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Investigator’s Desk Aid to the Consumer Product Safety Improvement Act (CPSIA) Whistleblower Protection Provision

15 U.S.C. § 2087

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This Desk Aid represents the Occupational Safety and Health Administration’s (OSHA’s) summary of the scope of coverage and protected activity and the procedures for investigating and adjudicating retaliation complaints under CPSIA as of the “last revised” date listed below. This Desk Aid is internal guidance directed to OSHA personnel and is subject to change at any time. This Desk Aid is not intended to reflect the views of other governmental agencies. This Desk Aid is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations. This document is intended only to provide clarity for OSHA personnel regarding existing requirements under the law or agency policies. There may be a delay between the publication of significant decisions or other authority under this whistleblower protection provision and modification of the Desk Aid. The Code of Federal Regulations; documents issued in compliance with Executive Orders 13891 and 13892 and the Administrative Procedure Act, as applicable; and decisions of the Department of Labor’s Administrative Review Board remain the official sources for the views of the Secretary of Labor on the interpretation of this whistleblower protection provision.

Abbreviations Used in this Desk Aid:

CPSA	Consumer Product Safety Act, 15 U.S.C. §2051 <i>et seq</i> (a statute enforced by the CPSC; CPSIA Public Laws 110-314 and 112-28 amended the CPSA)
CPSC	Consumer Product Safety Commission or “the Commission”

CPSIA	Consumer Product Safety Improvement Act of 2008 (used in this Desk Aid to refer just to the Act’s whistleblower protection provision, 15 U.S.C. § 2087)
OSHA	Occupational Safety and Health Administration

I. CPSIA in a Nutshell

CPSIA’s whistleblower protection provision prohibits manufacturers (including importers), private labelers, distributors, and retailers of consumer products from discharging or otherwise retaliating against an employee for reporting potential violations of federal consumer product safety law or engaging in other protected activities.

CPSIA’s whistleblower protection provision can be found at 15 U.S.C. § 2087. The procedures for OSHA’s investigation and resolution of CPSIA whistleblower complaints can be found at 29 CFR Part 1983. Most of the definitions relevant to CPSIA whistleblower complaints can be found at 15 U.S.C. § 2052 and 29 CFR § 1983.101.

A. Covered Entity

CPSIA prohibits consumer product manufacturers (including importers), private labelers, distributors, and retailers from discharging or otherwise retaliating against an employee for engaging in protected activity.

Employees are defined in OSHA’s CPSIA regulations to include individuals presently or formerly working for, or an individual who is applying to work for, or an individual whose employment could be affected by a consumer product manufacturer (including importers), private labeler, distributor, or retailer.

What is a manufacturer/importer?

A manufacturer is any person who manufactures or imports a consumer product. A product is manufactured if it is manufactured, produced, or assembled.

Notably, the definition of manufacturer indicates that the term includes *importers* of consumer products. The statute defines importing a consumer product to include reimporting a consumer product manufactured or processed, in whole or in part, in the United States but does not further define the term.

What is a private labeler?

A private labeler is an owner of a brand or trademark on the label of a consumer product which bears a private label. A consumer product bears a private label if: (i) the product (or its container) is labeled with the brand or trademark of a person *other than* a manufacturer of the product; (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled; and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

What is a distributor?

A distributor is a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, and does not include a manufacturer or retailer of such product.

What is a retailer?

A retailer is a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

What is a consumer product?

The definitions of manufacturer, private labeler, distributor, and retailer applicable to CPSIA whistleblower complaints all indicate that the employer must be involved in certain activities relating to a consumer product. Therefore, to determine CPSIA coverage, it is important to understand the definition of a consumer product. The applicable definition of *consumer product* is found at 15 U.S.C. § 2052(5).

In general, a consumer product is any article, or component part thereof, produced or distributed:

- (i) For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or
- (ii) For the personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.

