Congressional Research Service
Informing the legislative debate since 1914

The Consumer Product Safety Act: A Legal Analysis

Updated April 24, 2018

Congressional Research Service
https://crsreports.congress.gov
R45174

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The Consumer Product Safety Commission (CPSC or Commission) was established in 1972 by the Consumer Product Safety Act (CPSA) "to protect the public against unreasonable risks of injury associated with consumer products." The CPSC is empowered to meet this objective through a blend of consumer monitoring, research, investigations, safety standard-setting, and enforcement powers. The Commission's jurisdiction under the CPSA is largely governed by the definition of "consumer product," which is broad in scope, although a number of products that generally are regulated by other federal agencies are explicitly carved out of the definition. The term includes products that are manufactured domestically, as well as hundreds of billions of dollars' worth of consumer products that are manufactured outside of the U.S. and imported into the country each year. It encompasses over approximately 10,000 types of products from baby strollers, cribs, and bath seats, to cigarette lighters and matchbooks, to lawn mowers, garage door openers, and television antennas, to name a few. The CPSC estimates that covered consumer products play a role in over $1 trillion of costs to the country annually in the form of deaths, illnesses, injuries, and property damage.

Given this broad statutory mandate and the impact consumer products have on the day-to-day lives of the general public, the CPSC has been of perennial interest to Congress. Congress conducts oversight hearings on the Commission, and bills that would affect the CPSC are introduced in virtually every Congress. In the 115th Congress, for example, bills have been introduced that would expand the Commission's regulatory jurisdiction and require the Commission to promulgate mandatory safety rules involving certain products.

This report provides a legal overview of the CPSC's structure, jurisdiction, and statutory powers under the CPSA.

Key Takeaways of This Report

- While the CPSC has the authority to issue mandatory consumer product safety rules under some circumstances, in most instances, the CPSA requires the Commission to defer to "voluntary consumer product safety standards" that are predominately drafted and developed by private industry.
- Although the Commission has authority to order companies to engage in various corrective actions (i.e., recalls) to address hazardous consumer products, the Commission generally may only exercise this authority after conducting an administrative hearing, and any entity that is adversely affected by such an order can challenge the action in federal court. Consequently, in most circumstances, before initiating an involuntary corrective action order, the Commission will attempt to negotiate voluntary actions the company can take to correct product hazards.
- The CPSA, among other things, makes it unlawful to sell, distribute, or import consumer products that are not in compliance with a CPSC-issued safety rule or corrective action order.
- Violations of the CPSA can result in civil and criminal penalties.

Contents

Introduction 1
CPSC Structure 3
Scope of Jurisdiction Under the CPSA 4
General Powers Under the CPSA 6
Consumer Monitoring, Research, & Investigations 7
Voluntary Safety Standards, Mandatory Safety Rules, & Product Bans 8
- Mandatory Consumer Product Safety Rules & Product Bans 10
- Voluntary Safety Standards 12

Enforcement Powers 13
- Mandatory Risk Reporting 14
- Compliance Inspections 15
- Corrective Actions to Address Substantial Product Hazards 16
  - Negotiated Corrective Actions 17
  - Corrective Actions Through Administrative Proceedings 18
  - Available Corrective Actions 18
- Imminently Hazardous Consumer Products 19
- Civil & Criminal Penalties 20

Contacts

Author Information 22

Introduction

The Consumer Product Safety Commission (CPSC or Commission) was established in 1972 by the Consumer Product Safety Act (CPSA)[1] "to protect the public against unreasonable risks of injury associated with consumer products,"[2] primarily after they have entered the stream of commerce.[3] The CPSC is empowered to meet this objective through a blend of consumer monitoring, research, investigations, safety standard-setting, and enforcement powers.[4] Although the CPSC has the authority to issue mandatory consumer product safety rules under some circumstances, in most instances, the CPSA requires the Commission to defer to "voluntary consumer product safety standards" that are predominately drafted and developed by private industry.[5] In light of this mandate, the CPSC provides technical assistance and otherwise helps industry groups develop voluntary standards more frequently than it issues mandatory safety standards through rulemakings.[6] Additionally, although the Commission has authority to order companies to engage in various corrective actions, which the CPSC collectively refers to as "recalls,"[7] it generally may only exercise this authority after it conducts an administrative hearing on the subject.[8] Furthermore, any entity that is adversely affected by such an order can challenge the action in federal court.[9] Consequently, in most circumstances, the Commission generally attempts to negotiate voluntary actions with companies to correct product hazards upon mutually acceptable terms before initiating an involuntary recall order.[10]

Courts have stated that because the CPSA is a "[r]emedial safety" law, it "should be broadly construed to effectuate its purpose."[11] Courts have applied this judicial principle when

---

[1] Pub. L. No. 92-573, 86 Stat. 1207 (1972) (codified as amended at 15 U.S.C. §§ 2051-2089). In addition to the CPSA, the Commission also implements other laws, including: the Federal Hazardous Substances Act (Pub. L. No. 86-613, 74 Stat. 372 (1960) (codified as amended at 15 U.S.C. §§ 1261-78a)); the Poison Prevention Packaging Act (Pub. L. No. 91–601, 84 Stat. 1670 (1970) (codified as amended at 15 U.S.C. §§ 1471-77)); the Virginia Graeme Baker Pool and Spa Safety Act (Pub. L. No. 110–140, title XIV, 121 Stat. 1794 (2007) (codified as amended at 15 U.S.C. §§ 8001-08)); the Flammable Fabrics Act (Pub. L. No. 83-88, 67 Stat. 111 (1953) (codified as amended at 15 U.S.C. §§ 1191-1204)); the Refrigerator Safety Act (Pub. L. No. 84-930, 70 Stat. 953 (1956) (codified as amended at 15 U.S.C. §§ 1211-14)); and the Child Nicotine Poisoning Prevention Act (P.L. 114-116, 130 Stat. 3 (2016) (codified at 15 U.S.C. § 1472a)). These other laws are outside the scope of this report.

[2] 15 U.S.C. § 2051(b)(1).

[3] U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-17, CONSUMER PRODUCT SAFETY OVERSIGHT: CHALLENGES AND OPTIONS FOR RESPONDING TO NEW AND EMERGING RISKS 1 (2014) [hereinafter 2014 GAO EMERGING RISKS REPORT]. Manufacturers do not have to receive CPSC approval of products before they can be sold, imported, or distributed. However, as is discussed below, distributors and importers must have certain products tested and certified for compliance with various laws and regulations, and the CPSC may inspect imported products for compliance with relevant rules and standards before they enter U.S. markets. *See infra* "Compliance Inspections" and "Voluntary Safety Standards, Mandatory Safety Rules, & Product Bans" sections of this report.

[4] 15 U.S.C. §§ 2051-2089.

[5] *Id.* § 2056(a)-(b).

[6] *See* CONSUMER PROD. SAFETY COMM'N, FISCAL YEAR 2017, ANNUAL PERFORMANCE REPORT 9-10 (2018).

[7] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 5 (2012) (The CPSC generally "refers to corrective actions as 'recalls' because the public and media more readily recognize and respond to that description.").

[8] 15 U.S.C. § 2064(f).

[9] *Id.* § 2073.

[10] *See generally* 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 8-9.

[11] *See, e.g.*, United States v. One Hazardous Prod. Consisting of a Refuse Bin, 487 F. Supp. 581, 588 (D.N.J. 1980). *See also* Consumer Prod. Safety Comm'n v. Chance Mfg. Co., 441 F. Supp. 228, 231 (D.D.C. 1977) ("The most unequivocal expression of congressional intent to be gleaned from the legislative history of the Act is that the definition of 'consumer product' be construed broadly to advance the Act's articulated purpose of protecting consumers from

interpreting the term "consumer product," which largely defines the scope of the CSPC's jurisdiction under the CPSA.[12] As is discussed in detail below, the term "consumer product" generally covers thousands[13] of products that are manufactured or used for consumer purposes, with the exception of those products that are carved out by statute.[14] The term "consumer products" includes products that are manufactured domestically, as well as hundreds of billions of dollars' worth of products that are manufactured outside of the U.S. and imported into the country each year.[15] The CPSC estimates that covered consumer products play a role in over $1 trillion of costs to the country annually in the form of deaths, illnesses, injuries, and property damage.[16]

Given this broad statutory mandate and the impact consumer products have on the day-to-day lives of the general public, the CPSC has been of perennial interest to Congress. Congress conducts oversight hearings on the Commission,[17] and bills that would affect the CPSC are introduced in virtually every Congress. In the 115th Congress, for example, bills have been introduced that would expand the Commission's regulatory jurisdiction[18] and require the Commission to promulgate mandatory safety rules involving certain products.[19]

The CPSA has been amended a number of times. As is discussed below, Congress made a number of notable changes to the Commission's rulemaking process via legislation enacted in 1981.[20] The last major legislative amendment to the CPSA occurred in 2008, with the enactment of the Consumer Product Safety Improvement Act of 2008 (CPSIA).[21] Congress passed the CPSIA, in large part, to respond to what became known as the "Year of the Recall," when millions of consumer products, many of them children's toys imported from China, were recalled in 2007.[22] The CPSIA, among other things,

---

hazardous products."). *See also* Butcher v. Robertshaw Controls Co., 550 F. Supp. 692, 694-95 (D. Md. 1981) ("[T]he [CPSA] is intended for the protection of the public against unreasonable risks of injury associated with 'consumer products', a term which is to be liberally construed in accordance with the statute's patently remedial purpose."). Courts generally give a liberal construction to remedial legislation. *See generally* United States v. Article of Drug Bacto-Unidisk, 394 U.S. 784, 798 (1969) ("But we are all the more convinced that we must give effect to congressional intent in view of the well-accepted principle that remedial legislation such as the Food, Drug, and Cosmetic Act is to be given a liberal construction consistent with the Act's overriding purpose . . . ; United States v. Sullivan, 332 U.S. 689, 693-695 (1948); United States v. Dotterweich, 320 U.S. 277, 283-284 (1943).").

