



# Consumer Product Safety Improvement Act (CPSIA): New Requirements and Emerging Implementation Issues

(name redacted)

Legislative Attorney

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## Summary

This report will present an overview of issues regarding the implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). In addition to strengthening the regulatory and enforcement authority of the Consumer Product Safety Commission, the new law established new safety standards, such as those for lead content and phthalates, and testing and certification requirements, focusing particularly on children's products. A range of implementation issues have arisen, including uncertainty about possible exemptions to and appropriate compliance with new standards, compliance with testing and certification requirements, disputes about Commission interpretation of new standards, and the particular concerns of small businesses and of non-profit resellers.

For a summary of the provisions in the CPSIA, including those not described in this report, see CRS Report RL34684, *Consumer Product Safety Improvement Act of 2008: P.L. 110-314*, by (name redacted).

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## **Introduction**

In August 2008, the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted in response to consumer alarm about the safety of toys and children's products and concern about the effectiveness of the Consumer Product Safety Commission (CPSC) and of the statutory and regulatory framework for consumer product safety. Consumer attention and concern were roused by several well-publicized national recalls of various toys and children's products. In addition to strengthening the regulatory and enforcement authority of the CPSC, the new law established new safety standards, such as those for lead content and phthalates, and testing and certification requirements, focusing particularly on children's products.

A range of implementation issues have arisen. New safety standards and testing and certification requirements have caused confusion and concern about possible exemptions to and appropriate compliance with new standards, compliance with testing and certification requirements, and disputes about CPSC interpretation of new standards. Despite the efforts of the CPSC to issue implementing regulations and guidelines in a timely manner, a number of unanswered questions and lack of clarity remain, particularly among small manufacturers, second-hand retailers, and manufacturers/retailers of certain types of consumer products. Increased statutory penalties and potential applicability of certain state laws have added to uncertainty about what constitutes compliance with the new requirements of the CPSIA.

This report will describe the new requirements for certification and testing and the effect of the stay of enforcement of these requirements announced by the CPSC, certain new safety standards established by the CPSIA and related implementation actions and issues, implementation issues faced by small businesses and second-hand retailers, and legislative proposals to amend the CPSIA to provide for exemptions from certain requirements and for special consideration for small businesses and second-hand retailers.

## **Definition of Consumer Product**

An understanding of what products are covered by the CPSIA and other consumer product safety statutes is necessary as context for consideration of the CPSIA implementation. The Consumer Product Safety Act (CPSA, 15 U.S.C. §§2051 et seq.) defines "consumer product" as "any article or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise."<sup>1</sup>

Not all products that might be considered consumer products under the general definition are subject to consumer product safety laws administered and enforced by the Consumer Product Safety Commission (CPSC). There are express exemptions for products covered under other statutes, including tobacco and tobacco products, motor vehicles and motor vehicle equipment, pesticides, firearms/antique firearms and ammunition/supplies (except for fireworks), aircraft and components, boats and other marine vessels, drugs, medical devices, cosmetics, food, or any article which is not customarily produced or distributed for sale to, or use or consumption by, or

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<sup>1</sup> CPSA §3(a)(5) (codified at 15 U.S.C. §2052(a)(5)).

enjoyment of, a consumer. The CPSC also has jurisdiction over amusement rides that are not permanently fixed to a site but rather are part of a travelling carnival or show, but does not have jurisdiction over rides that are permanently fixed to a particular site.<sup>2</sup> Furthermore, the CPSC has no jurisdiction to regulate a particular consumer product if the risk of injury associated with that product could be eliminated or sufficiently reduced by actions taken under the Occupational Safety and Health Act of 1970 (Occupational Safety and Health Administration), under the Atomic Energy Act of 1954 (the Energy Research and Development Administration [now Department of Energy] and the Nuclear Regulatory Commission), or under the Clean Air Act (the Environmental Protection Agency). The CPSC has no authority to regulate any risk of injury associated with electronic product radiation emitted from an electronic product if such risk may be regulated under the Public Health Act (the Food and Drug Administration).

## **Definition of Children's Product**

The CPSIA added a definition of “children’s product” to the CPSA.<sup>3</sup> Before the CPSIA, the various consumer product safety statutes made no distinction between children’s products and other consumer products. Some of the new requirements established by the CPSIA necessitated a definition of what constituted a “children’s product.” “Children’s product” is a consumer product designed or intended primarily for children 12 years of age or younger. Several factors are to be considered in determining whether a product is primarily intended for a child 12 years of age or younger, including:

- a manufacturer statement or label about the intended use of the product;
- whether the packaging, display, promotion, or advertising of the product represents it as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by children 12 years of age or younger; and
- the Age Determination Guidelines issued by the CPSC in 2002.<sup>4</sup>

## **Certification and Testing**

In light of the confusion and misunderstanding regarding the certification and testing requirements of the CPSA as amended by the CPSIA, this section will summarize these requirements and the CPSC’s limited stay of enforcement. There are two types of compliance certification requirements: (1) a general conformity certification for consumer products, not just children’s products, based on testing of each product or a reasonable testing program by the manufacturer and (2) a certification for children’s products based on testing by a third-party laboratory. Until a third-party testing requirement takes effect for a safety standard applying to children’s products, a general conformity certification applies to that safety standard. The certification requirement applies to products manufactured on or after November 12, 2008. The

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<sup>2</sup> State agencies have jurisdiction over fixed rides that are located in a park in their jurisdiction.

<sup>3</sup> CPSIA §235(a) added CPSA §3(a)(16), codified at 15 U.S.C. §2052(a)(16).

<sup>4</sup> Timothy P. Smith, ed., CPSC, Age Determination Guidelines: Relating Children’s Ages To Toy Characteristics and Play Behavior (2002).

third-party testing and certification requirements take effect at different times, on a rolling basis.<sup>5</sup> Both types of certification are required of either the manufacturer (domestic product) or importer (imported product), not of a retailer or distributor.

The CPSIA added a requirement that the certificates must “accompany” each product or shipment of products subject to the certification requirements and be “furnished” to each distributor or retailer of the product. In addition, a copy of the certificate must be “furnished” to the CPSC upon request. Under the CPSA as amended by the CPSIA, the CPSC has the authority to designate by rule whether the manufacturer or importer (or private labeler) must issue the required certificate and to relieve the other parties from the requirement to furnish certificates.<sup>6</sup>

## **General Conformity Certification**

The CPSA requires all manufacturers and importers—not just those that manufacture or import children’s products—to certify they have complied with all applicable safety rules, bans, standards, and regulations under statutes enforced by the CPSC. Applicable safety rules do not include voluntary safety standards, only mandatory standards, such as those in title 16 of the Code of Federal Regulations, that have been promulgated under a statute enforced by the CPSC. Aside from the CPSA, these include the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act, miscellaneous statutes providing for specific safety standards.<sup>7</sup> The certification must assert compliance with all standards that apply to a product and must be based on a test of each product or on a reasonable testing program. The manufacturer or importer may conduct the test in-house and is not required to have testing done by a third-party/independent laboratory. The manufacturer or importer may determine for itself what constitutes a reasonable testing program. Generally, the CPSC does not examine or investigate the testing program of a particular manufacturer or importer, although the CPSC can prescribe what constitutes a reasonable testing program for a particular safety standard.

