

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Assistant Secretary of the Commission.*  
[FR Doc. E9-30850 Filed 12-23-09; 4:15 pm]  
**BILLING CODE 6351-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, January 8, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Assistant Secretary of the Commission.*  
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## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2 p.m., Wednesday January 20, 2010.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Assistant Secretary of the Commission.*  
[FR Doc. E9-30848 Filed 12-23-09; 4:15 pm]  
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## CONSUMER PRODUCT SAFETY COMMISSION

### Consumer Product Safety Act: Notice of Commission Action on the Stay of Enforcement of Testing and Certification Requirements

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Revision of terms of stay of enforcement.

**SUMMARY:** The Consumer Product Safety Commission (“CPSC” or “Commission”) is announcing its decision to revise the terms of its stay of enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (“CPSA”) as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”).<sup>1</sup> On February 9, 2009, the Commission announced a stay of enforcement that would remain in effect until February 10, 2010, at which time the Commission would vote to terminate the stay. Through this notice, the Commission announces changes to the stay including when the stay will lift as to certain testing and certification requirements and how the testing and certification requirements will be implemented or otherwise become effective with regard to specific products subject to the testing and certification requirements of the CPSIA.

**DATES:** Pursuant to this revision of terms, the stay of enforcement, as it pertains to most products, expires on February 10, 2010. Details regarding the stay of enforcement relative to specific products and other dates can be found in part II of this document.

**FOR FURTHER INFORMATION CONTACT:** John “Gib” Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail [jmullan@cpsc.gov](mailto:jmullan@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Background

*A. What Statutory Requirements are at Issue?*

In the **Federal Register** of February 9, 2009 (74 FR 6396), the Commission announced that it would stay its enforcement with respect to certain testing and certification requirements in

section 14(a)(1), (a)(2), and (a)(3) of the CPSA, as amended by section 102 of the CPSIA.

In brief, sections 14(a)(1), (a)(2), and (a)(3) of the CPSA establish testing and certification requirements for most consumer products regulated by or under the statutes enforced by the Commission, including children’s products. Section 14(a)(1) of the CPSA requires every manufacturer of a product (and the private labeler of such product if such product bears a private label) that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission and which is imported for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other law enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation applicable to the product.

For children’s products, section 14(a)(2) of the CPSA states that, before importing for consumption or warehousing or distributing in commerce any children’s product that is subject to a children’s product safety rule, the manufacturer (and the private labeler if the children’s product bears a private label) must submit sufficient samples of the children’s product, or samples that are identical in all material respects to the product, to a CPSC-recognized third party conformity assessment body accredited under section 14(a)(3) of the CPSA (“recognized third party test laboratory”). The recognized third party test laboratory must test the children’s product for compliance with such children’s product safety rule. Based on the testing, the manufacturer (or private labeler) must issue a certificate that certifies that the children’s product complies with the children’s product safety rule based on the assessment of a recognized third party laboratory accredited to conduct such tests.

Section 14(a)(3) of the CPSA establishes a schedule for implementing third party testing and includes a time line for the accreditation of third party conformity assessment bodies. Section 14(a)(3)(A) of the CPSA states that the third party testing requirement applies to any children’s product manufactured more than 90 days after the Commission has established and published a “notice of requirements” for the accreditation of

<sup>1</sup> The Commission voted 5-0 to publish this notice, with changes, in the **Federal Register**.

Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler and Anne Northup issued statements, and their statements can be found at <http://www.cpsc.gov>.

third party conformity assessment bodies to assess conformity with a children's product safety rule. As of the date of publication of this notice, the Commission has issued six notices of requirements; the notices of requirements, and their respective effective dates, are as follows:

- Lead paint (73 FR 54564 (September 22, 2008), effective for products manufactured after December 21, 2008);
- Full-size and non-full size cribs and pacifiers (73 FR 62965 (October 22, 2008), effective for products manufactured after January 20, 2009);
- Small parts (73 FR 67838 (November 17, 2008), effective for products manufactured after February 15, 2009);
- Metal components of children's metal jewelry (73 FR 78331 (December 22, 2008), effective for products manufactured after March 23, 2009);
- Bicycle helmets, dive sticks and similar articles, rattles, bicycles, and bunk beds (74 FR 45428 (September 2, 2009), effectiveness stayed at least until February 10, 2010)); and
- Limits on total lead in metal children's products and in non-metal children's products (74 FR 55820 (October 29, 2009), effectiveness stayed at least until February 10, 2010).

