

Safety Commission Delays Some Requirements for Children's Products; Others Remain Intact

February 17, 2009

On January 30, 2009, the U.S. Consumer Product Safety Commission (CPSC) voted unanimously to issue a one year stay of enforcement for certain testing and certification requirements for manufacturers and importers of regulated products, including products intended for children 12 years old and younger. These requirements are part of the Consumer Product Safety Improvement Act (CPSIA), which added certification and testing requirements for all products subject to CPSC standards or bans. However, all manufacturers, importers, distributors and retailers of children's products must still meet the new lead and phthalate limits of the CPSIA, which was signed into law on August 14, 2008.

Nearly every product intended for children under age 12 that will be sold in the U.S. is affected by CPSIA.

Significant to makers of children's products, the vote by the Commission provides limited relief from the testing and certification requirements relating to lead and phthalates for certain products and mandatory toy standards, among other things, scheduled to go into effect on February 10, 2009. Manufacturers and importers of children's products will not need to test or certify to these new requirements but they -- like distributors and retailers -- will still need to meet the new lead and phthalate limits, mandatory toy standards and other CPSC requirements. The lead and phthalates content requirements are particularly important:

- Beginning February 10, 2009, children's products cannot be sold if they contain more than 600 parts per million (ppm) total lead. This includes children's products that were manufactured before February 10. The maximum lead content limit is further decreased to 300 ppm by August 14, 2009.
- Certain children's products manufactured on or after February 10, 2009 cannot be sold if they contain more than 0.1% of certain specific phthalates or if they fail to meet new mandatory standards for toys.

The requirements of the CPSIA apply equally to the importers of off-shore goods as well as small family run businesses selling handmade products. The CPSIA includes a provision that makes it illegal for anyone to sell a recalled product.

The Commission acknowledged that it is difficult to know whether children's products contains lead without the benefit of testing and provided some guidance that can be found on the CPSC's website.

Failure to comply with the Act can result in significant civil and criminal penalties. Directors, officers and agents no longer must have notice of a violation to be criminally liable.

The application of the CPSIA is rapidly evolving with the CPSC.

The decision by the Commission gives the staff more time to finalize four proposed rules which could relieve certain materials and products from lead testing and to issue more guidance on when testing is required and how it is to be conducted. Importers, manufacturers, distributors and retailers of children's products need to review their products and processes to ensure compliance. Miller Canfield can help.