[12] 15 U.S.C. § 2052(f).

[13] CONSUMER PROD. SAFETY COMM'N, FISCAL YEAR 2017, ANNUAL PERFORMANCE REPORT *i* (2018).

[14] 15 U.S.C. § 2052(f) (defining "consumer product"). *See also* ASG Indus., Inc. v Consumer Prod. Safety Comm'n, 593 F2d 1323, 1328 (D.C. Cir. 1978).

[15] 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 1 ("CPSC reported that during calendar year 2012, more than 235,000 importers imported approximately $706.6 billion of consumer products under CPSC's jurisdiction—an average of nearly $2 billion per day.").

[16] Consumer Prod. Safety Comm'n, "About CPSC," https://www.cpsc.gov/About-CPSC (last visited Mar. 12, 2018).

[17] *See, e.g., Oversight of the Consumer Product Safety Commission: Hearing Before the on Consumer Protection, Product Safety, Insurance, and Data Security Comm. of the S. Comm. on Commerce, Science, and Transportation,* 114th Cong. (2015); *Oversight of the Consumer Product Safety Commission: Hearing Before the Subcomm. on Commerce, Manufacturing, and Trade of the H. Comm. on Energy and Commerce*, 114th Cong. (2015).

[18] *See, e.g.,* Firearm Safety Act of 2018, H.R. 5162, 115th Cong. (2018).

[19] *See, e.g.,* Portable Fuel Container Safety Act of 2017, H.R. 919 115th Cong. (2017)

[20] Pub. L. No. 97-35, § 1202, 95 Stat. 703, 704 (1981) (codified as amended in scattered sections of 15 U.S.C.). *See, infra* "Voluntary Safety Standards, Mandatory Safety Rules, & Product Bans" section of this report.

[21] Pub. L. No. 110-314, 122 Stat. 3016 (2008) (codified as amended in scattered sections of 15 U.S.C.).

[22] *See generally* A. Marvin Quattlebaum, Jr. and Dowse B. "Brad" Rustin IV, "Congressional Response to the 'Year of the Recall,'" 19 Bus. L. Today 1 (2009) ("The year of 2007 will be remembered as the 'Year of the Recall.' During this one year alone, there were 20 million toys recalled in the United States, most of which were manufactured in China and

- required the CPSC to change several existing voluntary standards into mandatory consumer safety rules[23] utilizing a more streamlined rulemaking process than that with which the Commission must normally comply;[24]
- required the Commission to create a publicly available and searchable consumer product safety database;[25] and
- enhanced the CPSC's enforcement powers.[26]

This report provides a legal overview of the CPSC's structure, jurisdiction, and statutory powers under the CPSA, as amended. First, the report discusses the CPSC's structure and the scope of its jurisdiction and general powers. The report next discusses the CPSC's authority to engage in consumer monitoring, research, and investigations that inform the type of rules the Commission will issue and the enforcement actions it takes. The report then distinguishes between the types of standards the Commission may set, examining its authority to issue mandatory product safety rules and product bans on the one hand, which are seldom issued in practice, and the CPSA's intent that the Commission defer to voluntary, industry-developed safety standards on the other. Finally, the report analyzes the Commission's enforcement powers, including the requirement under the CPSA that companies self-report certain product risks to the Commission; the Commission's ability to inspect products for compliance with the CPSA; the various corrective actions the Commission may either initiate or agree to as part of a negotiation with a company; the Commission's rarely used authority to designate a product an "Imminently Hazardous Consumer Product"; and the civil and criminal penalties to which violators of the CPSA may be subject.

CPSC Structure

The CPSC is comprised of a maximum of five commissioners who are appointed by the President, subject to the advice and consent of the Senate, to serve seven-year terms.[27] No more than three commissioners may be of the same political party.[28] CPSC commissioners "may [only] be removed by the President for neglect of duty or malfeasance in office but for no other cause."[29] This removal protection arguably allows the Commission to operate with a degree of independence from the Administration beyond that of a typical executive agency that is headed by officials who serve at the pleasure of the President.[30]

recalled due to the use of lead paint. Some of the more high-profile recalls involved the RC2 Corporation, which recalled over 1.5 million Thomas & Friends wooden railway toys, and Mattel, which recalled over 1.5 million Fisher-Price toys followed by an additional recall of 9 million more toys. All of these toys had been manufactured in China.").

[23] 15 U.S.C. §§ 2056a(b), 2056b(a), and 2089(a).

[24] *Compare* 15 U.S.C. § 2056a(b) (requiring the CPSC to issue a mandatory safety standard for children's toys pursuant to the rulemaking procedures codified at 5 U.S.C. § 553) *with* 15 U.S.C. § 2058.

[25] 15 U.S.C. § 2055a(a).

[26] Pub. L. No. 110-314 §§ 214-17, 122 Stat. 3016, 3054 (2008) (codified as amended in scattered sections of Ch. 47, 15 U.S.C.).

[27] 15 U.S.C. § 2053(a)-(b).

[28] *Id*. § 2053(c).

[29] *Id*. at § 2053(b).

[30] *See generally* CRS Report R43391, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues*, by Henry B. Hogue, Marc Labonte, and Baird Webel.

One of the CPSC commissioners is selected by the President, subject to the advice and consent of the Senate, to be the Commission's Chairman.[31] The Chairman is empowered with the executive and administrative responsibilities of the CPSC, which includes hiring personnel, expending appropriations, and delegating duties among the other commissioners and CPSC staff.[32]

The Commission has six main offices: Communications; Legislative Affairs; Inspector General; Executive Director; Equal Employment Opportunity and Minority Enterprise; and General Counsel.[33] It also has a number of sub-offices, including offices of Hazard Identification and Reduction, Import Surveillance, International Programs, and Compliance and Field Operations.[34] In FY2017, the Commission employed approximately 560 employees and received $126 million in appropriations.[35]

Scope of Jurisdiction Under the CPSA

As noted above, the Commission's jurisdiction under the CPSA is largely governed by the definition of "consumer product."[36] The term is multifaceted and broad in scope, although a number of products that generally are regulated by other federal agencies are explicitly carved out of the definition.[37]

A "consumer product" is defined, in relevant part, as

> 1. [A]ny article, or component part thereof,
>
> 2. produced or distributed
>
> a. for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or
>
> b. 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.[38]

The CPSA further provides that, to meet the definition, a product must be "customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer."[39]

---

[31] 15 U.S.C. § 2053(a).

[32] *Id*. § 2053(f)(1). The CPSA establishes a number of officer positions, including a General Counsel, an Executive Director, and Associate Executive Directors for: Compliance and Administrative Litigation; Economic Analysis; Information and Public Affairs; Engineering Sciences; Epidemiology; Health Sciences; Administration; Field Operations; and Program, Management, and Budget. *Id*. § 2053(g)(1). The Chairman selects and the Commission must approve appointments to these positions. *Id*.

[33] CONSUMER PROD. SAFETY COMM'N, FISCAL YEAR 2017, ANNUAL PERFORMANCE REPORT 1 (2018).

[34] *Id*.

[35] CONSUMER PROD. SAFETY COMM'N, AGENCY FINANCIAL REPORT FISCAL YEAR 2017 10-11 (2017).

[36] 15 U.S.C. § 2052(a)(5).

[37] *Id*. *See generally* U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-52, CONSUMER PRODUCT SAFETY OVERSIGHT: OPPORTUNITIES EXIST TO STRENGTHEN COORDINATION AND INCREASE EFFICIENCIES AND EFFECTIVENESS 1 (2014) [hereinafter 2014 GAO COORDINATION REPORT] (noting seven other federal agencies—Department of Housing and Urban Development (HUD), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Highway Traffic Safety Administration (NHTSA), Nuclear Regulatory Commission, Pipeline and Hazardous Materials Safety Administration, and the U.S. Coast Guard—as having some federal regulatory authority over consumer products).

