



# The American Companies

## "NEWS-UPDATE"

April 29, 2009

### Significant CPSIA Compliance Date for Manufacturers/Importers of Children's Products

Certain requirements of the Consumer Product Safety Improvement Act of 2008 (CPSIA<sup>1</sup>) affecting manufacturers and importers of children's products are scheduled to become more stringent on August 14, 2009: the (1) lead content limit and the (2) lead paint ban; while a (3) new tracking label requirement is scheduled to take effect on the same date.

These requirements affect importers as well as manufacturers because among other things, the CPSIA made it unlawful for any person to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the U.S. consumer products that are not in conformity with Consumer Product Safety Commission-enforced standards, rules, bans, etc.

A recent letter to the CPSC from 28 predominantly Democratic members of Congress could potentially embolden CPSC's actions with respect to its CPSIA implementation, including the changes that take effect on August 14, 2009. However, CPSC staff have currently declined to comment on how or if the Commission would take any actions based on the letter. (See Notes for further details.)

#### Lead Content Limit for Children's Products to Drop to 300 ppm

Effective August 14, 2009, consumer products designed or intended primarily for children 12 and under that have more than 300 parts per million (ppm) (from 600 ppm) of total lead content by weight in any accessible part will be considered banned hazardous substances. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child.

CPSC has determined that these more stringent lead content limits apply not only to products manufactured after the August 14, 2009 effective date but also to products manufactured earlier that are sold from inventory or on store shelves after August 14th.

While CPSC issued a one year enforcement stay (until February 10, 2010) of certain CPSIA testing and conformity certification requirements, including for lead content, it did not stay the underlying requirements. Therefore, children's products must still meet the CPSIA lead content limits or be considered banned hazardous substances.

#### Lead Paint Ban's Limit to Drop to 0.009%

Effective August 14, 2009, the "lead paint ban" of 16 CFR Part 1303 will become more stringent. Specifically, paint and similar surface coating materials that contain lead or lead compounds in which the lead content is in excess of 0.009% (from 0.06%) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film, will be considered banned hazardous products. (CPSC has also expressed the 0.009% limit as 90 ppm and the 0.06% limit as 600 ppm)

The "lead paint ban" pertains to lead in (1) paint for consumer use, as well as the paint used on (2) toys and other articles intended for use by children that bear paint and (3) furniture for consumer use that bears paint.

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CPSC has determined that this more stringent lead paint ban applies not only to products manufactured after the August 14, 2009 effective date but also to products manufactured earlier that are sold from inventory or on store shelves after August 14, 2009.

Note that domestic manufacturers and importers of children's products that are subject to the lead paint ban that are manufactured after December 21, 2008 are required to have those products tested by a CPSC-accredited third-party lab and based on that testing, issue a certification that the products comply with the ban. This requirement was not stayed by CPSC's one year testing and certification stay.

### **Tracking Labels to Be Required for Children's Products, Packaging**

Effective August 14, 2009, manufacturers must place permanent distinguishing marks on children's products and their packaging, to the extent practicable, that would enable the manufacturer and ultimate purchaser to ascertain the (i) manufacturer or private labeler; (ii) location and date of production; (iii) cohort information (including batch, run number, or other identifying characteristic); (iv) etc. (the "tracking label" requirement).

CPSC has previously stated that the scope of the tracking label requirement is quite broad in that it applies to all children's products (for children 12 and younger) including, but not limited to, items such as clothing or shoes, not just toys and other regulated products.

CPSC has stated that this requirement is intended to assist in the event of a recall (e.g. by helping consumers identify the specific children's product being recalled; helping companies only recall or destroy the affected products; etc.)

<sup>1</sup>Enacted as Public Law 110-314 on August 14, 2008.

CPSC Website on the CPSIA available at <http://www.cpsc.gov/about/cpsia/cpsia.html>

### **Notes**

1. A recent letter to the CPSC from certain members of Congress could potentially embolden CPSC's actions with respect to its CPSIA implementation.

In this letter, 28 predominantly Democratic members of Congress stated their view that "the CPSC is empowered by the CPSIA to exercise its authority and enforcement discretion in a manner that ensures enforcement of the Act in a comprehensive manner while providing appropriate and common-sense relief to businesses and institutions."

While it is unclear how or even whether this letter will affect CPSC's enforcement of the CPSIA as the language of the CPSIA remains the same, CPSC Commissioner Moore noted he was influenced by such "post enactment" Congressional statements when he moved to grant a 12 month CPSIA lead content stay for youth ATVs.

2. The CPSC faces many of its own August 14, 2009 requirements, including: (i) a rulemaking to define "inaccessible parts" for CPSIA lead content purposes; (ii) initiating two rulemakings every six months creating mandatory or more stringent standards for durable infant/toddler products; (iii) assessing the effectiveness of the ASTM F963-07 toy standard or its successor; (iv) etc.

*If you have any further questions, or require additional information, please do not hesitate to contact us at [Compliance@shipamerican.com](mailto:Compliance@shipamerican.com)*



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