Additionally, section 14(g) of the CPSA imposes certain requirements for certificates, and CPSC regulations, at 16 CFR part 1110, limit the testing and certification requirement to importers and domestic manufacturers. The certification requirements of section 14(g) apply only to products manufactured after the date such certification requirement becomes effective and do not apply to products held in inventory. Thus, for products below where the stay is lifted effective February 10, 2010, certification will only be required for products manufactured beginning on February 11, 2010.

#### *B. What Did the Stay of Enforcement Cover? Why Did the Commission Issue the Stay?*

Rather than list the consumer product safety rules or similar rules, bans, standards, or regulations under any other law enforced by the Commission that were covered by the stay of enforcement on testing and certification, the stay instead described the rules, bans, standards, or regulations that were not covered by the stay of enforcement. The list consisted of the following:

- (1) The requirements of any CPSC regulation, or of section 14(a) of the CPSA as it existed before the CPSIA, for product testing and certification,

including, *inter alia*, existing requirements for certification of automatic residential garage door openers, bicycle helmets, candles with metal core wicks, lawnmowers, lighters, mattresses, and swimming pool slides;

(2) The certifications required due to certain requirements of the Virginia Graeme Baker Pool & Spa Safety Act being defined as consumer product safety "rules;"

(3) The certifications of compliance required for all-terrain vehicles (ATVs) in section 42(a)(2) of the CPSA;

(4) Any voluntary guarantees provided for in the Flammable Fabrics Act ("FFA") or otherwise (to the extent a guarantor wishes to issue one);

(5) The requirements on manufacturers, including importers, of children's products to use third party laboratories to test and to certify, on the basis of that testing, compliance of children's products with:

- Requirements applicable to the lead content of paint and other surface coatings effective for products *manufactured after December 21, 2008*;
- Requirements applicable to full-size and non-full-size cribs and pacifiers effective for products *manufactured after January 20, 2009*;
- Requirements concerning small parts effective for products *manufactured after February 15, 2009*; and

• Requirements on the lead content of metal components of children's metal jewelry effective for products *manufactured after March 23, 2009*. See 74 FR at 6399. The Commission stated in the stay that all certification requirements in its regulations that existed prior to the enactment of the CPSIA would remain in effect regardless of the stay on testing and certification. This meant, for example, that the Commission's pre-CPSIA requirements for the testing and certification of mattresses remained in effect, so a mattress manufacturer would be required to comply with the pre-CPSIA requirements for testing and certifying mattresses.

The Commission explained that the stay of enforcement was necessary due to uncertainty or confusion as to how the testing and certification requirements would apply to various products, the type of testing that would be needed, whether finished products or their components could or should be tested, and whether certain requirements (particularly labeling requirements) were, under section 14 of the CPSA, rules, bans, standards, or regulations for which testing is required. The Commission also noted that, at the

time it issued the notice in November 2008, several rulemaking or voluntary standards development activities were underway and would not be resolved by February 10, 2009 (the effective date for several CPSIA provisions). Other factors, such as the need to develop or validate test methods and to educate the business community on the CPSIA, contributed to the Commission's decision to issue its stay of enforcement (see 74 FR at 6397 through 6398).

The **Federal Register** notice announcing the stay of enforcement also emphasized that the stay applied only to testing and certification; in other words, a product still had to comply with applicable mandatory safety requirements. For example, the stay of enforcement meant that a manufacturer did not have to have a recognized third party laboratory test a children's toy with respect to the CPSIA's limit for phthalates, but the children's toy still had to comply with the phthalate limit.

#### **II. When Will the Stay of Enforcement Be Lifted? When Will Manufacturers Need To Test and Certify Their Products?**

##### *A. What Prompted the Commission Action on the Stay of Enforcement Prior to the February 10, 2010 Scheduled Date for a Vote To Terminate the Stay?*

Between February 9, 2009 and the date of publication of this notice, the Commission issued more than 20 **Federal Register** notices, statements of policy, guidance documents, proposed rules, interim final rules, and final rules pertaining to the CPSIA, and most of these documents pertained to testing and certification issues. These **Federal Register** documents include:

