

## CLIENT ALERT

### Highlights from the CPSC's September 4, 2008 Consumer Product Safety Reform Legislation Public Meeting

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On Thursday, September 4, 2008, the Consumer Product Safety Commission (CPSC) held a public meeting to discuss implementation of the Consumer Safety Improvement Act of 2008. The Act, signed into law by President Bush on August 14, 2008, brings about broad reform in the regulation of consumer product safety as well as the operations of the CPSC. Approximately 500 people attended the meeting on September 4, including representatives from manufacturing firms, consumer groups, retailers, and the government. We heard "from the inside" about implementation of the new law and the CPSC's views on key provisions.

Chairman Nancy Nord and Commissioner Thomas H. Moore provided opening comments at the meeting, and senior staff members, including CPSC General Counsel Cheryl Falvey and Assistant Regulatory Director of the Office of Compliance John "Gib" Mullan, addressed provisions of the new Act. Key issues covered at the meeting included:

- *Public Database* - The Act requires the CPSC to develop, establish, and maintain a publicly available complaint database on the Commission's website. The CPSC staff stated that it currently envisions that the database will be similar to one established by the National Highway Traffic Safety Administration (NHTSA), which enables users to search product complaints and recalls, with appropriate alterations.
- *Accreditation* - The CPSC staff discussed the timetable for establishing lab accreditation standards for third-party testing and certification of children's products as set forth in the Act, as well as for general certification of other products. The CPSC staff has already developed its recommendation for accreditation of labs for lead paint testing, based on international accreditation standards, and plans to develop future standards in a similar manner. The lead paint standard is scheduled to be published by September 15, 2008, with additional standards to be published periodically through June 2009.
- *Application to Existing Inventory* - Some provisions in the Act will be retroactive and will apply to existing product inventory. A notable example of this is the new lead standard, which applies to all existing children's products. Other provisions, however, like third-party testing and certification of children's products, go into effect months after enactment and, in the CPSC's view, will not apply to existing inventory.
- *Definition of "children's product"* - The CPSC identified ambiguity in the term "children's product," defined in the Act as "a consumer product designed or intended primarily for children 12 years of age or younger." The Commission staff stressed the importance of the "intended primarily" language, and described this as a "know it when you see it" standard. The CPSC intends to develop guidelines to clarify its interpretation of that definition.

The CPSC presenters expressed their interest in receiving comments and questions about the Act and will consider insights from concerned parties in promulgating regulations and establishing standards and guidance. The CPSC website currently has a page where members of the public may submit questions about the Act.

In the coming months, the CPSC intends to hold additional public discussions about the Act's interpretation and implementation. The CPSC will post notice of these meetings along with additional information relating to the new legislation on its website.

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

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