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<sup>5</sup> The third-party testing and certification requirement for the lead-based paint standard was the first to take effect, on December 21, 2008. Thus, a general conformity certification for the lead-based paint standard (and other standards applicable to a product) had to be issued between November 12, 2008, and December 21, 2008. Since the latter date, a certificate based on third-party testing for the lead-based paint standard must be issued for a children’s product, together with a general conformity certification for any standards applicable to that product for which third-party testing and certification requirements have not taken effect.

<sup>6</sup> In response to concerns about cost and efficiency raised by manufacturers and importers, the CPSC issued regulations permitting general conformity certifications to be electronically submitted and limited submission of the certificates to the U.S. importer or, in the case of domestically produced products, the U.S. manufacturer. It also specified the requirements that an electronic certificate must meet. 73 Fed. Reg. 68328 (Nov. 18, 2008).

<sup>7</sup> The Federal Hazardous Substances Act (FHSA, 15 U.S.C. §§1261 *et seq.*) provides for warning/informational labeling of hazardous substances and for the banning of certain hazardous substances for which labeling would not provide adequate protection for the public against the potential hazards posed by the substances. The Flammable Fabrics Act (FFA, 15 U.S.C. §§1191 *et seq.*) provides for the establishment of safety standards regarding fabric flammability. It also prohibits the manufacture, sale, importation, transportation, or delivery in commerce of a product, fabric, or related material or of a product made of a fabric or related material that does not comply with the standards and deems that such practices constitute unfair methods of competition and unfair and deceptive acts or practices under the Federal Trade Commission Act. The Poison Prevention Packaging Act (PPPA, 15 U.S.C. §§1471 *et seq.*) authorizes the CPSC to establish special packaging standards for a household substance if such standards are required to protect children from serious injury or illness from using, handling, or ingesting such substance, with exceptions for noncompliant packages for elderly/handicapped persons and packaging at the direction of a licensed medical practitioner. The Refrigerator Safety Act (RSA, 15 U.S.C. §§1211 *et seq.*) prohibits the introduction into interstate commerce of any household refrigerator that does not conform with certain safety standards.

The CPSC has not prescribed what constitutes a reasonable testing program for the any of the new standards under the CPSIA.

The CPSIA did not establish the general conformity certification requirement, but expanded the certification requirement's scope to all safety standards under all statutes enforced by the CPSC. Previously, the requirement only applied to safety standards under the CPSA. Because of the expanded scope of this requirement and the new safety standards under the CPSIA, products that previously were not subject to this requirement now are, to the surprise of some manufacturers and importers. The CPSIA also added products imported for consumption and warehousing to the list of products requiring general conformity certification.<sup>8</sup> Previously, any products imported for distribution in commerce were subject to general conformity certification; products imported directly by the end consumer or imported for holding/storage in a warehouse (not for distribution and sales) did not require general conformity certification.<sup>9</sup>

### **Children's Product Third-Party Testing and Certification**

Unlike the general conformity certification requirement, the requirement for testing and certification of children's products was newly established by the CPSIA. As noted in the previous section, for the general conformity certification, determining and assuring compliance with safety standards was largely left up to the manufacturer or importer. The Senate report for S. 2045, the Consumer Product Safety Commission Reform Act of 2007 (originally the Senate counterpart to H.R. 4040 which became the CPSIA), noted that "the [new third-party testing and] certification requirement would likely impose new costs on all manufacturers of children's products since currently manufacturers either self-certify or do not certify products at all."<sup>10</sup>

However, under the CPSIA, a manufacturer and/or importer must certify compliance of children's products with applicable safety standards based on testing by accredited third-party laboratories. Testing may be done by in-house, proprietary laboratories of a manufacturer only under certain conditions, such as firewalling (insulation and independence from influence and direction of the manufacturer concerning testing) and appropriate accreditation. The CPSIA required the CPSC to issue accreditation requirements for such laboratories and maintain a list of accredited laboratories and set deadlines by which the CPSC was required to publish accreditation requirements based on the type of product being tested by the laboratory. Specific, staggered deadlines for publication of accreditation requirements were established for the testing of lead paint (September 13, 2008, but actually published September 22, 2008), cribs and pacifiers (October 13, 2008, but actually published October 22, 2008), small parts (November 12, 2008, but actually published November 17, 2008), children's metal jewelry (December 12, 2008, but actually published December 22, 2008), and baby bouncers/walkers/jumpers (due March 12, 2009, but not published). The staggered deadlines facilitated gradual phasing in of the new requirements. The CPSIA required the accreditation requirements related to the testing of other children's products to be published as early as practicable, but no later than June 14, 2009, or, for safety rules established or revised on or after August 14, 2009, not later than 90 days before such

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<sup>8</sup> CPSIA §102(a)(1).

<sup>9</sup> Import for testing, for demonstration at trade shows, or re-export would not require such certification unless later distributed and sold for consumption.

<sup>10</sup> S.Rept. 110-265, at 25 (2008).

rules take effect. The accreditation guidelines for certain products have been completed and testing and certification is already in effect for those safety standards.<sup>11</sup>

The CPSIA requires testing and certification for any children's product manufactured more than 90 days after the laboratory accreditation guidelines are published for a safety standard. Based on the actual publication date of the relevant accreditation guidelines, certification and testing is required for lead paint on children's products manufactured after December 21, 2008; for cribs and pacifiers manufactured after January 20, 2009; for children's products with small parts manufactured after February 15, 2009; and for children's metal jewelry manufactured after March 23, 2009.<sup>12</sup> The accreditation guidelines and testing and certification requirements have not been published nor implemented for baby bouncers/walkers/jumpers, apparently because the CPSC would have to issue guidelines in accordance with current regulations that are outdated and are not being followed instead of being able to issue guidelines in accordance with up-to-date voluntary standards recognized by the CPSC.<sup>13</sup> These guidelines may also have been delayed in accordance with the stay of enforcement discussed in the next section.

