



Consumer Product Safety Improvement Act

by Jill B. Deal, Esq. and Jennifer M. Thomas, Esq.
Venable LLP, Washington, D.C.

The Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314 (“CPSIA”), which governs the safety of consumer products – in particular products intended for or used by children – was passed by Congress on August 14, 2008. Although some of its provisions went into effect in 2008 (summarized below), some important provisions have not come into effect until this year. The Consumer Product Safety Commission (“CPSC”) is responsible for implementing CPSIA. Actions that the CPSC are required to take to fully implement CPSIA are so sweeping that it will likely take years for them to be fully implemented. We summarize CPSIA in Part A below, and fully describe certain provisions in Part B below.

A. Summary

•Effective in 2008

- Inspection and Recordkeeping Requirements for Manufacturers of Children’s Products
- General certification requirements for products regulated by the CPSC

•Effective as of February 10th, 2009:

- 600 parts per million lead limits in children’s products
- 1,000 parts per million (0.1%) phthalate limits, and
- Mandatory toy standards for safety, labeling and testing for: hazards caused by magnets; certain toxic substances; toys with spherical ends; hemispheric-shaped objects; cords, straps, and elastics; battery-operated toys, etc.
- Some products covered by the above provisions are subject to a CPSC one-year stay of enforcement action.

•Effective on August 14th, 2009:

- 300 parts per million lead limits in children’s products,

- 90 parts per million lead limits in paint and other surface coatings,
- Mandatory inclusion of permanent tracking labels on children’s products and packaging.

B. Description of CPSIA Provisions

General Certification Requirements:

CPSIA requires manufacturers or importers of all products subject to regulation by the CPSC to declare conformance with CPSC-enforced rules. Certification must be based on a test of the product, or a “reasonable testing program.”

Lead Limits in Children’s Products:

Products intended primarily for use by children 12 years of age or younger that contain more than 600 ppm lead are banned in the United States (“US”) as of February 10, 2009. Paint and other coatings are not considered sufficient barriers to keep lead content from being accessible to children. However, some parts of children’s products that are inaccessible may be exempt from the lead limits. Under CPSIA, lead limits are reduced to 300ppm by August 14, 2009, and to 100ppm by August 10, 2011. Lead in paint and surface coatings must be reduced to 90ppm by August 14, 2009.

CPSC has said that it will not take enforcement action on lead limits with regard to certain natural children’s products, ordinary children’s books printed after 1985, and children’s textiles, unless there is evidence that the manufacturer or distributor was on notice that the particular product contained more than 600ppm lead.

Third-Party Testing and Safety Certificate Requirements:

In addition to the general certification requirement, manufacturers or importers of consumer products primarily intended for children 12 years of age or younger must have their products tested by a testing laboratory accredited by the CPSC or a designated independent accrediting organization, and must issue a certificate based on that testing. Most products affected by this requirement are subject to a one-year stay of enforcement action by the CPSC. However, third-party testing requirements are not delayed for lead-containing

paint, cribs, pacifiers, and children's metal jewelry. The list of laboratories accredited by CPSC to perform some or all of the required testing can be found on the CPSC website. CPSC.gov. Over 100 laboratories have already been accredited.

Tracking Labels for Children's Products:

Manufacturers must have a tracking label or another permanent distinguishing mark on any consumer product primarily intended for children 12 years of age and younger. This requirement includes items such as clothing and shoes—not just toys and other products regulated by the CPSC. Some products may be exempt if they are too small or are shipped without individual packaging.

Labeling and Advertising Requirement for Toys and Games:

CPSIA requires that certain toys and games intended for use by children under 12 to carry a label or cautionary statement regarding choking hazards. This statement must also be included in advertising that provides a direct means for purchasing or ordering the product.

Phthalates Ban:

"Children's toys" or "child care articles" are prohibited by the CPSIA from containing the phthalates DEHP, DBP, and BBP in amounts greater than 0.1% (1,000ppm). Under CPSIA a "children's toy" is a product intended for a child 12 years of age or younger for use when playing, and a "child care article" is a product that a child 3 years of age or younger would use for sleeping, feeding, sucking or teething. Pending further study and review by the CPSC and a group of outside experts, the three phthalates DINP, DIDP, and DnOP, are also prohibited in amounts greater than 0.1%.

Packaging materials for children's toys and child-care articles are not required to comply with the phthalates ban unless they are intended to be reused. Phthalate content must be determined by a "reasonable testing program."

Inspection Of Proprietary Laboratories, Identification Of Supply Chain, And Recordkeeping Requirements:

CPSIA also makes clear that the CPSC has authority to inspect the proprietary laboratories that will conduct testing of children's products to be used in support of manufacturer and importer certifications. CPSIA also expands inspection and recordkeeping requirements, including requiring manufacturers and importers to keep records on all subcontractors used in

manufacture, and each retailer or distributor that is supplied with the manufactured product.

Penalties for Non-Compliance

The new CPSIA amendments increase civil penalties for violations of the Consumer Product Safety Act to \$100,000, and increase the cap on civil penalties to \$15,000,000.

Penalties for violations of the Federal Hazardous Substances and Flammable Fabrics Acts, both administered by the CPSC, were formerly set at \$5,000 per violation. However, CPSIA amendments increase penalties under those acts to \$100,000 per violation, and also increase the cap on civil penalties to \$15,000,000.

On or before August 14, 2009, CPSC is scheduled to issue final regulations interpreting the penalty "factors" to be considered in assessing and enforcing penalties under these three Acts.

Because CPSIA is such a broad reaching reform of U.S. product safety law, we have not attempted to cover all of the changes it is intended to bring about to improve the safety of US consumer products, particularly those intended for children, in this Consumer Alert. For further Alerts on different aspects of CPSIA, please go to: <http://venable.com/consumer-products-and-services-industries/>.

How and When Will the CPSIA Affect My Business?

CPSIA and related regulations apply to all businesses, including large, small, boutique, and home-based businesses. Manufacturers, importers, distributors, and retailers of products subject to regulation by the CPSC (such as products with required child-resistant packaging) may be affected by provisions of the CPSIA. The CPSC is producing new guidance with regard to provisions of the CPSIA on an ongoing basis.

To find out how your business will be affected in the coming year and how Venable may be able to assist you, contact Jill B. Deal jdeal@Venable.com or at 202.344.4713 or Jennifer M. Thomas at jmthomas@Venable.com or at 202.344.4338.

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