

# SAFEGUARDS

SGS CONSUMER TESTING SERVICES

HARDLINES, SOFTLINES, ELECTRICAL & ELECTRONIC

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## STAY OF ENFORCEMENT OF THE CRITICAL PROVISIONS OF CONSUMER PRODUCT SAFETY IMPROVEMENT ACT (CPSIA)

The U.S. Consumer Product Safety Commission voted 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 CPSIA, which added *certification and testing requirements* for all products subject to CPSC standards or bans. A number of these requirements are slated to come in to effect on February 10, 2009 including lead content rule for children's products, ban on use of certain phthalates in toys and childcare items, and mandatory testing of toys to ASTM F963.

### What the Stay Means

Simply stated, the Commission is saying that they will **not enforce** the testing and certification portion of the Act that has not yet come into effect, specifically the ban on lead in substrate at levels over 600 ppm and the ban on phthalates in certain products at levels above 1000 ppm.

The Commission is giving manufacturers and importers temporary (1 year...to 2/10/10) relief from *some* of the testing and certification requirements under the Act. This relief has been granted for several stated reasons which include,

- to allow time to develop more guidance and outreach for small businesses that are facing extreme challenges and negative economic impact from the new testing provisions.
- to allow the Commission more time to consider exclusions for certain products and materials that are considered inherently lead free.
- to allow the Commission time to consider an exclusion for "re-sellers" of children's products.
- to allow the Commission time to develop appropriate testing methodologies and implementation rules and guidelines based on sound scientific and technical analysis backed by education of the business community.

There are four very important *exceptions* from the stay of enforcement.

1. The following 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 December 21, 2008;
  - ⇒ The standards for full-size and non full-size cribs and pacifiers effective for products made after January 20, 2009;
  - ⇒ The ban on small parts effective for products made after February 15, 2009; and
  - ⇒ The limits on lead content of metal components of children's jewelry effective for products made after March 23, 2009.

The logo for SGS, consisting of the letters "SGS" in a bold, sans-serif font. A vertical orange line is positioned to the right of the letters, and a horizontal orange line is positioned below the letters, forming a partial frame.

2. Certification requirements applicable to ATV's manufactured after April 13, 2009.
3. 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
4. Pool drain cover requirements of the Virginia Graeme Baker Pool & Spa Safety Act.

### What The Stay Does Not Mean

It is critical to understand what this stay does not say or imply. Most important, the stay does not relieve the manufacturer or importer from the responsibility to ensure that their product meets all applicable product safety rules, including those covered by the stay of enforcement for testing and certification. The covered products still have to comply with the regulations as stated, such as the 2/10/09 ban on lead in substrates in excess of 600 ppm, the ASTM F963 requirement for toys and the ban on phthalates in concentration over 1000 ppm. The statements from the Commission go to great lengths to state that the obligation is still in effect to comply with the law under the current schedule, and that it is the Commission's understanding that major manufacturers will not delay compliance programs that they have already initiated or have planned.

### Analysis of the Stay

- Since the Commission will not be immediately enforcing the testing portion of the act for lead in substrates and for phthalates, this will allow for screening methods to be used as a cost saving methodology for manufacturers and importers to check if their products are in compliance with the Act.
- The Commission expects that manufacturers/importers of certain products and related industry groups that are seeking exemption for their products from lead content provisions of the CPSIA because they are inherently lead free could use this additional time to gather scientific data to present to the Commission for its consideration.
- The Commission has stated in several documents that they are not interested in penalizing or hindering businesses, small or large, that are selling safe products. The Commission has also expressed an expectation for State Attorney Generals to follow its intent of the stay and focus their enforcement actions on other provisions of the law such as sale of recalled products.



- Most importantly, all companies that are subject to product safety rules under the CPSC jurisdiction should understand that they are STILL under a legal obligation to produce/import/sell products that comply with all regulations under the Act.

SGS experts continue to monitor the CPSC and other websites to keep up to date on the emerging details of the CPSIA and state legislation status. Keep in touch with your local SGS office and subscription to these Safeguards bulletins for the latest news.

### FOR ENQUIRIES:

Global Competences Support Centre: [gcsc@sgs.com](mailto:gcsc@sgs.com)  
 Chuck Coletta +770-319-6019 [Chuck.Coletta@sgs.com](mailto:Chuck.Coletta@sgs.com)  
 Sanjeev Gandhi +973-461-7924 [Sanjeev.Gandhi@sgs.com](mailto:Sanjeev.Gandhi@sgs.com)  
 HingWo Tsang +852 2774 7420 [Hingwo.Tsang@sgs.com](mailto:Hingwo.Tsang@sgs.com)

Asia – Hong Kong. Tel: +852 2334 4481 Fax: +852 2144 7001 [mktg.hk@sgs.com](mailto:mktg.hk@sgs.com)  
 Australasia \_ Perth. Tel: +61 (0) 3 9790 3418 Fax: +61 (0) 3 9701 0988 [au.cts@sgs.com](mailto:au.cts@sgs.com)  
 Europe – London —UK. Tel: +44(0) 20 8991 3410 Fax: +44 (0) 20 8991 3417 [gb.cts.sales@sgs.com](mailto:gb.cts.sales@sgs.com)  
 Africa & Middle East – Turkey. Tel: +90 212 225 0024 Fax: +90 212 296 47 82 [sgs.turkey@sgs.com](mailto:sgs.turkey@sgs.com)  
 Americas – USA. Tel: +1 973 575 5252 Fax: +1 973 575 1193 [Marketing.CTS.US@sgs.com](mailto:Marketing.CTS.US@sgs.com)

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