

August 13, 2009

### First Anniversary of the Consumer Product Safety Improvement Act

August 14, 2009 will mark the one-year anniversary of the Consumer Product Safety Improvement Act. It has been a year of unprecedented activity by the CPSC and still more key provisions of the CPSIA go into effect on August 14th .

### Lead Content Limit Reduced to 300 Parts Per Million; Final Rule on Inaccessible Component Parts Issued

On August 14th the lead content limit for children's products goes down from 600 ppm to 300 ppm. The new limit will apply to children's products distributed after that date regardless of the date the product was manufactured.

The CPSIA provides that lead-containing component parts that are not accessible to a child through normal and reasonably foreseeable use and abuse, as determined by the CPSC, are not covered by the content limit. Last week, the CPSC issued an interpretive Final Rule for determining whether component parts may be deemed inaccessible. The Act itself states that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child. The Final Rule essentially provides that the probe and the use and abuse tests that already exist for the safety testing of children's toys will be utilized to test for inaccessibility.

### Limit on Lead in Surface Coatings Reduced to 90 Parts Per Million

On August 14th the limit for lead in paint and similar surface-coating materials on children's products goes down from 600 ppm to 90 ppm, here again without regard to the product's date of manufacture.

### Tracking Labels on Children's Products

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One of the more controversial sections of the CPSIA is Section 103, which concerns tracking labels on children's products. Beginning August 14th, manufacturers will be required to place a tracking label or another permanent distinguishing mark on any children's product and its packaging, "to the extent practicable." The tracking label must contain certain identifying information, including the name of the manufacturer or private labeler, the location and date of production, and "cohort information" such as the batch or run number. The intent of the requirement is to assist consumers and the CPSC in the event of a product recall.

With many questions as to how the CPSC would interpret and enforce the tracking label requirement and the effective date looming, the CPSC recently issued a Statement of Policy. Among the key points are that the CPSC does not believe that the CPSIA mandates a "uniform one-size-fits-all" method for compliance. Manufacturers will be expected to use their best judgment to develop a marking system suitable for their particular products. When considering the reasonableness of a manufacturer's decision regarding what information to include, the CPSC will take into account the practices of peer manufacturers. Marking may be impracticable if the product is too small to be marked, if a mark would damage the product or impair its utility, if the product's surface material is impossible to mark permanently or if the aesthetics of the product would be ruined by a mark. The CPSC states that it will not penalize those who make "good faith" efforts at compliance as both businesses and the agency learn the most effective and efficient tracking methods.

*This is the ninth in a series of Troutman Sanders CPSIA Advisories. If you missed any of the earlier Advisories, please contact Kristy Adams at [kristy.adams@troutmansanders.com](mailto:kristy.adams@troutmansanders.com).*

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