



**GOLDBERG SEGALLA** <sup>LLP</sup>

## Consumer Product Safety Commission Update

Consumer Product Safety Commission Legislative Update

January, 2009 • Vol. 1, No.4

### **One-Year Stay of Enforcement For Certain Testing and Certification Requirements**

On January 30, 2009, the Consumer Product Safety Commission announced a one-year stay of enforcement for certain new testing and certification requirements that were established pursuant to the 2008 CPSIA. While these requirements become effective on February 10, 2009, the CPSC voted to issue the one-year stay to give it more time to finalize four proposed rules. However, not all testing and certification requirements are stayed, which should be of particular interest to manufacturers and importers.

Under Section 102 of the 2008 CPSIA, all products that are subject to a consumer product safety rule, or any similar rule, ban, standard or regulation under any other act enforced by the CPSC must be accompanied by a General Conformity Certificate certifying that the product has been tested based on a reasonable testing program, and that the product complies with all rules, bans standards or regulations applicable to the product. The certificate must also specify each rule, ban, standard or regulation applicable to the product.

For children's products, the certificate must be based on testing by a third party laboratory that has been specifically accredited to perform the particular children's product test applicable to the product. The new legislation also contains provisions for accreditation of proprietary testing laboratories, such as those owned by a manufacturer, provided that the test results are protected from undue influence by the manufacturer, and provided that allegations of undue influence by the manufacturer can be reported confidentially to the Commission.

The CPSC stay of enforcement with respect to children's products applies to new total lead content limits (600 ppm), phthalates limits for certain products (1000 ppm), and mandatory toy standards. According to the CPSC, "[m]anufacturers and importers – large and small – of children's products will not need to test or certify to these new requirements, but will need to meet the lead and phthalates limits, mandatory toy standards and other requirements."

The one-year stay does not apply to the ban of lead in paint and other surface coatings that were into effect December 10, 2008. The bans on cribs and pacifiers made after January 20, 2009 are also not subject to the stay. Prospectively, the CPSC the stay will not apply to: (1) small parts" to become effective on February 15, 2009; (2) the limits on lead content of metal components of children's jewelry for products made after March 23, 2009; and (3) the certification requirements for ATVs manufactured after April 13, 2009. Testing and certification requirements that were in place prior to the 2008 CPSIA remain unaffected by the stay as well.

The stay of enforcement does not prevent the State Attorneys General from enforcing these requirements. The CPSC, in its announcement, strongly encourage the State Attorneys General to “focus their own enforcement efforts on other provisions of the law, e.g. the sale of recalled products.”

## **Clarification on Rules Covering Resellers of Children’s Products**

On January 8, 2009, the CPSC clarified a reseller’s responsibilities 2008 CPSIA with respect to a variety of different circumstances. This eliminated some of the uncertainties with which resellers have been struggling.

First, as of February 1, 2009, children’s products cannot be sold if they contain more than 600 parts per million (ppm) total lead or more than 0.1% of certain specific phthalates or if they fail to meet new mandatory standards for toys. Manufacturers and importers are required to certify compliance with these requirements. Under the 2008 CPSIA, it was unclear whether a reseller of children’s products was also required to provide this certification. The CPSC advised that there is no such certification requirement. However since selling products that exceed the new limits is a violation, the CPSC advises that resellers should avoid products that are likely to have lead content, unless they have testing or other information to indicate the products being sold have less than the new limit.” Failure to comply subjects the reseller to civil and/or criminal penalties.

Second, the 2008 CPSIA outlawed the sale of recalled products. The CSPC’s position is that the reseller has the burden to determine whether a product has been recalled. If a product has been recalled, the reseller must remove it from inventory. The CPSC advises the reseller to check the CPSC website for a list of recalled products before taking them into inventory.

Third, the CPSC cautioned resellers to pay particular attention to special categories of recalled or banned products, including cribs, play yards, jewelry, painted wood or metal toys, toys that are easily breakable into small parts, and stuffed toys that have small parts not securely fastened. Significantly, the CPSC will hold a reseller responsible for selling children’s products that lack the required age warnings.

**Goldberg Segalla LLP** is a Best Practices law firm with offices in New York (Buffalo, Rochester, Syracuse, Albany, New York, White Plains and Long Island), New Jersey (Princeton), Pennsylvania (Philadelphia), and Connecticut (Hartford). Our Consumer Products Regulatory and Litigation Team consists of the following attorneys:

**Frank J. Ciano, Partner**  
**Charles F. Gfeller, Partner**  
**Neil A. Goldberg, Partner**  
**Cheryl A. Possenti, Partner**

## CONSUMER PRODUCT SAFETY COMMISSION UPDATE

**Mark B. Seiger, Partner**  
**Joseph J. Welter, Partner**  
**Sarah X. Fang, Associate**  
**Paul C. Steck, Associate**

### **PHILADELPHIA**

1700 Market Street, Suite 1418, Philadelphia, Pennsylvania 19103-3907  
Telephone: 267.519.6800 Fax: 267.519.6801

### **BUFFALO**

665 Main Street / Suite 400, Buffalo, New York 14203-1425  
Telephone: 716.566.5400 Fax: 716.566.5401

### **SYRACUSE**

5789 Widewaters Parkway, Syracuse, New York 13214-1855  
Telephone: 315.413.5400 Fax: 315.413.5401

### **ALBANY**

8 Southwoods Blvd. / Suite 300, Albany, New York 12211-2364  
Telephone: 518.463.5400 Fax: 518.463.5420

### **NEW YORK**

111 John Street / Suite 800, New York, New York 10038-3002  
Telephone: 646.253.5400 Fax: 646.253.5500

### **ROCHESTER**

2 State Street / Suite 805, Rochester, New York 14614-1342  
Telephone: 585.295.5400 Fax: 585.295.8300

### **WHITE PLAINS**

170 Hamilton Avenue / Suite 203, White Plains, New York 10601-1717  
Telephone: 914.798.5400 Fax: 914.798.5401

### **LONG ISLAND**

200 Old Country Road / Suite 210, Mineola, New York 11501-4293  
Telephone: 516.281.9800 Fax: 516.281.9801

## CONSUMER PRODUCT SAFETY COMMISSION UPDATE

### PRINCETON

301 Carnegie Center Drive / Suite 101, Princeton, New Jersey 08540-6227  
Telephone: 609.986.1300 Fax: 609.986.1301

### HARTFORD

65 Memorial Drive / Suite 340, West Hartford, Connecticut 06107-2434  
Telephone: 860.760.8400 Fax: 860.760.8401

### EUROPE

*We are affiliated with:*

*Studio Legale Casini, C.so di Porta Romana, 63 20121 Milano, Italy*  
Telephone: 011-39-02-54113609 Fax: 011-39-02-54116314

Via M. Coppino, 273, 55049 Viareggio, Italy  
Telephone: 011-39-05-84388797 Fax: 011-39-05-84388798

© COPYRIGHT 2009 Goldberg Segalla LLP, ALL RIGHTS RESERVED