

and explain that the request may be resubmitted when the deficiency is corrected.

(e) Each complete request for exclusion will be reviewed by the Office of Hazard Identification and Reduction, who will preliminarily recommend granting or denying the request. Where the preliminary determination is to grant, the Commission will publish a notice of proposed rulemaking inviting public comment on whether the proposed exclusion should be issued in final form, and the Office of Hazard Identification and Reduction will review and evaluate the comments and supporting documentation before making its recommendation to the Commission for final agency action.

(f) The filing of a request for exclusion does not have the effect of automatically staying the effect of any provision or limit under the statutes and regulations enforced by the Commission. Even though a request for an exclusion has been filed, unless an exclusion is issued in final form by the Commission after notice and comment, materials or products subject to the lead limits under section 101 of the CPSIA are considered to be banned hazardous substances if they do not meet the lead limits.

Dated: January 9, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-715 Filed 1-14-09; 8:45 am]

BILLING CODE 6335-01-P

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

#### Children's Products Containing Lead; Proposed Determinations Regarding Lead Content Limits on Certain Materials or Products; Notice of Proposed Rulemaking

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016. This notice of proposed rulemaking (NPR) initiates a proceeding under section 3 of the CPSIA authorizing the Commission to issue regulations, as necessary, to implement the CPSIA. In this document, the Commission solicits written comments concerning preliminary determinations on certain natural, untreated and unadulterated materials and metals that have not been

found to exceed the lead content limits prescribed under section 101(a) of the CPSIA.

**DATES:** Written comments and submissions in response to this notice must be received by February 17, 2009.

**ADDRESSES:** Comments should be e-mailed to

*Sec101Determinations@cpsc.gov.*

Comments should be captioned

“Section 101 Determinations of Certain Materials or Products NPR.” Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-7923). Comments also may be filed by facsimile to (301) 504-0127.

**FOR FURTHER INFORMATION CONTACT:**

Kristina Hatlelid, PhD, M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504-7254, e-mail *khatlelid@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Under section 101(a) of CPSIA, consumer products designed or intended primarily for children 12 years old and younger that do not contain more than 600 ppm of lead (as of February 10, 2009), 300 ppm of lead (as of August 14, 2009); 100 ppm after three years (as of August 14, 2011), unless the Commission determines that it is not technologically feasible to have this lower limit, are not considered to be banned hazardous substances under the Federal Hazardous Substances Act (FHSA). However, in the absence of Commission action, these products and materials remain subject to the testing requirements of section 102 of the CPSIA (codified at § 14 of the Consumer Product Safety Act (CPSA)).

Under these provisions, on and after February 10, 2009, general conformity certificates certifying that they comply with the applicable lead content limit are required for children's products. The certification must be based on tests of each product or a reasonable testing program. On and after August 14, 2009, absent Commission action to the contrary, the certificates must be based on testing performed by a laboratory whose accreditation to perform the testing has been accepted by the Commission.

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. There may be certain products or

materials that inherently do not contain lead or contain lead at levels that do not exceed the lead content limits under section 101(a) of the CPSIA. To the extent that such materials or products exist, the Commission, of its own initiative, is proposing to exercise its section 3 authority to make preliminary determinations that certain commodities or classes of materials or products do not exceed the lead limits prescribed in section 101(a) of the CPSIA. The effect of such a Commission finding would be to relieve the material or product from the testing requirement of section 102 of the CPSIA for purposes of supporting the required certification. Of course even where a material or product has been so relieved of the testing requirement, it must still meet the statutory lead level requirements in actual fact. The Commission will obtain and test products in the marketplace to assure that this remains the case and will take appropriate enforcement action in situations where that is not the case.

#### B. Proposed Determinations on Certain Products and Materials

The Commission staff identified a number of commodities or classes of materials that do not inherently contain lead or contain lead that does not exceed the CPSIA lead limits of 600 ppm or 300 ppm.