Consumer products include a wide variety of items ranging from coffee makers to toys to lawnmowers. Some types of products, however, are regulated by other federal agencies and are excluded from the applicable definition of consumer product.

For example, manufacturers, part suppliers, and dealers of cars, trucks, and motorcycles are generally regulated by the Department of Transportation; food, drugs, and cosmetics are generally regulated by the Food and Drug Administration; and alcohol, tobacco, and firearms are within the jurisdiction of the Department of the Treasury. Those products and others specifically listed in the statute are not consumer products.

See *Attachment 2* for a list of common consumer products regulated by the CPSC, as well as common products excluded from the definition of consumer product.

Examples of CPSIA Whistleblower Coverage:¹

A company that:

- Produces kitchen and household appliances that are sold for consumer use is a manufacturer of consumer products.
- Imports small magnets and then distributes them to stores for sale to consumers is a distributor of consumer products as well as a manufacturer of consumer products.
- Reimports children's toys, that were previously manufactured in and exported from the United States, is a manufacturer of consumer products.
- Sells boxed mattresses with its brand name, which are manufactured by a third party, is a retailer of consumer products and a private labeler.
- Purchases bicycles and electric scooters from the manufacturer and sells them to wholesalers or retailers for later sale to consumers is a distributor of consumer products.
- Sells home furniture to consumers is a retailer of consumer products.
- Manufactures light fixtures specifically for an industrial setting, not available for sale to (or for use or enjoyment by) consumers, is not a covered employer because the light fixtures do not fit within the definition of a consumer product.
- Manufactures cars, trucks, or motorcycles for sale to consumers, either directly or via dealerships, is not a covered employer because motor vehicles are excluded from CPSA's definition of a consumer product. An employee of this company could be covered under the employee protection provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21).

¹ The examples are provided for illustrative purposes only. CPSC's website contains a list of recalled products that may assist OSHA whistleblower investigators in analyzing whether a manufacturer, importer, private labeler, distributor, or retailer is a covered entity under the CPSIA whistleblower provision.

See <https://www.cpsc.gov/Recalls>

B. Protected Activity

Under CPSIA, an employee is protected from retaliation for having:

1. Provided, caused to be provided (or being about to provide or cause to be provided) to the employer, the federal government, or the attorney general of a State, information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of CPSA, as amended by CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts;

OR

2. Testified (or being about to testify) in a proceeding concerning such violation;

OR

3. Assisted or participated (or being about to assist or participate) in such a proceeding;

OR

4. Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believed to be in violation of any provision of CPSA, as amended by CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts.

What is the CPSC?

The Consumer Product Safety Commission (CPSC or Commission) is a federal agency charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency's jurisdiction. More information about the CPSC can be found at www.cpsc.gov.

Complaints to whom?

Complaints to an employer, the federal government (including the CPSC and other agencies), or the attorney general of a State are protected. Other forms of objection and refusals to violate any laws enforced by the CPSC or any order, rule, regulation, standard, or ban under those laws are also protected. CPSIA-protected activity also includes testimony, assistance, and participation in proceedings related to the laws enforced by the CPSC.

Complaints about what?

An employee is protected from retaliation for providing information about, objecting to, or refusing to participate in any activity that is, or that he or she reasonably believes to be, related to a violation of a consumer product safety law enforced by the CPSC, or any order, rule, regulation, standard, or ban under a consumer product safety law enforced by the CPSC.

Must the employee report an actual violation of consumer product safety law?

CPSIA requires that a report or refusal to work relate to activity that the employee reasonably believes is a violation of the CPSA, as amended by the CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts. The employee need not provide information regarding conduct that actually violates consumer product safety laws, rules, regulations, standards, orders, or bans. If the employee reasonably believes that the reported conduct is a violation, then the employee is protected. A report based on a reasonable but mistaken belief that conduct violates consumer product safety law is protected.

