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**RECOMMENDED CPSIA REVISIONS**

By Susan Kohn Ross

**CPSC Report to Congress re CPSIA**

On January 15, 2010, the Consumer Product Safety Commission (CPSC) released its report which contains recommendations for reforming the Consumer Product Safety Improvement Act (CPSIA). The report begins by summarizing some recent Commission activities, including its port screenings, which are said to have barred the entry of products containing too much lead. Interestingly, there are no comments in the report about phthalates level requirements.

The first among several recommendations in the report concerns Section 101, which mandates that all children's products must not exceed the proscribed lead levels. The Commission recommends that certain products be excluded from the constraints of Section 101, particularly parts described as not likely to have been among those for which the CPSIA was intended, such as parts found in children's bicycles and ATV vehicles. Books and other reading material with illustrations published prior to 1985 were printed using a process that had a lead content exceeding Section 101 levels. Some have suggested that books were not intended to be covered by the CPSIA, and the Commission has proposed that the law be clarified to exclude books and other children's printed materials.

Given the significant upheaval which occurred as the result of the drastic reduction in the acceptable lead level in February 2009 to 600 ppm (parts per million) and again in August 2009 to 300 ppm, CPSC is sensitive to the market disruption caused by a retroactive application of these limits on goods already in the supply chain. Therefore, the CPSC recommends that, whenever the 100 ppm lead limit takes effect, it should only apply prospectively, i.e., to goods produced after the effective date. The question of whether it is even technologically possible to meet the 100-ppm limitation is one the Commission will have to resolve later this year.

Further, given the disruption that CPSIA implementation caused to small businesses and crafters, CPSC's report states the Commission will consider volume of production, channels of distribution, and other factors to minimize the disruption to these small entities and asks Congress to also focus on compliance issues affecting low-volume manufacturers.

A full copy of the report may be obtained at [CPSC Report to Congress](#) and includes links to the recommendations of the individual commissioners.

**Foreign Corrupt Practice Act (FCPA) Enforcement Spreads**

Another case involving the FCPA has recently made headlines. This one involves bribes allegedly paid to Panamanian port authority government officials in order to obtain and keep contracts having to do with maintaining lighthouses and buoys. The parties are Charles Jumet (Jumet), who has already pled guilty to

two counts of conspiring to make corrupt payments to foreign government officials and making a false statement. He is scheduled to be sentenced on February 12, 2010. Also allegedly involved are John W. Warwick (Warwick), former President of Ports Engineering Consultants Corp. (PECC), PECC itself, Overman Associates, and Overman de Panama. As is customary, the names of the government officials supposedly bribed are not listed in the indictment, but rather they are referred to as Government Officials A, B and C. Government Official A is identified as the former Administrator of Panama's National Ports Authority (APN), the government entity responsible for operating and maintaining the lighthouses and buoys near the Panama Canal. This official is said to have formed a shell company called Soderville Corp., which became a major shareholder of PECC. Government Official B is described as the Deputy Administrator of APN, who later became the Administrator. He is said to have formed Warmspell Holding Corp., which also became a shareholder of PECC and whose officers are said to be his relatives. Government Official C is mentioned as being a "very high-ranking" executive official of the Republic of Panama.

The subterfuge used to mask the payments is said to have worked this way. Warwick and Jumet created companies under Panamanian law which would receive government contracts from officials of the Republic of Panama. Government Official A awarded to PECC the contract to collect lighthouse and buoy tariffs, provide engineering consulting services, and maintain other aids to navigation in Panama. Warwick and Jumet agreed to allow Government Official B to designate Warmspell and Soderville as shareholders of PECC so that their payments would appear on the books and records of the American company as dividends, thereby concealing receipt of these payments by the Panamanian officials. Part of the deal also included PECC's issuing "bearer" shares as the means to make payments to Government Official C. Warwick is also said to have also caused Overman de Panama to bring suit against PECC to obtain payment from the Panamanian government of monies purportedly owing under the contracts which, it is inferred, were not truly owed.

Warwick's indictment goes on to spell out a series of detailed steps the individuals took to carry out their corrupt plans. At some point, the Panamanian Comptroller General opened an investigation and suspended payments to PECC. Those payments later resumed and the dividend payments to shareholders also continued. At least some press stories suggest the contracts awarded to PECC resulted in payments totaling \$18 million between 1997 and 2000. The monies paid to the Panamanian officials are said to total at least \$200,000. The fact that the contracts were awarded without competitive bidding caused the Comptroller General to open his investigation.

In addition to conviction and jail time for Warwick, the U.S. Government is seeking forfeiture of all property traceable to the alleged violations and specifically mentions the sum of \$798,909.44. At his sentencing, Jumet faces the possibility of five (5) years in jail and a fine, which is the greater of \$250,000 or twice the gain or loss.

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