



PRODUCT SAFETY ALERT

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The Consumer Product Safety Commission (CPSC) has taken a variety of actions to implement the Consumer Product Safety Improvement Act of 2008 (CPSIA) in recent weeks. Most notably, General Certificates of Conformity (GCCs) will be required for products manufactured after February 10, 2010 for many categories of products. Certifications will be required for compliance with child-resistant packaging obligations but not for general hazard labeling. Lead substrate testing for children's products was stayed for another year. The CPSC also released guidance on component testing, is seeking comments on testing and certification requirements, and plans to hold another public workshop on issues related to creating a public database of information on consumer product safety incidents.

Complex decision lifts stay for most products, extends lead substrate stay for one year. The CPSC agreed to lift the stay of testing and certification for most non-children's products, meaning that General Certificates of Conformity will be required for products manufactured after February 10, 2010. As noted above, the CPSC clarified that Federal Hazardous Substances Act (FHSA) certifications will not be required, but certification of compliance with Poison Prevention Packaging Act (PPPA) requirements will be required. Third party testing and certifications will also be required for certain children's products covered by separate safety rules made after February 10, 2010, including bicycle helmets, bunk beds, dive sticks and rattles. The stay will remain in effect for some children's product requirements until 90 days after accreditation standards are published in the Federal Register. Finally, the Commission agreed to stay lead testing in children's products, subject to two important existing exceptions. Third party testing and certification remains required for lead in paint in children's products and lead in metal jewelry. Third party testing is also currently required to show compliance with requirements for small parts, cribs and pacifiers.

The CPSC's press release contains a helpful chart that identifies the various specific requirements and deadlines at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml10/10083.html>.

Lead paint and substrate component testing. In conjunction with the stay of lead substrate testing, the Commission also published an updated interim enforcement policy on these items, available at <http://www.cpsc.gov/about/epsia/frcomponent.pdf> which allows component testing to indicate compliance as described in the policy. Such testing must be done by a recognized third party laboratory. This policy also confirms that if a product is made with materials that the Commission has concluded would not exceed lead limits and thus are "low lead" products (like textiles, most gemstones, precious metals, stainless and surgical steel, etc.) neither have to be tested nor are subject to a certification requirement. All products must still comply with the applicable requirements.

Testing and certification comment deadline January 11, 2010. The CPSC held a two-day workshop in December on aspects of testing and certification, including required elements of a "reasonable testing program," sampling, how to avoid undue influence on laboratories, component testing, verification of third party tests, and small business impacts. The comment deadline remains January 11, 2010. The tentative schedule calls for the CPSC to release a final rule at the end of the summer, an ambitious schedule given the complexities of the issues.

Alternative lead paint test procedure. The CPSC is publishing for public comment an alternative test procedure to test for lead in small areas of painted toys or children's products using spray sampling, multiple stamping or component testing of finished components. The deadline for comments will be 60 days after publication in the Federal Register.

Workshop on public database scheduled January 11 – 12, 2010. The CPSC announced that it would hold a public workshop on establishment of a public database on January 11 and 12, 2010. See <http://www.cpsc.gov/library/foia/foia10/brief/dbworkshop.pdf>. Topics to be covered at the workshop include "Data Analysis and Reporting," "Reports of Harm," "Manufacturer Notification and Response," "Additional Database Content," and "Materially Inaccurate Information."

Congressional Action on Lead Exemptions. In the meantime, a legislative proposal to address exemptions from lead limits is circulating. The language would provide an exemption process for components where it is technically infeasible to eliminate lead, subject to required lead warning labels. The process will likely allow for exemptions only for bikes and ATVs. Ordinary books will be completely exempt.

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