To have a reasonable belief, an employee must have a subjective belief (i.e., actually believe that a violation has occurred, is occurring, or is likely to occur), *and* the belief must be objectively reasonable (i.e., it must be possible that a reasonable person in the employee's position would share this belief). In determining whether the employee had an objectively reasonable belief, the employee's training, experience, and educational background are relevant. The report will be protected so long as a reasonable person with the same training and experience would also believe that the relevant activity constitutes a violation.

Does the employee need to mention any federal consumer product safety law, rule, regulation, standard, order, or ban when engaging in protected activity?

The information that the employee provides to the employer, federal government, or the attorney general of a State must be specific enough in relation to a given practice, condition, directive, or event that affects consumer product safety for an investigation to be conducted. However, the employee does not have to specifically identify any provision of federal consumer product safety law or any rule, regulation, standard, order, or ban that he or she believes is being violated.

Does CPSIA protect work refusals?

Yes. CPSIA explicitly protects employees from retaliation for objecting to, or refusing to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of CPSA, as amended by CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts.

Does the CPSIA whistleblower provision contain any explicit exceptions to protection?

The CPSIA whistleblower provision does not protect employees who, acting without express or implied direction from the employer (or the employer's agent), deliberately cause a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under CPSA, as amended by CPSIA, or any other law enforced by the CPSC. This exception to protection is an affirmative defense that the employer must raise and requires an element of willfulness. In other words, for the exception to apply, the evidence must show that the employee knew or acted with reckless disregard for whether his or her conduct violated the law.

Examples of CPSIA Whistleblower Protected Activity:

- i. An associate of a large membership club tells his supervisor that customers are complaining that the trash cans it sells under its name as a private labeler, but made by another manufacturer, pose a safety hazard to the public. The trash can's lining has sharp edges which has resulted in lacerations being sustained by many customers of this retailer. The associate's report to his supervisor is CPSIA-protected activity.
- ii. An employee of an appliance manufacturer complains to a state attorney general that its gas ranges could spontaneously turn on, creating an unreasonable risk of injury. As long as the employee had a reasonable belief that the gas ranges could spontaneously turn on, the report to the state attorney general is CPSIA-protected activity.
- iii. An employee of an importer of children's clothing and toys testifies in an administrative hearing that its fire engine, toy tea set, and toy boxing gloves present lead and choking hazards in violation of CPSA and the Federal Hazardous Substance Act (FHSA). The testimony is CPSIA-protected activity.
- iv. A salesperson of a distributor of all-terrain vehicles (ATVs) calls the CPSC and states that, despite the company's consent agreement with the CPSC, senior management ordered her to sell ATVs to children under 16 years of age. The report to the CPSC is CPSIA-protected activity.
- v. An employee of a fashion house is designing wind resistant running gloves. He finds great material at a discounted price but later learns that it does not meet the Flammable Fabrics Act (FFA) flammability standards. Immediately, he selects a different, more expensive fabric that does meet the FFA flammability standards. His supervisor informs him that the new fabric is too expensive and the fashion house will manufacture the gloves with the fabric originally selected. The employee contacts the CPSC and is fired the following day.

The CPSC investigates and determines that gloves do not need to meet the standards under the FFA. However, the employee's call to the CPSC is protected activity under CPSIA as long as he had a reasonable (even if mistaken) belief that the fabric used for the gloves had to meet FFA standards.

- vi. A pharmacist at a grocery store notices that the *new packaging* for an over-the counter pain killer comes with a flip top lid in two economical sizes, but contains no warning that it should be kept away from children. She raises the issue with her supervisor who tells her not to worry about it. The pharmacist then removes the pain killer in the new packaging from store shelves and is fired for refusing to sell it.

The packaging is a consumer product within the meaning of CPSIA, although the drug contained in the packaging is not a consumer product. The grocery store is a retailer because it is selling or distributing the pain killer, including the packaging, to consumers. If the employee had a reasonable belief that the packaging would not meet the child safety requirements of the Poison Prevention Packaging Act (PPPA) (an Act enforced by the CPSC) because it did not contain a warning that it was not suitable for children, her refusal to shelve the product for sale to consumers would be CPSIA-protected activity.

