

CLIENT ALERT

Highlights from ICPHSO 2012

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The International Consumer Product Health and Safety Organization ("ICPHSO") hosted its annual meeting and training symposium on February 28-March 2, 2012, in Orlando, Florida. Crowell & Moring attorneys Bridget Calhoun, Laurent Ruessmann, Scott Winkelman, Natalia Medley, and Laura Walther attended this year's meeting, along with representatives from the United States and other governments, industry, consumer interest groups, and a variety of service providers.

Conference Overview: As in past years, one of the highlights of the meeting was "CPSC Day," featuring representatives from the U.S. Consumer Product Safety Commission ("CPSC") who provided insights on topics including the CPSC's areas of focus for 2012, enforcement priorities and practices, increased import surveillance efforts, international cooperation, and enhanced electronic databases. Speakers included CPSC Chairman Inez Moore Tenenbaum, Commissioner Robert Adler, General Counsel Cheryl Falvey, Executive Director Kenneth Hinson, newly-appointed Office of Compliance and Field Operations Director Andrew Kameros, Office of Compliance and Field Operations Deputy Director Marc Schoem, Office of Import Surveillance and Inspection Director Carol Cave, and others from the Office of Compliance and the General Counsel's office. The American Bar Association also hosted two law seminars where representatives from industry, the CPSC, and the private bar addressed issues on penalties and enforcement, and impact after the first year of the CPSC's public database. Finally, as in past years, international product safety agencies were well represented and provided useful insights on incident reporting, global trends, and products of enhanced focus.

Key highlights from the meeting included:

CPSC Updates & Priorities for 2012

- The Executive Director outlined the agency's August 2011 reorganization, including the six integrated product teams to address the following hazards: children's products, chemical, mechanical, fire, electrical, and combustion. Each team is co-led by a representative from the Office of Hazard Identification and Reduction and from the Office of Compliance and Field Operations. The teams are comprised of lawyers and other staff, as appropriate.
- The CPSC is currently working on mandatory standards for fire pots and gel fuels as well as table saws. Subject to budget approval, the CPSC has outlined the following mandatory standard activities for FY 2012: durable nursery products, portable generators, recreational off-highway vehicles, upholstered furniture, and phthalates.
- CPSC officials announced the March 1, 2012 posting of a revised Recall Handbook, updated for the first time since the passage of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). The revised handbook includes information about the advances of new technologies available for publicizing and implementing corrective actions.
- The CPSC's import surveillance plans include expanding its risk assessment methodology pilot to target imports based on risk and increasing the number of risk-based inspections at points of entry while reducing inspections of low risk products and importers.

- The CPSC is interested in creative ways to increase recall effectiveness and is now expecting companies to post information about recalls on Facebook, Twitter, and blogs. The CPSC itself actively uses social media to reach consumers about recalls and noted that CPSC staff will endeavor to give firms a chance to review CPSC blog entries and tweets before they are posted.
- The CPSC staff discussed the importance of reverse logistics, stressing that firms must carefully consider and plan the details for pulling recalled product back from the market and distribution channels, accounting for and quarantining that product, and destroying recalled product. The CPSC will hold firms accountable for recalled products. Keeping dangerous recalled products out of the stream of commerce is a CPSC priority, and it was urged that firms take proactive steps to prevent recalled products from finding their way back to consumers.
- The CPSC has heralded the public database located at SaferProducts.gov as a success as its first anniversary approaches. CPSC staff highlighted new features of the website, including the ability for companies to submit Section 15(b) reports and retailer reports. Should the CPSC's proposed budget gain approval and funding, the CPSC announced it intends to automate virtually all correspondence with firms through the SaferProducts.gov portal.

CPSC Enforcement & Penalties

- Section 15(b) reports are routinely being screened for possible late reporting violations though not every Section 15(b) report results in the Staff opening a late reporting investigation.
- The CPSC will apply the CPSIA's \$15 million civil penalty maximum (instead of the previous \$1.8 million maximum) to ongoing failures to timely report under Section 15 that originate prior to and continue past August 2009.
- When analyzing the "economic gain" factor for calculating civil penalties, the CPSC does not ask for or necessarily consider a firm's profit margin on the product, nor does it necessarily consider how much the recall cost the firm. The CPSC is most concerned with whether a firm delayed reporting to take advantage of seasonal demand for the product or attempted to sell off inventory before reporting.
- Firms engaged in Section 19 enforcement investigations and negotiations are encouraged to propose creative solutions to the CPSC staff to resolve those matters, noting that all proposed solutions must be accepted by vote of the Commissioners.
- Disgorgement is a remedy that the CPSC and the Department of Justice will consider in appropriate cases of egregious conduct.
- In deciding whether to prosecute an individual criminally for a failure to report, the CPSC considers that person's knowledge of the product issue and the individual's involvement in the decision not to report.

International Matters

- Several speakers from Health Canada were featured during the meeting, speaking about the implementation of the new Canadian Consumer Product Safety Act ("CCPSA").
 - Officials and lawyers in Canada discourage firms from merely carbon copying Health Canada on Section 15(b) reports to the CPSC. The CCPSA requires different information for 14(2) and 14(3) reports than is required for Section 15(b) reports in the U.S.

- For certain incidents involving electrical consumer products, the Ontario Electrical Safety Authority ("ESA") reporting requirement may be triggered. A single parallel report may satisfy both the CCPSA and the ESA but must be submitted to each agency.
- In Australia, the Australian Competition & Consumer Commission anticipates that a major 2012 focus will be hazardous chemical ingredients, especially those in cosmetics and toiletry items.
- European Commission ("EC") officials from the DG SANCO discussed new projects focused in particular on the safety of children's bathing products and strollers, fireworks, battery chargers, and lawn mowers.
- Many speakers discussed the increased focus on international cooperation and harmonization of standards. The U.S., Canada, EC, and Australia are working to harmonize consumer product safety standards. Many countries, including the U.S., Canada, and the EC, continue outreach in and work with China. The CPSC spoke about the ongoing work it is doing in China through its office established in Beijing with two full time employees working there.
- The U.S. Securities and Exchange Commission is developing rules to implement new legislation relating to the disclosure of whether products contain conflict minerals such as gold and tungsten, generally originating in the Democratic Republic of the Congo. Compliance with the law will require greater traceability of those materials in order to make those disclosures.

For more information about ICPHSO, please click [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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