## **Stay of Enforcement of Certification and Testing**

The CPSC has announced a stay of federal enforcement for certain certification and testing requirements for one year, effective February 10, 2009.<sup>14</sup> Both general conformity and children's product third-party testing and certification are stayed for lead content (but not for lead-based paint), phthalates standards, and mandatory toy standards. There is no stay of enforcement for certification and testing that had already been implemented or for which the accreditation guidelines had already been published as of the date of the stay.<sup>15</sup> Nor did the CPSC stay the safety standards themselves or the required compliance with such standards. Therefore, if a product does not comply with a safety standard and such noncompliance is discovered, the manufacturer and/or importer may be liable civilly and criminally for such noncompliance and may be subject to private lawsuits.

The CPSC stay of enforcement also does not stay enforcement by state attorneys general, so theoretically, a state could enforce the certification and testing requirement. For example, a state could enjoin sales and distribution in that state of products that do not comply with this requirement.

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<sup>11</sup> See accreditation guidelines available at <http://www.cpsc.gov/about/cpsia/cpsia.html#requirements>.

<sup>12</sup> The actual effective date should be March 22, 2009, but the extra day is not explained by the CPSC.

<sup>13</sup> CPSC Staff responses to Rep. Dingell's questions in an attachment to the Letter from Acting CPSC Chair Nord to Rep. Dingell, dated March 20, 2009, at 4-5, available at <http://www.cpsc.gov/about/cpsia/dingell032009.pdf>.

<sup>14</sup> 74 Fed. Reg. 6396 (Feb. 9, 2009).

<sup>15</sup> The stay of enforcement does not apply to: (1) general certification required for mandatory safety standards under the CPSA before the CPSIA and any other certifications expressly required by CPSC regulations; (2) third-party testing and certification for lead-based paint in children's products, cribs and pacifiers, small parts in children's products, and children's metal jewelry; (3) certifications for pool-drain covers required under the Virginia Graeme Baker Pool & Spa Safety Act; and (4) certifications required for the new ATV standard established by CPSIA §232 (not to be confused with lead content standards that apply to ATVs).



## Applicability of Certain New Product Standards

The implementation of new product standards for lead and phthalates in particular have caused controversy. CPSC has no authority to delay or suspend the safety standards and on these grounds has declined to stay effective dates.

### Lead

CPSIA §101 established a lead safety standard for lead content in children's products and amended the safety standard for lead in paint or coatings for certain consumer products. The new standard for lead content in children's products has provoked consternation among manufacturers of some products who assert that there should be an exemption for certain products presenting a "low risk" of exposure to lead.<sup>16</sup>

### Lead-Based Paint Standard and Inventory

Lead in paint standards have existed since the 1970s. The current regulatory standard prohibits the use on children's products and furniture of paint or other surface coatings with a lead content exceeding 0.06 % by weight of the total nonvolatile content of the paint or the weight of the dried paint film.<sup>17</sup> CPSIA §101(f) reduces the permissible trace amount of lead in paint to 0.009 % (90 ppm) from 0.06 % (600ppm), subject to subsequent periodic review and further reduction to the lowest lead level technologically feasible. The more stringent standard will take effect August 14, 2009.<sup>18</sup>

A CPSC Office of General Counsel memorandum concerning the application of CPSIA lead standards to inventory clarifies that inventory of noncompliant products may not be sold after the new standard for lead in paint takes effect on August 14, 2009.<sup>19</sup> Although the CPSIA does not expressly ban such sale or distribution, the Office of General Counsel concludes that a reading of the CPSIA as a whole indicates such an interpretation.

### Lead Content/Substrate Standard

#### *Inventory Manufactured Before Effective Date of New Standard*

Under the CPSIA §101(a)(2), the permissible lead level in products for children aged 12 and younger is being progressively reduced over three years: 600 parts per million (ppm) as of February 10, 2009; 300ppm as of August 14, 2009; and 100ppm as of August 14, 2011. If 100ppm is not technologically feasible, the CPSC must set the lowest level that is technologically

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<sup>16</sup> See *infra* note 40.

<sup>17</sup> 16 C.F.R. §1303.1. This regulatory standard was issued by the CPSC pursuant to its authority under the CPSA and §401 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(c)).

<sup>18</sup> This is pursuant to CPSC amendment of the current regulatory standard at 16 C.F.R. §1303.1. 73 Fed. Reg. 77492 (December 19, 2008).

<sup>19</sup> Cheryl A. Falvey, CPSC General Counsel, the CPSC Office of General Counsel, Memorandum on Retroactive Application of CPSIA to Inventory (September 12, 2008).

feasible. After promulgating either the 100ppm level or the lowest level technologically feasible, the CPSC is required to review and lower the limit at least every five years.

The CPSC Office of General Counsel memorandum concerning lead standards and inventory concluded that inventory of noncompliant products may not be sold after the effective dates of each phase of the lead standard.<sup>20</sup> After August 14, 2009, inventory of children's products that contain more than 300ppm cannot be sold and after August 14, 2011, inventory of children's products that contain more than 100ppm cannot be sold.

### *Statutory Exemptions and Implementing Regulations*

The CPSIA §101(b) provides for several exemptions from the lead content/substrate standard. The CPSC has issued several proposed and final regulations with regard to various authorized exemptions.

Through a rulemaking with notice and opportunity for a hearing, the CPSC may exempt certain noncompliant materials or products from being subject to the standard if it determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that the lead in the products or materials will not “result in the absorption of any lead into the human body ... nor ... have any other adverse impact on public health or safety.”<sup>21</sup> In considering whether any lead will be absorbed, the CPSC must take into account normal and reasonably foreseeable use and abuse of a product by a child, including swallowing, mouthing, breaking, or other activities, and the aging of the product. The CPSC's rules for requesting and determining such exemptions<sup>22</sup> requires its Office of Hazard Identification and Reduction (EXHR) to make an initial recommendation within 30 calendar days, to “the extent practicable”<sup>23</sup> or to request an extension from the Executive Director of the CPSC. The rule does not specify any timeline for a final decision by the CPSC and provides that the filing of an exclusion request does not stay the lead standard or related certification or other requirements for the subject of the request pending a final decision by the CPSC.<sup>24</sup> The exclusion request must include the best-available, objective, peer-reviewed, scientific evidence that is unfavorable to the request and that is reasonably available to the requestor, as well as evidence that supports the request.<sup>25</sup> Any initial decision of the CPSC to grant an exclusion request, whether upon or against the initial recommendation of the EXHR, shall be published in the Federal Register for comment.<sup>26</sup> A requestor will be notified of an exclusion denial; an exclusion grant will be published as a final rule in the Federal Register.<sup>27</sup>

The lead content standards under the CPSIA shall not apply to any inaccessible component parts of a children's product. A component part is not accessible if it is “not physically exposed by

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<sup>20</sup> Cheryl A. Falvey, CPSC General Counsel, the CPSC Office of General Counsel, Memorandum on Retroactive Application of CPSIA to Inventory (September 12, 2008).

