

# Blowback on Lead Limits

■ Industries say that new rules to protect children's products go too far. Are babies really likely to eat bicycles?

By Neil Munro

A 2008 law designed to keep toxic levels of lead out of children's products has spurred a widespread push-back by manufacturers and retailers who say that the ban won't significantly increase safety but will force companies to close and will eliminate the market for used toys and clothing for kids.

The Consumer Product Safety Improvement Act was overwhelmingly passed by Congress last August after a barrage of publicity about lead-tainted toys made in China. It includes a provision that bans the sale to children younger than 13 of any item whose lead content exceeds 300 parts per million. The law requires the testing and labeling of every component that goes into making a toy, garment, book, or other product destined for kids.

The restrictions have generated a growing chorus of criticism in the commercial sector. Bicycle manufacturers and sellers say that the recycled steel used in most

bikes contains small amounts of lead that put them off limits for young children, even though the bicycle parts are highly unlikely to be eaten. The zippers sewn into children's garments may contain enough lead to violate the law, but the cost of testing each zipper will price the items out of the market, fashion designers contend.

The costs of testing and labeling each component as lead-free, plus the penalties for selling toys that contain unrecognized lead in paint or plastic, will put small makers of toys and local toy shops out of business, and leave the U.S. market dominated by foreign factories and domestic big-box stores, representatives for the toy industry say. To get around the law, parents may buy unsafe adult-sized products for their children, critics say.

"Like every member of Congress, I've heard from people in my district ... [who say] they will literally be put out of business because of something that China did," said Rep. Jason Altmire, D-Pa., chairman of the House Small Business Committee's Investi-

gations and Oversight panel. "We cast the net wider than we should have."

When the law was written, legislators decided to allow few exceptions and to limit the Consumer Product Safety Commission's ability to fine-tune the ban through regulations. The law's stringent requirements were drafted with the aid of lobbyists in the environmental and consumer sectors, and were championed by Rep. Henry Waxman, D-Calif., then a subcommittee chairman on the House Energy and Commerce Committee, and by House Speaker Nancy Pelosi, D-Calif. The environmental lobbyists feared that CPSC flexibility would allow the nation's chemical and manufacturing industries to push for legal loopholes.

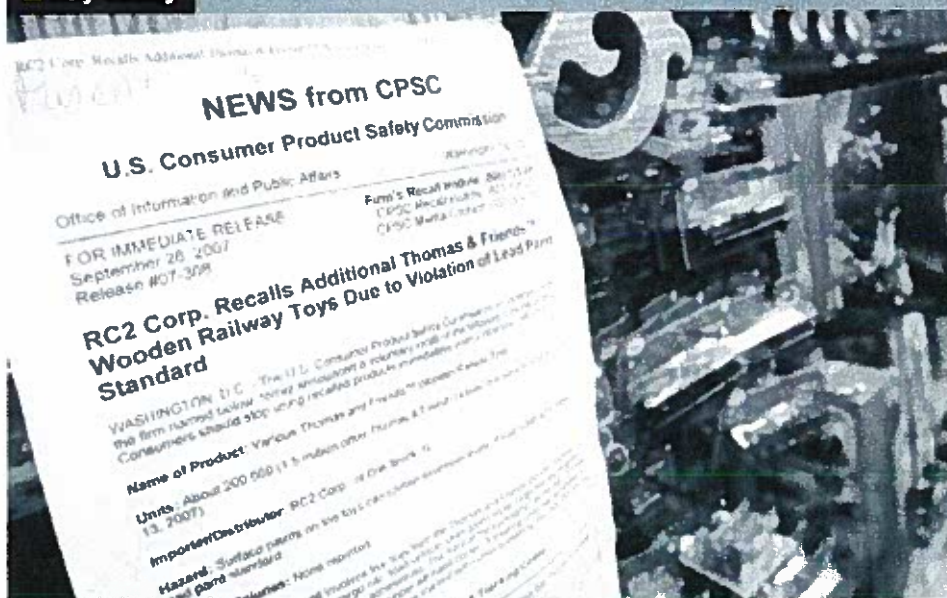
In 2008, "we tried to put some flexibility into the bill, but [Democrats] violently opposed it. Now it is biting them in the bottom, and they won't admit they were wrong," said Rep. Joe Barton, R-Texas, the ranking member on Energy and Commerce, which Waxman now chairs.

Most Democratic legislators, staff aides, and allied advocates have resisted calls for a change in the law. Supporters say that any problems have been caused by the CPSC's Republican-appointed acting chairwoman, Nancy Nord. Some of the opponents in business "are deliberately misreading the law to make it unworkable, and Commissioner Nord appears, in some cases, to be going along with this misreading so that those who were never happy with this law can try to reopen it and get a better deal," a Capitol Hill staff member said.

But with Altmire and some other Democrats feeling heat from voters, the situation has created a nascent political opportunity for Republicans and has undermined a long-running advocacy campaign to apply new environmental standards to the nation's vast chemical and food industries. Lobbyists on both sides of the issue depict last year's law as a test run for Waxman's Kid-Safe Chemicals Act, which would apply the environmentalists' "precautionary principle" by requiring extensive safety testing of chemicals found in plastics, food, textiles, and manufactured goods before they could be sold. (See "Target Practice," *NJ*, 11/15/08, p. 54.)

