice would support an Executive veto of S. 644. However, since many provisions of the bill are of primary interest to other Departments and Agencies, the Department defers to them regarding Executive action on S. 644.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and extends across the width of the page.

Michael M. Uhlmann  
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

May 6, 1976

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF   
SUBJECT: S. 644 - Consumer Product Safety Commission  
Improvements Act of 1976

The Office of Legislative Affairs concurs with the agencies  
that the subject bill be signed.

Attachments



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 5-7-76

TO: Bob Linder

FROM: Jim Frey

Attached is the GSA views  
letter on S. 644, for inclusion  
in the enrolled bill file.

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



May 5, 1976

Honorable James T. Lynn  
Director, Office of  
Management and Budget  
Washington, DC 20503

Dear Mr. Lynn:

By letter of April 30, 1976, your office requested the views of the General Services Administration (GSA) on enrolled bill S. 644, a bill "To amend the Consumer Product Safety Act to improve the Consumer Product Safety Commission, to authorize new appropriations, and for other purposes."

GSA interposes no objection to Presidential approval, but respectfully submits the following comments on the enrolled bill.

Section 8 of the enrolled bill proposes the addition of a new paragraph (8) to section 27(b) of the Act (15 U.S.C. 2076(b)), authorizing the Commission to lease buildings or parts of buildings in the District of Columbia. The authority to acquire general purpose leased space for executive agencies is vested in GSA under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, the Public Buildings Act of 1959 (73 Stat. 479), as amended, and Reorganization Plan No. 18 of 1950 (64 Stat. 1270). Granting this authority to the Commission is clearly in derogation of GSA responsibilities under these authorities. To further the effectiveness of GSA's real property acquisition and utilization functions and responsibilities under the above statutory authorities, Executive Order 11512, approved by the President February 27, 1970, specifically sets forth policies for the guidance of heads of executive agencies as well as for GSA, regarding the acquisition, assignment, reassignment, and utilization of office buildings and space in the United States. To permit other agencies to exercise the above authority without regard to existing procedures and the seeking of GSA's cooperation subverts the intent of law and other directives. The fragmentation of GSA's real property responsibilities also causes unnecessary increased costs to the Government when an individual agency hires and maintains its own real property acquisition staff.

2

Section 18 seeks to amend section 1114 of title 18, U.S.C., to provide protection for Commission employees assigned to perform investigative, inspection, or law enforcement functions. GSA has no objection to the inclusion of such personnel within the purview of the above section. However, GSA would strongly object to any construction of "protective" functions which would include protection of space under the charge and control of GSA.

Sincerely,

  
TERRY CHAMBERS  
Acting Administrator



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

DATE: 5-10-76

TO: Bob Linder

FROM: Jim Frey

Attached is HEW's views letter on S. 644 for inclusion in the enrolled bill file.

Also attached is the House Conference Report to accompany H.R. 10230 enrolled bill file.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY  
OFFICE OF CONSUMER AFFAIRS  
WASHINGTON, D.C. 20201

May 7, 1976

MEMORANDUM

TO: James M. Frey  
Assistant Director for  
Legislative Reference  
Office of Management & Budget

FROM: Michael A. Sterlacci *MAS*  
General Counsel  
Office of Consumer Affairs

SUBJECT: S. 644, an act to amend the Consumer Product  
Safety Act to improve the Consumer Product  
Safety Commission, to authorize new appro-  
priations, and for other purposes

Donald Hirsch has asked me to respond for the Department of Health, Education, and Welfare to your request for views on the Enrolled Bill, S. 644.

Although there are some administrative drawbacks, the bill's good points outweigh these administrative considerations. Some of the provisions which are of concern to us are the budget and employee provisions (Sec. 4), the appropriations authorization (Sec. 2) which significantly departs from the fiscal direction of the Administration, and the accountability provision (Sec. 5) which is apparently breaking new ground in terms of the Commission's civil liability.