<sup>21</sup> CPSIA §101(b)(1)(A) [15 U.S.C. §1278a(b)(1)(A)].

<sup>22</sup> 74 Fed. Reg. 10475 (March 11, 2009). The procedure is codified at 16 C.F.R. §1500.90.

<sup>23</sup> 74 Fed. Reg. at 10481, codified at 16 C.F.R. §1500.90(e).

<sup>24</sup> 74 Fed. Reg. at 10481, codified at 16 C.F.R. §1500.90(h).

<sup>25</sup> 74 Fed. Reg. at 10481, codified at 16 C.F.R. §1500.90(c)(6).

<sup>26</sup> 74 Fed. Reg. at 10481, codified at 16 C.F.R. §1500.90(f) and (g).

<sup>27</sup> *Id.*

reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include to [sic], swallowing, mouthing, breaking, or other children's activities, and the aging of the product to a child during normal and reasonably foreseeable use and abuse of the product."<sup>28</sup> Pursuant to the CPSIA, the CPSC has proposed an interpretative rule to provide guidance with respect to what product components or classes of components will be considered to be inaccessible.<sup>29</sup> The preamble to the proposed rule describes an inaccessible component as one that is inside a product which a child cannot touch and that may be encased in material such as plastic, rubber, or metal.<sup>30</sup> The CPSC sought comments as to whether fabric should be considered a barrier rendering lead inaccessible to a child;<sup>31</sup> a final rule has not been issued, so it is unclear whether fabric will be included as a barrier.<sup>32</sup> Inaccessibility would be determined by the manufacturer using existing use and abuse tests<sup>33</sup> and accessibility probes<sup>34</sup> required under current CPSC regulations.

If the CPSC determines that it is not technologically feasible for certain electronic devices to comply with the lead standard, it must also issue requirements to minimize exposure or accessibility to lead in those devices. Such requirements may include a child-resistant cover that prevents exposure to and accessibility of the parts containing lead. The CPSC has issued an interim final rule concerning certain electronic devices for which it is not technologically feasible to meet the lead limits as required under CPSIA §101.<sup>35</sup>

For the purpose of the exemptions described above, paint, coatings, or electroplating are not considered to be a barrier that would render lead in the substrate inaccessible to a child, or to prevent absorption of any lead into the human body.<sup>36</sup>

The CPSC has proposed a list of inherently lead-free materials, including precious metals and all-natural-fiber textiles<sup>37</sup> and has also issued a Statement of Commission Enforcement Policy on Section 101 Lead Limits.<sup>38</sup> A final list has not yet been promulgated. With regard to materials and products not on this list, manufacturers and importers may request a CPSC determination that a commodity or class of materials or a specific material or product does not exceed the lead content limits specified under CPSIA §101(a).<sup>39</sup> The procedure is similar to the one for determining

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<sup>28</sup> CPSIA §101(b)(2)(A) [15 U.S.C. §1278a(b)(2)(A)].

<sup>29</sup> 74 Fed. Reg. 2439 (Jan. 15, 2009). The rule would be codified at 16 C.F.R. §1500.87.

<sup>30</sup> 74 Fed. Reg. at 2440.

<sup>31</sup> *Id.*

<sup>32</sup> Several comments advocated recognizing fabric as a barrier rendering lead-containing components inaccessible. See comments available at <http://www.cpsc.gov/library/foia/foia09/pubcom/Inaccessiblelead1.pdf>. The comment period for this proposed rule ended on February 17, 2009.

<sup>33</sup> 74 Fed. Reg. at 2442, codified at 16 C.F.R. §1500.87(e) and (f).

<sup>34</sup> 74 Fed. Reg. at 2442, codified at 16 C.F.R. §1500.87(d). The probes are currently used to determine whether sharp points or edges in certain children's products are accessible based on whether a probe can touch a component inside a product.

<sup>35</sup> 74 Fed. Reg. 6990 (Feb. 12, 2009).

<sup>36</sup> CPSIA §101(b)(3) [15 U.S.C. §1278a(b)(3)]; 74 Fed. Reg. at 2442, codified at 16 C.F.R. §1500.87(b); and discussion at 74 Fed. Reg. at 2440.

<sup>37</sup> 74 Fed. Reg. 2433 (Jan. 15, 2009).

<sup>38</sup> Available at <http://www.cpsc.gov/about/cpsia/101lead.pdf>.

<sup>39</sup> 74 Fed. Reg. 10475 (March 11, 2009).

exclusions of certain noncompliant products and materials, with similar deadlines and notice and comment provisions.

### *Applicability to Specific Products*

The CPSC General Counsel has issued opinions concerning the applicability of the lead standard to books (and certain other paper-based products such as posters and games), apparel/shoes, All-Terrain-Vehicles (ATVs), bicycles, and small motorcycles/dirt bikes.

In its response to comments by ATV manufacturers on the rule regarding the procedure for applying for and granting exclusions of noncompliant products from the standard, the CPSC asserted that the pertinent statutory language does not allow it any discretion to grant the requested exclusion. Specifically, the CPSC concluded that allowing exclusions where “no meaningful increase” in lead levels in the human body could occur meant that exclusions would be permissible only in cases where the lead in a product or material will not result in the absorption of *any* lead into the human body.<sup>40</sup> Thus, the CPSC implied that any exemption for metal parts of products such as ATVs, bicycles, and small motorcycles/dirt bikes may require legislation to amend the CPSIA’s exemption language<sup>41</sup> requiring zero absorption of lead by a person.

Since the CPSC issued the final rule regarding the procedure for applying for and granting exclusions of noncompliant products from the standard or determinations that a material/product is inherently compliant, there have been several applications for exemption or determination. The CPSC has decided only one as of the date of this report, an application by several manufacturers and industry groups with regard to ATVs, which the CPSC denied.<sup>42</sup> The exclusion was denied because metal parts of ATVs are not covered by the statutory exclusion language, consistent with the CPSC position asserted in the Federal Register notice for the final rule on the exclusion procedure. However, the CPSC announced in the Commissioners’ statements accompanying the vote that the Commissioners and staff were working to develop a plan to stay enforcement of lead content standards as applied to ATVs.<sup>43</sup> A CPSC vote on the stay of enforcement is scheduled for April 24, 2009; the stay would cover ATVs manufactured before or on May 1, 2011, the date the stay ends.<sup>44</sup> The stay for such ATVs would remain in effect for the life of the ATVs and any replacement parts for those ATVs.<sup>45</sup> Manufacturers seeking the protection of the stay would have to submit a request specifying vehicles and parts covered by the stay within 45 days of the issuance of the stay and explain why such vehicles and parts cannot be made inaccessible, substituted with another material, or made compliant at this time.<sup>46</sup>

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<sup>40</sup> 74 Fed. Reg. at 10476.

