



Establish a deliberate emphasis on product safety.

CPSC REFORM: THE CONSUMER PRODUCT SAFETY ACT OF 2008

On July 31, 2008 the U.S. House and Senate approved the Consumer Product Safety Improvement Act of 2008 (H.R. 4040) by wide margins (House 494-1; Senate 89-3)(collectively, the “Improvement Act”). The Improvement Act has been characterized as the most sweeping change to the U.S. Consumer Product Safety Commission (“CPSC”) since its creation in 1972. A few of the new requirements in the Improvement Act are described below.¹



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Legislative History. The Bill was introduced in the U.S. House by Representative Bobby Rush (D-Illinois) and had 106 co-sponsors. The proposed legislation came on the heels of extraordinary product recalls in 2007 when recalls jumped 22% in a nine-month period ending June 30, 2007, racking up 415 filed recall actions that affected nearly 45 million products.² After introduction, the Bill received amendments and proposed name changes from the U.S. Senate and was ultimately approved in a Joint House-Senate Conference Report on July 29, 2008. The measure received full Congressional approval three days later and has been sent to the President, who is expected to sign it in August.

“Ban” of Lead in Children and Infant Products. Touted as a ban of lead in children and infant products, the Improvement Act establishes lower allowable threshold levels for lead, which are incrementally phased-in over three (3) years. Manufacturers must reduce lead levels to 600 parts/million within 180 days, 300 parts/million within 1 year, and 100 parts/million within 3 years. Threshold levels for lead paint were lowered from 0.06% to 0.009%. Children and infant products are defined by existing CPSC regulations as consumer products that are intended for use by a child 12 years of age or younger, and infant products are defined as “child care articles” intended to facilitate sleep or feeding of children 3 years of age or younger.

“Ban” of Phthalates in Children and Infant Products. Touted as a ban of phthalates, the Improvement Act prohibits the manufacture, sale, distribution, or import of children and infant products with concentrations of more than 0.1% of di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP) and an interim prohibition on the same products with concentrations of more than 0.1% of diisononyl phthalate (DINP) or diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP). The Bill establishes a Chronic Hazard Advisory Panel to study the health effects of phthalates and issue a report to the CPSC, which is given authority to implement a permanent rule. The prohibition and interim prohibition are effective 180 days after enactment of the Improvement Act. Phthalates are organic compounds of phthalic acid, which are added to plastics to increase their flexibility. Since 2004, conflicting health studies have suggested that phthalates may cause asthma and disorder in the male reproductive system.

Mandatory Toy Safety Standards. The Improvement Act implements as the CPSC mandatory standard for toy safety the existing provisions of ASTM International Standard F963-07 (“F963”) with directions for further review and incorporation of revised versions of F963 as the CPSC standard for children’s toys. ASTM F963 standard governs safety requirements, warning labels, and testing for hazards caused by ingesting magnets, toxic substances, toys with spherical ends, hemispheric-shaped objects, cords, straps, elastics, and battery-operated toys. Compliance with the existing provisions of F963 is required 180 days after enactment of the Improvement Act.

Formaldehyde Study. The Improvement Act requires that the CPSC conduct a study within 2 years on the use of formaldehyde in the manufacture of textile and apparel articles to identify risks to consumers.

Mandatory Labeling Requirements. In separate sections, the Improvement Act requires labeling in: (1) children's products that identify the manufacturer and the production batch of the product; and (2) toys and games that directly associate the product's warning statement with the product's advertising in the company's website, catalog, and printed materials. In the latter, the product warning must be placed adjacent to the advertising, and compliance is required for internet websites within 120 days following enactment of the Improvement Act and within 180 days for all other written materials.

Third-Party Product Testing. Certain children's products must be tested for compliance with certain safety standards by an accredited laboratory, special rules for the manufacturer's own laboratory, and priorities for testing more hazardous components and products, such as lead paint, cribs, metal jewelry, and baby walkers, jumpers, and bouncers. Depending on the product, implementation of these new requirements run 30 to 210 days after enactment of the Improvement Act.

Mandatory ATV Standards. One non-children's product addressed by the Improvement Act was All-Terrain Vehicles ("ATVs") in which the Bill adopted a mandatory standard governing equipment configuration and performance requirements developed by the Specialty Vehicle Institute of America (SVIA) and the American National Standard Institute (ANSI), which is known as ANSI/SVIA-1-2007. The standard becomes mandatory 150 days following its publication in the Federal Register and is mandatory for all ATVs manufactured, imported, sold, or distributed in the U.S. The Improvement Act requires further proceedings on speed restrictions for youth ATVs, free hands-on training programs, and the promotion of helmets and safety gear. The ATV industry had experienced an influx of foreign, non-traditional ATVs that did not comply with the voluntary ANSI/SVIA industry standard, which made their product directly vulnerable to U.S. purchasers, particularly youth.

CPSC Administration. The Improvement Act gives new authority to the CPSC that allows the Commission greater enforcement of its safety regulations. The CPSC's authority includes: (1) increased civil penalties for violations of CPSC, Flammable Fabrics Act ("FFA"), and Federal Hazardous Substances Act ("FHSA") regulations; (2) improved criminal penalties by increasing fines, lengthening imprisonment periods, and including potential forfeiture of assets for violation of regulations; (3) deputizing state attorney general officers to enforce CPSC regulations; (4) creating whistleblower protections; and (5) reducing manufacturers' options in its Corrective Action Plan to choose refund, repair, or replacement of a recalled product and replacing that option with CPSC requirements on a case-by-case basis; and (6) creating a searchable database within 2 years that identifies death and severe personal injury allegedly arising from product hazards, as well as the identification of the product and its manufacturer. Also, the CPSC budget is increased in 2010 to \$118 million and in 2014 to \$136 million.

¹ This general description does not provide detail to or a comprehensive description of the requirements of the Improvement Act, nor does it seek to provide legal advice. The data contained in this article is informational only and reading or using it does not establish an attorney-client relationship. Individual manufacturers should seek the advice of a lawyer to determine how and whether the provisions of the Improvement Act apply to its products or to its actions.

² Wall Street Journal, July 29, 2008, at A1.

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