II. Procedures for Handling CPSIA Complaints

Procedures for handling complaints under CPSIA’s whistleblower protection provision are contained in [29 CFR Part 1983](#). Below is a summary of the procedural provisions most relevant to the OSHA investigation. More information is also available in the “[What to expect during an OSHA Whistleblower Investigation](#)” section of OSHA’s website, in the “[Whistleblower Protection for Consumer Product Industry Workers](#)” fact sheet, and in the [OSHA Whistleblower Investigations Manual](#).

A. Complaint

Who may file: An employee who believes that he or she has been retaliated against in violation of CPSIA may file a complaint with OSHA. The employee may also have a representative file on the employee’s behalf.

Form: The complaint need not be in any particular form. Oral or written complaints are acceptable, including OSHA’s [Online Complaint form](#). If the complainant cannot make a complaint in English, OSHA will accept a complaint in any language.

Timing: The complaint must be filed within 180 days of when the alleged adverse action took place. Equitable tolling principles may extend the time for filing in limited circumstances, consistent with the guidance in OSHA’s Whistleblower Investigations Manual.

Distribution of complaints and findings to partner agencies: Complaints and findings in CPSIA cases must be electronically sent to the CPSC.

B. Investigation

Upon receiving a complaint, OSHA will evaluate the complaint to determine whether it contains a *prima facie* allegation of retaliation. In other words, the complaint, supplemented as appropriate with interviews of the complainant, should allege that:

1. The employee engaged in CPSIA-protected activity;
2. The respondent knew or suspected that the employee engaged in CPSIA-protected activity;
3. The employee suffered an adverse action;² and
4. The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

If the complaint meets these requirements, OSHA will ask for a position statement from the respondent and proceed with the investigation. If it does not meet these requirements, and the complainant does not agree to administrative closure of the case, OSHA will dismiss the

² An adverse action is an action that might dissuade a reasonable employee from engaging in CPSIA-protected activity. Examples of adverse actions include (but are not limited to) firing, demoting, denying overtime or a promotion, or disciplining the employee.

complaint with notice to the complainant and the respondent of the right to request a hearing before a Department of Labor administrative law judge (ALJ).

CPSIA uses a “contributing factor” standard of causation. Thus, following the investigation, OSHA will find that retaliation occurred if it determines that there is reasonable cause to believe that CPSIA-protected activity was a contributing factor in the decision to take adverse action against the complainant and the respondent has not shown by clear and convincing evidence that it would have taken the same action in the absence of the protected activity. A contributing factor is a factor which, alone or with other factors, in any way affects the outcome of a decision.

If OSHA finds reasonable cause to believe that retaliation occurred, it will issue findings and a preliminary order stating the relief to be provided. The relief may include reinstatement, back pay, compensatory damages, other remedies for the retaliation (such as a neutral reference), and reasonable attorney’s fees and costs.

If OSHA does not find reasonable cause to believe that retaliation occurred, it will issue findings dismissing the complaint.

If the complainant and respondent agree to settle the case during the investigation, they must submit the settlement agreement for OSHA’s review and approval.

C. Administrative and Judicial Review

Either the complainant or the respondent may object to OSHA’s findings within 30 days and request a hearing before an ALJ. Filing objections will stay OSHA’s order for all relief except reinstatement, which is *not* automatically stayed. If no objections are filed, OSHA’s findings become the final order of the Secretary of Labor, and are not subject to review.