<sup>41</sup> CPSIA §101(b)(1)(A).

<sup>42</sup> The ballot vote and accompanying statements of Commissioners Nord and Moore with are available at <http://www.cpsc.gov/library/foia/ballot/ballot09/atvexclusion.pdf>. The ATV application and CPSC staff recommendation package is available at <http://www.cpsc.gov/library/foia/foia09/brief/atvexclusion.pdf>.

<sup>43</sup> See the Commissioners’ statements and directions to CPSC staff to develop elements of a stay-of-enforcement plan available at <http://www.cpsc.gov/library/foia/ballot/ballot09/atvexclusion.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

In a letter to the CPSC, several Senators have expressed the opinion that the exclusion language of the CPSIA §101(b)(1)(A) gives the CPSC the discretion to grant an exclusion for conditions like that of the ATVs and to implement the CPSIA in a common-sense manner.<sup>47</sup> These opinions echo those of a Senate conferee on the CPSIA cited by the ATV manufacturers in their comments on the rule for the exclusion procedure.<sup>48</sup>

## Phthalates

### Inventory Manufactured Before Effective Date (Court Ordered Application)

In *NRDC, Inc. v. United States Consumer Prod. Safety Comm'n*,<sup>49</sup> a lawsuit filed by consumer advocacy groups,<sup>50</sup> a federal district court struck down an advisory opinion of the CPSC's Office of General Counsel (OGC) that interpreted the phthalates ban as applying only to products manufactured after the effective date of the new ban (February 10, 2009) and thus effectively permitted the continued sale of existing noncompliant inventory after February 10, 2009.<sup>51</sup> Before this court decision, the OGC interpretation had been criticized by congressional proponents of the phthalates standard as being contrary to congressional intent.<sup>52</sup> The court found that the text and legislative history indicated clearly that the phthalates standard applied to products manufactured before the effective date of the standard and criticized the OGC analysis, indicating that it was not due deference because it was not thorough, well-reasoned, or substantiated, as required by case-law precedents. The CPSC did not appeal the court's decision.

### Standard Concerns Certain Children's Toys and Children's Products

A phthalates safety standard for certain consumer products was established by §108 of the CPSIA. Beginning 180 days after enactment, §108 permanently bans the three phthalates whose toxicity is not disputed and temporarily bans three other phthalates pending a review by a Chronic Hazard Advisory Panel (CHAP).<sup>53</sup> It prohibits children's toys or child care articles that contain

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<sup>47</sup> Letter available at <http://www.learningresources.com/text/pdf/LR/Sign-OnLettertoActingChairmanNancyNord4.9.09.pdf>. See also Bureau of National Affairs, *Nord 'Open' to Granting Petition Request For Exclusion From Lead Rules, if Possible*, 37 Product Safety Liability Reporter 412 (April 13, 2009).

<sup>48</sup> Comments from American Honda Motor Co., Inc., *et al.*, to the CPSC, dated Feb. 17, 2009, at 3 (citing letter from Sen. Klobuchar to the CPSC, dated Jan. 26, 2009), available at <http://www.cpsc.gov/library/foia/foia09/pubcom/leadexclusion.pdf>.

<sup>49</sup> 597 F. Supp. 2d 370 (S.D.N.Y. 2009) [hereinafter NRDC lawsuit].

<sup>50</sup> Natural Resources Defense Council, Inc. and Public Citizen, Inc.

<sup>51</sup> Advisory Opinion dated November 17, 2008, from CPSC General Counsel Falvey to Ms. Ravitz and B. Cohn, Arent Fox LLP, concerning the retroactive application of the phthalates ban of CPSIA §108 and of the lead content standard of CPSIA §101 [hereinafter CPSC Phthalates Opinion], available at <http://www.cpsc.gov/library/foia/advisory/320.pdf>.

<sup>52</sup> See Letter dated Nov. 24, 2008, from Senator Feinstein and Representatives Waxman, Schakowsky, and DeGette, to the CPSC Commissioners Nord and Moore, available at <http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.Home>, and Letter dated Nov. 21, 2008 from Senator Boxer to CPSC General Counsel Falvey, available at <http://boxer.senate.gov/news/releases/record.cfm?id=305227>, both urging that the General Counsel's interpretation be changed to apply the phthalates ban retroactively to inventory of noncompliant products.

<sup>53</sup> For more information on the scientific studies regarding phthalates and human health effects, see CRS Report RL34572, *Phthalates in Plastics and Possible Human Health Effects*, by (name redacted) and (name redacted).

more than 0.1 % DEHP, DBP, or BBP. The sale of children's toys that can be placed in the mouth or child care articles containing concentrations of more than 0.1 % of DINP, DIDP, or DnOP, is prohibited on an interim basis until a review by a CHAP. After the CPSC receives the report from the CHAP, it must determine, by rule, whether to continue the interim ban. It defines "children's toy" as "a consumer product designed or intended by the manufacturer for a child 12 years of age or younger, for use by the child when the child plays." "Child care article" is "a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger or to help such children with sucking or teething." The statute includes guidelines for determining whether a product was intended or designed for use by children of the specified ages and whether a toy can be placed in a child's mouth. The provision does not restrict phthalate alternatives.

Section 108 also clarified any preemptive effect these standards would have on state laws. Non-identical provisions are preempted, unless a state applies for and the CPSC grants an exemption for stronger protections under state laws, and the federal law would not preempt restrictions on phthalate alternatives. The CPSIA standard differs somewhat from existing state laws. For example, the federal law is not identical to the state laws with regard to the definitions of toys, children's products, or children's articles, and the age group for which these consumer products are intended.<sup>54</sup> It appears that the new federal phthalates safety standard preempts recent state laws that were enacted in the absence of federal standards, to the extent that they do not provide identical protection for the same risk of injury.

### **Applicability to Specific Products**

The CPSC General Counsel has issued advisory opinions regarding the applicability of the phthalates ban to apparel and shoes.<sup>55</sup> The opinions note that under the phthalates ban, apparel and shoes, except for sleepwear, would generally not be considered either toys or child care articles as defined under the statute. Even shoes designed in a whimsical manner designed to appeal to children, generally would not be considered toys. In public meetings conducted by the CPSC staff with regard to the CPSIA implementation, the staff has also acknowledged the issues posed by some home design items and sporting goods.<sup>56</sup> For example, it may be unclear whether certain home design products should be considered toys because of their toy-like appearance and whether others are designed for use by the child or by the parent in caring for the child. With regard to certain sporting goods, such as inflatable balls or wading pools, it may be unclear whether the product, when deflated, can normally be mouthed by a child. In addition to the advisory opinions, the CPSC has made available draft guidance regarding what children's products are subject to the phthalates ban; the guidance elaborates on what constitutes a toy, a toy that can be placed in the mouth, or a child care article.<sup>57</sup>

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<sup>54</sup> CPSIA §108(e) compared to Cal. Health & Safety Code §§108935-108939; 18 V.S.A. § 1511; Rev. Code Wash. (ARCW) §§ 70.240.010- 70.240.020.

