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Consumer Law/Trade Regulation Practice

Third Party Testing Requirement for Compliance with Lead Paint Regulation to go into Effect for Children's Products Manufactured After December 21, 2008

On August 14, 2008, President Bush signed the Consumer Product Safety Improvement Act (the "CPSIA") into law. Section 102 of the CPSIA mandates third party testing for certain children's products. It provides that before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer, importer and private labeler of such product shall (A) submit sufficient samples of the product, or samples that are identical to the product in all material respects, to a third party testing laboratory accredited under requirements established by the Consumer Products Safety Commission ("CPSC") for testing; and (B) based on such testing, issue a certificate that certifies that such children's product is in compliance with all applicable children's product safety rules. A third party lab is one that is not owned by the manufacturer, importer or private labeler.

The CPSIA sets forth a time line for the CPSC to accredit third party testing labs to be eligible to test for compliance with the various children's product safety rules. The first such accreditation requirements were published by the CPSC on September 22, 2008 and apply to third party labs that test for compliance with the lead paint regulation, 16 C.F.R. Part 1303, which bans certain consumer products, including toys and other articles intended for use by children, with paint or other similar surface-coating materials containing more than 600 parts per million of lead. Children's products manufactured after December 21, 2008 and subject to 16 C.F.R. Part 1303, must be tested by a lab meeting these requirements.

Businesses that manufacture, import, distribute, or retail products subject to 16 C.F.R. Part 1303 should be aware that another key provision of the CPSIA lowers the lead limit under Part 1303 from the current limit of 600 parts per million to 90 parts per million on August 14, 2009.

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