

US Consumer Product Safety Improvement Act 2008 – A Closer Look

Last month's Focus report gave an overview of the US Consumer Product Safety Improvement Act 2008, now further details into how the Act impacts on industries are investigated.



US CPSIA - A Closer Look 進一步審視《美國消費產品安全加強法》

Third-party Laboratory Test
Lead Requirement
Phthalates Requirement
Certificate and Label
Children's Product
Children's Care Product

...to the US Consumer Product Safety Improvement Act in the form of the Improvement Act of 2008 (aka HR-4040) prompt drastic changes to the impacts on manufacturers is immense. The prohibition is placed on "children's products" as of age or younger" because such products are designed for use by children. The Act also includes provisions for third-party testing.

...Hong Kong industries and major textile & apparel, are most affected. The Act would need to comply with the prohibition, labeling and testing requirements in the same boat with toy manufacturers.

...product safety were consistent with any regulation, interpretation and standard would naturally apply to products and operations.

Amendments to the US Consumer Product Safety Act in the form of the Improvement Act of 2008 (CPSIA) a.k.a. HR4040 prompt drastic changes to substance limitation/prohibition, product testing and labelling of products, thus the impacts on manufacturers are immense. Particular attention is placed on 'children's products' as defined as 'a product designed or intended primarily for children 12 years of age or younger' because such products are subject to substance limitation/prohibition, labelling and mandatory third-party testing.

Hong Kong industries across the board are affected, yet the impacts are significant for two particular industries - toys and apparel manufacturing. The fact that children's apparel would need to comply with the substance limitation/prohibition, labelling and testing requirements put many apparel manufacturers in the same boat with toy producers.

The prescribed specifications on product safety were outlined in January's Focus, yet as with any regulation, there are inevitably more than one interpretation and questions over the Act's implementation would naturally arise given the extensive range of toy and apparel products covered. Addressing questions of how the Act applies to products should help clarify some uncertainties and mitigate adverse impacts on supply chain operations.

Toys

In spite of the significant decreases in lead levels¹, for both substrate and surface coating, the industry is ready to reach such standard. This is the view of **Lawrence Chan, Hong Kong Toys Council Chairman**. He further says: "Lead isn't the problem, the problem is with phthalates and this is due to the fact that manufacturers can receive supplies of unknown chemical composition."

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The Act's phthalates requirement is problematic for several reasons. Firstly, the Act is ambiguous about the types of materials that require testing, so manufacturers must assume all materials need testing. And considering that many different types of materials are used in toy products as well as the prohibition on composite testing, testing would be extensive and expensive.

Moreover phthalates requirement is more stringent than those of lead as manufacturers must ensure that all product components comply with the prescribed standards, not just the accessible parts. "It certainly makes little sense that all components, even inaccessible ones, need to comply; components safely housed internally pose no threat. Compared to the lead requirement, the phthalates requirement is absurd," Mr Chan adds.

It is not hard to see that phthalate testing is more expensive than lead testing and would significantly incur additional cost on manufacturers; it is estimated that the overall testing cost would increase by three to four times.

From the supply chain perspective, there is huge difficulty in sourcing compliant materials. The haste nature of the Act's approval and implementation means that upstream suppliers have not had time to adjust. Furthermore, suppliers do not exclusively supply toy manufacturers, thus achieving compliance is not an imperative for suppliers. Consequently, it is now increasingly difficult for toy manufacturers to source compliant materials.

¹ See Points to Note

Phthalates, other than those banned, may be used as alternative plasticisers although manufacturers are obliged to ensure that these alternatives are adequately tested and do not pose risk of injury under normal use or reasonably foreseeable misuse.

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Regarding products, the nature of some product categories has elicited questions as to whether compliance is applicable. Feedback from the Consumer Product Safety Council (CPSC) has confirmed that the children's product rule is to be strictly implemented. For sports equipment, unless the products are toy versions of sports equipment, compliance is not applicable. Similarly, unless jewellery items are used as toys, compliance is not applicable.

Children's Apparel

The lead requirements are applicable to all sewn children's apparel. The Act considers any base material as substrate, thus base fabric is deemed a substrate material and requires compliance. Phthalates requirement is applicable to children's care products only, which are defined as 'products designed or intended to facilitate sleep or feeding of children less than three years old or help such children with sucking or teething'. Also if decorative items such as jewellery are part of the apparel product, these items will need to satisfy the phthalates requirement as well.

During a recent seminar, **Guangdong Entry-Exit Inspection and Quarantine Bureau's Chief Director Zhang Xiaolue** explains that children's apparel and dyed apparel (not necessarily children's) shall come under strict scrutiny of provincial authorities. Those apparel products that are not subject to the mandatory testing will be selectively inspected.

He illustrates that there were numerous cases of substandard apparel products: "In the past, there



were examples of substandard products barred from entering the destined export markets because small parts and accessories were faulty. For example, parts and accessories may be easily pulled out and swallowed by children or paint had excessive lead levels. Entire batches of apparel products have been rejected even if seemingly small accessories or parts were tested as problematic.”