- "Third Party Testing for Certain Children's Products; Notice of Requirements for the Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Total Lead in Children's Products," 74 FR 55820 (October 29, 2009);
- "Notice of Availability of a Statement of Policy: Testing and Certification of Lead Content in Children's Products," 74 FR 55820 (October 29, 2009);
- Proposed Rule on "Safety Standard for Infant Walkers," 74 FR 45704 (September 3, 2009);
- Proposed Rule on "Safety Standard for Bath Seats," 74 FR 45719 (September 3, 2009);
- "Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Parts 1203,

1510, 1512, and/or 1513 and Section 1500.86(a)(7) and/or (a)(8) of Title 16, Code of Federal Regulations,” 74 FR 45428 (September 2, 2009);

- Final Rule on “Children’s Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products,” 74 FR 43031 (Aug. 26, 2009);

- “Notice of Availability of a Statement of Policy: Testing of Component Parts With Respect to Section 108 of the Consumer Product Safety Improvement Act,” 74 FR 41400 (August 17, 2009);

- Final Rule on “Children’s Products Containing Lead; Interpretative Rule on Inaccessible Component Parts,” 74 FR 39535 (August 7, 2009);

- Proposed Rule on Requirements for Consumer Registration of Durable Infant or Toddler Products, 74 FR 30983 (June 29, 2009);

- Final Rule on “Children’s Products Containing Lead; Final Rule; Procedures and Requirements for a Commission Determination of Exclusion,” 74 FR 10475 (Mar. 11, 2009);

- Notice of Availability of Draft Guidance Regarding Which Children’s Products are Subject to the Requirements of CPSIA Section 108; Request for Comments and Information, 74 FR 8058 (Feb. 23, 2009); and

- Interim Final Rule on “Children’s Products Containing Lead; Exemptions for Certain Electronic Devices; Interim Final Rule,” 74 FR 6990 (Feb. 12, 2009).

Additionally, the Commission has met with numerous parties to discuss various aspects of the CPSIA or educate interested parties about the CPSIA’s requirements, and, on December 10, and 11, 2009, it held a two-day workshop to discuss issues relating to the testing, certification, and labeling of certain consumer products pursuant to section 14 of the CPSA (see 74 FR 58611 (November 13, 2009)). Given the issuance of many rules and other **Federal Register** documents, statements of policy, and guidance documents, the Commission believes it is appropriate to phase in the testing and certification requirements as described in more detail below.

Parts II.B through F of this document discuss specific consumer product safety rules under the CPSA and similar rules, bans, standards, or regulations under the other laws enforced by the Commission as to which consumer products or children’s products must be certified, and how the Commission will handle each with regard to the timing of certification requirements. For example, for a children’s product, lifting the stay of enforcement with regard to a

particular children’s product safety rule will mean that the children’s product is subject to the third party testing requirement and the manufacturer’s certification must be based on the results of tests conducted by a CPSC recognized third party laboratory. The Commission recognizes that many retailers have been requiring third-party testing and certification despite its stay of enforcement. In certain circumstances, however, with regard to specific children’s product safety rules, laboratories still need to be accredited for testing. Further, the Commission still needs to address the issues of component part testing and the scope of the definition of the term “children’s product.” The sections below describe how the Commission will handle those particular situations. For a non-children’s product, lifting the stay of enforcement will mean that the product is subject to the certificate requirements in section 14(g) of the CPSA. If the product was subject to a pre-existing certificate requirement (which may be in the form of a label), there may be a need for a manufacturer to modify its certificates to include the new requirements in section 14(g) of the CPSA where appropriate, or provide the additional information required by section 14(g) in some other manner where the existing label cannot be altered, which is currently the case with the mattress standard. Finally, this document, in sections C, E and F below, indicates the rules where certificates of compliance will be required for non-children’s products and how manufacturers can transition their existing certifications under prior Commission regulations to meet the new requirements of section 14(g) of the CPSA.

#### *B. Children’s Products Where the Commission Is Lifting the Stay of Enforcement and For Which Third Party Testing and Certification Will Become Necessary*

As indicated above in part I.A, the Commission has issued two notices of requirements for accreditation of laboratories for testing to children’s product safety rules that were affected by the stay of enforcement. (See 74 FR 45428 (September 2, 2009) (pertaining to bicycle helmets subject to 16 CFR part 1203, dive sticks and similar articles subject to 16 CFR 1500.86(a)(7) and (a)(8), rattles subject to 16 CFR part 1510, bicycles subject to 16 CFR part 1512, and bunk beds subject to 16 CFR part 1513); 74 FR 55820 (October 29, 2009) (pertaining to limits on total lead in children’s products).) Through this notice, the Commission announces its

decision with regard to four of these children’s product safety rules to lift the stay of enforcement on February 10, 2010 as follows:

- Bicycle helmets (16 CFR part 1203);
- Bunk beds (16 CFR part 1513);
- Rattles (16 CFR parts 1510, 1500.18(a)(15) and 1500.86(a)(1)); and
- Dive sticks (16 CFR parts 1500.18(a)(9) and 1500.86(a)(7) and (a)(8)).

