

## Customs and International Trade

May 27, 2010

### Consumer Product Manufacturers and Importers: Is Your Company Developing a Reasonable Testing Program For Assuring Product Safety?

The Consumer Product Safety Commission (CPSC) is tasked with developing rules and regulations to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA). The agency has had a very busy last few months, and importers and manufacturers of consumer products should be aware of these developments in order to begin taking action.

Over the past 60 days, the CPSC has published several notable proposed and final rules in the Federal Register, including the following:

- Final interpretive rule on civil penalty factors, published March 31
- Proposed interpretive rule on the definition of a “children’s product,” published April 20 (children’s products are subject to additional CPSIA-mandated testing and certification obligations)
- Proposed rule on testing and labeling pertaining to product certification, published May 20 (commonly known as the “15 Month Rule”)
- Notice of proposed rulemaking regarding the conditions and requirements for testing component parts of consumer products, published May 20
- Notice of proposed rulemaking regarding a publicly available consumer product safety information database, published May 24

This list does not include the notices addressing accreditation rules or safety standards applicable to specific products, such as bath seats, infant walkers and toddler beds. The material in each of these documents is comprehensive, and each one may affect your business in a different way.

For many of the more recent proposed rules, you may have an opportunity to submit comments to the CPSC. However, this window of opportunity is closing fast: Comments on the definition of “children’s product” must be received by the CPSC no later than June 21, 2010, and comments on the other proposed rules are due as early as July 23, 2010.

Although the CPSIA has been in effect for nearly two years, many of its testing and certification obligations have been postponed. Enforcement for testing and certification requirements for lead in children’s products, for example, is stayed until February 10, 2011. The stays are temporary, however, and the agency is under heavy pressure from Congress to begin enforcing the CPSIA in earnest.

If your company has not already done so, it is crucial to begin developing a comprehensive product safety program in line with these rules to avoid being caught by surprise and subject to potentially massive civil penalties. One importer, Daiso, was recently assessed a **\$2 million penalty** for repeated importations of non-compliant products, and **is prohibited from importing any other children’s products until it develops a comprehensive product safety program and satisfies numerous other court-mandated conditions**. Being proactive now may help your company avoid a similar fate.

If you have any questions, please contact one of the Katten Muchin Rosenman LLP **Customs and International Trade** attorneys or professionals listed below:

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