"Their larger agenda is derailed unless they get this issue out of the discussion,"

## ■ Toy Story



■ Concern over lead in children's products grew in 2007 with a spate of reports about lead paint used in imported toys. Now each component part must be tested and labeled.

AP/WIDEWORLD

said Edward Krenik, a lawyer at Bracewell & Giuliani who lobbies for the Coalition for Safe and Responsible ATV Use, which is financed by the all-terrain vehicle industry.

"This Kafkaesque bureaucratic nightmare contributes nothing to society, and it will ruin my business," said Rick Woldenberg, the owner of Learning Resources. His Vernon Hills, Ill., firm makes educational toys; it employs 150 people and generates \$25 million a year in revenue. Woldenberg is the leading business advocate challenging the law, and he helped to organize an April 1 protest on Capitol Hill.

The opposition includes professionals and designers who have long supported Democrats. Janet Littlecrow, an Oklahoma Indian and a lifelong Democrat who makes custom-designed tribal clothing, said that the law is so destructive she had

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—Nancy Nord, the Consumer Product Safety Commission's acting chairwoman

to ask Republicans for help. She and her handful of employees will lose their livelihood because they can't ask customers to pay \$1,699 in testing costs every time they order a \$130 dress, she said.

"A T-shirt never killed anyone," Ilse Metchek, president of the Los Angeles-based California Fashion Association, declared. The association's members have been hit hard because the children's clothes they produced for the 2009 season were made before the law was passed and can't be tested in time for sale, she said. "There is no point in talking [to Waxman]; his mind is made up," Metchek said angrily. "Don't confuse him with the facts."

These opponents are calling for a variety of changes, including provisions that would allow vendors to sell their current stock and permit component-testing by the original mass producers. They also want risk-analysis regulations that would enable companies to sell products containing trace amounts of lead if there is a low risk that the element would be absorbed by children. Firms should be allowed to sell bicycles, for example, that have minute amounts of

lead in components that are unlikely to be chewed by young users, Woldenberg said.

Under the law, each class of products can be exempted only if it cannot contribute to the absorption of "any lead in the human body."

"Lead has no place in our children's lives," said Elizabeth Hitchcock, the public health advocate for the federation of state Public Interest Research Groups. "Congress did a great thing last year," she said, adding, "I wore out a couple pairs of shoes [lobbying] on this bill." Complaints about job losses in the small-business sector are usually a mask for the interests of large firms, Hitchcock said, although she acknowledged, "Nobody has audited the price tag for what it will cost to do this testing."

Hitchcock blames Nord and the CPSC for not using regulatory flexibility to solve any problems. "I've consistently said, and so have many of our champions on the Hill, that the solutions are not legislative, they're administrative," she said.

"I'm not so all-powerful that I can single-handedly cause the problems that we have seen," Nord told *National Journal*. "The problem is the law." Although children must be protected from lead, "I would hope the Congress

would give us more flexibility," she said.

Over the past few months, Nord's commission has declared that untreated cloth is exempt from the law, and that it has no plans to force some industries, such as producers of all-terrain vehicles, to comply. But these decisions are either trivial or leave business owners personally exposed to future prosecutions by the federal government or the 50 states' attorneys general, Woldenberg said.

"There is room for flexibility, and you don't have to throw the baby out with the water" by rewriting the law to include risk-analysis regulations that would allow industry lobbyists to open up loopholes, Hitchcock responded. The protests are intended to get a risk-analysis loophole into the law, said the Hill aide who supports the statute. "That was an approach that was totally rejected by Congress.... [and it] would mean a fundamental

change to how the law was written," the staffer said.

Early this month, President Obama named South Carolina Democrat Inez Moore Tenenbaum to head the CPSC. This "changes the situation significantly. We will have a chairman interested in seeing this law work, instead of a chairman interested in seeing this law rewritten," the Hill aide said.

The focus on Nord's role is misplaced, Woldenberg and other critics of the law said. Her decisions have been backed by the only Democrat on the CPSC, and by the commission's lawyers, he said.

Altmire's position reflects tensions in the Democratic Caucus. He told *NJ* that his focus will be on the economic impact of the law because constituents say that it was drafted without taking costs into account. "That is not my view," he said, but "we want to clarify and fix the issue [of the CPSC's regulatory options].... That is the one of the sticking points." Asked about the larger goal of the Kid-Safe Chemicals Act, Altmire said, "It is beyond the scope of what I intend to look at."

Most business executives, and especially their trade associations, don't want to engage in an ideological fight with the Democratic-dominated Congress, Woldenberg said. "They're all into appeasement," he said. Moreover, most executives ignore the law's impact until "the invoice crosses their desk," he said, after which they protest.

Democratic staffers are dangling the prospect of regulatory exemptions, or narrow legislative exemptions, for industries that don't call for a rewrite that includes risk analysis, business lobbyists say. Most opponents in the business sectors "will lose interest [in a rewrite] once they get their exemption," or once they begin to line up at the CPSC for a "sequential begging process," said Walter Oisen, a senior fellow at the free-market Manhattan Institute in New York City, whose blog, *Overlawyered.com*, has rallied opponents of the law.

"We ought to have a bipartisan fix," said Barton, who has drafted a bill that would allow the CPSC to exempt classes of products after risk-analysis studies. He can't change the law without Democratic cooperation, he said. "Mr. Waxman has 36 votes; I've got 23." And if legislators don't fix it, Barton said, the voters will have their say. ■

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[nmunro@nationaljournal.com](mailto:nmunro@nationaljournal.com)