

August 27, 2009

Consumer Product Safety Commission Publishes Final Rule Excluding Certain Materials from Lead Testing and Certification Requirements

On August 26, the Consumer Product Safety Commission (CPSC) published in the Federal Register a Final Rule regarding the lead content limits established in the Consumer Product Safety Improvement Act (CPSIA). In this Final Rule, the CPSC determined that certain materials do not exceed the lead content limits that are established under section 101(a) of the CPSIA. Therefore, these materials will not be subject to the testing and certification requirements imposed on manufacturers and importers under section 102(a) of the CPSIA.

The materials **excluded** from the testing and certification requirements include the following:

- Precious gemstones: diamond, ruby, sapphire and emerald
- Semiprecious gemstones and other minerals, provided that the gemstone or mineral is not based on lead or lead compounds and is not associated in nature with any mineral that is based on lead or lead compounds
- Natural or cultured pearls
- Wood
- Paper and similar materials made from wood or other cellulosic fiber, including but not limited to: paperboard, linerboard and medium, and coatings on such paper which become part of the substrate
- CMYK process printing inks (except for spot colors, other inks that are not used in the CMYK process, inks that do not become part of the substrate, and inks used in after-treatment applications such as screen prints, transfers, decals or other prints)
- Textiles (excluding after-treatment applications described above) consisting of:
 - natural fibers (dyed or undyed), including but not limited to: cotton, kapok, silk, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, sisal, silk, wool, alpaca, llama, goat, rabbit, camel, horse, yak, vicuna, qiviut and guanaco; or
 - manufactured fibers (dyed or undyed), including but not limited to: rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid and spandex.
- Other plant- and animal-derived materials, including but not limited to: animal glue, bee's wax, seeds, nut shells, flowers, bone, sea shell, coral, amber, feathers, fur and leather

If you have any questions regarding the CPSC's Final Rule on products not subject to the CPSIA's testing and certification requirements or how it may affect your business, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below:

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- Surgical steel and other stainless steel within the designations of Unified Numbering System, UNS S13800-S66286, **except for** stainless steel designated as 303Pb (UNS S30360)
- Certain precious metals and alloys, including gold (at least 10 karat), sterling silver (at least 925/1000), platinum, palladium, rhodium, osmium, iridium, and ruthenium and titanium

These materials have been found by the CPSC not to exceed 100 ppm of lead, the lowest lead content limit defined in the CPSIA, which is scheduled to take effect on August 14, 2011 (unless such a limit is not technologically feasible). Therefore, the list of exempted products will not need to be revisited as the lead limits become more stringent in the future.

However, this exemption only applies to the following materials insofar as they have not been “changed or altered” such that they in fact exceed the lead content limit. The exemption also does not apply to metals and alloys where lead or lead-containing metal is intentionally added, nor does it include non-steel or non-precious metal components of a product (such as solder or base metals in electroplate, clad or fill applications).

Even when a product or material has been relieved of the testing and certification requirements, manufacturers and importers remain responsible for verifying that the product or material has not been changed or altered, or experienced conditions that could impart lead into the product or material. The CPSC expects all applicable products to comply with section 101(a) of the CPSIA, and it intends to test products in the marketplace to ensure that they continue to comply.

The effective date of the Final Rule is August 26, 2009, the date of publication in the Federal Register.

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