[38] 15 U.S.C. § 2052(a)(5).

[39] *Id*. § 2052(a)(5)(A).

Courts have stated that the definition of "consumer product" should be "liberally construed in accordance with the stated purposes of [the CPSA], i.e., the protection of consumers from injury due to unsafe products."[40]

The U.S. Court of Appeals for the District of Columbia (D.C. Circuit) interpreted the phrase "any article or component thereof" of the consumer product definition to mean either "a distinct article of commerce" or "a component part of such a distinct article."[41] The language "for sale to the consumer" applies to products that are purchased directly by a consumer, while the phrase "for the personal use, consumption or enjoyment of a consumer" encompasses products that a consumer obtains through other means, such as "through lease, promotional gift, or purchase by an institution for consumer use."[42] The D.C. Circuit has explained that, to comport with the phrase "*customarily* produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,"[43] a product does not have to be *primarily* sold or distributed to consumers, but those sales or distributions must be more than "occasional" and "there must be a significant marketing of the product as a distinct article of commerce for sale to consumers or for the use of consumers."[44]

Congress expressly carved out a handful of items from the broad definition of consumer product.[45] These items, which are largely outside the scope of the CPSC's jurisdiction, include

[40] United States v. One Hazardous Prod. Consisting of a Refuse Bin, 487 F. Supp. 581, 588 (D.N.J. 1980). *See also supra* note 11.

[41] United States v. Anaconda Co., 593 F.2d 1314, 1319-20 (D.C. Cir. 1979). *See also* Consumer Prod. Safety Comm'n v. Chance Mfg. Co., 441 F. Supp. 228, 233 (D.D.C. 1977) (holding that an amusement park ride was a "consumer product" even though it was not sold directly to consumers).

[42] *Anaconda Co.*, 593 F.2d. at 1320. *See also Chance Mfg. Co.*, 441 F. Supp. at 232 ("In light of the House Committee [Report's] additional statement that '[it] is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use,' it seems beyond dispute that Congress intended the Act's application to a given product to depend, less on how the product changes hands than on the degree to which it affects or endangers the safety of individuals in their capacity as consumers.").

[43] 15 U.S.C. § 2052(a)(5)(A) (emphasis added).

[44] *Anaconda Co.*, 593 F.2d at 1322.

[45] 15 U.S.C. § 2052(a)(5)(A)-(I). The CPSC also is barred from:

> regulat[ing] any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. §§ 651-78]; the Atomic Energy Act of 1954 [42 U.S.C. §§ 2011-2296b-7]; or the Clean Air Act [42 U.S.C. §§ 7401-7671q]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product . . . if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act [21 U.S.C. §§ 360hh-ss].

15 U.S.C. § 2080(a).

tobacco and tobacco products;[46] motor vehicles;[47] pesticides;[48] firearms;[49] aircrafts;[50] boats;[51] food;[52] and drugs, medical devices, and cosmetics.[53] Generally, these products are regulated primarily by other federal agencies, and thus likely excluded from the CPSC's jurisdiction to avoid duplicative regulation.[54]

The CPSC, thus, has jurisdiction over approximately 10,000[55] types of products from baby strollers,[56] cribs,[57] and bath seats,[58] to cigarette lighters[59] and matchbooks,[60] to lawn mowers,[61] garage door openers,[62] and television antennas,[63] to name a few.

General Powers Under the CPSA

The legislative objectives of the CPSA are

[46] *Id*. § 2052(a)(5)(B).

[47] *Id*. § 2052(a)(5)(C) ("motor vehicles or motor vehicle equipment (as defined by section 30102(a)(6) and (7) of title 49)").

[48] *Id*. § 2052(a)(5)(D) ("pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. § 136])").

[49] *Id*. § 2052(a)(5)(E) ("any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. § 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article"). Section § 4181 of the Internal Revenue Code applies to pistols, revolvers, other firearms, shells, and cartridges.

[50] 15 U.S.C. § 2052(a)(5)(F) ("aircraft, aircraft engines, propellers, or appliances (as defined in section 40102(a) of title 49)").

[51] *Id.* § 2052(a)(5)(G) ("boats which could be subjected to safety regulation under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph").

[52] *Id.* § 2052(a)(5)(I) ("The term 'food', as used in this subparagraph means all 'food', as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. § 453(e) and (f)]), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. § 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. § 1033]).").

[53] *Id.* § 2052(a)(5)(H) ("drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. § 321(g), (h), and (i)]])").

[54] *See generally* 2014 GAO COORDINATION REPORT, *supra* note 37, at 4 ("By statute, certain categories of products that are regulated by other agencies are excluded from the definition of 'consumer product,' and therefore CPSC does not have jurisdiction over them."). However, the report notes that the CPSC's jurisdiction over certain products "potentially overlaps" with the regulatory jurisdictions of other federal agencies. *Id.* at 18-19.

[55] CONSUMER PROD. SAFETY COMM'N, FISCAL YEAR 2017, ANNUAL PERFORMANCE REPORT i (2018).

[56] 16 C.F.R. §§ 1227.1-1227.2 (2017).

[57] *Id*. §§ 1219.1-1219.2, 1220.1-1220.2.

[58] *Id*. §§ 1215.1-1215.2.

[59] *Id*. §§ 1210.1-1210.20.

[60] *Id*. §§ 1202.1-1202.7.

[61] *Id*. §§ 1205.1-1205.36 (2017).

[62] *Id*. §§ 1211.1-1211.40.

[63] *Id*. §§1402.1-1402.4.

> 1. [T]o protect the public against unreasonable risks of injury associated with consumer products;
>
> 2. [T]o assist consumers in evaluating the comparative safety of consumer products;
>
> 3. [T]o develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and
>
> 4. [T]o promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.[64]

To meet these legislative ends, the CPSC is empowered to monitor consumer markets, study and investigate dangers associated with consumer products,[65] and develop safety regulations for the manufacture, sale, and distribution of products.[66] Notably, Congress statutorily requires the CPSC to defer to industry-developed voluntary safety standards and only authorizes the Commission to implement mandatory safety standards through rulemakings under the limited circumstances discussed below.[67] Additionally, the Commission generally relies on manufacturers, distributers, and sellers to take voluntary steps to rectify product defects, voluntary safety standard compliance issues, and mandatory safety rule violations.[68] The Commission will generally only exercise its authority to impose mandatory recalls, product bans, and other corrective measures, and to seek civil and criminal penalties, when expressly mandated by Congress or when the Commission determines voluntary steps are insufficient, product dangers are particularly acute, or safety standard violations are egregious.[69]

Consumer Monitoring, Research, & Investigations

One of the primary means by which the Commission addresses its mission of protecting consumers is by monitoring and evaluating deaths, injuries, illnesses, and other harms associated with consumer products.[70] In accordance with the CPSA,[71] the Commission maintains a publicly searchable database—called the National Electronic Injury Surveillance System (NEISS)—of injury reports derived from dozens of emergency rooms across the country.[72] These reports form the basis of a statistically significant sampling of the consumer product-related injuries that occur in the United States and allow the CPSC to estimate the total number of these injuries that occur each year, as well as the societal costs that flow from these injuries.[73] The Commission describes

[64] 15 U.S.C. § 2051(b).

[65] *Id*. § 2054.

[66] *Id*. §§ 2056-56c, 2058.

[67] *Id*. § 2056(b). Congress has, at times, expressly mandated that the Commission promulgate mandatory safety rules. *See, e.g.*, 15 U.S.C. §§ 2056a(b), 2056b(a), and 2089(a) (requiring the CPSC to issue a mandatory safety rule for durable infant and toddler products, children's toys, and ATVs, respectively).

[68] *See id*.; 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 8-9.

[69] *See generally* 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 8-9.

[70] *See generally* CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 1 (2017)

[71] 15 U.S.C. § 2054(a)(1).

[72] Consumer Prod. Safety Comm'n, "National Electronic Injury Surveillance System (NEISS)," https://www.cpsc.gov/Research—Statistics/NEISS-Injury-Data (last visited Apr. 5, 2018).

