



July 2011

PRODUCT LIABILITY UPDATE

Lower Lead Limit in Children's Products Effective August 14

Effective August 14, 2011, all children's products manufactured, imported, distributed, or sold in the United States must meet the 100-ppm-lead-content limit required by the 2008 Consumer Product Safety Improvement Act (the "2008 Act"). The 2008 Act set an initial lead limit of 600 ppm in children's products – those designed or intended primarily for children 12 and younger – and dates by which the limit was to be lowered, first to 300 ppm and eventually to 100 ppm. Pursuant to that timetable, the limit was lowered from 600 ppm to 300 ppm on August 14, 2009. The 2008 Act specifically mandates that the limit is to be lowered from 300 ppm to 100 ppm on August 14, 2011 unless the Consumer Product Safety Commission (the "Commission") determines that the 100-ppm limit is not technologically feasible, in which case the Commission could set an alternative limit. On July 13, the Commission voted 3-2 that lowering the limit to 100 ppm is technologically feasible, paving the way for the lower limit to go into effect on August 14.

Notably, the 2008 Act gives the Commission the authority only to determine whether a lead limit of 100 ppm is technologically feasible. Thus, the Commission had no ability to either consider economic feasibility in its determination or adopt an alternative limit in light of economic feasibility.

While the 100-ppm limit is the lowest limit set forth in the 2008 Act, the Act provides for additional periodic review and the potential for further reductions. Specifically, the Commission is to review and, if necessary, lower the limit no less frequently than every five years based upon the best available scientific and technical information.

Existing inventory with lead levels exceeding 100 ppm cannot be sold after August 14, 2011. However, the Commission has requested that Congress pass an amendment that would allow pre-existing inventory to be sold after the effective date.

FOR MORE INFORMATION

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