Children’s products subject to the four regulations identified immediately above will require testing by a recognized third party laboratory and certification based on such testing.

With regard to bicycle helmets, the existing certification and labeling requirement of 16 CFR part 1203.34 states that the label “is the helmet’s certificate of compliance.” The certification label requirement in the bike helmet standard requires fewer details than what is now required for certifications under section 14(g) of the CPSA. The current label on bicycle helmets does not contain the contact information for the date and place where tested, custodian of test records and the place of manufacture which section 14(g) requires as part of any certification. Likewise, with regard to youth helmets, the existing label would not identify the third party testing laboratory which would now be required under section 14(g) of the CPSA. The more detailed requirements of section 14(g) can be handled in one of two ways: (1) The bicycle helmet manufacturer can either include this additional information on the label on its products such that the label continues to serve as the helmet’s certificate of compliance; or (2) the manufacturer or importer can provide a separate paper or electronic certificate to accompany the helmets.

The Commission plans to keep the stay in effect for the bicycle regulations (16 CFR part 1512) as applicable to all bicycles, both non children’s and children’s, until May 17, 2010. With regard to bicycles, the Commission has determined that there is insufficient laboratory capacity for third-party testing of bicycles at this time despite the fact that the notice of accreditation of laboratories issued more than 90 days ago. The Commission understands that the laboratories are communicating with staff about their applications, capabilities and related timing issues. Should the extension of this stay until May 17, 2010 prove insufficient, the bicycle manufacturers and laboratories must petition the Commission for additional relief no later than April 1, 2010.

The Commission plans to keep the stay in effect for total lead content in metal children's products and in non-metal children's products tested pursuant to CPSC-CH-E1001-08, Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products or CPSC-CH-E1002-08, Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products, (section 101 of the CPSIA) until February 10, 2011. With regard to lead content, the Commission has determined that testing of children's products for lead content by a recognized third party testing laboratory and certification based upon that testing should begin on products manufactured after February 10, 2011 to allow component testing to form the basis for certifications for lead content and permit the staff to complete an interpretative rule on the meaning of the term "children's product." An interpretative rule on the meaning of the term "children's product" would provide firms with additional guidance on when testing for lead content will be required by the Commission. In the meantime, to assist subject firms in understanding the meaning of "children's product" as used in the CPSIA pending the issuance of a final rule on it, the Commission has posted on its Web site a series of Frequently Asked Questions that explain that the Commission believes that certain products are presumptively children's products, such as stuffed animals, hula hoops, outdoor playground equipment, children's art materials, children's backpacks and lunchboxes, strollers, playpens and other juvenile products. Other products come sized for both adults and children, including, but not limited to, ATVs, bicycles, mattresses, and wearing apparel, and the Commission has already indicated that the youth-sized versions of those products would be considered children's products. Further, by way of illustration and guidance pending the issuance of the interpretative rule on the meaning of "children's product" in the CPSIA, the Commission offers the following additional examples that demonstrate the application of the definition of "children's product:"

(1) A mat for use on the floor in the back seat of a car is decorated with animated characters. This product is not a children's product despite its cartoon motif. A car mat is not commonly recognized by consumers as being intended for a child 12 years of age or younger. While a child may sit in the back seat and the products may be

advertised showing a child sitting on a seat with the mat under his or her feet, the product is not primarily designed or intended for the child. It does not need to be tested for lead content and does not require third-party testing.

(2) A local home improvement store sells shredded hardwood mulch in 2 cubic feet bags in its garden center. It advertises the mulch solely for use in gardening. The manufacturer of the mulch has only indicated on its packaging that it is intended as a weed barrier that also prevents water loss around plants. A local elementary school purchases a delivery of 100 bags of shredded hardwood mulch to provide soft surfacing for its outdoor playground equipment. The shredded hardwood mulch is not a children's product even though purchased for use by the school. It has not been marketed for use by children and is not commonly recognized by consumers as being intended for use by children. It does not need to be tested for lead content and does not require a tracking label.

