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## CONSUMER PRODUCT SAFETY LAW

NEWSLETTER OF THE ADVERTISING, MARKETING & MEDIA PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

### SPECIAL BULLETIN

## CPSC Grants One Year Stay of Enforcement of Certain CPSIA Testing & Certification Requirements: Relief is Limited and Qualified

[Kerrie L. Campbell](#)

In response to the chaos and confusion that the Consumer Product Safety Improvement Act (CPSIA) has created in the marketplace, the Consumer Product Safety Commission voted unanimously (2-0) to issue a one year stay of enforcement for certain testing and certification requirements for manufacturers and importers of regulated products, including products intended for children 12 years and younger. The Proposed Draft can be found [here](#). Specifically, the stay provides limited relief from the testing and certification requirements for new total lead content limits, phthalates limits and mandatory toy standards (among other things), which go into effect on February 10, 2009. According to the Commission's January 30, 2009 [announcement](#), "manufacturers 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 stay does not apply (among other things) to four requirements for third-party testing and certification of certain children's products subject to:

- The ban on lead in paint and other surface coatings effective for products made after December 21, 2008
- The standards for full-size and non full-size cribs and pacifiers effective for products made after January 20, 2009
- The ban on small parts effective for products made

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after February 15, 2009 and

- The limits on lead content of metal components of children's jewelry effective for products made after March 23, 2009.

While the stay provides limited relief from the enforcement of certain testing and certification requirements with which industry has been struggling to comply, the Commission is cautioning all businesses, including but not limited to handmade toy and apparel makers, crafters and home-based small businesses, to "be sure that their products conform to all safety standards and similar requirements, including the lead and phthalate provisions of the CPSIA."

Emphasizing what the stay does and does not do, Acting CPSC Chairman Nancy Nord explained that the stay "will give some temporary and limited relief" to businesses who cannot comply with the testing and certification requirements but "does not relieve them of complying with the underlying requirements enacted by Congress and which go into effect on February 10, 2009, dealing with lead, phthalates and a number of other toy standards." Nord noted that the stay provides "breathing space" but "should not be viewed as a full solution to the many problems raised [about CPSIA]." Any changes to CPSIA requirements, including the retroactive nature of the lead ban, "need to be addressed by Congress." [Statement by [Acting CPSC Chairman Nancy Nord](#)]

What does this mean for untested and uncertified products in inventory? All sellers, including thrift shops and charities, have to decide whether to continue to sell children's products that have not been tested. Given the limited nature of the relief, Commissioner Thomas Moore acknowledged that "[t]his may seem like a Catch 22 to some people." According to Moore, if companies have "a history of making products that have caused no harm . . . then they have no reason to fear this interim period." [Statement by [Commissioner Thomas Moore](#)]  
The CPSIA requirements, however, do not appear to take into account a company's belief that its products do not present a safety concern.

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#### FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



**[Kerrie L. Campbell](#)** Ms. Campbell specializes in consumer product safety counseling and represents major manufacturers and retailers in investigation,

enforcement and penalty proceedings before the U.S. Consumer Product Safety Commission (CPSC) and in matters referred to the U.S. Department of Justice. Ms. Campbell routinely counsels clients regarding compliance with the reporting requirements under the Consumer Product Safety Act, Flammable Fabrics Act and other statutes regulated by the CPSC. She advises clients on product recalls, corrective actions, responses to agency inquiries and Freedom of Information Act (FOIA) requests. She is a member of the Advisory Board for BNA's Product Safety and Liability Reporter.

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