

# Wisconsin Retailers, Manufacturers and Distributors: Are you in Compliance with the New Consumer Product Safety Law?



**Jordan K. Lamb**  
608-252-9358  
jkl@dewittross.com

## **Location**

Capitol Square Office  
Two East Mifflin Street  
Madison, WI 53703

## **Practice Areas**

- Administrative Law
- Consumer Product Safety
- Environment
- Government Relations & Lobbying
- Intellectual Property
- Renewable Energy
- Telecommunications

Jordan Lamb is an attorney in the firm's Capitol Square Office whose law practice focuses on government relations, environmental and administrative law. She concentrates on legislative drafting, legislative research, and facilitating communication between clients and state government including administrative agencies and the State Legislature.

In August 2008, President Bush signed the new Consumer Products Safety Improvement Act (CPSIA) into law. This Act's new consumer products safety testing and certification requirements have ushered in a completely new direction in consumer product safety regulation: first, you must demonstrate safety, then you can sell the product.

## **All Retailers and All Manufacturers Must Comply**

This new, sweeping law affects virtually all manufactures, importers, distributors and retailers of consumer products. The Act applies to anyone who makes, produces or assembles a product and to all retailers who sell products, regardless of the size of their business.

## **Certificates of Conformity Required**

Written certificates, called "general certificates of conformity," are required for any product that is regulated by the CPSC for all products manufactured after November 12, 2008. The certificates must be provided by manufacturers and importers to all retailers. These certificates must identify the product and certify that the product complies with all CPSC rules, bans, standards or regulations.

Note, however, that due to the burden imposed by this requirement, the Commission has extended a one-year delay on this requirement for certain certificates of conformity depending on the type consumer products involved. This delay is in effect until February 2010.

## **Lead and Phthalates Banned for Children's Products**

The Act also imposes new bans on Phthalates and Lead in children's products. Children's products are products that are designed or intended primarily for children 12 years of age or younger.

Phthalates are a group of chemicals that are used to make vinyl and plastics soft and flexible. Three specific Phthalates in have been banned under this Act for use in children's toys and child care articles as of February 10, 2009.

The Act also requires the implementation of a phased in ban on Lead in children's products. This ban includes both lead paint and total lead content.

## **Third-Party Testing Required**

There is also a third-party testing requirement under the new Act, which has raised a tremendous amount of concern. Children's products must now be certified that they comply with the Phthalate and Lead. The certification must be based on testing of each product done by a third party, not by the manufacturer itself.

There has been difficulty getting third-party testing entities accredited. Accordingly, the Commission has delayed full implementation of this requirement and the third-party testing requirements will be phased-in on a rolling schedule.

### **Cautionary Statements Mandatory on All Children's Products**

The Act expanded the required warning requirements for choking hazards for children's toys and games. Specific warnings are required in all internet advertising, catalogues, and other printed materials on packaging and accompanying descriptive materials for toys and games containing small balls, balloons, small parts, and marbles.

### **Many Other Changes – Act is Evolving**

The full scope of this Act is much broader than what is described above. The Act makes numerous changes to other consumer protection standards including: changes to the nursery

products standards; requiring permanent tracking labels on children's products and packaging; increasing CPSC's recall authority; and establishing extensive "whistle-blower" protection for private-sector employees who report violations.

The rules and regulations needed to implement all of the changes included in the Act are being developed on an almost daily basis. The consumer products safety climate is changing quickly in the U.S. and keeping yourself and your business up to date on these new developments could affect your bottom line. For general information about the CPSC go to [www.cpsc.gov](http://www.cpsc.gov) or contact your attorney.



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[www.dewittross.com](http://www.dewittross.com)

Capitol Square Office Two East Mifflin Street, Suite 600, Madison, WI 53703, Tel 608-255-8891, Fax 608-252-9243  
Metro Milwaukee Office 13935 Bishop's Drive, Suite 300, Brookfield, WI 53005, Tel 262-754-2840, Fax 262-754-2845