[73] CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 1 (2017).

the NEISS as "the foundation for many CPSC activities," as it informs the CPSC's investigations, research, and enforcement and remedial actions discussed further below.[74]

In addition, the Commission also contracts with all 50 states and the District of Columbia to receive and track information on accidental deaths connected to consumer products.[75] The Commission purchases and reviews thousands of "death certificates that have a high probability of consumer product involvement."[76] The CSPC distills and disseminates this consumer product injury-related information in its annual reports to Congress.[77] The Commission typically aggregates the death, injury, and societal cost data by age groups and consumer product types.[78]

Utilizing this trove of data, the CPSC performs studies, conducts investigations, and engages in other research[79] "to identify hazardous products and design effective strategies to reduce product hazards."[80] In FY2016, for example, the Commission issued reports on consumer harms related to ATVs and carbon monoxide poisonings, studied the impact that exposure to flame retardants and crumb rubber have on human health, and engaged in a number of research activities involving nanotechnology.[81] The CPSA authorizes the Commission, through contracts and grants, to team up with both governmental and nongovernmental entities to advance its research activities, and generally requires the research from these collaborative efforts to be made publicly available, free of charge.[82] This research provides data that can help the CPSC develop measures to detect and eliminate consumer product hazards utilizing its safety standard-setting authorities and enforcement powers, which are discussed in the next two sections.[83]

Voluntary Safety Standards, Mandatory Safety Rules, & Product Bans

Many of the thousands of consumer products in the CPSC's jurisdiction are subject to either voluntary safety standards developed primarily by private industry, mandatory safety rules issued by the CPSC, or a combination of both.[84] These standards and rules detail labeling, packaging,

---

[74] *Id*.

[75] *Id*.

[76] *Id*.

[77] Consumer Prod. Safety Comm'n, "Annual Reports," https://www.cpsc.gov/About-CPSC/Agency-Reports/Annual-Reports (last visited Apr. 5, 2018).

[78] *See, e.g.*, CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 3-6 (2017) (for example, during the relevant annual reviewing period, toys were associated with an estimated 12 deaths, 241,886 hospital emergency department treated injuries, and around $8 million in treatment costs, while packaging and containers for household equipment were associated with an estimated 139 deaths, 433,416 emergency department treated injuries, and around $15 million in treatment costs).

[79] 15 U.S.C. § 2054(b).

[80] CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 15 (2017).

[81] *Id*. at 15-16.

[82] 15 U.S.C. § 2054(d).

[83] CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 15 (2017).

[84] U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-582, CONSUMER PRODUCT SAFETY COMMISSION: A MORE ACTIVE ROLE IN VOLUNTARY STANDARDS DEVELOPMENT SHOULD BE CONSIDERED 4 (2012) [hereinafter 2012 GAO VOLUNTARY STANDARDS REPORT].

and performance measures that are designed to promote product conformity and reduce safety risks associated with the use of the products.[85]

In a few instances, Congress has expressly required the CPSC to promulgate mandatory consumer safety rules. For example, pursuant to the CPSIA, the Commission promulgated mandatory consumer safety rules for "durable infant or toddler product[s],"[86] certain kids' toys,[87] and all-terrain vehicles.[88] Absent such an express legislative mandate, the CPSC, in accordance with amendments made to the CPSA in 1981,[89] is generally required to defer to industry-developed voluntary safety standards.[90] The CPSC is statutorily restricted from issuing mandatory consumer safety rules except in instances in which voluntary standards would not "eliminate or adequately reduce the risk of injury" and where it is unlikely there "will be substantial compliance with such voluntary standards."[91] The 1981 amendments to the CPSA also added a number of procedural steps that the Commission must follow in order to issue mandatory consumer safety rules.[92] These rulemaking procedures, which are codified in CPSA Section 2058 and discussed below, arguably enhance CPSC accountability and the procedural rights of interested parties, but also potentially make it more costly, time-consuming,[93] and difficult for the CPSC to promulgate mandatory safety rules.[94] Accordingly, the Commission participates in the development of voluntary standards more frequently than it issues mandatory consumer product safety rules.[95] Nevertheless, because finalizing voluntary standards generally requires building consensus among consumers, industry, and other interested parties, it also is not uncommon for the process to finalize voluntary safety standards to span multiple years.[96]

---

[85] *Id*.

[86] 15 U.S.C. § 2056a.

[87] *Id*. § 2056b.

[88] *Id*. § 2089.

[89] Pub. L. No. 97-35, § 1202, 95 Stat. 703, 704 (1981) (codified as amended in scattered sections of 15 U.S.C.).

[90] 15 U.S.C. § 2056(b).

[91] *Id.*

[92] Pub. L. No. 97-35, § 1203, 95 Stat. 703, 704-13 (1981) (codified as amended at 15 U.S.C. § 2058).

[93] *See, e.g.*, 2012 GAO VOLUNTARY STANDARDS REPORT, supra note 84, at 7 (noting that the rulemaking process to establish mandatory safety rules for cigarette lighters took approximately 10 years).

[94] 15 U.S.C. § 2058. *See, e.g.*, 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 25; Robert S. Adler, *Somebody Always Pays*, CPSC.GOV: COMMISSIONER ADLER'S BLOG (Jul. 7, 2015) https://leadership.cpsc.gov/adler/2015/07/01/somebody-always-pays/ ("First, I note that since 1981 the Consumer Product Safety Commission has labored under what is, by many accounts, the most burdensome and detailed set of cost-benefit procedures in the federal government. Included in these procedures are requirements for elaborate preliminary regulatory analyses followed by even more elaborate final analyses, with cost-benefit findings even required for those regulatory alternatives not chosen. This has led to what many observers call 'paralysis by analysis.'

"Consider the following statistics: in the eight year period from 1973 to 1981 – before Congress imposed these procedures on the CPSC – the agency drafted 24 safety rules, or roughly 3 rules per year. In sharp contrast, in the thirty-four years since 1981, the agency has managed to eke out only ten rules – or roughly one rule every 3 1/2 years.").

[95] *See* CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 11-14 (2017) (noting the issuance of four final and four proposed substantive consumer product safety rules, and staff involvement with 40 voluntary standards).

[96] 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at *i* ("because the laws do not establish a time frame for finalizing a voluntary standard, conflicting industry and consumer interests can delay its development, sometimes for years. CPSC has worked with the window covering industry since 1994 to develop a voluntary standard to address strangulation hazards stemming from window blind cords, but as of September 2014, no voluntary standard that addresses the ongoing safety concerns had been finalized.").

In addition to issuing mandatory safety rules, the CPSC also has authority to promulgate rules that ban products from the stream of commerce if it determines that "no feasible consumer product safety standard . . . would adequately protect the public from the unreasonable risk of injury associated with such product."[97] In order to promulgate a rule banning consumer products, the CPSC must follow the rulemaking procedures provided in CPSA Section 2058.[98]

The next section further discusses the CPSC's authority to issue mandatory safety rules and product bans, as well as the CPSC's more commonly used authority to participate in the development of voluntary safety standards.

Mandatory Consumer Product Safety Rules & Product Bans

The Commission has promulgated approximately 40 mandatory safety rules and product bans pursuant to CPSA authorities since it was established in 1972.[99] Most of these rules were implemented prior to the 1981 amendments that generally required the Commission to defer to voluntary safety standards and added certain procedural steps to the rulemaking procedures under CPSA Section 2058.[100] Four of the rules were promulgated pursuant to express legislative authorization under the CPSIA to follow the notice-and-comment rulemaking procedures of the Administrative Procedure Act (APA) that typically apply to federal agency rulemakings, rather than the more arduous procedures of CPSA Section 2058 with which the CPSC usually must comply.[101]

CPSA Section 2058 requires the CPSC to take certain procedural steps when issuing rules that go beyond the typical APA notice-and-comment procedures.[102] For example, prior to implementing a mandatory consumer safety rule or product ban, the Commission must issue a detailed "final regulatory analysis."[103] This regulatory analysis requires the Commission to engage in a cost-benefit analysis and assess "reasonable alternatives" to the final rule, as well as justify why these alternatives were not adopted.[104] In addition, the Commission must substantiate a number of factual findings.[105] For example, the CPSC must document "that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with

[97] *Id*. § 2057.

[98] *Id*.

[99] *See* "Regulations, Mandatory Standards, & Bans," U.S. Prod. Safety Comm'n, https://www.cpsc.gov/Regulations-Laws—Standards/Regulations-Mandatory-Standards-Bans (last visited: Apr. 17, 2018).

[100] *See generally* Robert S. Adler, *Somebody Always Pays*, CPSC.GOV: COMMISSIONER ADLER'S BLOG (Jul. 7, 2015) https://leadership.cpsc.gov/adler/2015/07/01/somebody-always-pays/ ("Consider the following statistics: in the eight year period from 1973 to 1981 – before Congress imposed these procedures on the CPSC – the agency drafted 24 safety rules, or roughly 3 rules per year. In sharp contrast, in the thirty-four years since 1981, the agency has managed to eke out only ten rules – or roughly one rule every 3 1/2 years.").

[101] *See* 15 U.S.C. §§ 2056a(b), 2056b(a), and 2089(a) (requiring the CPSC to issue a mandatory safety rule for durable infant and toddler products, children's toys, and ATVs, respectively, pursuant to APA § 553 rather than 15 U.S.C. § 2058).

