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CPSC Extends Stay of Enforcement Another Year and Adopts Interim Policy Permitting Component Part Testing for Lead

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Informed by its ongoing dialogue with stakeholders, the Consumer Product Safety Commission (CPSC or Commission) voted (4-1) to extend the stay of enforcement on testing and certification of many regulated children's products, including those subject to the lead content limits, until February 10, 2011. As before, while providing a limited reprieve on testing and certification, products must still comply with all applicable rules, standards and bans. The Commission also voted unanimously to approve an interim enforcement policy that allows component testing as a basis for demonstrating compliance with the new lead paint and lead content limits.

Children's Products Covered by the Extended Stay

Categories of children's products covered by the extended stay of enforcement include the following: children's toys and child care articles with banned phthalates, children's toys subject to the mandatory toy safety standard (ASTM F-963), caps and toy guns, clacker balls, baby walkers, bath seats, other durable infant products, electrically operated toys, youth all-terrain vehicles, youth mattresses, children's bicycles, carpets and rugs, vinyl plastic film and children's sleepwear. Independent third-party testing and certification will only be required for these categories of children's products

90 days after the CPSC publishes the laboratory accreditation requirements for any individual category in the Federal Register.

The Commission voted 4-1 (Adler dissenting) to extend the stay on certification and third-party testing for children's products subject to lead content limits for another year "to allow component testing adequate time to develop and to give stakeholders adequate notice of new requirements," said Chairman Tenenbaum. Commissioner Adler disagreed with the length of the stay, opining that a six-month extension is sufficient. Products must still meet the 300 ppm limit now, but certification and third-party testing to show compliance will kick into effect further down the road for all children's products manufactured after February 10, 2011.

Children's Products NOT Covered by the Extended Stay

The previously granted stay will end on February 10, 2010, for four children's products:

- Bicycle helmets
- Bunk beds
- Infant rattles
- Dive sticks

Any of these products manufactured after February 10, 2010, will require certification based on independent third-party testing by a CPSC-recognized lab.

Independent third-party testing and certification are still required for all children's products subject to the following consumer product safety rules:

- Ban on lead in paint and other surface coatings
- Standards for full-size and non full-size cribs and pacifiers
- Ban on small parts
- Lead content limits for metal components of children's jewelry

Nonchildren's Products

Under the CPSIA, domestic manufacturers and importers are not required to test nonchildren's products using an independent third-party lab. Instead, they must issue a general certificate of conformity (GCC) certifying that nonchildren's products comply with applicable CPSC regulations. The testing must be based on a "reasonable testing program" as yet undefined by the Commission. The Commission will not require GCCs for children's products. Notably, the stay of enforcement will remain in effect for certain categories of nonchildren's products, including adult bicycles, carpets and rugs, vinyl plastic film and wearing apparel. Products that require labeling under the Federal Hazardous Substances Act (FHSA) or labeling rules will not require additional certification beyond those regulations.

Click [here](#) for a full list of required certifications and effective dates for children's and nonchildren's products as well as the CPSC's December 19, 2009 announcement.

Interim Component Testing Policy for Children's Products

Under this policy, domestic manufacturers and importers have a choice in certifying their products. They can either send samples of the entire children's product to an independent third-party test lab, or they can certify that their products meet lead paint and lead content limits based on the following methods of component certification:

Lead in Paint: Have test reports from recognized third-party test labs showing that each paint on the product complies with the 90 ppm lead paint limit or have certificates from paint suppliers stating that all their paint on the product complies with the 90 ppm lead limit based on testing by a recognized third-party test lab.

Lead Content: Have test reports from recognized third-party test labs showing that each accessible component part on the product complies with the 300 ppm lead limit or have certificates from part suppliers stating that all accessible component parts on the product comply with the 300 ppm lead limit based on testing by recognized third-party labs.

Any person who issues a false certificate is subject to penalties.

As before, despite the reprieve on certification and testing requirements for certain products, *all products must comply with applicable safety standards and bans, including the limits for lead content, lead paint, the ban on certain phthalates and the mandatory toy safety standard (ASTM F-963).*

What the Commissioners Have to Say

Each member of the five-member Commission panel issued a statement on the extended stay of enforcement, including the following comments revealing his or her respective views:

[Chairman Tenenbaum](#): "The agency is actively seeking input from our regulated community . . . my hope is that our stakeholders will continue to be active partners in our implementation of the CPSIA."

[Commissioner Nord](#): "The stay was needed because the deadlines set out in the CPSIA were wildly unrealistic and their enforcement would have resulted in even more chaos in the marketplace than we have already seen over the past year without increasing safety."

[Commissioner Adler](#): "I respectfully disagree, however, with my colleagues who have chosen to extend the stay beyond August 10, 2010. While there will be some disruption in the marketplace no matter which date is chosen, no hard evidence has been brought to my attention that would require an even longer extension of this stay . . ."

[Commissioner Northup](#): This is a "must read" statement with too many interesting comments to recite here, including as but one example , "[Chairman Tenenbaum] ruled my motion out of order to have the Commission jointly send a letter to Congress asking it to at least clarify the law and reaffirm that Congress intended not to have any allowance for *de minimis* (or not bio-available) lead content – or to seek any sort of reasonable allowance for products that pose no real harm to children. The Democrat Commissioners subsequently made clear they did not want to inform Congress on the issues dividing the Commission nor openly seek changes to the law or even seek input from the Office of Management and

Budget. They refused to sign a letter to Congress later that same month seeking guidance on the *de minimus* issue . . . Congress has now reached out [and expressly] requested feedback from the Commission in the very near future regarding recommendations to change the law . . . ”

[Commissioner Moore](#): “I am not concerned about there being no final testing and certification rule (the so-called 15 month rule) in place prior to the lifting the stay.”

Why it matters

Companies are well-advised to take up the Commission’s invitation to be active participants in the ongoing CPSIA implementation process. The commissioners welcome input and it informs their thinking and decision-making processes. To the extent companies continue to have concerns about new and confusing CPSIA requirements – and who doesn’t? – it makes sense to take advantage of the opportunity to engage in robust dialogue and debate with the Commission and staff tasked with sorting out this messy law.

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For additional information on this issue, contact:

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