

News from our Environmental Practice Group

Consumer Product Safety Improvement Act of 2008

On August 14, 2008, President Bush signed the Consumer Product Safety Improvement Act of 2008 ("CPSIA") into law. In general, CPSIA significantly expands oversight and enforcement powers of the Consumer Product Safety Commission ("CPSC") and introduces stricter controls on manufacturing, testing, and labeling of children's products. Key provisions of CPSIA that may affect Cooley's clients include the following:

Phthalate Prohibition. Certain children's toys and child care articles manufactured on or after February 10, 2009 may not contain the following plasticizing compounds: di(2-ethylhexyl) phthalate (DEHP); di-n-butyl phthalate (DBP); butyl benzyl phthalate (BBP); diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di(n-octyl) phthalate (DnOP). The ban on DEHP, DBP, and BBP is permanent; while the ban on DINP, DIDP, and DnOP is on an interim basis pending further study and review by a group of outside experts and the CPSC.

Lead Content and Lead Paint Rule. CPSIA sets new limits on the lead content in children's products and the amount of lead in the paint used on those products. These new limits are to be phased in over the course of three years. The sale of products in violation of the new standards can result in significant civil and criminal liability. In addition, CPSIA sets new limits on lead content in paint and similar surface-coating materials for consumer use.

Mandatory Testing of Children's Products. Under CPSIA, manufacturers, importers, and private labelers of children's products

must have their products tested by a CPSC-accredited independent testing laboratory and, based on the testing, must certify that those products meet all applicable CPSC requirements to import or distribute them in commerce. Accreditation procedures and testing requirements are to be phased in on a rolling basis from late 2008 through August 2009, based on the category of children's product or condition to be tested (i.e., lead paint; cribs and pacifiers; small parts; metal jewelry; baby bouncers, walkers and jumpers; 300 ppm lead content). Additionally, CPSC will publish a new set of Children's Product Safety Rules in June 2009.

Tracking Labels. As of August 14, 2009, manufacturers must place a tracking label or other permanent mark on any consumer product primarily intended for children aged twelve and younger. This label must contain certain basic information, including the source of the product, the date of manufacture, and more detailed information on the manufacturing process such as a batch or run number.

Record keeping requirements. Importers, retailers, and distributors of consumer products must keep records identifying the manufacturers of products by name and address. CPSIA also requires manufacturers to keep records of each retailer or distributor that has been sent a consumer product and the subcontractors used in the manufacture of the product.

Increased civil and criminal penalties. Under CPSIA, maximum criminal and civil penalties for certain violations of the

Consumer Product Safety Act, the Flammable Fabrics Act, and the Federal Hazardous Substances Act will increase dramatically—for example, civil penalties will increase from \$5,000 to \$100,000 per violation, and the overall penalty cap will increase from \$1.25 million to \$15 million.

Enhancement Rather Than Preemption of State Laws; State Attorney General Enforcement. The requirements of CPSIA do not preempt or affect any state-law damage claims or warning requirements (e.g., California Proposition 65, which mandates warning labels on products containing substances deemed hazardous). In addition, state attorneys general may enforce some CPSC standards and requirements by seeking injunctive relief, and the CPSC may become a party to any such lawsuit filed by a state attorney general.

Conclusion

CPSIA combines stricter consumer product safety standards with new testing

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and reporting requirements, advertising and packaging restrictions, and tougher enforcement. Accordingly, manufacturers, importers, distributors, and retailers of children's products need to ensure that their products and procedures meet the new requirements, and that they stay informed about the forthcoming rules to be promulgated by CPSC. The Cooley attorneys above can help you to understand how CPSIA specifically affects your business and to form a plan to ensure your compliance with the new standards.