The ALJ proceeding is a *de novo* adversarial proceeding in which both the complainant and the respondent have the opportunity to seek documents and information from each other in discovery and to introduce evidence and testimony into the hearing record. OSHA does not typically participate in the ALJ proceeding. Documents and other information submitted to OSHA during the investigation do not automatically become part of the record in the ALJ proceeding. However, both the complainant and the respondent may introduce evidence that they obtained or used during OSHA’s investigation in the ALJ proceeding. The ALJ may hold a hearing or dismiss the case without a hearing if appropriate. Either the complainant or the respondent may appeal the ALJ’s decision in the case to the Department of Labor’s Administrative Review Board (ARB), which may either accept or reject the case for review. The ARB’s decision is subject to discretionary review by the Secretary of Labor. A complainant or respondent may obtain review of a final, reviewable decision by the Department of Labor by appealing to the appropriate U.S. Court of Appeals.

D. Kick-Out Provision

CPSIA permits a complainant to bring a *de novo* action in federal district court if 210 days have passed since the filing of the complaint with OSHA, the Department of Labor has not reached a final decision on the complaint, and the delay is not due to the bad faith of the complainant. CPSIA also permits a complainant to bring a *de novo* action in federal district court within 90 days after receiving OSHA's findings.

Attachment 1: Laws Enforced by the CPSC

The table below provides a simplified summary of laws administered by CPSC. OSHA investigators should not rely on the table below as a substitute for a full analysis of CPSIA’s whistleblower coverage in each case using the standards described above (see pp. 2-4).

For a current list of CPSC’s regulations, laws and standards, visit www.cpsc.gov/Regulations-Laws--Standards/Statutes.

Statute	Description ³
Consumer Product Safety Act (CPSA) https://www.cpsc.gov/s3fs-public/pdfs/blk_media_cpsa.pdf?epslanguage=en	Enacted in 1972, this law established the CPSC, defines the CPSC’s basic authority, and authorizes the CPSC to develop standards and bans. It also gives the CPSC the authority to pursue recalls and to ban products under certain circumstances.
Consumer Product Safety Improvement Act of 2008 (CPSIA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_cpsia.pdf	This law amended CPSA in 2008 to provide the CPSC with significant new regulatory and enforcement tools. CPSIA addresses, among other things, lead, phthalates, toy safety, third-party testing and certification, imports, ATVs, civil and criminal penalties, and SaferProducts.gov. It repeals a funding limitation on the number of CPSC commissioners.
Updates to CPSIA (Public Law 112-28) https://www.govinfo.gov/content/pkg/BILLS-112hr2715enr/pdf/BILLS-112hr2715enr.pdf	Public Law 112-28 amended CPSIA in 2011 to provide the CPSC with greater authority and discretion in enforcing current consumer product safety laws. Public Law 112-28 addresses lead content limits and exceptions from these limits, third-party testing and certification and issues related to small batch manufacturers.

³ Descriptions of the statutes enforced by the CPSC are based on the summaries available at <https://www.cpsc.gov/Regulations-Laws--Standards/Statutes>.

<p>Federal Hazardous Substances Act (FHSA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_fhsa.pdf</p>	<p>The FHSA requires certain hazardous household products to have warning labels. It also gives the CPSC the authority to regulate or ban a hazardous substance, and toys or other articles intended for use by children, under certain circumstances to protect the public. Examples of products regulated under this law include electrically operated toys, cribs, rattles, pacifiers, bicycles, and children’s bunk beds.</p>
<p>Child Safety Protection Act (CSPA) https://www.cpsc.gov/PageFiles/113862/cspa.pdf</p>	<p>The CSPA amends certain provisions of the Federal Hazardous Substances Act to better protect small children from choking hazards. The CSPA requires warning labels on specific products and mandates that manufacturers, importers, distributors, and retailers report certain choking incidents.</p>
<p>Children’s Gasoline Burn Prevention Act (CGBPA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_gascan.pdf</p>	<p>The Children’s Gasoline Burn Prevention Act requires portable gasoline containers manufactured for sale in the United States on or after January 17, 2009, to conform to safety requirements for child-resistant packaging.</p>
<p>Child Nicotine Poisoning Prevention Act of 2015 (CNPPA) https://www.cpsc.gov/s3fs-public/Child-Nicotine-Poisoning-Prevention-Act-of-2015.pdf?dP0dJfd7W9yxKnITmmmObcVRQCo9fA0G</p>	<p>The CNPPA requires any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States to be in “special packaging” as defined by the PPPA and in accordance with the Commission’s regulations at 16 CFR §§ 1700.15 and 1700.20.</p>