<sup>55</sup> OGC Advisory Opinion on applicability of the phthalates standard to wearing apparel, dated Nov. 25, 2008, available at <http://www.cpsc.gov/library/foia/advisory/321.pdf>, and OGC Advisory Opinion on applicability of the phthalates standard to shoes, dated Oct. 17, 2008, available at <http://www.cpsc.gov/library/foia/advisory/318.pdf>.

<sup>56</sup> See information related to the CPSC public meeting on phthalates available at <http://www.cpsc.gov/about/cpsia/phthalates.html>.

<sup>57</sup> 74 Fed. Reg. 8058 (Feb. 23, 2009), available at <http://www.cpsc.gov/businfo/frnotices/fr09/draftphthalatesguidance.pdf>

## California Phthalates Ban

Effective January 1, 2009, a California statute<sup>58</sup> prohibits the manufacture, sale, or distribution in commerce of any toy or child care article that contains DEHP, DBP, or BBP in concentrations exceeding 0.1% and of any toy or child-care article, intended for use by children under three years of age that can be mouthed, that contains DINP, DIDP, or DnOP in concentrations exceeding 0.1%. The statute requires manufacturers to use the least toxic alternative when replacing phthalates in such products and also prohibits them from replacing phthalates with certain carcinogens (including substances known, likely to be, or suggestive of being human carcinogens) or reproductive toxicants identified in accordance with federal or California laws. California defined “toys” as “all products designed or intended by the manufacturer to be used by children when they play,”<sup>59</sup> and “child care article” is defined as “all products designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething.”<sup>60</sup>

The Attorney General of the State of California sent a letter to the CPSC General Counsel setting forth the State’s position with regard to how the federal and state phthalates laws interact.<sup>61</sup> The California Attorney General expresses concern that the CPSC Phthalates Opinion did not note the effect of state laws. He asserts that: (1) to the extent the federal phthalates standard and the California standard overlap, they are identical and thus the federal ban does not preempt the state ban; (2) to the extent that the state law covers products that are not covered by the federal ban, the federal ban does not preempt state law; (3) during the period between the effective date of the state ban and the effective date of the federal ban, the federal ban does not preempt state law; and (4) if the federal ban does not cover products manufactured before its effective date, it does not preempt the California phthalates ban, which applies to products manufactured before its effective date. The California Attorney General concludes,

As of January 1, 2009, it will be illegal to sell, distribute, or manufacture toys and child care articles in California with greater than 0.1 percent of six specified phthalates, regardless of when or where the products were manufactured. The effective date of the federal CPSIA does not affect implementation of California’s phthalate restrictions. Because A.B. 1108 will have been on the books for over 14 months before its phthalate limits take effect, we believe that industry has had sufficient time to prepare to comply with the requirements that take effect on January 1, 2009. The Attorney General, and other public enforcers, can and will enforce California’s phthalate ban after that date.<sup>62</sup>

The CPSC Frequently Asked Questions for the CPSIA simply state that the new federal provisions on phthalates preempt state laws,<sup>63</sup> but with regard to the California laws and the California Attorney General’s letter to the CPSC, a CPSC spokesperson reportedly stated, “The

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<sup>58</sup> Cal. Health & Safety Code §§108935-108939 (current on LexisNexis).

<sup>59</sup> Cal. Health & Safety Code §108935(a).

<sup>60</sup> Cal. Health & Safety Code §108935(b).

<sup>61</sup> Letter dated December 3, 2008, from Attorney General Brown, Supervising Deputy Attorney General Weil, and Deputy Attorney General Sullivan, State of California, to CPSC General Counsel Falvey, available at [http://caag.state.ca.us/prop65/pdfs/CA\\_phthalate\\_letter.pdf](http://caag.state.ca.us/prop65/pdfs/CA_phthalate_letter.pdf).

<sup>62</sup> *Id.* at 5.

<sup>63</sup> Available at <http://www.cpsc.gov/ABOUT/Cpsia/faq/preemption.html>.

Consumer Product Safety Commission respects the law as passed in California, and its implementation starting this week.”<sup>64</sup>

Additionally, California has petitioned for exemption of certain phthalates statutes from preemption by the new federal toy safety standard, in accordance with CPSIA §106(h)(2).<sup>65</sup> This provision permits state and local governments to petition for exemption of existing state and local toy safety standards from preemption by federal toy safety standard when the state and local laws protect consumers from the same risk of injury as the federal law.

## **Toy Safety Standard**

CPSIA §106 mandated adoption of the ASTM International<sup>66</sup> Standard F963–07 Consumer Safety Specifications for Toy Safety within 180 days of the CPSIA enactment. Since the enactment of the CPSIA, ASTM International has adopted a new revision to this standard, F963-08. Under the CPSIA, this revision becomes effective as the new standard within 180 days of the ASTM International notification of the revision to the CPSC. The revision is subject to review and adoption (or partial adoption) by the CPSC. If the CPSC notifies the ASTM within 90 days of receiving the revision notification that it will not adopt the ASTM revision, the older standard will remain in effect for the United States.

The CPSIA permits certain departures from the ASTM toy standard. Specifically, CPSIA §101 provides that in any conflict with the lead standard under that section, the lead standard under CPSIA §101 supersedes the ASTM toy standards. Also, states may petition the CPSC for exemption from preemption of state standards. Several states have already done so.

## **Implementation Concerns of Specific Stakeholders**

In addition to issues of exemption for specific product categories or the delay of certain requirements of the CPSIA, small businesses and second-hand resellers have asserted that they have particularly suffered a severe economic impact from the CPSIA.

### **Small Businesses**

Small businesses have asserted that the CPSIA disproportionately affects them with regard to inventory loss due to noncompliance with the new lead and phthalates standards and the costs of third-party testing. They have sought relief, either administratively or legislatively, from the application of the new requirements to small businesses. The CPSIA does not expressly permit consideration of the needs of small businesses in the implementation or enforcement of the new requirements, that is, there is no small-business exemption from the requirements. The CPSIA focuses on the product and whether a product meets certain standards. Accordingly, the CPSIA permits the consideration of exemptions based on the threat to public safety posed by types of

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<sup>64</sup> Susan Bohan, “Phthalate ban in children’s products now in force in California,” *Contra Costa Times* (January 1, 2009).