[102] 5 U.S.C. § 553. *See generally* CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey, 15-17. Congress has, at times, empowered the CPSC to issue regulations pertaining to specific products in accordance with the APA, rather than Section 2058 of the CPSA. *See, e.g.*, 15 U.S.C. §§ 2056a(b), 2056b(a), and 2089(a) (requiring the CPSC to issue a mandatory safety rules for durable infant and toddler products, children's toys, and ATVs, respectively, pursuant to the notice-and-comment rulemaking procedures codified at 5 U.S.C. § 553).

[103] 15 U.S.C. § 2058(f). The Commission also must engage in a similar "preliminary regulatory analysis" of a proposed rule. *Id*. § 2058(c).

[104] *Id*. § 2058(f)(2)(A)-(B).

[105] *Id*. § 2058(f).

such product,"[106] "that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated,"[107] and "that the benefits expected from the rule bear a reasonable relationship to its costs."[108] Similarly, the CPSC is permitted to issue a rule banning a product only if "no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product."[109]

The CPSA expressly authorizes any party that is or would be impacted by a mandatory consumer safety rule or product ban to file a lawsuit challenging the rule in a U.S. Court of Appeals.[110] In such cases, courts review the rule in accordance with the APA,[111] under which the court can set aside the rule if it finds that the CPSC acted unlawfully, abused its discretion, or otherwise acted in an arbitrary or capricious manner.[112] The CPSA also provides that neither a product ban nor a "consumer product safety rule shall [] be affirmed unless the Commission's [final regulatory analysis' factual] findings . . . are supported by substantial evidence on the record taken as a whole."[113] In addition to setting aside a mandatory safety or product ban rule promulgated by the CPSC, the court may issue other forms of relief to a party challenging such a rule, including ordering the CPSC to cover the prevailing party's attorney's fees.[114]

The CPSA provides that, when the CPSC issues a consumer product safety or product ban rule, states and localities are generally barred from implementing any other "safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury."[115] However, courts have disagreed over how broadly to interpret this preemption provision in light of the savings clause of CPSA Section 2074, which provides that "[c]ompliance with consumer product safety rules or other rules or orders under this chapter

[106] *Id*. § 2058(f)(3)(A).

[107] *Id*. § 2058(f)(3)(F).

[108] *Id*. § 2058(f)(3)(E).

[109] *Id*. § 2058(f)(3)(C).

[110] *Id*. § 2060.

[111] 5 U.S.C. § 706(2). *See generally* CRS Report R41546, *A Brief Overview of Rulemaking and Judicial Review*, by Todd Garvey, 1.

[112] O'Keefe's, Inc. v. Consumer Prod. Safety Comm'n, 92 F.3d 940, 942 (9th Cir. 1996) (In a challenge to a Commission action under CPSA Section 2060, the court held that the CPSC did not act arbitrarily and capriciously in violation of the CPSA and APA; the court explained the standard of review, thusly: "The Administrative Procedure Act states that a final agency action shall be set aside if it is arbitrary, capricious, or an abuse of discretion. A decision is arbitrary and capricious if the agency 'has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.' Review under the arbitrary and capricious standard is narrow, and the reviewing court may not substitute its judgment for that of the agency.") (citations omitted).

[113] 15 U.S.C. § 2060(c). *See* Zen Magnets, LLC v. Consumer Prod. Safety Comm'n, 841 F.3d 1141, 1148 (10th Cir. 2016) ("Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' A court may 'neither reweigh the evidence nor substitute [its] judgment for that of the agency.' Nonetheless, '[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight.'") (citations omitted).

[114] 15 U.S.C. § 2060(c).

[115] *Id*. Under certain circumstances, the CPSC may formally provide an exemption from this preemption provision for a standard that "provides a significantly higher degree of protection from such risk of injury than the [CPSC-issued rule]." *Id*. § 2075(c).

shall not relieve any person from liability at common law or under State statutory law to any other person."[116] One commentator has explained:

> Although a few courts have found state-law claims to be preempted by the CPSA, the majority of the courts have followed the Supreme Court of the United States' decision in Geier v. American Honda Motor Co., Inc., 529 U.S. 861 (2000), in which the Court addressed the dilemma posed by inclusion of an express preemption provision and a savings clause in the National Traffic and Motor Vehicle Safety Act and held that the presence of the savings clause prohibits a broad reading of the preemption provision to include common-law claims. In light of the *Geier* decision, many courts have found that the CPSA forms only a minimum safety standard and that its provisions are not intended to completely replace or preempt state law.[117]

The CPSA's preemption provisions generally do not apply to voluntary safety standards.[118]

The CPSA generally requires manufacturers of consumer products that are subject to CPSC-issued rules to have such products tested and certified for "compli[ance] with all rules, bans, standards, or regulations applicable to the product" before the products enter the marketplace.[119] Furthermore, the CPSA subjects heightened standards on manufacturers of children's products covered by a CPSC-issued rule.[120] Manufacturers of these products generally must have covered products tested and certified by third parties that are accredited by either the Commission or an accreditation body approved by the Commission.[121]

Voluntary Safety Standards

As discussed, the CPSC more frequently defers to voluntary safety standards covering a consumer product rather than issue its own mandatory rule establishing a specific safety rule for that product. These voluntary standards are largely developed by private industry "standards development organizations," such as the American National Standards Institute (ANSI), Underwriters Laboratories (UL), and ASTM International, which generally consist of trade groups, research bodies, consumer advocates, and similar entities.[122] Interested parties typically

---

[116] Joy T. C. Carmichael, PREEMPTION OF STATE LAW BY CONSUMER PRODUCT SAFETY ACT (CPSA) (15 U.S.C.A. §§ 2051 TO 2083), 14 Am. L. Rep. Fed. 2d 501, 2 (2017).

[117] *Id*. *Compare* Moe v. MTD Prods., 73 F.3d 179, 182 (8th Cir. 1995) (Section 2075 of the CPSA "preempts not only positive enactments of state standards, but also common law tort actions that would have the effect of creating a state standard.") and Bic Pen Corp. v. Carter, 251 S.W.3d 500, 509 (Tex. Sup. Ct. 2008) ("In summary, we disagree with the court of appeals that Carter's judgment below can be affirmed on the theory of design defect because the J-26 was properly certified according to the federal protocol and because imposing a higher standard under common law would conflict with the federal regulatory scheme in this area."), *rev'd on other grounds*, BIC Pen Corp. v. Carter, 346 S.W.3d 533 (Tex. Sup. Ct. 2011) *with* Colon ex rel. Molina v. BIC USA, Inc., 136 F. Supp. 2d 196, 205 (S.D. N.Y. 2000) ("The analysis set forth in *Geier* makes clear that the presence of the saving clause in the CPSA eliminates a broad reading of the preemption provision to include common law claims.") and Summerlin v. Scott Petroleum Corp., 324 F. Supp. 2d 810, 814 (S.D. Miss. 2004) ("As in *Geier*, this Court finds that the CPSA forms only a minimum safety standard, and that its provisions are not intended to completely replace or preempt state common law causes of action.").

[118] Nat'l Kerosene Heater Assoc. v. Massachusetts, 653 F. Supp. 1079, 1088 (Mass. D.C. 1986) ("I therefore hold that where the Commission has not made public findings that a voluntary standard meets the requirements of § 2056(b) pursuant to § 2058(b)(2), the voluntary standard does not constitute a consumer product safety standard in effect within § 2075(a).").

[119] 15 U.S.C. § 2063(a)(1).

[120] *Id*. § 2063(a)(2)-(3).

[121] *Id*.

[122] 2012 GAO VOLUNTARY STANDARDS REPORT, *supra* note 84, at 4-5. The standards development organizations are

volunteer to participate in the development of voluntary standards in accordance with the relevant standards development organization's own written policies and procedures.[123] The policies and procedures generally allow for divergent views to be expressed and consensus to develop as to the final safety standards.[124]

The CPSC often participates in the development of voluntary safety standards by, for instance, providing standards development organizations recommendations on standards that should be implemented and technical assistance during the standard development process.[125] The CPSC issues semi-annual reports on its involvement in the creation of voluntary standards.[126] The CPSC does not have legal authority to enforce voluntary standards by initiating an enforcement action against entities for failing to comply with voluntary safety standards.[127] However, as discussed in more detail in the following section, the failure of an entity to comply with voluntary safety standards can play a role in the Commission's determination to exercise its enforcement powers.[128]

Enforcement Powers

The Commission has at its disposal a number of tools to enforce compliance with the CPSA. The CPSA authorizes the Commission, under circumstances described below, to order companies to halt the distribution of products in the stream of commerce, provide refunds and replacement products, and take other corrective actions.[129] The Commission[130] also may seek injunctive relief and civil penalties from federal district courts[131] and may request the Department of Justice to pursue criminal penalties[132] to prevent violations of the CPSA.[133] To help identify instances that warrant the exercise of these enforcement powers, the CPSA requires industry to notify the

typically "private-sector professional and technical organizations, trade associations, and research and testing entities." *Id.* at 5.