<p>Drywall Safety Act of 2012 (DSA) https://www.cpsc.gov/s3fs-public/Drywall-Safety-Act-of-2012.pdf?j817wTrwm5VjIy8LPe9JCbXJXA9LaFs3</p>	<p>The DSA requires that drywall manufactured or imported for use in the United States meet the labeling provisions in ASTM C1264-11, “Standard Specification for Sampling, Inspection, Rejection, Certification, Packaging, Marking, Shipping, Handling, and Storage of Gypsum Panel Products.” In addition, as directed by the DSA, the Commission made certain determinations regarding ASTM C1396-14a, “Standard Specification for Gypsum Board.” Based on those determinations, drywall manufactured or imported for use in the United States on or after July 22, 2015 must comply with the limitations on sulfur content in ASTM C1396-14a, “Standard Specification for Gypsum Board.”</p>
<p>Flammable Fabrics Act (FFA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_ffa.pdf</p>	<p>The FFA regulates the manufacture of highly flammable clothing and interior furnishings. Under FFA, the CPSC can and has issued standards. Some examples of standards that have been established are for clothing textiles, vinyl plastic film used in clothes, carpets and rugs, children’s sleepwear, mattresses, and mattress pads.</p>
<p>Labeling of Hazardous Art Materials Act (LHAMA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_fhsa.pdf</p>	<p>LHAMA amends the Federal Hazardous Substances Act, designating the ASTM Standard Practice for Labeling Art Materials for Chronic Health Hazards as a regulation under the Act. It requires a review of all art materials to determine the potential for causing a chronic hazard. Art materials that are found to pose a chronic hazard must bear a warning label.</p>
<p>Poison Prevention Packaging Act (PPPA) https://www.cpsc.gov/s3fs-public/pppa.pdf</p>	<p>The PPPA requires a number of household substances to be packaged in child-resistant packaging.</p>
<p>Refrigerator Safety Act (RSA) https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_rsa.pdf</p>	<p>The Refrigerator Safety Act requires refrigerators to have a mechanism (usually a magnetic latch) that enables the refrigerator door to be opened from the inside in the event of accidental entrapment.</p>

<p>Virginia Graeme Baker Pool and Spa Safety Act (VGB Act)</p> <p>https://www.poolsafely.gov/wp-content/uploads/2016/04/pssa.pdf</p>	<p>This act establishes a federal swimming pool and spa drain cover standard that requires public pools to be equipped with compliant anti-entrapment drain covers and, in certain instances, with additional devices or suction entrapment prevention systems.</p>
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Attachment 2: Consumer Products Regulated/Not Regulated by the CPSC

Check the CPSC website for complete and updated information regarding regulated products at www.cpsc.gov/Business--Manufacturing/Business-Education as well as products outside of the CPSC's jurisdiction at www.cpsc.gov/Regulations-Laws--Standards/Products-Outside-CPSCs-Jurisdiction.

Products not regulated by the CPSC contain the name of the regulatory agency in parenthesis.

