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Consumer Law/Trade Regulation Practice

CPSC Stays Enforcement of Certain Certification and Testing Requirements Imposed by the CPSIA

On Friday, the Consumer Product Safety Commission voted unanimously (2-0) to issue a one year stay of enforcement of certain certification and testing requirements that were imposed by the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

The stay will remain in effect until February 10, 2010.

The Commission took this action based on its recognition that there is substantial confusion as to which testing and certification requirements of subsection 14 (a) of the Consumer Product Safety Act, as amended by the CPSIA, apply to which products under the Commission's jurisdiction, what sort of testing is required where the provisions do apply, whether testing is necessary for children's products that may not by their nature contain lead, whether testing to demonstrate compliance must be conducted on the final product rather than on its parts prior to assembly or manufacture, whether manufacturers and importers must issue certificates of compliance to address the labeling requirements under the Federal Hazardous Substances Act, and what sort of certificate must be issued and by whom.

By its action, the Commission stayed enforcement of all certification and testing requirements imposed by the CPSIA with the exception of the certification and third-party testing of children's products subject to:

- (i) the ban on lead in paint and other surface coatings effective for products manufactured after December 21, 2008
- (ii) the standards for full-size and non full-size cribs and pacifiers effective for products manufactured after January 20, 2009
- (iii) the ban on small parts effective for products manufactured after February 15, 2009
- (iv) the limits on lead content of metal components of children's jewelry effective for products manufactured after March 23, 2009.

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The stay also does not apply to:

(i) certification requirements that existed prior to enactment of the CPSIA, such as those applicable to automatic residential garage door openers, bike helmets, candles with metal-cored wicks, lawnmowers, lighters, mattresses and swimming pool slides

(ii) the certifications required under the Virginia Graeme Baker Pool & Spa Safety Act

(iii) the certifications of compliance required for ATVs which were added by the CPSIA

(iv) any voluntary guarantees provided for in the Flammable Fabrics Act or otherwise (to the extent a guarantor wishes to issue one).

It is important to note that the stay does not relieve any company from complying with any applicable consumer product safety rule, ban, standard or regulation enforced by the Commission, including, but not limited to, the upcoming February 10, 2009 limits on lead content (which will apply retroactively to existing inventory) and phthalates in certain children's products. Nor does the stay permit the sale of products that do not comply with applicable mandatory safety requirements. In that regard, Nancy Nord, Acting Chair of the Commission, has urged Congress, among other things, to consider amending the CPSIA to provide charities, thrift stores and small retailers with relief from the retroactive effect of the lead content limit.

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