

CLIENT ALERT

What's Happening at CPSC This Fall

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As the slow days of summer draw to a close, school children are not the only ones facing a busy fall workload. The U.S. Consumer Product Safety Commission has a packed agenda this fall, and heading into 2015. Here are some of the issues consumer product manufacturers, distributors, and retailers should be following:

1. **1110 Hearing:** The CPSC hearing on September 18 was scheduled as a result of significant comments filed on the proposed 110 rule in order to review "stakeholders" anticipated challenges in meeting an electronic filing requirement. It provides members of the industry an opportunity to explain to the CPSC the practical logistics involved in creating certificates that "accompany" products they ship globally. The announcement for the hearing signaled CPSC's desire to get into the details, such as understanding the difference between document imaging and searchable data elements. Many companies have already developed systems for meeting certificate of compliance requirements, and the rule changes would necessitate reengineering of existing IT systems to meet new requirements.

2. **Magnet Rule:** The Commission moved forward with a hearing on the proposed rule to ban small rare earth magnets, despite concerns raised by Commissioner Buerkle that the rulemaking was premature and could affect the ability of the Commission to serve as the appellate review body with respect to current administrative cases alleging the magnets present a substantial product hazard. The matter is not set for a ballot vote and a decisional meeting is scheduled for September 24, 2014.

3. **CHAP Report:** The Chronic Hazard Advisory Panel, or "CHAP," recommended that the interim ban on the use of diisononyl phthalate (DINP) in children's toys and child care articles at levels greater than 0.1 percent be made permanent, but that the current interim bans on di-n-octyl phthalate (DNOP) and diisodecyl phthalate (DIDP) be lifted. The CHAP also

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recommended that diisobutyl phthalate (DIBP), di-*n*-pentyl phthalate (DPENP), di-*n*-hexyl phthalate (DHEXP), and dicyclohexyl phthalate (DCHP) should be permanently banned from use in children's toys and child care articles at levels greater than 0.1 percent. While the CHAP did not recommend that action be taken on dimethyl phthalate (DMP) or diethyl phthalate (DEP), it encouraged U.S. agencies responsible for dealing with DEP exposures from food, pharmaceuticals, and personal care products to conduct the necessary risk assessments with a view to supporting risk management steps. Rep. Henry A. Waxman, Rep. Frank Pallone, Jr., and Rep. Jan Schakowsky followed up the CHAP report with letters to both Food and Drug Administration Commissioner Margaret Hamburg and Consumer Product Safety Commission Chairman Elliot Kaye. Their letter urged the agencies to take swift action to ensure necessary protection for human health, stating:

"The CHAP's findings are alarming. The hazards associated with phthalates and their ubiquity in everyday products underscore the need for further regulatory action on and assessment of phthalates and phthalate substitutes. Although the statute requires CPSC to act within 180 days, we urge you to move forward on these actions without delay."

4. **Transparency (The 6b Rule):** The rulemaking process continues for CPSC's proposed changes to section 6(b) of the Consumer Product Safety Act (CPSA), the section which provides certain confidentiality protections to those voluntarily reporting about their products. Written comments were due in April 2014. Our analysis of what the proposed rule revisions may mean for the confidentiality of information submitted to the CPSC is available [here](#), and a summary of the key changes proposed to the rule is available [here](#).

5. **Recall Effectiveness:** Continuing the theme of transparency, consumer groups like Kids in Danger continue to press for more information about recall effectiveness. Following a product recall, the recalling entity is required to send monthly reports to CPSC which include information about how many product returns, replacements or repairs have been conducted. This information is submitted confidentially to CPSC, who sometimes shares information about recall rates in the aggregate, but not by entity name or particular recall event. Historically, the overall rate of recall compliance is understood to be quite low, and getting consumers to return or replace recalled products continues to be extremely difficult even in the age of social media. Without changes to the 6b rule, CPSC is not in a position to simply share the monthly reporting information from recalling entities, and may not have much incentive to do so as low recall rates could reflect poorly on the agency. That said, if public pressure mounts, we may see the CPSC try to find other ways to tackle the recall participation issue.

6. **ATV/ROHV Safety:** All-Terrain Vehicles (ATVs) and Recreational Off-Highway (ROHVs) are not new to CPSC scrutiny, but during the CPSC's Fiscal Priorities meeting, consumer advocates identified ATV/ROHV safety as a high priority for the coming year. Commission Adler responded at that meeting by describing such vehicles as "among the most dangerous products sold today," suggesting that the CPSC may also have ATV/ROHV safety in its sights. Likely focus issues include vehicle stability, occupant protection, and the problems related to increased use of such

recreational vehicles on public roads. On September 11, 2014, the Commission received a briefing package including a Request for Information (RFI) Regarding Passenger Use of ATVs to be published in the *Federal Register* to solicit comments on the CPSC staffs' work in "assessing the inclusion of a performance standard related to preventing passengers on ATVs."

7. **Detergent Packets:** Like magnets and button batteries, laundry packets fall into the category of products which pose a potential safety issue not because they fail to work as intended, but because of unintended use: many young children have reportedly swallowed these convenient cleaning pods. CPSC issued past safety alerts about these products in 2012 and 2013, but has continued to receive high numbers of incident reports into 2014. CPSC staff members have been in discussions with the voluntary standard making body, ASTM, regarding the development of a new standard to reduce ingestion risk. Consumer advocacy groups also consider laundry packets to be a priority for this coming year, potentially adding pressure on CPSC to take further action.

8. **Window Covering Standards:** The Commission will likely be considering the petition for rulemaking to eliminate accessible cords on window covering products in the near future. The petitioners assert that a mandatory rule is necessary because attempts to develop a voluntary standard that adequately mitigates the risk of injury associated with window covering cords have failed. On August 29, 2014, the Window Covering Manufacturers Association (WCMA) wrote to the CPSC indicating its commitment to the goal of minimizing the risk of its products and willingness to discuss any and all proposals including performance based standards focused on minimizing the strangulation risk to children from corded products. The full text of the WCMA letter can be found on the CPSC [website](#).

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

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