On the other hand, there are several substantive advancements made by parts of this legislation. It is true that the Department of Justice may oppose the self-litigating authority provision (Sec. 11) but it is similar to the power granted the Federal Trade Commission in the FTC Improvement Act. Moreover, the interest of the Department of Justice should be sufficiently protected by the 45 day option period

James M. Frey  
Page 2

and the fact that it applies only to civil cases. Likewise industry may be upset by the sampling plan section (Sec. 6) but we feel that its cause has not really been injured because the same benefits can be gained by placing the sampling plan in the enforcement mechanism and thereby allow industry greater flexibility with the same protection against strict liability. Most important of all is the preemption clause (Sec. 17) which has been worked out in conjunction with the industry and to the best of our knowledge is strongly supported by both industry and this office.

In the final analysis, any reservations we might have about other aspects of this legislation are overcome by the significance of the preemption provision. We feel that this section alone makes the bill worthy of enactment. Accordingly, we recommend that the President approve this legislation.

STATEMENT BY THE PRESIDENT

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from the use of hazardous products. Today, I am signing S.644, a bill which will enable the Commission to more effectively carry out this important mandate.

The Consumer Product Safety Commission Improvements Act of 1976 expands the Commission's authority by permitting the issuance of preliminary injunctions to prohibit distribution of products which present a substantial hazard, and by establishing new procedures and timetables within which consumer safety standards must be promulgated.

Further, the Act authorizes Federal preemption of State product safety laws in certain enumerated circumstances. This will not only guarantee that consumers have adequate protection, but will free industry from the costly burden of attempting to comply with a bewildering patchwork of State and local safety standards.

If consumer product regulation is to have real meaning, adequate tools must be provided the Commission responsible for protecting the American consumer. The Act I am signing today provides such tools.

*Statement by the President*

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from <sup>the</sup> use of hazardous products. *(handwritten mark)*

*S. 644,*  
Today, I am signing a bill which will enable the Commission to more effectively carry out this important mandate.

The Consumer Product Safety Commission Improvements Act of 1976 expands the Commission's authority by permitting the issuance of preliminary injunctions to ~~stop~~ <sup>prohibit</sup> distribution of products which present a substantial hazard and by establishing new procedures and timetables <sup>within which</sup> ~~for the promulgation of~~ consumer safety standards *must*

*be promulgated,*  
Further, the Act ~~allows for~~ <sup>authorizes</sup> Federal preemption of State product safety laws in certain enumerated circumstances. This will not only guarantee <sup>that</sup> consumers <sup>have</sup> adequate protection, but will free industry from the costly burden of attempting to comply with a bewildering patchwork of State and local safety standards.

If consumer product regulation is to have real meaning, adequate tools must be provided the Commission responsible for protecting the American consumer. The Act I am signing today provides such tools.

Doug Smith changes

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from <sup>the</sup> use of hazardous products. A

Today, I am signing a bill which will enable the Commission to more effectively carry out this important mandate.

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<sup>be promulgated,</sup> Further, the Act <sup>authorizes</sup> ~~allows for~~ Federal preemption of State product safety laws in certain enumerated circumstances. This will not only guarantee <sup>that</sup> consumers <sup>have</sup> adequate protection, but will free industry from the costly burden of attempting to comply with a bewildering patchwork of State and local safety standards.

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REMARKS OF THE PRESIDENT  
UPON SIGNING THE  
CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENTS ACT OF 1976

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from use of hazardous products. ~~While the Commission has established an admirable record in its short life, all too often its efforts have been hamstrung by inadequate legislative authority.~~

*enable the Commission to more effectively carry out this important*  
Today, I am signing a bill which will ~~go a long way toward~~ *mandate*  
~~removing legislative barriers~~ ¶

The Consumer Product Safety Commission Improvements Act of 1976 expands the Commission's authority by permitting the issuance of preliminary injunctions to stop distribution of products which present a substantial <sup>and</sup> hazard, by establishing new procedures and timetables for the promulgation of consumer product safety standards, ~~and by allowing courts to award costs of bringing suit to the losing party.~~ <sup>preventing</sup>

Further, the Act allows for Federal preemption of State product safety laws in certain <sup>enumerated</sup> ~~limited~~ circumstances. ~~While I have been generally reluctant to seek Federal preemption of State laws, I believe it is necessary in this instance in order to~~ <sup>This will not only</sup> guarantee consumers adequate protection <sup>but will</sup> ~~regardless of where they live and to free industry from the~~ <sup>costly</sup> burden of attempting to comply with a bewildering patchwork of State and local safety standards.

