

January 21, 2009

## Lead Content and Phthalate Limits for Children's Products to Take Effect on February 10, 2009

Next month, key provisions of the Consumer Product Safety Improvement Act (CPSIA) will take effect. Beginning February 10, 2009, children's products cannot be sold if any part of the product contains more than 600 parts per million (ppm) of lead. The new lead content limit for children's products is in addition to the already existing limit applicable to lead-containing paints and surface coatings on certain consumer products. The term "children's product" is defined by the CPSIA as a "consumer product designed or intended primarily for children 12 years of age or younger." The Consumer Products Safety Commission's General Counsel has opined that, because children's products that do not meet the new lead content limit are to be treated as "a banned hazardous substances" under the Federal Hazardous Substance Act, as of February 10, 2009 all children's products will need to comply, regardless of the date they were manufactured. Thus, all inventory on store shelves is subject to the 600 ppm limit and non-conforming products cannot be lawfully sold on or after February 10, 2009. Retailers who sell products in violation of the new limit could face civil and/or criminal penalties. This August, the limit on lead content will be reduced to 300 ppm.

Additionally, certain children's toys and child care articles manufactured on or after February 10, 2009 cannot be sold if they contain more than 0.1% of certain phthalates. The CPSC's General Counsel has opined that the phthalate limit would **not** apply retroactively to products manufactured before February 10, 2009.

Importers and domestic manufacturers of children's products subject to the new lead content and phthalate limits and manufactured on or after February 10, 2009 must issue general conformity certificates certifying that the products have been tested for compliance with those requirements.

Also effective February 10, 2009, the Standard Consumer Safety Specification for Toy Safety, ASTM F963-07, will become a mandatory consumer product safety standard. ASTM F963-07 covers a wide range of toy safety requirements, including those for battery-operated toys and toys with sharp points. Importers and

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domestic manufacturers of toys manufactured on or after February 10, 2009 will have to issue general conformity certificates certifying that the toys comply with ASTM F963-07.

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