*C. Products Where the Commission Is Lifting the Stay of Enforcement and for Which General Conformity Certification Will Become Necessary*

The Commission further announces its decision to lift the stay of enforcement on February 10, 2010 with regard to the following rules applicable to non-children's products:

- Ban on Lead-In-Paint in paint and on furniture (16 CFR part 1303);
- Requirements for child-resistance on portable gas containers (Section 2 of the Children's Gasoline Burn Prevention Act);
- Regulations for special packaging required under the Poison Prevention Packaging Act (16 CFR part 1700);
- Ban on extremely flammable contact adhesives (16 CFR part 1302);
- Ban of unstable refuse bins (16 CFR part 1301); and
- Standard for refrigerator door latches (16 CFR part 1750).

Products subject to these statutes and regulations will require testing based upon a reasonable testing program, and the manufacturers will need to issue a certificate of general conformity to these statutes or regulations ("general conformity certificate") beginning on February 10, 2010 for all products manufactured after that date. The Commission has concluded that general conformity certificates are not required for labeling requirements under the Federal Hazardous Substances Act because those requirements are not sufficiently similar to consumer product safety standards or bans to warrant certification.

*D. Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice*

Due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements for the children's product, the Commission has decided to continue the stay of enforcement for consumer products or children's products listed below. This means that the Commission will not take enforcement action against the manufacturers (including importers) and private labelers of such products for not having certificates based on third party testing as required by the CPSIA. Products must still comply with these regulations including any testing requirements contained in those regulations. (For convenience, we have identified the relevant regulation or statutory provision applicable to the product.)

- Carpets and rugs (16 CFR parts 1630 and 1631, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Vinyl plastic film (16 CFR part 1611, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Wearing apparel (16 CFR part 1610, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Caps and toy guns (16 CFR part 1500.18(a)(5));
- Phthalates (section 108 of the CPSIA);
- ASTM F963 (Consumer Safety Specifications for Toy Safety) (section 106 of the CPSIA);
- Clacker balls (16 CFR parts 1500.18(a)(7), 1500.86(a)(5));
- Baby walkers (In the **Federal Register** of September 3, 2009 (74 FR 45704), the Commission issued a proposed rule pertaining to baby walker standards);
- Bath seats (In the **Federal Register** of September 3, 2009 (74 FR 45719), the Commission issued a proposed rule pertaining to bath seats);
- Children's sleepwear (16 CFR parts 1615 and 1616, except that the continuation of the stay of enforcement does not extend to guarantees under the Flammable Fabrics Act);
- Electronic toys (16 CFR parts 1500.18(b) and 1505); and
- Durable infant products (section 104 of the CPSIA).

The Commission intends to require testing and certification of these

products once it completes the rulemakings associated with the products, issues notices of requirements, or otherwise resolves the issues that have warranted a continuation of the stay of enforcement for the products.

*E. Consumer Products Subject to Pre-Existing Requirements, but That May Be Subject to Additional Requirements for Children's Products When the Commission Issues a Notice of Requirements for the Children's Product or That May Be Subject to Additional Certification Requirements*

In some cases, a product class can consist of products that are intended for adults and products that are intended for children depending on how the product is marketed. In these situations, the general conformity certification requirements in section 14(a)(1) of the CPSA would apply to the non-children's product, whereas the third party testing and certification requirements in section 14(a)(2) of the CPSA would apply to the children's product.

As stated above in part I.B, the Commission's stay of enforcement did not apply to the requirements of any CPSC regulation requiring testing, labeling, recordkeeping or certification as it existed before the CPSIA. The Commission made clear at the time it issued the stay in February of 2009, that its stay did not undo these pre-existing testing, labeling, recordkeeping or certification requirements, some of which had been in place for certain products for many years. The Commission never stayed the certifications required for ATVs manufactured after April 13, 2009, nor did it stay the certification requirements in the mattress standard which existed prior to the passage of the CPSIA. Indeed, there are two mandatory certification requirements relating to ATVs that were not stayed: (1) The requirement in the mandatory standard for ATVs which requires a certification label that contains a certification by the manufacturer; and (2) the certification required by CPSA section 42, added by the CPSIA, which contains a certification requirement that relates to the ATV Action Plans. A third certification, the general conformity certificate for ATVs containing all of the information required by section 14(g) of the CPSA, will now be required for ATVs effective February 10, 2010. As discussed above with regard to bike helmets, the more detailed requirements of section 14(g) can be handled in one of two ways: (1) The ATV manufacturer can either include this additional information on the label on its ATVs

such that the label continues to serve as the ATV's certificate of compliance; or (2) the manufacturer or importer can provide a separate paper or electronic certificate to accompany the ATVs.

