

March 23, 2009

Recent Events Affect the Implementation of the Consumer Product Safety Improvement Act

Consumer Product Safety Commission Proposes Guidelines and Requirements for Mandatory Recall Notices

On March 20, 2009, the Consumer Product Safety Commission (CPSC) published a notice in the Federal Register proposing a set of guidelines and requirements on the information to be included in a recall notice ordered by the CPSC. The order would be based on a finding by the CPSC or by a federal district court that a consumer product is “imminently hazardous” or presents a “substantial product hazard,” as defined in the Consumer Product Safety Act. Such an order would apply to manufacturers (including importers), retailers and distributors of consumer products.

The Consumer Product Safety Improvement Act of 2008 (CPSIA) amended the original Consumer Product Safety Act to include required information in a mandatory recall notice. Much of the information in the notice, including a description of the recalled product, the approximate number of units covered by the recall, a description of the substantial product hazard, and the dates of manufacture and sale of the recalled product, are required under the CPSIA. Other guidelines, such as including the specific term “recall” in a notice and stating the approximate price or price range of the recalled product, are included even though they are not statutory requirements.

In most circumstances, the CPSC negotiates voluntary recall notices as part of corrective action plans for manufacturers whose products violate product safety rules, standards, regulations or bans. Although the notice does not specifically address the form and content requirements of these voluntary recall notices, they will serve as a guide for such notices. If the CPSC decides to extend these requirements to voluntary recall notices, it will indicate as much in a subsequent rulemaking.

The CPSC will accept written comments on the proposed guidelines and requirements. Comments must be received by April 20, 2009.

Other CPSC Developments

This notice is the latest in a flurry of proposed and final rules issued by the CPSC in implementing the CPSIA. In addition to the proposed guidelines on mandatory recall notices, the CPSC published notices covering a number of other issues in implementing the CPSIA:

- On February 23, 2009, the CPSC issued a notice of availability of draft guidance regarding which children’s products are subject to the requirements of Section 108 of the CPSIA, which bans products containing certain phthalates. The CPSC intends to address issues raised in submitted comments in a subsequent notice of proposed rulemaking.
- On February 26, 2009, the CPSC issued a notice of inquiry seeking comments and information on the implementation of Section 103 of the CPSIA, which requires marking children’s products and packaging with information that would allow manufacturers and ultimate purchasers to ascertain the location and date of the product’s production, cohort information and other source-identifying information. Comments are due by April 27, 2009.
- The CPSC issued a final rule on March 11, 2009, governing the procedures and requirements for seeking a Commission “determination” that certain materials do not exceed the CPSIA’s lead limits, or a Commission “exclusion” for certain materials that do exceed the CPSIA’s lead limits but neither result in the absorption of any lead into the human body nor have any other adverse impact on public health or safety.

If you have any questions regarding the applicability or impact of the many provisions in the CPSIA on your business, or if you would like assistance in submitting any comments to the CPSC, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

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