Particular attention should be paid to buttons, snaps, zippers and prints. Illustrations and designs printed on apparel products need to be checked that the paint used is within the prescribed limit. Past cases have shown rubber prints to contain high amounts of lead. In some cases, prints may be considered as surface coating if it can be easily scratched off. On phthalates, attention is placed on children’s care products such as bibs, diapers or diaper covers, footed pajamas etc.

Supply chain management is therefore an area of critical importance and naturally manufacturers are required to manage their suppliers so that their supply materials are in compliance. Mr Zhang adds that provincial authorities would also focus on the region’s paint suppliers to ensure their supplies are up to standard.

So far, the Act outlines that testing must be representative of the manufacturing process.



The Act’s mandate for unit (final product) testing is particularly pertinent for apparel manufacturers. It is understandable that the same components, such as zippers, buttons and base materials, are utilised in different combinations to make various final products. So, not only does component testing saves both money and time, it makes more sense than unit testing; furthermore it is safer. However, the case for unit testing is that the veracity of component testing is in doubt if manufacturers make unauthorised component substitutions.

Manufacturers therefore may wish to provide individual testing certificates in lieu of the unit testing certificate. So far, the Act outlines that testing must be representative of the manufacturing process, thus whether individual component testing certificate or final article testing certificate is to be used depends on the final product.

Points to Note

- Lead in substrate requirement - 600 ppm (parts per million) after 10 Feb 2009; 300 ppm after 14 Aug 2009, and 100 ppm after 14 Aug 2011; lead in surface coating requirement - 90 ppm after 14 Aug 2011.
- Phthalates requirement - permanent ban on DEHP, BBP, DBP and interim ban on DnOP, DIDP, DINP for over 1,000 ppm after 10 Feb 2009.
- Mandatory third-party testing for all children’s products (for users aged 12 or under).
- Distinguish lead in substrate and lead in surface coating.
- Lead in substrate and lead in surface coating involve separate testing methods.
- Lead in substrate and lead in surface coating requirements are not applicable to inaccessible components.
- Small areas of paint (1 cm²) are not exempted.
- Composite testing is not allowed.
- Electroplated layer is considered in substrate and not a surface coating.
- Inventory products must comply with lead requirement on the effective dates.
- Inventory products do not need to comply with phthalates requirement, only products manufactured on or after 10 Feb 2009 need to comply.
- Not all children’s apparel need to comply with phthalates requirement, only children’s care products.
- Phthalates requirement is applicable to all components, accessible and inaccessible.
- The CPSC will issue a guide to outline typical components that are accessible and inaccessible in August 2009; until then manufacturers need to judge whether components are accessible or not.

For further information, please browse the CPSC website at - www.cpsc.gov

Children's apparel, as a children's product, is required to bear the tracking label that contains all the information pertaining to the product's manufacturing details. The aim of the label is to enable the user ascertain where the product comes from so that in the event of product recall, a back track of the product's supply chain can determine the sources of the manufacturing and supplies. Effective supply chain management is key to how the tracking label operates, where manufacturers ought to maintain records of all supply sources.

Some apparel manufacturers have indicated that buyers are requesting their adult apparel products comply with the prescribed standards. Although not obliged to comply with the law, some buyers are clearly playing it safe, as some adult apparel products (or other products for that matter) may be given to children of 12 years or younger to use. Manufacturers may consider using conspicuous displays highlighting that products are not intended for children's use.

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Areas for Further Clarification and Future Developments

As mentioned in last month's report, the hastily approved Act fails to account for the concerns of manufacturers (both US domestic and non-US) and supply chain realities. The generic nature of the Act also fails to account for the comprehensive range of product variations entailing different product specifications and thus different manufacturing processes. As such there are still numerous outstanding issues that need clarification. Even at the Act's fundamental level, some definitions need to be resolved, for

Updates

Since the completion of this Focus report, the US Consumer Product Safety Commission's Office of Information and Public Affairs has published on 30 Jan a press release on the latest development of the CPSIA. This press release is reproduced here.

CPSC Grants One Year Stay of Testing and Certification Requirements for Certain Products

WASHINGTON, D.C. - The U.S. Consumer Product Safety Commission voted unanimously (2-0) to issue a one year stay of enforcement for certain testing and certification requirements for manufacturers and importers of regulated products, including products intended for children 12 years old and younger. These requirements are part of the Consumer Product Safety Improvement Act (CPSIA), which added certification and testing requirements for all products subject to CPSC standards or bans.

Significant to makers of children's products, the vote by the Commission provides limited relief from the testing and certification requirements which go into effect on 10 February 2009 for new total lead content limits (600 ppm), phthalates

limits for certain products (1000 ppm), and mandatory toy standards, among other things. Manufacturers and importers – large and small – of children's products will not need to test or certify to these new requirements, but will need to meet the lead and phthalates limits, mandatory toy standards and other requirements.

The decision by the Commission gives the staff more time to finalise four proposed rules which could relieve certain materials and products from lead testing and to issue more guidance on when testing is required and how it is to be conducted.

The stay will remain in effect until 10 February 2010, at which time a Commission vote will be taken to terminate the stay.

