

## Client Alert.

---

February 8, 2011

# Late Breaking Changes to the CPSIA: The CPSC Grants Additional Stay for Portions of Lead Requirements

By Linda Lane

The Consumer Product Safety Improvement Act of 2008 (“CPSIA”) represented a major overhaul of consumer product safety rules and is regulated by the Consumer Product Safety Commission (“CPSC”). Since its enactment in August 2008, there has been a flurry of clarifications and refinements with respect to the exacting requirements of the CPSIA. Last week was no exception.

February 11, 2011 was supposed to be the expiration date for the CPSC’s stay of enforcement of testing and certification requirements for lead content in children’s products. Instead, it was announced last week that manufacturers and private labelers of children’s products will have another ten months, until December 31, 2011, to meet the strenuous requirements.

The CPSC voted 4-1 (Commissioner Robert S. Adler was the sole negative vote) to revise the terms of the stay of enforcement to extend the stay through 2011. The stay effects the testing and certification requirements for total lead content in metal children’s products (excluding children’s metal jewelry) and in non-metal children’s products. The stay also applies to youth all-terrain vehicles, youth off-road vehicles, youth snowmobiles, bicycles, jogger strollers, and bicycle trailers (which specific categories have been subject to different stays over the years). In short, the CPSC decided to extend the existing stay of enforcement on testing and certifications of the total lead content in children’s products (except metal components of children’s jewelry) until December 31, 2011.

Unaffected by last week’s announcement, there remains in effect a stay of enforcement on testing and certification for children’s products subject to safety rules for which a notice of requirements for accreditation of third-party laboratories has not yet been published—including testing of children’s toys and child care articles for banned phthalates and compliance with the mandatory toy safety standard ASTM F-963. These stays will continue until the requisite notices of requirements for laboratory accreditation are published.

Although the recently announced stay may be a relief to businesses that sell and manufacture children’s products, it is important for affected businesses to keep the limited nature of the stay in perspective. The stay relates only to testing and certification requirements. Children’s products are still subject to the strict limits for lead content, phthalate content, and ASTM F-963 standards as set forth in the CPSIA. Children’s products may not be sold that violate those applicable requirements. However, the testing and certification process for establishing this compliance will remain relaxed through the end of the year. Nevertheless, manufacturers and private labelers of those products need to know that their products comply with the underlying requirements today.

## Client Alert.

---

Morrison & Foerster is advising a variety of product manufacturers, importers, distributors, and retailers, and several of their trade associations, on issues relating to the CPSIA's implementation and other product safety requirements and related enforcement and class action litigation.

### Contact:

**Robert Falk**  
(415) 268-6294  
[rfalk@mofo.com](mailto:rfalk@mofo.com)

**Linda Lane**  
(858) 720-7989  
[llane@mofo.com](mailto:llane@mofo.com)

### About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at [www.mofo.com](http://www.mofo.com).

*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*