<sup>65</sup> See petition package at <http://www.cpsc.gov/about/cpsia/california.pdf>.

<sup>66</sup> ASTM International is the standards-setting organization formerly named American Society for Testing and Materials (ASTM).



products or product components, not based on the type of manufacturer or ability of the manufacturer to comply with safety standards.

Some small businesses apparently have asserted that manufacturing does not include final “assembling” of component parts, therefore, the work performed by certain small businesses is not manufacturing because it only constitutes “assembling.” However, no distinction is made between large-scale and small-scale manufacturers in either the CPSIA or the primary consumer product safety statutes. The CPSA does not define manufacturers or consumer products subject to consumer product safety laws in terms of the size of the manufacturer, production volume, or method of manufacture (such as mass-production versus handmade production). It defines “manufacturer” as “any person who manufactures or imports a consumer product”<sup>67</sup> and defines “manufactured” as “to manufacture, produce, or assemble.”<sup>68</sup>

The CPSC has asserted that it has no authority to stay the effective date of the actual safety standards for anyone;<sup>69</sup> therefore, there has been no stay of safety standards for small businesses that might suffer a greater economic impact from the requirements of the CPSIA.

However, pursuant to existing laws, the CPSC generally considers the needs of small businesses in promulgating regulatory standards pursuant.<sup>70</sup> The CPSC issued guidelines for small businesses in which it attempted to clarify the effect of the CPSIA on small businesses.<sup>71</sup>

## Second-hand Resellers

Second-hand resellers are not satisfied with CPSC guidelines which advise resellers that they have one of four choices for a product, as a practical matter: (1) test the product; (2) refuse to accept or sell the product and discard any inventory; (3) use the reseller’s best judgment based on knowledge of the product; or (4) contact the manufacturer about the product for information.<sup>72</sup> Although the guidelines attempt to provide practical advice to resellers, resellers remain uncertain as to what they are required to do. For example, exactly what constitutes knowledge that a product complies with safety standards is unclear.

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<sup>67</sup> CPSA §3(a)(10) (codified at 15 U.S.C. §2052(a)(11)).

<sup>68</sup> CPSA §3(a)(10) (codified at 15 U.S.C. §2052(a)(11)).

<sup>69</sup> Statements of Commissioners Nord and Moore accompanying the denial of an emergency stay of the effective date of lead limits under CPSIA §101(a)(2), available at <http://www.cpsc.gov/library/foia/ballot/ballot09/nam.pdf>.

<sup>70</sup> See Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” August 13, 2002 and §603 of the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. § 603). On its website, the CPSC asserts that it “fully considers the potential impact of its draft rules on small entities. The CPSC thoroughly reviews its draft rules to assess and take appropriate account of their potential impact on small businesses, small governmental jurisdictions, and small organizations. The CPSC ensures maximum notice to and participation by small entities in its rulemaking process.” This statement is available at <http://www.cpsc.gov/BUSINFO/smbusrm.html>.

<sup>71</sup> CPSC, Guide to the Consumer Product Safety Improvement Act (CPSIA) for Small Businesses, Resellers, Crafters and Charities, available at <http://www.cpsc.gov/about/cpsia/smbus/sbguide.pdf>.

<sup>72</sup> *Id.* Also see, e.g., Lorie Zapf, *Unintended Consequences of Toy Safety Bill*, San Diego Business Journal On the Web (posted April 6, 2009) available at <http://www.sdbj.com/article.asp?aID=99856415.8540918.1765309.9471661.7601674.481&aID2=135784>; Thomas L. Gallagher, *Manufacturers Urge Change in Product Safety Law*, Journal of Commerce Online (posted April 3, 2009) available at <http://www.joc.com/node/410562>; commentary generally at <http://amendthecpsia.com/category/in-the-news/>.

## State Petitions for Exemption from Preemption

Several states have petitioned the CPSC for exemptions from preemption of state safety standards by new standards under the CPSIA.<sup>73</sup> Some of the petitions are pursuant to the preemption exemption under CPSIA §106, the toy standard provision. Others have been filed under the general preemption provisions under the CPSA or the FHSA. The CPSC has not yet acted on any of these petitions.

## Legislative Proposals

In letters to the CPSC, congressional committees and members have urged the CPSC to expeditiously issue guidelines and exemption regulations, criticized the CPSC for problems with implementation, and asked the CPSC to explain the implementation issues that have arisen.<sup>74</sup> The CPSC responded with letters explaining these issues, how they are being handled, and the CPSC's views regarding potential solutions, including any need for additional legislation.<sup>75</sup> Relief from the deadlines imposed for CPSC action and increased agency discretion to grant exemptions are a couple of the proposed solutions that may entail legislation; component certification is one of the administrative solutions being studied by the CPSC. Additionally, business stakeholders, including manufacturers and second-hand resellers, have been vocal in demanding legislative action to resolve problems businesses perceive in the CPSIA and its implementation.<sup>76</sup> Consumer advocates generally appear to be pleased with the CPSIA implementation, with the exception of the OGC memorandum permitting the continued sale of inventory that did not comply with the new phthalates standard.<sup>77</sup> They acknowledge the implementation issues that have arisen and the exemptions permitted under the law and have urged the CPSC to issue appropriate guidance and take appropriate steps in its discretion to address these issues.<sup>78</sup> They have also urged the President to appoint a new CPSC Chair.<sup>79</sup>

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<sup>73</sup> State preemption petition packages for Arizona, California, Illinois, and New York, available at <http://www.cpsc.gov/ABOUT/Cpsia/faq/preemption.html>.

<sup>74</sup> Letter from Sen. Rockefeller, Chairman of the Sen. Commerce, Science, and Transportation Comm., Rep. Waxman, Chairman of the House Energy and Commerce Comm., Rep. Rush, Chairman of the House Commerce, Trade, and Consumer Protection Subcomm., and Sen. Pryor, to the CPSC, dated Feb. 4, 2009 (urging a timeline for expeditious implementation of the CPSIA), available at [http://energycommerce.house.gov/Press\\_111/20090205/cpsc.pdf](http://energycommerce.house.gov/Press_111/20090205/cpsc.pdf); Letter from Rep. Dingell, Chairman Emeritus of the House Energy and Commerce Comm., to the CPSC, dated March 4, 2009, available at [http://www.house.gov/apps/list/press/mi15\\_dingell/090305CPSC.shtml](http://www.house.gov/apps/list/press/mi15_dingell/090305CPSC.shtml) (asking the CPSC to explain implementation issues); Letter from Sen. Durbin to Acting CPSC Chair Nord, dated March 27, 2009 (criticism of Acting CPSC Chair Nord's views and actions regarding implementation of the CPSIA) available at <http://durbin.senate.gov/showRelease.cfm?releaseId=310660>.

