

2016 Emerging Issues in the Children's Products Industry

Insight

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Many emerging issues impacting children's products and the juvenile products industry are anticipated this year. We may see new regulations promulgated by the Consumer Product Safety Commission (CPSC or Commission), the National Highway Traffic Safety Administration (NHTSA), and other government agencies, as well as revisions to existing regulations. The following are areas of focus that we can expect to hear more about in 2016:

TSCA Reform and the Regulation of Chemicals – The Toxic Substances Control Act (TSCA), passed in 1976, provides the Environmental Protection Agency (EPA) with authority to regulate the introduction of new or already existing chemicals into commerce and the environment. TSCA reform measures, which are expected to be approved this year, would essentially preempt certain efforts of state and municipal governments to locally regulate chemicals and establish reporting requirements.

CPSIA Section 104 Notices of Proposed Rulemaking – The Consumer Products Safety Improvement Act of 2008 (CPSIA) provides specific rules and regulations pertaining to consumer products, including children's products, which are manufactured, sold, or imported into the United States. Section 104¹ of CPSIA provides certain requirements for durable infant and toddler products. The CPSC is currently considering proposed rules pursuant to Section 104 that would apply specifically to high chairs and children's folding chairs and stools. If enacted as proposed, these rules would require certain mandatory testing for such products, as well as certain specific warnings and labels to be affixed to those products. The proposed rules would adopt the voluntary standard ASTM F2163-14 (for children's folding chairs and stools) and ASTM F404-15 (for high chairs), but with certain specific modifications regarding testing and warnings related to these products. The briefing period for these proposed rules is not yet concluded, but we may see Final Rules handed down sometime this year.

The CPSC is also considering Notices of Proposed Rulemaking (NPRs) pertaining to warning requirements for other durable infant and toddler products, such as infant bouncer seats, infant

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bath tubs, inclined sleep products, expansion gates and expandable enclosures, stationary activity centers, baby changing tables, and booster seats. These proposed rules would also adopt and modify the ASTM voluntary standards for these products. Briefing packages, human factors studies, and other information from the children's products industry relative to these proposed rules and the related products will be likely be disseminated and considered in 2016.

Recall Effectiveness – The CPSC has reported that current data shows that 80% of recalled consumer products are not returned by the consumer, or are otherwise unaccounted for. A recall is only effective if there are comprehensive and continuing efforts to reach all relevant consumers as quickly as possible. The CPSC is looking for creative ways to reach consumers, such as product registration. However, manufacturers should continue to take steps to provide direct notice of recalls to their customers.

Interestingly, the CPSC data shows that 30% of product incident reports result in no recall. The CPSC believes it is better for companies to report and initiate their own investigation into product incidents, which may or may not result in a recall. When the CPSC initiates its own investigation, the likelihood of an eventual recall may increase.

Both the CPSC and NHTSA have expressed a goal of improving methods by which consumers can register products, and by which companies can contact consumers with important information regarding product safety issues.

Crib Bumpers – In 2012, the Juvenile Products Manufacturers Association (JPMA) filed a Petition with the CPSC requesting the CPSC to initiate rulemaking to establish performance standards for crib bumpers. The CPSC voted unanimously to grant the Petition. The CPSC has since issued a Request for Information (RFI) and has engaged in the rulemaking process related to crib bumpers. A proposed federal rule regarding crib bumpers may be issued in 2016.

Importing Consumer Products – Several government agencies are working on a joint effort to make the importation of consumer goods simpler and more transparent by having "one window" for imports. The proposed changes would ultimately allow importers to provide information through one central portal, as opposed to reporting through 47 different agencies. Specific agencies could then communicate directly with importers when issues arise. A pilot program is currently underway.

For more information about these issues, please contact [Michelle Corrigan](#) or [Julie Scheipeter](#) or the Stinson Leonard Street attorney with whom you regularly work.

¹ Section 104 was amended in August 2011.

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