[123] *Id*.

[124] *Id*.

[125] *See* CONSUMER PROD. SAFETY COMM'N, FY 2018 STAFF ACTIVITIES IN VOLUNTARY STANDARDS (2018).

[126] *See* "Voluntary Standards," U.S. Prod. Safety Comm'n, https://www.cpsc.gov/Regulations-Laws—Standards/Voluntary-Standards (last visited Mar. 28, 2018).

[127] 2012 GAO VOLUNTARY STANDARDS REPORT, *supra* note 84, at 10.

[128] *Id*. at 11.

[129] *See* 15 U.S.C. §§ 2064, 2066.

[130] The Attorney General also is authorized to seek judicial enforcement of the CPSA. *Id*. § 2071(a).

[131] *Id*. §§ 2064(g), 2071(a). *See, e.g.*, Athlone Indus., Inc. v. Consumer Prod. Safety Comm'n, 707 F.2d 1485, 1492 (D.C. Cir. 1983) ("After reviewing the dispositive substantive issue, we conclude, as did the Eighth Circuit, that the Commission lacks the authority to assess civil penalties in an administrative proceeding. The Commission is free to commence an action in federal district court to assess the penalties it seeks."); Advance Machine Co. v. Consumer Prod. Safety Comm'n, 666 F.2d 1166, 1168 (8th Cir. 1981) ("Concluding that the Commission does not have authority to proceed administratively to assess a civil penalty, it becomes unnecessary to consider the remaining issues."); United States v. Zen Magnets, LLC, 104 F. Supp. 3d 1277, 1280-81 (D. Colo. 2015) ("Upon the Commission's request, this Court has jurisdiction to enjoin violations of the CPSA, including by issuing preliminary injunctions 'to restrain the distribution in commerce' of products which the Commission has reason to believe present substantial hazards to consumers.") (citations omitted).

[132] While the CPSC has authority to seek civil penalties, the Department of Justice must pursue criminal penalties on the CPSC's behalf. 15 U.S.C. § 2071. *See generally* CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 20 (2017).

[133] 15 U.S.C. §§ 2066, 2068-73.

Commission of certain product hazards[134] and authorizes the Commission to conduct compliance inspections of facilities where the consumer products are produced, stored, or distributed.[135] The Commission also works with other federal agencies, as well as state and local governments, to inspect products for compliance with safety standards and corrective actions.[136] To address hazards more quickly, however, the Commission often attempts to negotiate corrective actions on terms agreeable to both the CPSC and the affected companies prior to initiating formal enforcement actions.[137]

The reporting requirements mandated by the CPSA, as well as the Commission's authorities to inspect consumer products, negotiate corrective actions, order mandatory corrective actions, and seek civil and criminal penalties are addressed in the next section of the report.

Mandatory Risk Reporting

The CPSA generally requires consumer product manufacturers, distributors, importers, and sellers to file a report with the CPSC "immediately"[138] upon "obtain[ing] information which reasonably supports the conclusion that [a] product" poses a "substantial product hazard."[139] The failure to comply with this reporting requirement is unlawful and can result in civil and criminal penalties.[140] These reports,[141] along with the Commission's monitoring, investigation, and research activities discussed above, help the CPSC identify products that warrant the imposition of voluntary safety standards, mandatory safety rules, bans, recalls, or other enforcement or corrective action.[142]

A product poses a Substantial Product Hazard when it does not conform to voluntary safety standards, mandatory safety rules, product bans, or other CPSC-issued rules. A product may also pose a Substantial Product Hazard when a defect[143] in the product "creates a substantial risk of injury to the public," in light of factors such as the severity of the injury it could cause and the

---

[134] *Id*. §§ 2064(b), 2084(a).

[135] *Id*. § 2065(a).

[136] *See generally* CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 42-43 (2017).

[137] *See generally* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 14-16 (2012).

[138] Reports generally must be filed within 24 hours of acquiring the relevant information. 16 C.F.R. § 1115.14(e) (2017).

[139] 15 U.S.C. § 2064(b); 16 C.F.R. §§ 1115.1-.29 (2017). Under certain circumstances, manufacturers also must file reports with the Commission when lawsuits are filed or legal settlements are reached involving allegations that a consumer product played a role in an individual's "death or grievous injury," such as loss of limb, loss of critical body functions, or other harms that could require protracted medical care.15 U.S.C. § 2084(a); 16 C.F.R. § 1115.12(d) (2017). To encourage voluntary compliance with these reporting requirements, the information provided in these litigation-related reports generally is not made public. 15 U.S.C. § 2055(e). Additionally, the CPSA expressly provides that the information provided to the Commission pursuant to Section 2084(a) does not constitute an "admission of liability under any statute or any common law." 15 U.S.C. § 2084(d). *See also Id*. § 2055(e)(2) ("Any report furnished under subsection (c)(1) or (c)(2)(A) of section 2084 of this title shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding, except in an action against such manufacturer under section 2069, 2070, or 2071 of this title for failure to furnish information required by section 2084 of this title.").

[140] *See infra* "Civil & Criminal Penalties" section of this report.

[141] CPSIA § 102 also requires manufacturers, distributors, importers, and retailers to report choking incidents involving certain toys.

[142] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 6-7 (2012).

[143] 15 U.S.C. § 2064(b); 16 C.F.R. § 1115.4.

quantity of affected products that are in the market.[144] A defect in a consumer product can occur at any stage of commerce—when it was designed, manufactured, finished, or packaged.[145] A product also could be defective due to its labeling, instructions, construction, and contents.[146] The CPSC does not consider a product to be defective simply because it poses the risk of harm to consumers.[147] For example, a hammer is not defective simply because an errant swing could result in a broken finger.[148] Rather, the CPSA and its implementing regulations outline a number of factors that should be weighed by an industry party making a determination of whether a product needs to be reported to the CPSC as a potential Substantial Product Hazard and by the CPSC when making a determination of whether the product actually poses a Substantial Product Hazard.[149] These factors include: the product's usefulness; the product's propensity for and potential severity of harm; the types of individuals who are most likely to be injured by the product (e.g., children, adults); and whether the risks of the product are readily apparent or can be sufficiently diminished through warning labels or instructions.[150]

Substantial Product Hazard reports should include

- a product description;
- contact information of all known manufacturers, distributors, importers, and sellers of the product;
- an explanation of the product's nonconformance with relevant safety standards or other rules; and
- an explanation of the product's potential dangers.

With the exception of trade secrets and certain other confidential types of information, the Commission may publicly release information included in these reports, but generally only after giving the manufacturer or other affected party an opportunity to contest the disclosure with the Commission or seek a court order staying the disclosure because it is confidential, inaccurate, or misleading.[151]

Compliance Inspections

The CPSA authorizes the Commission "to enter [and inspect], at reasonable times, [] any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce" for the purpose of ensuring that regulated products comply with mandatory safety rules, recalls and other corrective actions, and other aspects of the CPSA.[152] The

[144] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12 (2012).

[145] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12 (2012).

[146] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12 (2012).

[147] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12 (2012).

[148] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12 (2012).

[149] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12-13 (2012).

[150] 16 C.F.R. § 1115.4. *See also* CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 12-13 (2012).

[151] 15 U.S.C. § 2055(a)-(b). The Commission is not required to disclose any information that may be exempt from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. 15 U.S.C. § 2055(a)(1). For more information on FOIA, *see* CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Meghan M. Stuessy.

[152] 15 U.S.C. § 2065(a). *See also* U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-271, CUSTOMS AND BORDER PROTECTION: AUTOMATED TRADE DATA SYSTEM YIELDS BENEFITS, BUT INTERAGENCY MANAGEMENT APPROACH IS NEEDED 17 (2018) [hereinafter GAO 2018 CUSTOMS REPORT] (discussing coordination between the CPSC and Customs

CPSA also authorizes the CPSC to obtain, through the Secretary of the Treasury, "a reasonable number of samples of consumer products being offered for import" for inspection.[153] The Commission may request that Secretary of the Treasury deny entry into the country any imported product that fails to comply with a consumer product safety rule, poses a Substantial Product Hazard, or fails to meet various other requirements.[154]

The CPSC lacks the resources to inspect every one of the millions of consumer products manufactured domestically or imported into the country before these products reach American consumers.[155] As a result, the Commission tends to focus its inspection efforts on foreign products that are imported into the country because they historically are more likely to be subject to corrective actions than products manufactured in the United States.[156] According to a 2014 GAO report, four out of five of CPSC's product recalls in the United States involved an imported product.[157] The CPSC utilizes a risk-based system, called the Risk Assessment Methodology, as well as data from the U.S. Customs and Border Protection, to help the Commission prioritize and select which imported shipments of consumer products to inspect.[158]

The Commission coordinates compliance inspection activities with state and local governments.[159] In in FY2016, the Commission directed nearly 1,800 compliance inspections conducted by states and local governmental entities.[160] The CPSC also provides training and technical support for its state and local partners, as well as importers of foreign products, to improve compliance with the Act.[161]

Corrective Actions to Address Substantial Product Hazards

If the CPSC, after conducting an administrative proceeding,[162] concludes that a consumer product that has entered the stream of commerce constitutes a Substantial Product Hazard and that public disclosure of the hazard is necessary for public protection, the Commission may order relevant manufacturers, distributors, or sellers to address the hazard by implementing a corrective action,[163] which the CPSC generally refers to as a "recall."[164] The administrative process to formally designate a product as a Substantial Product Hazard and to impose a mandatory

---

and Border Protection in connection with the CPSC's oversight of consumer product imports).