A	<p>Amusement park rides, <i>not</i> fixed</p> <p>Amusement park rides, fixed (<i>regulated by state and local authorities</i>)</p> <p>Art materials</p> <p>All-Terrain Vehicles or ATVs</p> <p>Aircraft, propellers, etc. (<i>Federal Aviation Administration (FAA)</i>) (<i>See OSHA's AIR21 Desk Aid</i>)</p>
B	<p>Bath seats</p> <p>Batteries/cell phone batteries/battery packs/chargers</p> <p>Bassinets and cradles</p> <p>Bedside sleepers, i.e., a rigid assembly designed to keep a child from falling out of bed</p> <p>Bicycles and bicycle helmets</p> <p>Boats (<i>United States Coast Guard (USCG)</i>)</p> <p>Booster seats (not for use in a motor vehicle)</p> <p>Bounce houses</p> <p>Bunk beds</p>
C	<p>Car seats for infants and children (<i>National Highway Traffic Safety Administration (NHTSA)</i>) (<i>See OSHA's MAP-21 Desk Aid</i>)</p> <p>Carpets and rugs</p> <p>Carriages/strollers/jogging strollers</p> <p>Clothing</p> <p>Certain chemicals and chemical products</p> <p>https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/FHSA-Requirements</p> <p>Children's folding chairs and stools</p> <p>Children's sleepwear/pajamas</p> <p>Contact adhesives, liquid or semi-liquid</p> <p>Cosmetics and personal care products, including lipstick and baby powder (<i>Food and Drug Administration (FDA)</i>)</p> <p>Cribs and playpens</p>
D	<p>Dietary supplements (<i>FDA</i>)</p> <p>Drawstrings</p> <p>Drugs (human and animal) (<i>FDA</i>)</p>

E	<p>E-cigarettes (CPSC regulates liquid nicotine containers under the CNPPA, and has enforcement over issues such as battery safety; FDA also regulates e-cigarettes)</p> <p>Electrical products (household) such as hand-held hair dryers, small and large home kitchen appliances, extension cords, seasonal lights, and television sets</p> <p>https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Household-Electrical-Products</p>
F	<p>Fidget spinners</p> <p>Fireworks, consumer</p> <p>Fireworks, commercial (Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF))</p> <p>Flame retardants</p> <p>Food (human and animal) (FDA) (<i>See OSHA's FSMA Desk Aid</i>)</p>
G	<p>Guns, ammunition, pistols, revolvers, shells, and cartridges (ATF)</p>
H	<p>High chairs</p> <p>Hover boards</p>
I	<p>Infant products including high chairs, expansion gates, infant tubs, strollers, soft carriers, stationary activity center, and swings</p> <p>Inflatable amusement rides, e.g., bounce houses</p>
L	<p>Lawnmowers</p> <p>Lighters</p> <p>A lighter is a flame-producing product that consumers commonly use to light cigarettes, cigars, and pipes, although it may be used to light other materials. The term "lighter" does not include matches or any other lighting device intended primarily to light materials other than smoking materials. When used in this summary, the term "lighter" includes only the disposable and novelty lighters defined below.</p> <p>https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Lighters</p>
M	<p>Magnet sets</p> <p>Mattresses</p> <p>Medical devices (FDA)</p> <p>Motor vehicles and motor vehicle equipment (as defined in 49 U.S.C. § 30102(a) (6) & (7)) (NHTSA) (<i>See OSHA's MAP-21 Desk Aid</i>)</p>
P	<p>Patching compounds & emberizing materials containing asbestos</p> <p>Pesticides (Environmental Protection Agency (EPA))</p> <p>Products containing butyl nitrate & volatile alkyl nitrites</p> <p>Product packaging, e.g., blister pack packaging for pills</p>
T	<p>Tobacco (cigarettes, cigars, e-cigarettes etc.) and tobacco products (FDA). Note: The CPSC has some regulatory authority over the liquid canisters, batteries, and other components of e-cigarettes.</p> <p>Toys</p>

Attachment 3: CPSIA Resources and Links

CPSA Regulations:

<https://www.law.cornell.edu/cfr/text/16/chapter-II/subchapter-B>

CPSC's Website:

