

The Consumer Product Safety Improvement Act

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Overview of the CPSIA

- Lead content limit & more stringent lead paint limit
- Phthalates ban
- Mandatory toy safety standard (ASTM F963-07)
- New warning label and tracking label requirements
- New “super standards” for durable children’s products
- More prohibited acts (selling recalled product; unauthorized use of safety mark; export of recalled / violative products...)

Overview of the CPSIA *cont'd.*

- Whistle blower protection & increased penalties
- Public database of all product-related injury reports
- Increased requirements to report substantial product hazards
- Presumption of destruction for seized imports
- Certification requirements (stayed until 2010)
- State AG and CBP enforcement

Lead Limits (Section 101)

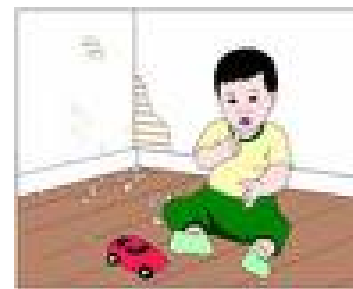
- **Lead Content Limits**

- Applies to: “children’s products”
- 600 ppm (Feb. 10, 2009)
- 300 ppm (Aug. 14 2009)
- 100 ppm, if feasible (Aug. 14, 2011)
- Applies to “any part” of the product
- Applies retroactively to existing inventory



Lead Limits (Section 101) *cont'd*

- **Lead Paint (and other surface coatings) Limits**
 - Applies to: “toys and other articles intended for use by children” and “furniture articles for consumer use”
 - 600 ppm (Dec. 21, 2008)
 - 90 ppm (Aug. 14, 2009)



Commission Guidance on Lead

- **Statement of Enforcement Policy on Lead Limits**

- **Accessibility:** Until inaccessibility rule is finalized, Commission will accept manufacturer's determination of accessibility ("Accessibility Probe" and "Use and Abuse Guidelines").
- **Electronic Devices:** Interim rule exempts inaccessible component parts; removable or replaceable component parts; and accessible component parts of specified list of products if (i) use of lead is necessary, and (ii) it is not technologically feasible to meet lead limit.

Commission Guidance on Lead *cont'd*

- **Exclusions:** Interim rule exempts specified materials and product classes, but exemption does not apply if person has actual knowledge that lead limit is exceeded.
- **Reporting Requirement:** If person has actual knowledge that a product exceeds the lead limit, it must be reported to the Commission.
- **Test Method (children's metal products)**
 - CPSC-CH-E1001-08 (Dec. 4, 2008)

Phthalates Ban (Section 108)

- **Phthalates Ban**

- Applies to “children’s toys” and “child care articles”
- Permanent ban (0.1%): DEHP, DBP, BBP
- Temporary ban (0.1%): DINP, DIDP, DnOP
- SDNY Court Decision - ban also applies retroactively to inventory
- No exception for inaccessibility
- CHAP process to study effects of phthalates on children’s health

Phthalates Ban (Section 108) *cont'd*

- **What are Phthalates?**
 - Plasticizer (softener) used in PVC & other plastics
 - Found in plastic toys (bath toys), playground equipment, plumbing, cosmetics, footwear, rainwear...



Commission Guidance on Phthalates

- **Interim Enforcement Policy on Phthalates Ban**
 - Until guidance is final, Commission will focus on products most likely to pose a risk (bath toys and other small, plastic toys).
 - Commission has requested comments regarding its approach to determining which products constitute “children’s toys” or “child care articles.” Comments are due March 25, 2009.
- **Test Method**
 - CPSC -CH-C1001-09.1 (Mar. 3, 2009)

Certification Requirements (1 Year Stay of Enforcement)

- **GCC Requirement:** Importers and U.S. manufacturers of *any product* must certify (based on a “reasonable” testing program) compliance with all consumer product safety rules enforced by the Commission.
- **Third Party Testing:** Importers and U.S. manufacturers of *any children’s product* must certify (based on third party testing at an accredited lab) compliance with all children’s product safety rules.