##### *Certain Natural Materials*

Based on the staff's review, the Commission preliminarily determines that the following natural materials do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA. These preliminary determinations are based on materials that are untreated and unadulterated with respect to the addition of materials or chemicals, including pigments, dyes, coatings, finishes or any other substance, and that do not undergo any processing that could result in the addition of lead into the product or material:

1. Precious gemstones: Diamond, ruby, sapphire, emerald
2. Certain semiprecious gemstones provided that the mineral or material 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 (minerals that contain lead or are associated in nature with minerals that contain lead include, but are not limited to, the following: Aragonite, bayldonite, boleite, cerussite, crocoite, linarite, mimetite, phosgenite, vanadinite, and wulfenite)
3. Natural or cultured pearls
4. Wood

5. Natural fibers such as cotton, silk, wool, hemp, flax, linen
6. Other natural materials including coral, amber, feathers, fur, untreated leather

#### *Certain Metals and Alloys*

Based on the staff's review, the Commission preliminarily determines that the following metals and alloys do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA provided that no lead or lead-containing metal is intentionally added:

1. Surgical steel
2. Precious metals: Gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium

The preliminary determinations do not extend to the non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications.

#### **C. Requests for Comments**

All interested persons are invited to submit to the Commission their comments and data concerning the Commission's preliminary determinations on the listed natural materials and metals and alloys. In particular, the Commission invites interested persons to submit any test results showing that substances covered by the proposed rule had lead exceeding the lead limits in section 101(a) of the CPSIA. In addition, the Commission seeks comments on:

- Other natural fibers that would not exceed the lead content limits
- Other natural materials that would not exceed the lead content limits
- Other metals or alloys that would not exceed the lead content limits
- Other materials, which by their nature, would not exceed the lead content limits.

Comments should be e-mailed to [Sec101Determinations@cpsc.gov](mailto:Sec101Determinations@cpsc.gov). Comments should be captioned "Section 101 Determinations of Certain Materials or Products NPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-7923). Comments also may be filed by facsimile to (301) 504-0127. All comments and submissions should be received no later than February 17, 2009.

#### **D. Impact on Small Businesses**

Under the Regulatory Flexibility Act (RFA), when an agency issues a

proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of relieving certain materials or products from the testing requirements of section 102 of the CPSIA if they were found to be inherently under the lead content limits prescribed. The number of small businesses that will be directly affected by the rule is unknown but could be considerable. However, it will not result in any increase in the costs of production for any firm. Its only effect on businesses, including small businesses, will be to reduce the costs that would have been associated with testing the materials under section 102 of the CPSIA. Based on the foregoing assessment, the Commission preliminarily finds that the proposed rule would not have a significant impact on a substantial number of small entities.

#### **E. Environmental Considerations**

Generally, CPSC rules are considered to "have little or no potential for affecting the human environment," and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(c)(1)). The proposed rule will not result in any additional lead in the environment since such materials do not contain lead or contain lead at levels that do not exceed the CPSIA limits. Therefore, the Commission does not expect the proposed rule to have any negative environmental impact.

#### **F. Executive Orders**

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this proposal is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

#### **G. Effective Date**

The Administrative Procedure Act requires that a substantive rule must be published not less than 30 days before its effective date, unless the rule relieves a restriction. 5 U.S.C. 553(d)(1). Because the proposed rule would provide relief from existing testing requirements under the CPSIA, the proposed effective date is the date of publication of a final rule in the **Federal Register**.

#### **H. List of Relevant Documents**

(1) Memorandum from Kristina M. Hatlelid, PhD, M.P.H., Toxicologist, Directorate for Health Sciences "Consumer Product Safety Improvement Act of 2008 (CPSIA): Certain Materials or Products that Do Not Exceed the Limits for Lead Content." December 2008.

(2) Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, "Preliminary regulatory analysis of a rule making determinations that certain materials or products do not have lead contents that exceed the limits established in section 101(a) of the CPSIA." December 2008.

