Despite being anticipated by many with the same fear surrounding Y2K, the transition from 1999 to 2000, 10 February 2009 came and went without the entire American small business market suddenly imploding. That was the day Phase I of the Consumer Product Safety Improvement Act (CPSIA) came into effect amid a chaotic chorus of defiance from some, endorsement from others and confusion from many.

Implications of CPSIA on our industry

by Shari Shallard

While nobody disagrees that improving safety is a worthy aim, the US legislative bill has been criticised for being confusing in its ambiguities, unreasonable in its implementation timetables, and capable of driving small businesses to extinction with its costly and comprehensive certification requirements. Proponents of the law, however, argue that most complaints are the product of widespread misinformation and that the necessity of CPSIA's aim should trump any teething problems.

Why the sports industry is confused

CPSIA, passed by the US government last August, imposes new requirements on manufacturers of numerous products, ranging from shoes and apparel to books and science kits. Limits have been set on levels of lead and phthalates, and certificates of conformance are to be required to prove that the product was tested to conform to the regulations. While the new substance standards are aimed primarily towards children's products, the certification requirements extend to anything regulated by the Consumer Product Safety Commission (CPSC)—which means that every industry is touched in one way or another. Indeed, innumerable items featured regularly in this magazine are affected: the plastic on water bottles and other phthalate-containing gear, juvenile sporting goods that may be viewed as 'toys', and any performance apparel line aimed at children (which most major brands offer) are just a few.

This is why Bill Sells, vice president of government relations for the Sporting Goods Manufacturers Association (SGMA), is so concerned with the law in its current form. "We're all in favour of product safety," he tells *WSA*, "but the law must be implemented in a way that does not have a severe negative impact over all of us."

He points out that the lead provisions are written in such a way that a product can be on a store shelf on 9 February, having been manufactured to meet every standard that existed at its inception. "And then," he says, "on February tenth, that same product was illegal. This is not fair to the manufacturer, it's not fair to the retailer, and it's not fair to the consumer."

The key problem, according to Mr Sells, is that the law applies retroactively. Rather than applying the standards to items manufactured on and after 10 February, they apply to all existing stock. He gives the example of a hypothetical retailer who has 200,000 tennis rackets in his inventory that are no longer in compliance with the law. "He's not allowed to take them to another country; he can't even give them away for free. He has to destroy them."

While Mr Sells is quick to reiterate his support of the spirit of the law, he feels that manufacturers and retailers should be given three to six months to sell remaining stock and get new compliant product onto the shelves. An amendment to this effect was applied to the phthalates standard, and he maintains hope that such a change will be made to the lead restrictions.

The timeline concern is echoed by voices in nearly every industry throughout the United States, but there is an additional question more particular to Mr Sells' industry: Do the strict guidelines that are aimed at children's toys apply to sporting goods?

To some extent, CPSC's answer to that question exemplifies why such ire surrounds the law; the answer is logical and nobly-minded, but conveys demanding expectations in an inconclusive way: "The category of products known as 'sporting goods' can include toys but not all sporting goods are toys," writes the organisation. "Indeed, [the toy safety standard] does not define sporting goods equipment to be a toy unless the product is a toy version of sporting goods equipment."

CPSIA imposes new requirements on manufacturers of numerous products, ranging from shoes and apparel to the plastic in water bottles.

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The CPSC decree continues: "However, 'children's toy' [is] defined broadly as a 'consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays." Therefore, any determination as to whether a particular sporting goods product would be a toy [will] be made on a case by case basis after consideration of the following factors: a statement by the manufacturer about the intended use of the product…; whether the product is represented in its packaging, [etc.,] for use by the ages specified; and whether the product is commonly recognised by consumers as being intended for use by a [child].

Mr Sells is frustrated by the ambiguities of the law—as well as with CPSC's "case by case" comment. "There is no real clarification on how they will define a sporting good," he says. At the moment, he is advising SGMA members to use their discretion and hope that more explicit guidance will emerge. "This is the worst possible situation," he says. "People are trying to comply, but they don't know how to."

More of unintended consequences

Increased regulations are nothing new, so why is this particular law resulting in ominous messages posted on the homepages of small business websites across the country? 'Due to the potential impact of the CPSIA on my business, I will not be taking any more custom orders until I can figure out if I'll have to close shop', reads one small business owner's greeting. 'I'm lobbying extensively for changes to the law [with] the hopes that I won't have to close my shop for good...'

This is because, according to a recent Forbes commentary by Walter Olsen (which has become the centrepiece of many a blogger's rant), CPSIA is "shaping up as a calamity for businesses and an epic failure of regulation, threatening to wipe out tens of thousands of small makers of children's items from coast to coast, and taking a particular toll on the handcrafted and creative, the small-production-run and sideline at-home business, not to mention struggling retailers."

