

A Products Liability Law Update

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Manufacturers and Importers of Children's Products Prepare for Heightened Regulations

Under the Consumer Product Safety Improvement Act of 2008 ("the Act"), the amount of allowable lead in any component part of a product intended for children ages 12 and under was reduced, effective February 10, 2009, to 600 parts per million, or "ppm." The Act also mandated a series of further reductions in allowable lead content in component parts, ultimately reaching as low as 100 ppm, if technically feasible, by August 14, 2011. Prior to that date, however, there are two intermediate steps that manufacturers and importers of children's products must meet by August 14, 2009:

- No more than 300 ppm of lead in any accessible component part of a children's product; and
- No more than 90 ppm of lead in any paint or other surface coating of a children's product.

In February 2009, the Consumer Product Safety Commission issued a stay of enforcement covering many of the requirements under the Act. This stay ostensibly postponed for one year manufacturers' and importers' obligations to obtain third-party testing and certification of compliance with allowable lead content in component parts of children's products. While the stay has been beneficial in alleviating some logistical difficulties relating to testing and certification for some products, it unfortunately has not resulted in any meaningful reduction in potential liability for market participants. Worse still, the stay may have lulled some manufacturers and importers into complacency with the intermediate and ultimate requirements of the Act.

The stay specifically did not alter manufacturers' or importers' obligations to obtain third-party testing for and certify compliance with allowable lead limits in surface coatings. Testing and certification of compliance for surface coatings is still required. In addition, the stay did not increase the allowable lead limits in surface coatings or component parts, or suspend the pending reductions in those limits. For that reason, even after implementation of the stay, manufacturers and importers must be mindful of the scheduled reductions in allowable lead content in covered products.

Any covered product sold after August 14, 2009, that is in violation of the reduced allowable lead limits, whether with respect to accessible component parts or surface coatings, will constitute the sale of a banned hazardous product under the Consumer Product Safety Act. In all likelihood, such products will be subject to a recall, and the sales will expose the seller of the product to potential liability. Because of this, and because the stay will expire in February 2010

unless extended by the Commission, if you manufacture or import products intended for use by children age 12 or younger, or which are marketed to that group, you should remain diligent and continue with plans to obtain third-party testing and certification of all such products.

For more information, please contact the Products Liability Group at:

206.223.7000 Seattle

503.778.2100 Portland

ProductsLiability@LanePowell.com

www.lanepowell.com

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