

Client Alert.

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U.S. Consumer Product Safety Commission Set to Further Reduce Lead Content Limit for All Children's Products

By Robert Falk, Linda Lane, William Tarantino and Jessica Moore

In the wake of several toy recalls, the federal Consumer Product Safety Improvement Act of 2008 ("CPSIA") imposed far-reaching requirements on consumer product manufacturers, importers, distributors, and retailers. Although its provisions have the potential to affect all members of the consumer product industry, the main focus of the CPSIA upon enactment was limiting the lead content of "children's products." Under the CPSIA, a "children's product" is a consumer product primarily designed or intended for use by children ages 12 and under.

The Consumer Product Safety Commission ("CPSC") previously implemented the CPSIA in a manner requiring the reduction of lead in surface coatings used on children's products to less than 90 parts per million ("ppm") and the reduction of the lead content of other accessible components of children's products to 300 ppm. Although the CPSIA envisioned that the lead content standard would be further reduced to 100 ppm as of August 2011, Congress granted the CPSC authority to find that this would not be technically feasible. The CPSC previously made such a finding with regard to certain accessible lead-containing component parts in children's electronic devices that were determined to be unable to meet the lead limits and components of electronic devices that are removable or replaceable, such as battery packs and light bulbs that are inaccessible when the product is assembled. As a result, many expected the CPSC to continue to evaluate the technological feasibility of a 100-ppm lead content limit on a category-by-category basis.

However, based on its own investigation, two public hearings, and a request for comments, *the CPSC staff has now found that the 100-ppm lead content limit is feasible for all children's products.* The only exceptions to this strict rule will be those components of children's electronic devices previously exempted by the CPSC. This staff finding is likely to be formally approved by the CPSC itself on July 13, 2011, and the 100-ppm lead content limit is therefore scheduled to go into full force and effect on August 14, 2011.

Morrison & Foerster LLP has closely followed the CPSIA as it evolved in Congress and ultimately was signed into law in 2008. We have since advised a variety of clients on its implementation and helped them keep abreast of developments emanating from the CPSC. We are a leader in providing legal advice and counsel on the CPSIA, product recalls, and other CPSC requirements affecting both children's and non-children's consumer products sold in the United States. We are also a leader in defending businesses faced with class actions and product liability and other litigation arising from extremely low levels of lead and other chemicals contained in children's, consumer, and food and beverage products.

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