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Limited One-Year Stay Granted for Children's Product Certification and Testing Requirements

Responding to industry complaints, on January 30, 2009, the Consumer Product Safety Commission (CPSC) issued a last-minute stay of contentious testing and certification requirements for children's products that were scheduled to take effect on February 10, 2009. Manufacturers and importers will welcome the limited reprieve, but it is critical to recognize that the stay will not alter many of the substantial new restrictions on children's products that will still become effective on February 10, 2009. Businesses that manufacture or sell (and those that resell, import, export, distribute and advertise) products intended for children will have to continue to scramble to meet the new standards that take effect on February 10, 2009, despite this latest twist.

The Consumer Product Safety Improvement Act (CPSIA) was passed in response to recent concerns about the safety of children's toys and signed into law on August 14, 2008. The CPSIA establishes new safety standards for products intended for children as well as new procedures and authority for the CPSC. The Act's provisions, phased in on a rolling basis, are far-reaching and have generated a great deal of controversy and confusion. The provisions that will take effect on February 10, 2009 are especially contentious and have recently been interpreted to apply to products originally believed to be excluded.

The one-year stay of enforcement granted by the CPSC on January 30 applies to certain testing and certification requirements under the CPSIA, but does not cover the underlying requirements that children's products must conform to. Most of the new requirements taking effect on February 10, 2009 remain unchanged, although strategies for compliance may require last-minute alteration.

February 10, 2009 Deadline

Provisions of the CPSIA still scheduled to take effect on February 10, 2009 include:

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- **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). Beginning February 10, 2009, 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 February 10, 2009 unless they meet the lead content restriction. **This requirement applies to existing inventory.**
- **New limits on phthalate content for children's toys and child care articles**, with a "children's toy" defined as a consumer product designed for use by a child when the child plays and a child care article defined as one intended to facilitate sleep or feeding of children three 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, 2009. Children's toys that can be placed in a child's mouth are subject to the strictest limits.
- **Mandatory application of the Consumer Safety Specifications for Toy Safety**, ASTM International Standard F963-07.
- **New advertising requirements regarding choking hazards**, applicable to certain children's toys and games.

January 30 Stay of Enforcement for Certain Certification Requirements Until February 10, 2010

Manufacturers and importers of children's products have been working to comply not only with the above requirements, but with an associated requirement that they certify compliance with all relevant consumer product safety standards, and that this certification be based on testing. Under the terms of the January 30, 2009 stay, the CPSC will not enforce certain certification requirements imposed by the CPSIA.

- **The stay applies to** the testing and certification requirements associated with the February 10, 2009 total lead-content, phthalate-content and mandatory toy safety standards described above.
- **The CPSC may still require certification of compliance with the lead, phthalate and toy-safety standards at some point in the future, and prior to expiration of the stay**, pursuant to other CPSC regulations not covered by the stay.
- **It does not apply to** *all* testing and certification

requirements enforced by the CPSC including other CPSIA-imposed testing and certification of children's products.

- **The stay does not affect the enforcement of any underlying consumer product safety requirements including those applicable to children's products as of February 10, 2009.**
- **The stay will remain in effect until February 10, 2010**, at which time the Commission will vote to terminate the stay.

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 rapidly evolving requirements of 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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