

## Legal Updates & News

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#### U.S. Consumer Product Safety Commission Grants One-Year Stay

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#### Background

The Consumer Product Safety Improvement Act of 2008 ("CPSIA") was signed into law by President Bush on August 14, 2008. The CPSIA represents a major overhaul of the earlier Consumer Product Safety Act ("CPSA") and was drafted in an attempt to modernize the CPSA and the regulating body, the Consumer Product Safety Commission ("CPSC"). (For additional general information on the CPSIA, please see earlier [Product Liability updates](#)).

Significantly, the CPSIA mandates that manufacturers and importers of products covered by the CPSIA issue General Certifications of Conformity ("GCC") for their goods. The GCC is required to identify the CPSC product safety regulation, or statutory requirement to which the product is subject, if any, and, where there is such an applicable regulation and/or requirement, the certification of the product must be based on a test of each product or a reasonable testing program. Moreover, for certain categories of products, certification must be based on independent third-party testing pursuant to a detailed and sometimes convoluted timeframe set forth in the CPSIA.

#### January 30, 2009 Stay

Since its enactment in August 2008, there has been a flurry of clarifications and refinements with respect to the CPSC's implementation of the CPSIA. The most recent event in the CPSIA's short lifespan occurred on January 30, 2009 when the CPSC voted unanimously to issue a one-year stay of enforcement for some third-party testing and certification requirements applicable to manufacturers and importers of children's products. The requirements that have been stayed were set to go into effect on February 10, 2009 and include the following:

- New total lead content limits for children's products (600 ppm as of February 10, 2009, reduced to 300 ppm as of August 10, 2009);
- Limits governing the amount of six types of phthalates in children's toys and childcare products (<1,000 ppm/each); and
- Mandatory toy safety standards under ASTM F963.

The stay will remain in effect until February 10, 2010, at which time a CPSC vote will be taken to terminate the stay.

Although, as a practical matter, this stay on enforcement temporarily relieves manufacturers and importers from the third-party testing and certification requirements set forth above, the CPSC made clear that manufacturers and importers are still obligated to meet the substantive lead and phthalate ppm limits put into place by the CPSIA, as well as the toy standards of ASTM F963 based on the deadlines set forth in the statute.

This clarification leaves some wondering whether the stay is largely a distinction without a difference. To properly ensure that products meet the CPSIA's lead and phthalate limits, testing

may be required and retailers that sell children's products and childcare articles may still insist upon being provided with certifications that the limits are being met with respect to the goods they are bringing into their inventories.

Importantly, the recently issued CPSC enforcement stay is limited and does not apply to the following:

- Four requirements for third-party testing and certification of certain children's products, including:
  - The ban on lead in paint and other surface coatings (600 ppm until August 10, 2009, reduced to 90 ppm thereafter);
  - Standards for cribs and pacifiers for products manufactured after January 20, 2009;
  - The ban on small parts for products manufactured after February 15, 2009; and
  - Limits on lead in children's jewelry effective for products manufactured after March 23, 2009;
- Certification requirements applicable to ATVs manufactured after April 13, 2009;
- Pre-CPSIA testing and certification requirements; and
- Pool drain-cover requirements of the Pool & Spa Safety Act.

One of the stated reasons behind the CPSC's grant of the one-year stay of most third-party testing and certification requirements is to give the CPSC's staff more time to finalize related proposed rules, including guidance for determining lead content in products. The CPSC stated that these proposed rules present complex issues that could not be resolved by February 10, 2009.

## **Conclusion**

Watchers can expect many more changes, refinements, and clarifications to the CPSC's implementation of the CPSIA over the next months and years. Many deadlines under the original CPSIA are looming, including deadlines for required tracking labels, mandatory standards for durable nursery products, registration of nursery products, further reduced lead content limits, and required procedures for labeling. Morrison & Foerster will continue to issue timely updates.

Morrison & Foerster is advising a variety of consumer and children's product manufacturers, distributors, and retailers and several of their trade associations on issues relating to the CPSIA's implementation, similar state and local requirements, and other lead, phthalate, and product safety laws and litigation. For further information, please contact [Linda Lane](#) in our San Diego office or [Robert Falk](#) in our San Francisco office.