

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

**MEMORANDUM**

**April 27, 2010**

**To: Members of the Subcommittee on Commerce, Trade, and Consumer Protection**

**Fr: Subcommittee on Commerce, Trade, and Consumer Protection Democratic Staff**

**Re: Subcommittee Hearing on H.R. \_\_\_\_\_, the Consumer Product Safety Enhancement Act**

On April 29, 2010 at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Trade, and Consumer Protection will hold a hearing on H.R. \_\_\_\_\_, the Consumer Product Safety Enhancement Act.

**I. THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008**

In 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA) to strengthen and modernize the consumer product safety system in the United States, with a particular emphasis on improving safety of products designed or intended for children. H.R. \_\_\_\_ was designed to address several issues that have been raised regarding implementation of CPSIA.

The development of CPSIA began in 2007, following record numbers of recalls of popular children's toys; many of these recalls were due to unsafe levels of lead. The 2006 lead poisoning death of a four-year-old boy who had swallowed a charm given away with athletic shoes also underscored the need for more effective federal protections.<sup>1</sup>

Medical science has shown lead to be a dangerous toxin, and there is no known safe level of lead exposure for children. Chronic exposure to lead has been found to contribute to children's attention problems, learning disabilities, mental retardation, and antisocial and delinquent behaviors. The presence of lead in children's products is invisible – there is no way

---

<sup>1</sup> Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report Dispatch: Death of a Child after Ingestion of a Metallic Charm – Minnesota, 2006* (Mar. 23, 2006) (online at [www.cdc.gov/mmwr/preview/mmwrhtml/mm55d323a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm55d323a1.htm)).

for a parent to know by looking at a toy whether it contains lead. In 2006, the Centers for Disease Control and Prevention recommended the restriction or elimination of nonessential uses of lead in consumer products as “part of a proactive strategy that prevents exposure to these products.”<sup>2</sup>

In 2007, the Subcommittee held four days of hearings at which more than 20 witnesses testified on the safety of children’s products and the need for increased authority and funds for the Consumer Products Safety Commission (CPSC) to deal with this problem.<sup>3</sup> On November 1, 2007, Subcommittee Chairman Bobby Rush, then-Ranking Member Cliff Stearns, then-Committee Chairman John Dingell, and Ranking Member Joe Barton introduced H.R. 4040, the Consumer Product Safety Modernization Act of 2007. Joining them as original co-sponsors were 46 other members from both parties. The Committee ordered the bill to be reported on December 18, 2007, by a unanimous vote, and the House unanimously approved the bill later that month.

In March 2008, an amended version of the legislation was approved by a strong majority of the Senate. Following an extensive conference, the bill passed both houses with overwhelming majorities and was signed into law by President Bush on August 14, 2008.

CPSIA fundamentally reformed product safety and CPSC. The law established basic safety standards for keeping toxic lead and phthalates out of children’s products, gave CPSC vital new resources and authority, and introduced a product testing system designed to ensure that all products are safe. The bill also reestablished a five-member Commission. While the original Consumer Product Safety Act provided for a five-member Commission, appropriations riders starting in 1986 had limited CPSC funding to allow for only three commissioners, which had impeded decision-making and rule-making.

Despite the strong bipartisan support for CPSIA, implementation has not been smooth. CPSC has issued several stays of enforcement of the law’s third-party testing requirements and lead content limits in specific products, including children’s all terrain vehicles and bicycles.<sup>4</sup> In

---

<sup>2</sup> *Id.*

<sup>3</sup> Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Our Children: Current Issues in Children’s Product Safety* (May 15, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Children from Lead-tainted Imports: Day 1* (Sept. 19, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Protecting Children from Lead-tainted Imports: Day 2* (Sept. 20, 2007); Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, *Comprehensive Children’s Product Safety and Consumer Product Safety Commission Reform Legislation* (Nov. 5, 2007).

<sup>4</sup> Consumer Product Safety Commission, *CPSC Grants One Year Stay of Testing and Certification Requirements for Certain Products* (Jan. 30, 2009); Consumer Product Safety Commission, *Notice of Stay of Enforcement Pertaining to Youth Motorized Recreational Vehicles*, 74 Fed. Reg. 22154 (May 12, 2009); Consumer Product Safety Commission, *Notice of*

addition, many businesses affected by the law have been confused as to its scope and impact, and small businesses have faced unique hurdles in meeting the law's requirements. Consumers also have faced confusion and reduced protections as a result of the stays of enforcement.