<sup>75</sup> Letter from Acting CPSC Chair Nord to Rep. Dingell, dated March 20, 2009, available at <http://www.cpsc.gov/about/cpsia/dingell032009.pdf>, and Letter from Commissioner Moore to Rep. Dingell, dated March 20, 2009, available at <http://www.cpsc.gov/about/cpsia/dingell032009a.pdf>.

<sup>76</sup> See *supra* note 72 for links to commentary and reporting on the April 1, 2009 rally reflecting the business constituency's frustration.

<sup>77</sup> CPSIA Fact Sheet, available at [http://www.citizen.org/print\\_article.cfm?ID=18326](http://www.citizen.org/print_article.cfm?ID=18326); Statement from a Coalition of Public Interest Organizations, dated Jan. 30, 2009, available at [http://www.consumersunion.org/pub/core\\_product\\_safety/009325.html](http://www.consumersunion.org/pub/core_product_safety/009325.html).

<sup>78</sup> *Id.*

<sup>79</sup> Letter to President Obama from the leaders of several consumer groups, dated Jan. 30, 2009, available at [http://www.consumerfed.org/pdfs/CPSC\\_leadership.pdf](http://www.consumerfed.org/pdfs/CPSC_leadership.pdf).

Some members have urged that hearings be held to consider implementation problems and whether legislation may be appropriate.<sup>80</sup> The congressional committees with jurisdiction over the CPSC and consumer product safety issues have not yet held hearings with regard to CPSIA implementation issues, apparently preferring to wait for the appointment of a new CPSC Chair<sup>81</sup> and to allow time for the CPSC to address and resolve such issues administratively to the extent feasible. The Chairmen of the congressional committees have urged President Obama to replace Acting CPSC Chair Nord as soon as possible with his own designee.<sup>82</sup>

The CPSC had been hampered by the absence of additional resources and staff needed to implement the CPSIA effectively. The recent enactment of the Omnibus Appropriations Act, Fiscal Year 2009, P.L. 111-8, provided \$105,404,000 to the CPSC, which was acknowledged by Acting CPSC Chair Nord as funds urgently needed to implement the CPSIA by hiring additional staff and upgrading databases and technology infrastructure.<sup>83</sup>

Several bills have been introduced to mitigate the impact of new CPSIA requirements on small businesses and second hand resellers (some of which are non-profit/charitable organizations); delay the effective dates of requirements; and provide exemptions for ATVs, bicycles, motorbikes, and books.

Proposed legislation to amend provisions established by the CPSIA include:

- S. 374, A bill to amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses, related to H.R. 968 and H.R. 1465 (sponsored by Senator Jim DeMint and introduced February 4, 2009);
- S. 389, to establish a conditional stay of the ban on lead in children's products, and for other purposes (sponsored by Senator Robert F. Bennett and introduced February 5, 2009);
- H.R. 968, to amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses, related to S. 374 (sponsored by Representative John B. Shadegg and introduced February 10, 2009);
- H.R. 1027, Thrift Store Protection Act (sponsored by Representative Bill Posey and introduced February 12, 2009);
- H.R. 1046, Children's Product Safety Enhancement and Clarification Act of 2009 (sponsored by Representative Adam H. Putnam and introduced February 12, 2009);

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<sup>80</sup> Letter from Rep. Joe Barton, ranking member of the House Energy and Commerce Comm., and Rep. Radanovich to Comm. Chairman Waxman, dated Jan. 21, 2009, available at <http://www.scribd.com/doc/11063758/CPSIA-Letter-to-Henry-Waxman>.

<sup>81</sup> Marcia Coyle, *Consumer bill sets off furor*, National Law Journal (April 13, 2009).

<sup>82</sup> Letter from Sen. Rockefeller, Chairman of the Sen. Commerce, Science, and Transportation Comm., Rep. Waxman, Chairman of the House Energy and Commerce Comm., Rep. Rush, Chairman of the House Commerce, Trade, and Consumer Protection Subcomm., and Sen. Pryor, to Pres. Obama, dated Feb. 3, 2009, available at [http://energycommerce.house.gov/Press\\_111/20090204/cpsc.pdf](http://energycommerce.house.gov/Press_111/20090204/cpsc.pdf).

<sup>83</sup> Statement of Acting CPSC Chair Nord, dated March 12, 2009, available at <http://www.cpsc.gov/pr/nord03122009appropriations.pdf>.

- H.R. 1465, to amend the Consumer Product Safety Act to provide regulatory relief to small and family-owned businesses, related to S. 374 (sponsored by Representative Brad Ellsworth and introduced March 12, 2009);
- H.R. 1510, to amend the lead prohibition provisions of the Consumer Product Safety Improvement Act of 2008 to provide an exemption for certain all-terrain vehicles, and for other purposes, related to H.R. 1587 (sponsored by Representative Denny Rehberg and introduced March 16, 2009);
- S. 608, Common Sense in Consumer Product Safety Act of 2009 (sponsored by Senator Jon Tester and introduced March 17, 2009);
- H.R. 1587, to amend the lead prohibition provisions of the Consumer Product Safety Improvement Act of 2008 to provide an exemption for certain off-highway vehicles, and for other purposes (sponsored by Representative Denny Rehberg and introduced March 18, 2009);
- H.R. 1692, to amend the Consumer Product Safety Improvement Act to exempt ordinary books from the lead limit in such Act (sponsored by Representative Jeff Fortenberry and introduced March 24, 2009);
- H.R. 1815, to clarify the applicability of certain provisions in the Consumer Product Safety Improvement Act, and for other purposes (sponsored by Representative Joe Barton and introduced March 31, 2009);
- S.Amdt. 964 to S.Con.Res. 13, to establish a deficit-neutral reserve fund to protect small and home businesses from the burdensome and impractical requirements of the Consumer Product Safety Improvement Act of 2008 (sponsored by Senator Jim DeMint and introduced April 2, 2009). This amendment not agreed to in the Senate by a Yea-Nay vote of 39 to 58 on April 2, 2009 (Record Vote No. 151).

## **Author Contact Information**

(name redacted)  
Legislative Attorney  
[redacted]@crs.loc.gov, 7-....

## Key Policy Staff

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<b>Area of Expertise</b>	<b>Name</b>	<b>Phone</b>	<b>E-mail</b>
Consumer Product Safety Law	-name redacted-	7-....	-redacted-@crs.loc.gov
Environmental Protection Agency and Health Effects of Phthalates	-name redacted-	7-....	-redacted-@crs.loc.gov

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