



## COMPLIANCE WITH CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008 POSES CHALLENGES FOR BUSINESSES

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Last August, President Bush signed the Consumer Product Safety Improvement Act of 2008 (CPSIA). The CPSIA provided the most comprehensive overhaul of U.S. consumer product safety laws since the enactment of the Consumer Product Safety Act in 1972. Among other changes, the CPSIA added new requirements concerning the testing of certain products designed for use by children 12 years of age or younger. In addition to the CPSIA's general provisions, the Consumer Products Safety Commission (CPSC) has also been authorized to draft specific regulations and testing procedures for children's products and has been issuing such regulations on a rolling basis throughout 2009. These regulations can present new and formidable challenges for businesses of all sizes.

The CPSIA revised large portions of the Consumer Product Safety Act, including those provisions dealing with product recalls, product warnings, and state enforcement of federal product safety laws. The revisions with the greatest potential to impact local businesses are set forth in Section 102 of the CPSIA.

Section 102 of the CPSIA amended the Consumer Product Safety Act in two significant respects. First, it expanded the certification requirement for consumer products regulated by the CPSC. Previously, manufacturers only had to certify that their products met the requirements of the Consumer Products Safety Act (CPSA). Now, this general certification requirement has been extended to all products subject to any standards under the CPSA and to products subject to any similar rule, standard, ban or regulation under any act enforced by the CPSC. Therefore, the first step in determining the impact of the new regulations on a business is to determine whether the products manufactured by a business are subject to any regulations promulgated by the CPSC. Unfortunately, this task is not as simple as one would hope as the CPSC regulates a diverse array of products ranging from cigarette lighters to stuffed animals.

The second aspect of Section 102 – a requirement for third-party testing of certain children's products – may pose even more substantial compliance issues for businesses. Section 102 of the CPSIA mandates third-party testing and certification of certain children's products (defined as products designed for use by children 12 years old or younger). Every manufacturer and importer of children's products must have its product tested by an accredited independent testing lab and, based on the testing, must issue a certificate that the product meets all applicable CPSC requirements. Children's products are subject to more regulations than other consumer products, including regulations regarding sharp corners, sharp edges and other safety matters unique to children.

Since the enactment of the CPSIA in August 2008, the CPSC has been publishing accreditation procedures for independent labs on a rolling basis, depending on the type of regulations that apply to the product. As an example, the CPSC published accreditation procedures for labs testing cribs and pacifiers in October 2008 and required third-party testing of these products by January 2009.

Businesses should be aware of the substantial revisions to the CPSIA and the new regulations being issued by the CPSC as they may have substantial impact on certain manufacturers. These changes affect any party that manufactures general consumer products and have particular importance to manufacturers of children's products. Though compliance with the new regulations and mandatory testing procedures can be onerous, failure to comply with the new law could subject businesses to