

Legal Updates & News

Bulletins

New EPA Reporting Requirements for Lead in Children's Products (Ages 14 and Under)

February 2008

by [Robert L. Falk](#), [Susan P. Linden](#)

LUEL Briefing, February 14, 2008

In the wake of multiple recalls of children's toys, jewelry and other household articles, and under pressure from environmental advocacy groups to exercise its regulatory authorities under the Toxic Substances Control Act (TSCA), the U.S. Environmental Protection Agency (EPA) announced a final rule that will require certain manufacturers and importers of consumer products containing lead or lead compounds that are intended for use by children to report certain unpublished health and safety data to EPA. See 73 Fed.Reg. 5109 (Jan. 29, 2008).

The requirements apply to manufacturers and importers across a wide range of industries, including: costume jewelry and novelty manufacturing; doll and stuffed toy manufacturing, game; toy and children's vehicle manufacturing; fastener, button, needle and pin manufacturing; toy and hobby goods and supplies merchant wholesalers; discount department stores; and warehouse clubs and supercenters. The rule excludes children's jewelry, which currently is the subject of rulemaking by the Consumer Product Safety Commission (CPSC). The final rule is effective February 28, 2008, and affected companies must submit the required information between February 28, 2008 and April 28, 2008.

EPA promulgated this new rule pursuant to section 8(d) of TSCA. The rule specifically requires submission of health and safety studies relating to the lead content of consumer products intended for use by children, not including children's metal jewelry. It also requires studies assessing exposure to lead from such products. EPA is particularly interested in toxicity data that would show a "substantial risk of injury to health or the environment." All *unpublished* health and safety studies relating either to the lead content of those products or exposure assessments (including bioavailability studies) are therefore required to be submitted by companies subject to the regulation. (This may increase the importance of properly analyzing on which corporate entities the regulation falls.)

The rule relies on the TSCA definition of "intended for use by children," which means a chemical substance or mixture in or on a product specifically intended for use by children *ages 14 years or younger*. (This stands in contrast to the younger "3 and under" age group at which CPSC's regulations regarding choking hazards currently focus.) EPA explains in the rulemaking that the "intended for use" criterion is satisfied if: (1) the product commonly is recognized as intended for children age 14 or younger, (2) the product is labeled or referred to in written materials as intended for or used by children age 14 or younger, or (3) there is advertising, promotion or marketing of the product aimed at children age 14 or younger.

For companies that are subject to the rule, the next challenge will be identifying their affected products and quickly assembling the studies and exposure assessments that are responsive to EPA's request. The substances listed in the new rule include: lead; acetic acid, lead (2+) salt; carbonic acid, lead (2+) salt (1:1); lead chloride (PbCl₂); chromic acid (H₂CrO₄), lead (2+) salt (1:1); lead oxide (PbO₂); borate (1-), tetrafluoro-, lead (2+) (2:1); phosphoric acid, lead (2+) salt (2:3); silicic acid, lead salt, basic; octadecanoic acid, lead salt (1:?): sulfuric acid, lead salt (1:?), basic; and lead sulfide (PbS). Affected parties have until February 12, 2008 to request that a particular substance or listed mixture be deleted.

It is too early to predict how companies will comply with the rule or what exemptions from its broad scope may be granted by EPA. Nor is it clear what EPA will do with the information it receives under its broad authorities

Related Practices:

- [Cleantech](#)
- [Consumer Litigation & Class Action](#)
- [Environmental Law](#)
- [Land Use & Natural Resource Law](#)
- [Litigation](#)
- [Product Liability](#)

under TSCA. (TSCA Section 9 requires EPA to coordinate with other agencies who may address the same risks presented by chemicals or mixtures EPA examines under TSCA.) In addition to this action by EPA, there currently is pending legislation in Congress to ban children's products containing more than 600 parts per million total lead, with that limit potentially being reduced to less than 100 parts per million over a four-year period. (As the legislation is currently structured, implementing regulations would be developed by the CPSC rather than EPA.)

Morrison & Foerster LLP is at the forefront of law firms with experience in lead issues, particularly with regard to consumer products, including those intended for use by children of varying age groups. We represent a variety of companies and trade associations with interests in this area and assist them with legislative, regulatory, and litigation matters involving lead content and exposure issues.

For further information or assistance in matters concerning lead, including this rulemaking by EPA, CPSC regulation, California's unique Proposition 65 statute and other federal, state and local initiatives addressing lead, please contact Michèle Corash or Robert Falk in our San Francisco office at MCorash@mofo.com or RFalk@mofo.com, or Peter Hsiao in our Los Angeles office at PHsiao@mofo.com.