#### **List of Subjects in 16 CFR Part 1500**

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

#### **I. Conclusion**

For the reasons stated above, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

#### **PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS**

1. The authority for part 1500 is amended to read as follows:

**Authority:** 15 U.S.C. 1261–1278, 122 Stat. 3016.

2. Add a new § 1500.91 to read as follows:

#### **§ 1500.91 Determinations Regarding Lead Content for Certain Materials or Products under Section 101 of the Consumer Product Safety Improvement Act.**

(a) The Consumer Product Safety Improvement Act provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit may be further reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to have this lower limit. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child.

(b) Section 3 of the CPSIA grants the Commission general rulemaking

authority to issue regulations, as necessary, either on its own initiative or upon the request of any interested person, to make a determination that a material or product does not exceed the lead limits as provided under paragraph (a) of this section.

(c) The following natural materials do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA provided that these materials have neither been treated or adulterated with the addition of materials or chemicals such as pigments, dyes, coatings, finishes or any other substance, nor undergone any processing that could result in the addition of lead into the product or material:

(1) Precious gemstones: Diamond, ruby, sapphire, emerald.

(2) Semiprecious gemstones provided that the mineral or material 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 (minerals that contain lead or are associated in nature with minerals that contain lead include, but are not limited to, the following: Aragonite, bayldonite, boleite, cerussite, crocoite, linarite, mimetite, phosgenite, vanadinite, and wulfenite).

(3) Natural or cultured pearls.

(4) Wood.

(5) Natural fibers such as cotton, silk, wool, hemp, flax, linen.

(6) Other natural materials including coral, amber, feathers, fur, untreated leather.

(d) The following metals and alloys do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA provided that no lead or lead-containing metal is intentionally added but does not include the non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications:

(1) Surgical steel.

(2) Precious metals: Gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium.

Dated: January 9, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-714 Filed 1-14-09; 8:45 am]

**BILLING CODE 6335-01-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

#### Children's Products Containing Lead; Exemptions for Certain Electronic Devices; Notice of Proposed Rulemaking

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016. Section 101 of the CPSIA provides for specific lead limits in children's products. Section 101(b)(2) of the CPSIA provides that the lead limits will not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse. In addition, section 101(b)(4) of the CPSIA provides that if the Commission determines that it is not technologically feasible for certain electronic devices to comply with the lead limits, the Commission must issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices and establish a compliance schedule unless the Commission determines that full compliance is not technologically feasible. For certain electronic devices for which it is not technologically feasible to meet the lead limits, the Commission is proposing requirements to eliminate or minimize the potential for exposure and accessibility of lead.

**DATES:** Written comments and submissions in response to this notice must be received by February 17, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Comments should be e-mailed to [Sec101ElectronicDevices@cpsc.gov](mailto:Sec101ElectronicDevices@cpsc.gov). Comments should be captioned "Section 101 Electronic Devices NPR." Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504-7923). Comments also may be filed by facsimile to (301) 504-0127.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The CPSIA provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or

intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. The limit may be further reduced to 100 ppm after three years, or August 14, 2011, unless the Commission determines that it is not technologically feasible to have this lower limit. A children's product is defined as a consumer product designed or intended primarily for children 12 years of age or younger under section 235(a) of the CPSIA (to be codified at section 3(a)(2) of the Consumer Product Safety Act). In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors will be considered:

- A statement by the manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

- The Age Determination Guidelines issued by the Commission in September 2002, and any successor to such guidelines.

Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child. Section 101(b)(2)(B) further provides that the Commission must promulgate a rule providing guidance with respect to what product components or classes of components will be considered to be inaccessible. A proposed interpretative rule providing guidance on inaccessibility is published elsewhere in this **Federal Register**.

In addition, if the Commission determines that it is not now technologically feasible for certain electronic devices to comply with the lead limits, section 101(b)(4) of the