With the sub-title "Self congratulation makes for bad law," Mr Olsen's column underscores the widely-held view that this is a well-intentioned law written hastily by uninformed politicians eager to respond to the lead scares and toy recalls that grabbed headlines in 2008. After the back-patting dies down, he asserts, what remains is a lot of "unintended consequences".

Few things unite competing companies like unpopular legislation. In addition to the hundreds—maybe thousands—of individual protests, a number of industries have come together to voice off against the government. The list of coalitions is endless: The Handmade Toy Alliance brings together nearly 300 toy stores, toymakers, and children's products manufacturers to convince CPSC that the law must change to preserve American handmade children's products. The publishing industry has a coalition; the nation's librarians have formed one.

The Hosiery Association and The Hosiery Technology Center have formed the CPSC Legwear Coalition with the goal of responding to and preparing the industry for CPSIA. Like so many others, the Legwear Coalition's official statement "applauds any legislation that makes products safer", but is working to convince CPSC to "redirect its efforts and resources to improve other categories that may pose immediate threats to American consumers".

Even industry giant adidas is frustrated by the new legislation. "Complying with the law has … had considerable impact on administration and testing costs," a representative from the adidas group tells *WSA*. "We have not seen substantial improvements of the law that consumers will benefit from. Instead of taking efforts in further strengthening threshold limit values for certain standards and aligning them with international product safety norms, CPSIA first and foremost has imposed additional obligations on manufacturers and retail businesses… We see this as counterproductive in any efforts taken by governments to harmonise international standards and remove single market barriers."

However, while the anti-CPSIA bandwagon is picking up passengers and momentum, consumer and environmental groups maintain that the law is fundamentally sound and long overdue. Consumer advocacy group Public Citizen has joined with other likeminded groups to form the Coalition of Public Interest Organizations; this coalition contends that views such as Mr Olsen's are the product of misinformation circulating through the media.

A statement released by the coalition reads: "[There is a] dire need to stop the flood of dangerous, often life-threatening, products entering the marketplace." In 2007, the

Tighter standards imposed by CPSIA include limits on lead and certain phthalates found in various products intended for use by children. Although not all sporting goods for children are considered toys, toy-versions of sporting goods equipment are definitely subject to CPSIA regulations.

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statement adds, there were 473 recalls of children's products, including millions of toys that contained dangerous levels of lead paint and other toxins. There were recalls of 563 in 2008, including nearly eight million toys.

The coalition's statement deconstructs several of the most common CPSIA myths, including the confusion over whether second-hand shops will be liable for its goods (they aren't required to test and certify, but should look out for recalled items and anything that appears to pose potential risk). However, even this supportive statement concedes: "Indeed the CPSC's slow approach to providing guidance and information about the CPSIA has contributed to the growing resentment against the new law among small businesses."

A small lifeline

CPSC has made several overtures to the business community, including an extraordinary amendment passed on 30 January—11 days before the law was to go into effect—to grant a one-year stay of testing and certification requirements for certain products.

Even without the paperwork requirement, however, new standards are expected to be maintained, leaving many critics unappeased. As Walter Olsen wrote in his January Forbes column, "[The] law grants enforcement authority not only to the CPSC but to the 50 state attorneys general, which means anyone who ships nationally, small fry or not, is at the mercy of whomever turns out to be the least reasonable attorney general…" He adds that delaying testing but maintaining the retroactive regulations is not as comforting to everyone as CPSC might have hoped. "Few librarians, eBay sellers or knitters want to be told that they're outlaws but at too small-fry a level to attract the authorities' attention. They want to be legal."

The Commission has also acknowledged that the compromise invites new questions: "[CPSC] is aware that it is difficult to know whether a product meets the lead standard without testing and has issued guidance for these companies," it writes; those guidelines can be found on the organisation's website.

Far-reaching impact

Manufacturers and retailers who export to, import from, or work within the United States would be wise to bookmark the CPSC website and check it regularly; clarifications are spit out almost daily as the consumer goods world awakens to the law's intimidating breadth. A simple press release like this: "children's rainwear made of vinyl or other plastic or plastic-like material would not be subject to the phthalates limits, as it is not considered a toy or a child care article, as defined" can be worth hundreds or thousands of dollars in avoided testing and preservation of existing inventory.

With every passing day since implementation, an important question remains: Once the papers are all shuffled, once the supply chains and store shelves begin to resemble what the law has demanded, will the post-CPSIA world turn out to be as anticlimactically intact as it was on the first day of the new millennium? Or will the hype prove to be justified this time? Will the so-called (by its detractors) National Bankruptcy Day ultimately prove to be just that?

The demands of this law may very well prove to weaken an already struggling economy; its implications are far-reaching and do impact all age groups and industries. Hopefully, though, the impact on public health and safety—particularly that of the nation's children—will be even more far-reaching and ultimately more popular.

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