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New Restrictions on Children's Products Effective February 10, 2009

As the February 10 deadline looms, manufacturers, importers, distributors, retailers, resellers and advertisers of products made for children are hurrying to achieve compliance with the provisions of the Consumer Product Safety Improvement Act of 2008 that take effect on that day, while industry groups petition Congress for relief from its requirements.

The Consumer Product Safety Improvement Act (CPSIA), passed in response to recent concerns about the safety of children's toys and signed into law on August 14, 2008, establishes new safety standards for products intended for children as well as new procedures and authorities for the Consumer Product Safety Commission (CPSC). The Act's provisions, phased in on a rolling basis, are far-reaching and have generated a great deal of controversy and confusion. Some of the provisions that will take effect on February 10 have recently been interpreted to apply to products originally believed to be excluded.

February 10, 2009 Deadline

Provisions of the CPSIA scheduled to take effect on February 10 include:

- **A new lead-content limit for all children's products**, defined as consumer products "designed or intended primarily for children 12 years of age or younger" (and recently interpreted to apply to children's books and similar products). As of February 10, children's products containing greater than 600 parts per million (ppm) total lead will be banned in the United States. The lead limit is scheduled to drop to 300 ppm on August 14, 2009, and again to 100 ppm on August 14, 2011 if technologically feasible. New **and used** children's products are banned from commerce in the United States as of

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February 10 unless they meet the lead content restriction.

- **New limits on phthalate content for children's toys and child care products**, with a "children's toy" defined as a consumer product designed for child play and a child care product defined as one intended to facilitate sleep or feeding of children 3 and younger, or to help young children with sucking or teething. The phthalate limits are also phased in over time, with the initial limitations going into effect on February 10. Children's toys that can be placed in a child's mouth are subject to the strictest limits.
- **Certification requirements for domestic manufacturers and importers** of product categories covered by the above prohibitions. As of November 2008 manufacturers and importers were required to certify compliance with applicable consumer product safety rules and regulations. When the above February 10 limits go into effect, domestic manufacturers and importers of children's products, toys and child care products will need to start certifying their products as compliant.
- **Mandatory application of the Consumer Safety Specifications for Toy Safety**, ASTM International Standard F963-07, requiring additional certifications by manufacturers and importers.
- **New advertising requirements regarding choking hazards**, applicable to certain children's toys and games.

Less than two and a half weeks before these provisions are scheduled to take effect, questions abound as to the reach of the requirements and the actions necessary for compliance. Those in the business of making and selling (and importing, exporting, advertising, distributing and reselling) products made for children are scrambling to institute new testing, certification and other procedures for compliance.

In the meantime, a number of industry groups have been lobbying Congress for relief. The Consumer Product Safety Commission has been issuing press releases, guidance and regulations, but acknowledges that many questions about the new requirements remain unanswered.

CPSIA Broadly

The CPSIA includes additional provisions relating to the safety of children's products and to the workings of the CPSC. These include:

- **Reduced limits for lead in paint**, also applicable to certain products painted or coated

with substances containing lead;

- **Mandatory third party testing** for certain children's products, phased in over time and requiring that samples be sent to accredited laboratories;
- **Requirement for tracking labels** on children's products;
- **Standards and customer registration requirements for durable nursery products;**
- **Administrative improvements and enhanced enforcement authority** for the CPSC; *and*
- **Increased penalties** for violation of the Consumer Product Safety Act or the Federal Hazardous Substances Act.

If you require additional information about the CPSIA, please contact one of the Squire Sanders lawyers listed in this alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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