The Commission's decision to lift the stay of enforcement will require that manufacturers (including importers) and private labelers of youth sized ATVs and mattresses primarily intended for children 12 and younger will need to modify their certificates to include all of the information required by section 14(g) of the CPSA. The details of the information described in section 14(g) of the CPSA requirements are available in a prior **Federal Register** notice on our Web site at <http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf>. Certificates must identify the manufacturer or private labeler issuing the certificate and any CPSC recognized third party laboratory on whose testing the certificate depends. Section 14(g) of the CPSA also requires the certificate to include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of the test results. Section 14(g) of the CPSA further requires the certificate to be legible and in English and contains other requirements pertaining to certificate availability and electronic filing.

The Commission's decision to lift the stay of enforcement means that youth ATVs and mattresses intended or designed primarily for children 12 and younger are subject to the third party testing and certification requirements in section 14(a)(2) of the CPSA. Certificates for youth-sized ATVs and mattresses primarily intended for use in cribs or exclusively in children's sized beds will need to be based upon testing done by a CPSC recognized third party laboratory. The Commission has not yet issued a notice of accreditation requirements for mattresses or ATVs so no third-party certificates will be required until 90 days after the Commission issues such notices of requirements. Furthermore, nothing in this notice affects the pre-existing stay on lead content testing and certification for youth ATVs. Youth ATVs and bicycles do not need to be tested for compliance with the lead limit of 300 ppm because the Commission has stayed those requirements by the issuance of a separate stay which remains in full force and effect for all the covered products.

Adult ATVs and mattresses are not children's products, but those consumer

products will require testing, either of each product or based upon a reasonable testing program, and the issuance of a general conformity certificate under section 14(a)(1) of the CPSA. Regardless of whether the product is or is not a children's product, the certificates for such product must comply with section 14(g) of the CPSA. The Commission understands that labels under the existing mattress standard and that serve as the certificate of compliance for those mattresses cannot be altered or modified without the Commission revising its regulation to allow for the additional information required by section 14(g) to be contained on the mattress label. The Commission directs staff to examine the labeling requirements of the mattress rule to determine whether staff should recommend a revision to the rule to conform to the requirements of section 14(g). Until the Commission acts to address this issue, mattress manufacturers must provide general conformity certificates for their products that contain all of the required information in section 14(g).

*F. Consumer Products Subject to a Pre-Existing Testing, Labeling, Recordkeeping or Certificate Requirement and That Now Are Subject to Additional Certification Requirements*

As stated above in part I.B, the Commission's stay of enforcement did not apply to the requirements of any CPSC regulation requiring testing, labeling, recordkeeping or certification as it existed before the CPSIA. The Commission made clear at the time it issued the stay in February of 2009, that its stay did not undo these pre-existing testing, labeling, recordkeeping or certification requirements which had been in place for certain products for many years. Several consumer products fall into this category, but, as stated immediately above in part II.E of this document, the Commission's decision to lift the stay of enforcement means that manufacturers (including importers) and private labelers of these products may need to modify their certificates to include any additional information required by section 14(g) of the CPSA. (For convenience, we have identified the relevant regulation applicable to the product.)

- Architectural glazing (16 CFR part 1201);
- Matchbooks (16 CFR part 1202);
- CB antennas (16 CFR part 1204);
- Lawnmowers (16 CFR part 1205);
- Swimming pool slides (16 CFR part 1207);

- Candles with lead wicks (16 CFR 1500.12(a)(2) and 1500.17(a)(13)(i)-(ii));
- Cellulose insulation (16 CFR part 1209);
- Garage door openers (16 CFR part 1211);
- Cigarette lighters (16 CFR part 1210);
- Multi-purpose lighters (16 CFR part 1212); and
- Fireworks (16 CFR 1500.14(b)(7), 1500.17(a)(3), 1500.17(a)(8-9), 1500.17(a)(11-12), 1500.83(a)27, 1500.85(a)(2) and part 1507).