Certification Requirements (1 Year Stay of Enforcement) *cont'd*

- **Stay of Enforcement:** CPSC issued a limited one year stay for certain testing and certification requirements under CPSIA section 102(a). Stay is scheduled to expire February 10, 2010.
- **IMPORTANT:** Stay relates only to the certification requirements, not to the underlying substantive standards (including the lead limits, phthalates ban and toy standards).

Limits to Certification Stay of Enforcement

- **Stay of enforcement explicitly does not apply to (certification is still required for):**
 - i. Any and all testing and certification expressly required by CPSC regulations, including those in effect prior to enactment of CPSIA (garage door openers, bike helmets, metal-core wicks, lawnmowers, lighters, mattresses, and pool slides)
 - ii. CPSIA requirements already in effect:
 - Lead paint and other surface coating limits
 - Crib and pacifier standards

Limits to Certification Stay of Enforcement *cont'd*

- Small parts ban
- Lead content limit for metal components of children's jewelry
- iii. Certification required under Virginia Graeme Baker Pool & Spa Safety Act
- iv. Certification required for ATVS
- v. Any voluntary guarantees provided for in the FFA

Key Definitions

- **Children's Products (lead)**: “Designed or intended primarily for children 12 years of age or younger.”
 - **Factors**: Label, marketing, common recognition, CPSC Age Determination Guidelines



- **Children's Toys (phthalates)**: “Designed or intended by manufacturer for a child 12 years of age or younger for use when the child plays.”
- **Child Care Article (phthalates)**: “Designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.”

Additional CPSIA Requirements

- **Whistleblower Protection**

- Employees of retailers, distributors, importers and manufacturers job status enshrined and absolute ability to leave to testify “at any proceeding”
- Employee can get all attorneys fees; employer only \$1,000
- Employee must have reasonable belief of violation; to dismiss employer must have clear and convincing evidence



Additional CPSIA Requirements *cont'd*

- **New Civil and Criminal Penalties**
 - Felony for willful violations of CPSC acts
 - Max civil penalty is \$15 million
 - Max penalty per violation (product) is \$100,000
 - Destruction of imports at importer's expense (including government salaries); new port bonds
 - State AGs can seek “injunctive relief”

Recent CPSC and Related Activity

- Recent Rule Making

- **Final Rule:** Procedures and Requirements for a Commission Determination or Exclusion
- **Notice of Proposed Rulemaking:** Mandatory Recalls

- Comments Sought

- **Tracking Labels** (Section 103) - comments due April 27, 2009.
- **Phthalates** (Section 108) - comments due March 25, 2009.

Recent CPSC and Related Activity *cont'd*

- **Requests Filed for Exclusions**

- Pen points in ball point pens
- Crystal beads and rhinestones
- ATVs and youth off-highway motorcycles (OHM)
- Certain metal alloys used in bicycles

- **Legislative Activity**

- Several bills have been introduced in Congress to amend CPSIA
- Omnibus Appropriations Act, 2009 (\$105 million for FY2009)
- Obama gets three new nominees to CPSC

How Can I Protect Myself and My Company?

- Document everything: get explicit declarations/ indemnifications from suppliers
- Good faith efforts to comply have a good chance of protecting you from the CPSC (but not necessarily from AGs)
- Establish clear lines of internal communication and authority for product safety assurance and response, including improved recall response systems and official company policy and means for employee complaints

How Can I Protect Myself and My Company? *cont'd*

- Review insurance for coverage of recalls and related issues
- Make product safety a priority--internally and publicly
- When there's a problem, flush it out of the system as soon as possible--fewer than half of reports to CPSC result in recalls
- CPSC staff IS approachable--define your issue/question first
- Consider marketing/packaging/labeling closely for children's product classification.
- Sign up for CPSIA web site updates:
<http://www.cpsc.gov/about/cpsia>

Thank you!

Questions?

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