The stay does not apply to:

- Four requirements for third-party testing and certification of certain children's products subject to:
 - > The ban on lead in paint and other surface coatings effective for products made after 21 December 2008;



example there are questions surrounding the issue of apparel size and age of the user, the CPSC has stated that clarifications would be made.

Testing remains a contentious area and the heart of many problems of the Act. Unclear definitions have caused confusion about which products need to be tested while it has been reiterated that even assuming all other supply chain requirements are fulfilled, not enough accredited laboratories are available to perform the testing. Related issues are to be taken up with the CPSC for clarifications, such as those concerning testing sample size and frequency. Other issues include which party should hold the certificate, the safest assumption and recommendation is that the manufacturer, importer and retailer all have copies of the certificate. The exact laws and procedures regarding the certificate and label are still in development.

Precise requirements concerning the tracking label, particularly for toys, need further

- > The standards for full-size and non full-size cribs and pacifiers effective for products made after 20 January 2009;
- > The ban on small parts effective for products made after 15 February 2009; and
- > The limits on lead content of metal components of children's jewellery effective for products made after 23 March 2009.
- Certification requirements applicable to all-terrain vehicles (ATV's) manufactured after 13 April 2009.
- Pre-CPSIA testing and certification requirements, including for: automatic residential garage door openers, bike helmets, candles with metal core wicks, lawnmowers, lighters, mattresses, and swimming pool slides; and
- Pool drain cover requirements of the Virginia Graeme Baker Pool & Spa Safety Act.

The stay of enforcement provides some temporary, limited relief to the crafters, children's garment manufacturers and toy makers who had been subject to the testing and certification required under the CPSIA. These businesses will not need to issue certificates based on testing of their products until

additional decisions are issued by the Commission. However, all businesses, including, but not limited to, handmade toy and apparel makers, crafters and home-based small businesses, must still be sure that their products conform to all safety standards and similar requirements, including the lead and phthalates provisions of the CPSIA.

Handmade garment makers are cautioned to know whether the zippers, buttons and other fasteners they are using contain lead. Likewise, handmade toy manufacturers need to know whether their products, if using plastic or soft flexible vinyl, contain phthalates.

The stay of enforcement on testing and certification does not address thrift and second hand stores and small retailers because they are not required to test and certify products under the CPSIA. The products they sell, including those in inventory on 10 February 2009, must not contain more than 600 ppm lead in any accessible part. The Commission is aware that it is difficult to know whether a product meets the lead standard without testing and has issued guidance for these companies that can be found on our web site <file://cpscpub/prerel/prhtml09/09086.html> .

Importers will exert pressure on manufacturers to ensure standards are met.



clarification as there is no indication about where the labels on the product and its packaging should be located. It is understandable that there are limits on placing labels on the product and its packaging, so the CPSC advises that the label should contain as much information as possible, enabling the end user to ascertain the product's location, date, batch and details on the manufacturer or private labeller. The label must be permanent on both product and packaging thus hang tags, as inquired by some manufacturers and importers, do not comply.

US authorities have hinted that requirement on lead will be stringent and could drop further below 90 ppm for surface coating. Requirement on formaldehydes in textile and apparel is also

a possibility. The Act imposes hefty penalties on importers who are responsible for compliance as product shipments enter the US. Naturally, importers will exert pressure on manufacturers to ensure standards are met. Mr Chan notes that the Act definitely requires a close relationship between the buyer and the manufacturer. "Achieving compliance will very much be a joint effort; in the past buyers have been indifferent to manufacturers and their needs, only paying attention to product price; things are different now and much buyer's education needs to be done," he says. ➡

Further analysis has been provided by the CPSC following the publication of the press release. It is emphasised that the CPSC did not grant a stay of the 10 February 2009 effective date of the lead content requirements of Section 101 (a)(2) as requested. The CPSC states: 'Also the Commission emphasises that the stay only applies to testing and certification, not to the sale of products that do not comply with applicable mandatory safety standards.'

This means that any children's product not meeting the 600 ppm lead content standard for accessible components is a banned hazardous product and cannot be sold. Retailers will not sell products where there is a question and may demand test data to prove that products meet the standards. Books, bikes, apparel, electronic products, and others may still have to be tested even though the Commission may eventually complete its rulemakings and exempt those products.

CPSC's actions grant no relief to manufacturers, retailers, thrift stores, resellers, distributors or others who have asked the CPSC for clarity regarding the definition of

accessible components and exclusion of certain products or materials. For example, if a manufacturer requests that a product be exempted by rulemaking, and ultimately it is not exempted, any such product sold would be subject to recall and the manufacturer could potentially be subject to class action litigation for selling banned hazardous substances. Because these risks are too great, many manufacturers may not take these risks by continuing to sell products.

As highlighted in a CPSC statement: 'It is important to clearly understand what the stay does and does not do. The stay of enforcement of the testing and certification provisions will give some temporary and limited relief to small manufacturers, home-based businesses and crafters who cannot comply with the law without incurring substantial testing costs. However, the stay does not relieve them of complying with the underlying requirements enacted by Congress and which go into effect on 10 February 2009, dealing with lead, phthalates and a number of other toy standards. Any changes to these requirements will need to be addressed by Congress.'