[153] 15 U.S.C. § 2066(b).

[154] *Id*. § 2066(a); 16 C.F.R. § 115.21(d).

[155] The CPSC has jurisdiction over approximately two-thirds of all categories of goods that are imported to the United States. GAO 2018 CUSTOMS REPORT, *supra* note 152, at 17.

[156] 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 1 ("In particular, the number of imported consumer products presents CPSC with challenges related to the growth of global supply chains that assemble products across a vast web of interconnected geographies as well as the difficulty of identifying product hazards among thousands of containers entering U.S. ports. . . . Although its authorities generally address product hazards post-market, CPSC reports that the continued growth in volume and diversity of consumer products has recently made strategies to prevent hazardous products from entering the marketplace a critical focus of the agency.").

[157] *Id*.

[158] GAO 2018 CUSTOMS REPORT, *supra* note 152, at 17.

[159] CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 42-43 (2017).

[160] *Id*.

[161] *Id*.

[162] 15 U.S.C. § 2064(c)-(d), (f); 16 C.F.R. §§ 1025.1-72 (2017).

[163] 15 U.S.C. § 2064(c).

[164] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 5 (2012) ("The Commission staff refers to corrective actions as 'recalls' because the public and media more readily recognize and respond to that description.").

corrective action can be time consuming, in large part, because, as is discussed below, the CPSC generally is required to conduct an administrative hearing on the matter.[165] Moreover, even when the Commission goes through this administrative process, the CPCS's Substantial Product Hazard determination and ordered corrective action can be challenged in federal court by adversely affected parties.[166] Consequently, the CPSC infrequently initiates administrative proceedings.[167] In many instances, rather, relevant companies work in cooperation with the CPSC and negotiate mutually agreeable plans for correcting potential hazards.[168]

Negotiated Corrective Actions

In instances in which parties cooperate with the Commission to reach a negotiated corrective action agreement, CPSC staff generally will review industry-issued product hazard reports and conduct an investigation to determine whether the product poses a Substantial Product Hazard under the CPSA.[169] If warranted, CPSC staff will make a preliminary determination[170] as to whether the product is a substantial hazard and assign the hazard as either Class A, B, or C based on its potential for consumer harm.[171] Class A hazards are likely to result in death, grievous injury or sickness, or are very likely to result in serious injury or sickness.[172] Class B hazards could, but are unlikely to, result in death or grievous injury or sickness, or are likely to result in serious injury/sickness, or are very likely to result in moderate injury/sickness.[173] Class C hazards could but are not likely to result in serious or moderate injury/sickness.[174] Once the preliminary determination has been made and the hazard has been classified, the Commission's staff then works with the relevant companies to develop an appropriate corrective action.[175]

In lieu of this process, companies can choose to utilize the Commission's Fast Track Product Recall Program, in which the company begins working almost immediately with Commission staff to implement a voluntary corrective action without the CPSC making a preliminary determination that the product is a Substantial Product Hazard.[176] The CPSC developed this program for the purpose of speeding up the process by which potentially dangerous products can be pulled from retailers and the reach of consumers.[177]

---

[165] 15 U.S.C. § 2064(f).

[166] *Id*. § 2073.

[167] GAO EMERGING RISKS REPORT, *supra* note 3, at 9 (noting that an administrative proceeding initiated in 2012 was the Commission's second in 11 years and that the relevant manufacturer refused to comply with the CPSC's order, resulting in litigation).

[168] *Id*. at 8.

[169] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 14 (2012). The Commission will also assess whether the product is an Imminently Hazardous Consumer Product; *see infra* "Imminently Hazardous Consumer Products" section of this report.

[170] Alternatively, the CPSC Commissioners can, after conducting a hearing and complying with other administrative procedures, formally vote to declare a product a Substantial Product Hazard. 15 U.S.C. § 2064(c); 16 C.F.R. §§ 1025.1-72 (2017).

[171] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 14 (2012).

[172] *Id*. at 14-15.

[173] *Id*. at 15.

[174] *Id*.

[175] *Id*.

[176] *Id*. at 15-16. Under this program, the Commission aims to approve implementation of a corrective action plan in 20 days or less. *Id*.

[177] *See* "Fast-Track Recall Program Wins Award," Consumer Prod. Safety Comm'n, https://www.cpsc.gov/Business—

Corrective Actions Through Administrative Proceedings

When the CPSC believes that negotiations with a company have come to an impasse or it determines it otherwise warranted or necessary, the Commission can formally vote to designate a product a Substantial Product Hazard and order a mandatory corrective action plan.[178] Before the CPSC may take these formal steps, however, it generally must conduct a hearing, presided by an independent "presiding officer"[179] such as an Administrative Law Judge. At such a hearing, interested parties may, among other things, express their views on the subject, offer evidence, and submit statements orally and in writing.[180] When the Commission initiates a proceeding to issue a mandatory Substantial Product Hazard corrective action plan, it may seek a preliminary injunction from a federal district court to prevent the continued distribution of the product during the pendency of the proceeding.[181] The CPSC also may seek judicial enforcement of its mandatory corrective action plans.[182] Parties that are adversely affected by a CPSC order designating a product a Substantial Product Hazard may challenge the order in a federal district court in accordance with CPSA Section 2073.[183]

Available Corrective Actions

Regardless of the process utilized, the Commission, often in conjunction with the relevant parties, will ordinarily develop a corrective action plan that is designed to be tailored to the unique characteristics of the hazardous product.[184] The primary goals of corrective action plans are to identify all defective products, get them out of the hands of consumers and the stream of commerce, and inform the public of the product's potential harm and the plan to correct it.[185] Corrective actions can include

- halting the product's distribution;[186]
- notifying public health officials and the general public of the hazard;[187]
- issuing written notices of the hazard to all known purchasers, sellers, distributors, and manufacturers of the product;[188]

Manufacturing/Recall-Guidance/Innovations-in-American-Government-Award-Fast-Track-Recall-Program/ (last visited Apr. 5, 2018).

[178] 15 U.S.C. § 2064(c)-(d).

[179] 16 C.F.R. § 1025.3(i) ("Presiding Officer means a person who conducts any adjudicative proceedings under this part, and may include an administrative law judge qualified under Title 5, United States Code, section 3105, but shall not include a Commissioner.").

[180] 15 U.S.C. § 2064(c)-(d). These hearings generally are to be conducted in accordance with the APA, 5 U.S.C. § 554. 15 U.S.C. § 2064(f); 16 C.F.R. §§ 1115.21(a), 1025.41.

[181] 15 U.S.C. § 2064(g).

[182] *Id*. §§ 2071, 2076(b)(7); 16 C.F.R. § 115.21(d).

[183] 15 U.S.C. § 2073.

[184] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 16 (2012). The Commission also can order certain corrective actions to address an Imminently Hazardous Consumer Product. 15 U.S.C. § 2064(c); *see also infra* "Imminently Hazardous Consumer Products" section of this report.

[185] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 17-18 (2012).

[186] 15 U.S.C. § 2064(c)(1)(A).

[187] *Id*. § 2064(c)(1)(C)-(D).

[188] *Id*. § 2064(c)(1)(B).

- rectifying the defect;[189]
- modifying the product so that it is compliant with relevant safety standards or rules;[190]
- replacing the noncompliant product with one that is compliant with safety standards and rules;[191] and
- providing consumer refunds to cover some or all of the defective item's purchase price.[192]

The Commission has indicated that a communication strategy to inform consumers, retailers, and other members of the public of the potential hazards associated with a product is an integral aspect of every corrective action plan.[193] The Commission generally must review and approve all communications related to a corrective action plan.[194]

Imminently Hazardous Consumer Products

In addition to its authority to designate Substantial Product Hazards, the Commission also may seek court-ordered relief to address an "imminently hazardous consumer product."[195] The CPSA defines an Imminently Hazardous Consumer Product to "mean[] a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury."[196] If a reviewing court determines that a product constitutes an Imminently Hazardous Consumer Product,[197] the CPSA authorizes the court "to grant . . . such temporary or permanent relief as may be necessary to protect the public from such risk."[198] The court-issued relief can range from the issuance of public notice to the condemnation and seizure of the product.[199] While the proceeding is pending, the CPSC also can issue an order requiring corrective actions—such as halting the distribution of the products and providing public notification of the products' hazards[200]—in accordance with CPSA Section 2064(c).[201] However, any such CPSC issued corrective action order must be rescinded if the court ultimately concludes that the product does not constitute an Imminently Hazardous Consumer Product.[202]

---

[189] *Id*. § 2064(d)(1)(A).

