

September 25, 2008

**Advisory**

**CPSC Releases Additional Guidance Concerning Effective Dates for  
Consumer Product Safety Improvement Act of 2008**

[The Consumer Product Safety Improvement Act of 2008](#), Public Law 100-313, 122 Stat. 3016 (August 14, 2008) (CPSIA) underscores Congress' directive that the [Consumer Product Safety Commission](#) (CPSC) must be more aggressive in assuring the safety of products in the U.S. market and protecting children by tightening standards and controls on the manufacture and sale of all children's products. The CPSIA greatly expands the CPSC's responsibility for development, monitoring and enforcement of safety requirements involving children's products. Additionally, it prescribes certain new product standards, particularly with regard to lead and phthalate levels, and sets forth other prohibitions against stockpiling of non-compliant products .

Most manufacturers and retailers will be challenged to meet the CPSIA's requirements, especially within the time provided by the Act's numerous effective dates. The economic impact of compliance will likely impact revenues, expected profit margins associated with children's products and the ability to compete in the marketplace. However, some more fortunate companies may find that their initiatives will be limited to conducting a thorough survey to confirm actual current compliance or compliance readiness. The boards of publicly traded companies, in particular, will likely wish to review such compliance issues at an Audit Committee meeting.

On September 4, 2008, the CPSC conducted one of several planned public meetings concerning the CPSIA. At this meeting, the CPSC responded to requests for guidance on whether Section 101 of the CPSIA regarding lead content applies to product currently in inventory or on store shelves prior to the effective date of those provisions, February 19, 2009, or only to product manufactured after that date. Cheryl A. Falvey, the CPSC's General Counsel, issued a [General Counsel Memorandum about the Retroactive Application of the CPSIA to Inventory](#) on September 12, 2008, and provided an advisory opinion concerning effective dates, particularly with regard to inventory and stockpiling.

General Counsel Falvey provided a helpful and detailed response. Below is a brief overview of the CPSC’s position concerning the effective dates with regard to product currently in inventory or on store shelves:

- Lead Limits Ban:
  - Bans sale of any children’s product with more than 600 ppm of lead after February 10, 2009 – they must come off the store shelves by that date;
  - No more than 300 ppm by August 14, 2009; and
  - No more than 100 ppm by August 14, 2011.
- Lead Paint Ban: Bans sales of any children’s product containing an amount over the new limit of 90 ppm after August 14, 2009 – they must come off the store shelves by that date.
- Phthalates: Bans sales of children’s toys that can be placed in a child’s mouth or child care article that contains concentrations of more than 0.1 percent of DINP, DIDP or DnOP after February 10, 2009.

Separately, General Counsel Falvey issued an “Overview and Regulatory Timetable” for implementation of the CPSIA, including the time frames within which to implement the Third-Party Testing of Children’s Products required by the act:

Third-Party Testing of Children’s Products		
	CPSC Publishes Accreditation Procedure	Third-Party Testing Required
Lead Paint	September 2008	December 2008
Cribs And Pacifiers	October 2008	January 2009
Small Parts	November 2008	February 2009
Metal Jewelry	December 2008	March 2009
Baby Bouncers, Walkers And Jumpers	March 2009	June 2009
300 ppm Lead Content	May 2009	August 2009
CPSC Children’s Product Safety Rules	June 2009	September 2009

Manufacturers are further prohibited by the CPSIA from stockpiling in advance of an effective date of a new product safety rule at a rate greater than the rate at which the product was produced or imported prior to the promulgation of that rule.

This client advisory provides a limited overview about certain issues arising from extensive legislation. For further information regarding your company's CPSIA compliance initiatives and issues, please contact Debra S. Rade at [debra.rade@radelaw.com](mailto:debra.rade@radelaw.com) or 312.895.2401.

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