<https://www.cpsc.gov/>

CPSC's Recall Handbook – detailing reporting requirements for manufacturers, importers, distributors, and retailers under the Act:

https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_8002.pdf

The Regulated Product Handbook

<https://www.cpsc.gov/s3fs-public/RegulatedProductsHandbook.pdf>

CPSIA Fact Sheet:

<https://www.osha.gov/Publications/OSHA-factsheet-whistleblower-conprod-indtry-wrkr.pdf>

CPSIA Regulations:

<https://www.osha.gov/laws-regs/regulations/standardnumber/1983>

CPSIA Whistleblower Statute:

<https://www.whistleblowers.gov/statutes/cpsia>

Federal Hazardous Substances Act Requirements:

<https://www.cpsc.gov/business--manufacturing/business-education/business-guidance/fhsa-requirements>

Laws Enforced by the Commission:

<https://www.cpsc.gov/Regulations-Laws--Standards/Statutes>

Attachment 4: Optional Worksheet: Analyzing CPSIA Whistleblower Complaints

In order to issue merit findings, answer 1 to 9 must be “yes” & answer 10 must be “no.”

	Yes	No
Timeliness (See Desk Aid p. 8)		
1. Was the complaint filed within 180 days of the alleged adverse action (or tolling applies)?	<input type="checkbox"/>	<input type="checkbox"/>
Coverage (See Desk Aid pp. 2-4)		
2. Is the respondent a manufacturer (or importer), private labeler, distributor, or retailer of a consumer product?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the complainant an employee within the meaning of CPSIA?	<input type="checkbox"/>	<input type="checkbox"/>
Protected Activity (See Desk Aid pp. 5-7)		
4. Has the complainant (or is the complainant about to):		
a. Provided or caused to be provided to the employer, the federal government, or the attorney general of a State, information regarding conduct that the employee reasonably believes violates any provision of the CPSA, as amended by CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts?		
b. Testified in a proceeding concerning such a violation?	<input type="checkbox"/>	<input type="checkbox"/>
c. Assisted or participated in such a proceeding?		
d. Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believed violates the CPSA, as amended by the CPSIA, or any other Act enforced by the CPSC, or any order, rule, regulation, standard, or ban under any such Acts?		
5. For items 4a. or 4d., did the complainant have a <i>subjective</i> , good faith belief that the conduct complained of violated the law?	<input type="checkbox"/>	<input type="checkbox"/>
6. For items 4a. or 4d., would a reasonable person with similar training, knowledge, and experience believe that a violation occurred, is occurring, or is likely to occur?	<input type="checkbox"/>	<input type="checkbox"/>
Employer Knowledge		
7. Did respondent know or suspect that complainant engaged in protected activity? (Remember that knowledge may be imputed to respondent using a cat’s paw theory or small plant doctrine if warranted by the evidence.)	<input type="checkbox"/>	<input type="checkbox"/>
Adverse Action		
8. Did respondent discharge or take other adverse action against the employee? (Adverse action is any action that could dissuade a reasonable employee from engaging in CPSIA-protected activity. Common examples include firing, demoting, or disciplining the employee.)	<input type="checkbox"/>	<input type="checkbox"/>
Nexus (Contributing Factor)		
9. Was complainant’s CPSIA-protected activity a <i>contributing factor</i> in respondent’s decision to take adverse action against the complainant? Evidence that protected activity contributed to an adverse action includes, but is not limited to:		
<ul style="list-style-type: none"> • Close timing (temporal proximity) between the protected activity and the adverse action. • Evidence of hostility towards the protected activity. • Disparate treatment of complainant as compared to other employees following the protected activity. • Changes in respondent’s treatment of complainant after the protected activity. • Indicators that respondent’s stated reasons for the adverse action are pretext. 	<input type="checkbox"/>	<input type="checkbox"/>
Affirmative Defense	No	Yes
10. Is there clear and convincing evidence that respondent would have taken the same action against complainant absent the protected activity?	<input type="checkbox"/>	<input type="checkbox"/>