



January 2009

Legal Alert: Consumer Product Safety Improvement Act

Portions of a new federal law governing consumer product safety will take effect on February 10, 2009. The law, the Consumer Product Safety Improvement Act (“CPSIA”), imposes new, more stringent, safety regulations on manufacturers, distributors, and retailers of children’s products including thrift stores. This legal alert reviews only CPSIA’s most notable requirements. If you are concerned that your organization may be affected by CPSIA, please contact Lawyers Alliance for more specific advice.

Who does CPSIA affect?

The CPSIA standards apply mainly to products intended for children twelve and under. The new requirements will affect organizations that manufacture, offer for sale, distribute in commerce, or import children’s products. Sellers of used children’s products, such as thrift stores, are exempt from some, but not all, of CPSIA’s requirements.

What does CPSIA require?

The main portions of CPSIA taking effect on February 10, 2009, are (1) new certification requirements for children’s products, (2) limits on lead content in children’s products, and (3) limits on phthalates content in some children’s products.

Both the lead ban and the phthalates ban apply to all items in inventory or on the shelves on February 10, 2009. Selling products in violation of the new limits could result in civil or criminal penalties.

New Certification Requirements

Effective February 10, 2009, all manufacturers must certify that their products comply with all relevant consumer product safety laws. In some instances involving children’s products, manufacturers are required to acquire certification from an independent testing lab. Products lacking the required certification cannot be sold in the United States.

Limited Exception for Sellers of Used Products

The CPSIA does not require resellers, such as thrift store or consignment stores, to test and certify children’s products for compliance with the lead and phthalates limits before they are sold. Resellers, such as thrift stores, are, however, barred from selling products that contain lead and phthalates exceeding allowed limits. Resellers should therefore avoid products that might contain lead or phthalates. Risk-averse resellers may choose to avoid all “children’s products.”

Lead Ban

CPSIA phases in new safety standards with respect to lead content in children's products. Starting on February 10, 2009, it is illegal to sell children's products with more than 660 ppm total lead. The lead limit drops to 300 ppm on August 14, 2009. This ban applies to all items in inventory or on store shelves on February 10, 2009, even if the products were manufactured before that date.

The CPSIA lead limit applies only to "children's products," which are consumer products designed or intended primarily for children twelve years of age or younger. In determining whether a product is intended for children twelve and under, consider the following factors: (a) any manufacturer's statement about the intended use of the product, (b) whether product is represented in its packaging or promotion as appropriate for use by children 12 years of age or younger, (c) whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

Phthalates Ban

Effective February 10, 2009, it is illegal to sell children's toys or childcare articles that contain more than 0.1% of certain phthalates. Phthalates are a family of chemical compounds that are used to make vinyl soft and flexible. This ban only applies to children's toys—products designed or intended for children twelve and under for play—and childcare articles—products intended to facilitate sleep, teething, or feeding of children age three and younger.

Phthalates are a class of multifunctional chemicals used in a variety of consumer and personal care products. Some are primarily used as plasticizers in the manufacture of flexible vinyl, which is used in consumer products, flooring and wall coverings, food contact applications, and medical devices. Some are used in personal care products (eg, perfumes, lotions, cosmetics) and in making lacquers, varnishes, and coatings, including those used to provide timed release in some pharmaceuticals.

This Alert is meant to provide general information only, not legal advice. Please contact Neil Stevenson at (212) 219-1800 ext. 273, if you have any questions about this Alert.

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