### III. The Stay

The United States Consumer Product Safety Commission hereby lifts the stay of enforcement that was announced in the **Federal Register** on February 9, 2009 as being effective until February 10, 2010. There will be no vote to lift the stay on February 10, 2010 as previously described in the **Federal Register** because the Commission has agreed that its issuance of this notice supersedes the earlier requirement for a vote on February 10, 2010.

Thus, as of February 11, 2010, except as stated above in part II, manufacturers (including importers) and private labelers of consumer products and children's products must comply with the testing and certification requirements set forth in paragraphs 14(a)(1), (a)(2), (a)(3), and (g) of the CPSA, as amended by section 102(a) of CPSIA. Products subject to CPSA or FHSA bans which are not expressly addressed by the Commission in this document do not require certification at this time. To the extent that any consumer product or children's product remains subject to a stay of enforcement as described above in part II, the Commission reiterates that such stay of enforcement does not alter or otherwise affect the requirement that the products meet all applicable product safety rules as defined in the CPSA or similar rules, bans, standards, or regulations under any other Act enforced by the Commission.

Dated: December 18, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

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## CONSUMER PRODUCT SAFETY COMMISSION

### Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2009 Lead Limits

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is announcing an interim enforcement policy regarding component testing and certification of children's products and other consumer products to the 90 parts per million (ppm) lead in paint limit and to the 300 ppm lead limit for children's products established in section 101 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

**DATES:** The interim enforcement policy is effective on December 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** John "Gib" Mullan, Assistant Executive Director for Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail [jmullan@cpsc.gov](mailto:jmullan@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

This statement sets forth the Commission's interim enforcement policy with regard to testing and certification of consumer products to the lead paint and lead content limits that took effect on August 14, 2009.<sup>1</sup> It states the circumstances under which domestic manufacturers or importers may certify children's products as in compliance with lead limits based on testing, at different times, of components or paints used on those products. As explained more fully below in part V of this document, a domestic manufacturer or importer may certify compliance with lead limits if, for each accessible component and each type of paint used on a product, it either obtains passing test results from a recognized third-party test laboratory or holds a certificate from another person based on passing test results from a recognized third-party test laboratory.

To make it easier for interested parties to understand the interim enforcement policy's provisions and how certain provisions interact with others, we have

numbered each paragraph in the interim enforcement policy.

#### II. Lower Limits for Lead in Paint and in Children's Products

1. On August 14, 2009, the limit for lead in paint and similar surface coatings was reduced from 600 parts per million (ppm) to 90 ppm. Section 101(f)(1) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law No. 110-314 (Aug. 14, 2008) required the Commission to modify its pre-existing regulation banning lead in paint by decreasing the applicable limit to 90 ppm (*see* 73 FR 77492 (Dec. 19, 2008)).

To simplify discussion, we use the term "paint" broadly herein to include any type of surface coating that is subject to 16 CFR part 1303. The new lower limit applies not only to paint sold to consumers as such (for example, a gallon of paint sold at a hardware store), but also to any paint on toys or other articles for children and to any paint on certain household furniture items (not limited to children's furniture). *See* 16 CFR part 1303.

2. Also on August 14, 2009, the general limit for lead in any accessible part of a children's product was reduced from 600 ppm to 300 ppm (*see* section 101(a)(2)(B) of the CPSIA). In this context, the term "children's product" means any consumer product that is designed or intended primarily for children 12 years of age or younger (*see* 15 U.S.C. 2052(a)(2)). Congress set out four factors that must be considered in determining whether a consumer product is primarily intended for children 12 and under; a statement of the manufacturer's intent concerning the appropriate age for users of the product is not determinative, but must be considered as one factor if it is reasonable. The Commission has promulgated a final rule for determining when parts of a children's product may be deemed inaccessible (*see* 74 FR 39535 (August 7, 2009)).

3. The Commission has established higher lead content limits for certain electronics components of children's products and has exempted certain other electronics components, such as cathode ray tubes, altogether (*see* 74 FR 6990 (February 12, 2009)). The Commission has denied exemptions in all other cases that have come before it to date, but it has temporarily stayed enforcement of the applicable lead content limits for certain metal components of youth motorized vehicles and youth bicycles (*see* 74 FR 22154 (May 12, 2009) (stay of enforcement pertaining to youth motorized recreational vehicles)); 74 FR

<sup>1</sup> The Commission voted 5-0 to publish this notice in the **Federal Register**. Commissioner Anne Northup issued a statement, and the statement can be found at <http://www.cpsc.gov/PR/northup12162009comptest.pdf>.