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Consumer Law/Trade Regulation Practice

CPSC Issues Final Rules for Requesting Commission “Determinations” or “Exclusions” with Respect to Lead in Children’s Products and for Testing of Children’s Metal Jewelry

The Consumer Product Safety Improvement Act (“CPSIA”) establishes specific limits on lead in children’s products. Currently, products designed or intended primarily for children 12 years of age or younger may not contain more than 600 parts per million (ppm) of lead by weight for any accessible part of the product. On August 14, 2009, that limit drops to 300 ppm.

On March 11, 2009, the Consumer Product Safety Commission (“CPSC”) issued a final rule on procedures for requests (i) for a Commission determination that a commodity or class of materials or a specific material or product does not exceed the lead content limit and (ii) for a Commission exclusion of a commodity or class of materials or a specific material or product that exceeds the lead content limit but which will not result in the absorption of any lead into the human body nor have any other adverse impact on public health or safety.

Under the new rule, any request for a determination by the CPSC must be supported by objectively reasonable and representative test results or other scientific evidence showing that the product does not, and would not, exceed the lead limit. Each request must include, *inter alia*, a detailed description of the product or material and its use by children, representative data on the lead content, data on the manufacturing processes and facilities through which lead could be introduced, an analysis of the possibility of lead contamination, detailed information on the test methods used to measure the lead content, and any data that is unfavorable to the request that is reasonably available to the requestor.

The Office of Hazard Identification and Reduction is responsible for evaluating requests under this rule and making a recommendation to the CPSC. Products that receive a determination are exempted from the CPSIA’s lead content testing and certification requirements, but manufacturers and importers must still verify that the product has not been altered or modified, or experienced any change in the processing, facility or supplier conditions that could

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Requests for an exclusion must include documentation based on the best available, objective, peer-reviewed, scientific evidence showing that lead in such product will not be absorbed into the body, taking into account normal and reasonably foreseeable use and abuse by a child, and the aging of the product, nor have any other adverse impact on health or safety. Requests must include, *inter alia*, a detailed description of the product or material and its use by children, representative data on the lead content, data on the manufacturing processes and facilities through which lead could be introduced, an analysis of the possibility of lead contamination, detailed information on the test methods used to measure the lead content, including the type of equipment used and other techniques used, and an assessment of the manufacturing processes which strongly supports a conclusion that they would not be a source of lead contamination. The Office of Hazard Identification will review and evaluate these requests too.

Also of note, importers and domestic manufacturers of children's metal jewelry products manufactured after March 23, 2009, must certify that the metal and metal alloy parts of such products do not exceed the CPSIA lead content limit, based upon testing by a CPSC-accredited third-party laboratory. The CPSC has published a list of accredited laboratories and the acceptable test methods on its website.

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