On June 19, 2009, the Senate approved new leadership for CPSC by confirming Inez Moore Tenenbaum as the new Chairman. Two additional commissioners were confirmed on August 7, 2009, restoring the agency to its original size of five commissioners. Since the arrival of Chairman Tenenbaum, CPSC has taken numerous steps to improve implementation of the law, including issuing specific guidance on compliance to businesses facing unique challenges, such as thrift stores and other sellers of used products.<sup>5</sup> CPSC also has taken regulatory action to clarify the meaning of CPSIA, including such critical steps as publishing guidance to allow component part testing to demonstrate compliance with the lead limits, and issuing a final rule determining that certain materials and products do not contain lead and therefore are not subject to the law's lead limits and testing requirements.<sup>6</sup>

## **II. H.R. \_\_\_\_, THE CONSUMER PRODUCT SAFETY ENHANCEMENT ACT**

Despite recent efforts by CPSC to clarify and improve implementation of the law, a number of problems persist. Some affected manufacturers have asserted that there are some products that require lead and do not pose a serious threat to public health or safety. Others have claimed that the law's lead requirements should not apply to used children's clothing. In addition, some affected industry members have asserted that the third-party testing requirements are overly burdensome for smaller businesses, and that alternative testing could be used without compromising public health or safety.

Over the past several months, committee staff have worked with a wide range of stakeholders to craft legislation to address many of these concerns. Stakeholders that have participated in this process include manufacturers of youth recreational vehicles (such as ATVs), children's bicycles, children's clothing, and toys, sellers of new and used children's products, consumer protection and public health groups, and CPSC.

H.R. \_\_\_\_ is the result of this process of stakeholder consultation. The legislation seeks to resolve some of the concerns raised by various interested parties by addressing unforeseen impacts of CPSIA. To this end, the legislation provides three major forms of relief:

---

*Commission Action on the Stay of Enforcement of Testing and Certification Requirements*, 74 Fed. Reg. 68588 (Dec. 28, 2009).

<sup>5</sup> Consumer Product Safety Commission, *CPSC Handbook for Resale Stores and Product Resellers* (Aug. 2009) (online at [www.cpsc.gov/ABOUT/Cpsia/cpsia.HTML](http://www.cpsc.gov/ABOUT/Cpsia/cpsia.HTML)).

<sup>6</sup> Consumer Product Safety Commission, *Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits*, 74 Fed. Reg. 68593 (Dec. 28, 2009); Consumer Product Safety Commission, *Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products; Final Rule*, 74 Fed. Reg. 43031 (Aug. 26, 2009).

- New regulatory flexibility for CPSC to exempt certain products, components, and materials from the lead limits in CPSIA, with limitations to ensure protection of public health;
- Relief for thrift stores and other retailers through an exclusion for certain used children's products from the lead limits, and a modification of the lead limit, set to take effect in August 2011, so that it will apply only to newly manufactured products;
- Relief for small batch manufacturers and other businesses by allowing the commission to approve alternative testing requirements for certain small batch manufacturers, by requiring CPSC outreach and assistance to small businesses, and by providing that the law's phthalate limits shall not apply to inaccessible component parts.

The legislation also provides for a narrow set of improved and clarified authorities to allow the CPSC to carry out the law.

The following organizations support the text of this legislation and urge its enactment: the National Association of Manufacturers, the Retail Industry Leaders Association, the Motorcycle Industry Council, the Handmade Toy Alliance, and Goodwill Industries, Inc.

### **III. WITNESSES**

The following witnesses have been invited to testify:

- John Engler  
President and CEO  
National Association of Manufacturers
- Paul Vitrano  
General Counsel  
Motorcycle Industry Council
- Jim Gibbons  
President and CEO  
Goodwill Industries International
- Dan Marshall  
Handmade Toy Alliance
- Steve Levy  
American Apparel and Footwear Association
- Rick Woldenberg  
Chairman  
Learning Resources, Inc.