

News from our Environmental Group

CPSIA Updates

Introduction

As discussed in the December 2008 Cooley Alert entitled “Consumer Product Safety Improvement Act of 2008”, the Consumer Product Safety Improvement Act (“CPSIA”), enacted on August 14, 2008, includes a series of provisions related to children’s products. Central to the CPSIA provisions are its stringent limits on lead content and phthalates in children’s products and its requirements that manufacturers, importers and private labelers (“manufacturers”) of children’s products regulated by the Consumer Product Safety Commission (“CPSC”) test their products through an accredited third-party testing facility and certify, based on the test results, that their products comply with applicable bans, standards and regulations. Originally, compliance with many CPSIA provisions was scheduled for February 10, 2009. Since the December 2008 Cooley Alert, the CPSC has updated and clarified some of the CPSIA provisions and extended some compliance dates.

Stay of enforcement

On January 30, 2009, the CPSC issued a one year stay of enforcement for certain testing and certification requirements. Specifically, the stay provides limited relief to manufacturers from testing and certifying that its children’s products comply with the new lead content limit of 600 parts per million (ppm), the 0.1% phthalate limit and mandatory toy standards. The stay of enforcement, however, only means that

manufacturers are not required to *test and certify* their children’s products in certain instances. Their products still *must comply* with all applicable bans, regulations and standards.

Moreover, the stay only delayed for one year the testing and certification requirements related to lead content and phthalate limits and mandatory toy standards. Manufacturers still must currently test and certify that their products comply with (1) the ban on lead in paint and other surface coatings; (2) the standards for full-size and non full-size cribs and pacifiers; (3) the ban on small parts; and (4) the limits on lead content of metal components of children’s jewelry. Further, parties must continue to comply with all pre-CPSIA testing and certification requirements.

Enforcement of lead limits

As of February 10, 2009, a children’s product cannot exceed 600 ppm of lead. The lead limit decreases to 300 ppm on August 14, 2009 and again to 100 ppm (if technologically feasible) on August 14, 2011.

Components parts of children’s products are only subject to the lead content limits if they are accessible to a child through foreseeable use and abuse. As to inaccessible parts, the CPSC has stated that it will “accept a manufacturer’s determination that a lead-containing part on their product is inaccessible to a child and not subject to the new lead limits, if it is consistent with the Commission’s proposed guidance or is based on a reasonable reading of the

inaccessibility requirement.” CPSC Press Release #09-120, February 6, 2009.

The CPSC has advised that, while retaining its ability to seek corrective action where appropriate, it generally will not impose penalties against a party for making, importing, distributing or selling (1) a children’s product to the extent that it is made of certain natural materials; (2) a children’s book printed after 1985; or (3) dyed or undyed textiles, and non-metallic thread and trim used in children’s apparel and other fabric products, even if these products are over the 600 ppm lead limit so long as the party did not know its products exceeded the lead limit. Immunity, however, will not exist if a party has actual knowledge that its products exceed the limit or continued to make, import, distribute or sell such products after being put on notice.

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Further, the CPSC issued an interim final rule effective February 10, 2009 to establish alternative lead limits for certain electronic devices unable to meet the lead limits due to technological infeasibility in an effort to prevent removal of certain electronic children's products from shelves.

Enforcement of phthalates limits

Beginning on February 10, 2009, no children's toy or child care article can contain more than 0.1% of specified phthalates. This ban applies to *all* children's toys and child care articles in inventory, regardless of when they were manufactured. The CPSC previously advised that products manufactured before February 10, 2009 were not subject to the phthalate limit; however, the Second Circuit in *National Resources Defense Council, Inc. v. U.S. Consumer Product Safety Commission* held that the phthalate ban applied to existing inventory as well as to products manufactured on or after February 10, 2009. The CPSC has adopted the Second Circuit's ruling.

Compliance dates for testing and certification

The following dates provide guidance as to when compliance, testing and certification is required.

Currently	Lead in paint used in children's products cannot exceed more than 600 ppm, and manufacturers must test and certify compliance
	Children's products cannot exceed more than 600 ppm of lead
	Children's metal jewelry cannot exceed more than 600 ppm of lead, and manufacturers must test and certify compliance
	Children's toys and child care articles cannot contain more than 0.1% (of total weight) of specified phthalates
	Newly manufactured children's toys must comply with the Mandatory Toy Standard (ASTM F963)
	Cribs, pacifiers and small parts must comply with applicable standards and test and certify compliance
August 14, 2009	Baby bouncers, walkers and jumpers must comply with applicable standards
	Lead in paint used in children's products cannot exceed more than 90 ppm, and manufacturers must test and certify compliance
February 10, 2010	Children's products cannot exceed more than 300 ppm of lead
	Manufacturers of children's products must comply with and test and certify that their products do not exceed more 300 ppm of lead and comply with the mandatory toy standard (ASTM F963)
	Manufacturers of children's toys and child care articles must test and certify that their products do not exceed .1% of specified phthalates.
August 14, 2011	Manufacturers of baby bouncers, walkers and jumpers must test and certify that their products comply with applicable standards.
	Manufacturers of children's products must comply with and test and certify that their products do not exceed more 100 ppm of lead (if technologically feasible).