[190] *Id*. § 2064(d)(1)(A).

[191] *Id*. § 2064(d)(1)(B).

[192] *Id*. § 2064(d)(1)(C).

[193] When the Commission imposes a corrective action, it must also require relevant parties to devise a plan to implement the corrective action that is subject to the Commission's approval. *Id*. § 2064(d)(2).

[194] CONSUMER PROD. SAFETY COMM'N, RECALL HANDBOOK 17-25 (2012).

[195] 15 U.S.C. § 2061(a).

[196] *Id*.

[197] *Id*.

[198] *Id*.

[199] *Id*. § 2061(b).

[200] *Id*. § 2064(c)(1).

[201] *Id*. § 2064(c). The CPSA authorizes the Commission to order additional corrective actions under 15 U.S.C. § 2064(d), e.g., refunds, modifications, replacements, for Substantial Product Hazards. While the Commission is not expressly authorized to order corrective actions under 15 U.S.C. § 2064(d) to address Imminently Hazardous Consumer Products, the Commission can request that a court issue similar relief pursuant to 15 U.S.C. § 2061(a)-(b).

[202] *Id*. § 2064(c)(3).

It is unclear exactly how many times the Commission has attempted to exercise its Imminently Hazardous Consumer Product authority, but its use appears to be rare.[203] The exercise of this authority might be uncommon because it is more difficult to prove to a court that a product is an Imminently Hazardous Consumer Product than a Substantial Product Hazard. Furthermore, the Commission can obtain similar relief for Substantial Hazard Products as it can for Imminently Hazardous Consumer Products.[204]

Civil & Criminal Penalties

Section 2068 of the CPSA makes unlawful a series of activities,[205] violations of which can result in civil[206] and criminal penalties.[207] Among other activities, Section 2068 makes it unlawful to

> (1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product . . . that is not in conformity with an applicable consumer product safety rule under this chapter, or any similar rule, regulation, standard, or ban;[208]
>
> (2) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product . . . that is—
>
> > (B) subject to voluntary [i.e., negotiated] corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action;
> >
> > (C) subject to an order issued under section 2061 [Imminently Hazardous Consumer Product] or 2064 [Substantial Hazard Product] of this title;[209] . . .

[203] 2014 GAO EMERGING RISKS REPORT, *supra* note 3, at 10-11 ("CPSC officials said that the agency attempted to use its imminent hazard authority one time, in 1986, to address hazards related to lawn darts, but was unsuccessful."). The Commission has, on other occasions, initiated actions alleging that a product constitutes an Imminently Hazardous Consumer Product, but it does not appear that a court has ever declared a product to be an Imminently Hazardous Consumer Product. *See, e.g.*, Consumer Fed'n of Am. v. Consumer Prod. Safety Comm'n, 990 F.2d 1298, 1300 (D.C. Cir. 1993) ("After further study, the Commission decided on pursuit of a civil action under section 12 of the CPSA to gain a judicial declaration that ATVs are an 'imminently hazardous consumer product.' 15 U.S.C. § 2061(b)(1) . . . During preparation of the action, CPSC conducted negotiations with the ATV industry on measures to reduce ATV-related deaths and injuries. On December 30, 1987, the Department of Justice filed an 'imminent hazard' lawsuit against the major distributors of ATVs. That same day, the Commission and the defendant distributors entered into preliminary consent decrees.") (citations omitted); United States v. Advance Machine Co., 547 F. Supp. 1085, 1091 (D. Minn. 1982) (noting that "[t]he July 1977 action, filed in United States District Court for the District of Columbia, against this defendant and others sought to have the baseball pitching machines declared 'imminently hazardous consumer products' under 15 U.S.C. § 2061(a), and to compel defendants to cease manufacture, sale, and distribution of the pitching machines, and to engage in extensive advertising and mailings so as to notify the purchasers of the machines. This suit was resolved by entry of the consent decree on May 8, 1979."); Consumer Prod. Safety Comm'n v. Chance Mfg. Co., 441 F. Supp. 228, 234 (D. D.C. 1977) (holding that the amusement ride in question is a "consumer product" but not reaching the merits of the Imminent Hazard Consumer Product question) ("that the Zipper machine is subject to CPSC regulation does not, of course, suggest that there is necessarily any imminent hazard associated with the Zipper. That question remains to be decided.").

[204] *Compare* 15 U.S.C. §§ 2061(a)-(b), 2064(c), 2069, 2070 *with* 15 U.S.C. §§ 2064(c), (d), (f)(2), 2069, 2070.

[205] 15 U.S.C. § 2068.

[206] *Id*. §§ 2069, 2071.

[207] *Id*. § 2670.

[208] *Id*. § 2068(a)(1).

[209] *Id*. § 2068(a)(2).

> (13) misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 2061 or 2064 of this title, or to make a material misrepresentation to such an officer or employee in the course of an investigation under this chapter ;[210] [or] . . .
>
> (15) export from the United States for purpose of sale any consumer product[211] . . . that—
>
> (A) is subject to an order issued under section 2061 or 2064 of this title . . .; or
>
> (B) is subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public.[212]

The CPSC has authority to enter into settlement agreements with parties that include the payment of civil penalties,[213] or it can file an action with a federal district court to seek the assessment of civil penalties.[214] Each knowing[215] violation of Section 2068 is subject to as much as a $100,000 civil penalty, and individuals or organizations that engage in multiple, related knowing violations could be assessed as much as a $15,000,000 civil penalty.[216] When calculating the size of civil penalties, the CPSC and reviewing courts take into account various factors, including the size of the violator's business and the severity of the violation.[217]

Violators of Section 2068 also can be subject to criminal fines, calculated pursuant to guidelines established by Section 3571 of the federal Criminal Code.[218] The CPSC may solicit the Department of Justice if it determines that it is appropriate to seek criminal penalties for Section 2068 violations in accordance with CPSA Section 2070.[219] Individuals who knowingly and willfully violate Section 2068 can be sentenced to a maximum five-year prison term.[220] Officers, directors, and other corporate representatives can be subject to the same criminal penalties and prison sentence in their individual capacity for "knowingly and willfully authoriz[ing] [or] order[ing]" others to violate Section 2068.[221] The CPSA also authorizes "the forfeiture of assets associated with [a] violation" of the CPSA "for which the violator is sentenced to pay a fine, be imprisoned, or both."[222]

---

[210] *Id*. § 2068(a)(13).

[211] This prohibition does not apply to products approved for export by the U.S. Secretary of the Treasury pursuant to 15 U.S.C. § 2066(e).

[212] 15 U.S.C.§ 2068(a)(15).

[213] *Id*. § 2069(c) (stating, in part: "Any civil penalty under this section may be compromised by the Commission.").

[214] Athlone Indus., Inc. v. Consumer Prod. Safety Comm'n, 707 F.2d 1485, 1492 (D.C. Cir. 1983) ("After reviewing the dispositive substantive issue, we conclude, as did the Eighth Circuit, that the Commission lacks the authority to assess civil penalties in an administrative proceeding. The Commission is free to commence an action in federal district court to assess the penalties it seeks.") (*citing* Advance Machine Co. v. Consumer Prod. Safety Comm'n, 666 F.2d 1166, 1168 (8th Cir. 1981)).

[215] "[T]he term 'knowingly' means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations." 15 U.S.C. § 2069(d).

[216] *Id*. § 2069(a)(1). These penalty figures are adjusted for inflation. *Id*. § 2069(a)(3).

[217] *Id*. § 2069(c).

[218] *Id*. § 2070(a)(2).

[219] *Id*. § 2071. *See generally* CONSUMER PROD. SAFETY COMM'N, 2016 ANNUAL REPORT TO THE PRESIDENT AND CONGRESS 20 (2017).

[220] 15 U.S.C. § 2070(a)(1).

[221] *Id*. § 2070(b).

[222] *Id*. § 2071(c).

The CPSA authorizes individuals to sue persons who commit knowing and willful violations of CSPC-issued rules for damages and attorneys' fees for.[223] Under certain circumstances, individuals and state Attorneys General also may seek injunctive relief through federal district courts against a violator of consumer product safety rules and Substantial Product Hazard orders.[224]

Author Information

David H. Carpenter
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

[223] *Id*. § 2072.

[224] *Id*. § 2073.