If consumer product regulation is to have real meaning, adequate tools must be provided the Commission responsible for protecting the American consumer. The act I am signing today provides such tools.

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

MAY 5 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 644 - Consumer Product Safety  
Commission Improvements Act of 1976  
Sponsor - Sen. Moss (D) Utah and Sen. Magnuson (D)  
Washington

Last Day for Action

May 11, 1976 - Tuesday

Purpose

To amend the Consumer Product Safety Act (CPSA) by clarifying and extending the powers, jurisdiction, and independence of the Consumer Product Safety Commission (CPSC) and by authorizing appropriations for CPSC through fiscal year 1978.

Agency Recommendations

Office of Management and Budget	Approval
Consumer Product Safety Commission	Approval
Civil Service Commission	Approval
Department of Health, Education, and Welfare	Approval (Informally)
Environmental Protection Agency	No objection (Informally)
Department of Commerce	No objection
General Services Administration	No objection (Informally)
Department of Justice	Defers

Discussion

The major provisions of S. 644 are described below:

Limits on CPSC's jurisdiction and other restrictions

S. 644 would

- exclude pesticides, tobacco and tobacco products,  
and firearms, ammunition, or ammunition components

To: J. Conroy  
5-5-76  
6:15 p.m.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 5

Time: 930am

FOR ACTION: Dawn Bennett *mb* cc (for information): Jack Marsh  
 Max Friedersdorf *mb* Jim Cavanaugh  
 Ken Lazarus *mb* Ed Schmults  
 Dick Parsons *mb*  
 Steve McConahey *mb*

FROM THE STAFF SECRETARY

DUE: Date: May 6

Time: 530pm

SUBJECT:

S. 644 - Consumer Product Safety Commission  
Improvements Act of 1976

ACTION REQUESTED:

- |   |   |
|---|---|
| <input type="checkbox"/> For Necessary Action         | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief     | <input type="checkbox"/> Draft Reply              |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks            |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 6

Time: 930am

FOR ACTION: Dawn Bennett  
Max Friedersdorf  
Ken Lazarus  
Dick Parsons  
Steve McConahey

cc (for information): Jack Marsh  
Jim Cavanaugh  
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: May 6

Time: 530pm

SUBJECT:

S. 644 - Consumer Product Safety Commission  
Improvements Act of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval and issuance of signing statement  
noting the contribution of this legislation toward the  
interests of consumers.

Ken Lazarus 5/10/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a  
delay in submitting the required material, please  
telephone the Staff Secretary immediately.

James M. Cannon  
For the President

*Signing Statement*  
~~REMARKS OF THE PRESIDENT~~  
~~UPON SIGNING THE~~

Ken Lazarus'  
changes

CONSUMER PRODUCT SAFETY COMMISSION IMPROVEMENTS ACT OF 1976

The Consumer Product Safety Commission was established in 1974 to protect consumers from unreasonable risk of injury from use of hazardous products. ~~While the Commission has established an admirable record in its short life, all too often its efforts have been hamstrung by inadequate legislative authority.~~

Today, I am signing a bill which will <sup>extend and reinforce</sup> ~~go a long way toward~~ <sup>the Commission</sup> ~~removing legislative barriers.~~ <sup>9</sup> The Consumer Product Safety Commission Improvements Act of 1976 expands the Commission's authority by permitting the issuance of preliminary injunctions to stop distribution of products which present a substantial hazard, by establishing new procedures and timetables for the promulgation of consumer product safety standards and by allowing courts to award costs of bringing suit to the losing party.

Further, the Act allows for Federal preemption of State product safety laws in certain limited circumstances. While I have been generally reluctant to seek Federal preemption of State laws, I believe it is necessary in this instance in order to guarantee consumers adequate protection regardless of where they live and to free industry from the burden of attempting to comply with a bewildering patchwork of State and local safety standards.

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