

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.*

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**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

CPSIA provides that the Commission issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, and establish a schedule for achieving full compliance unless the Commission determines that full compliance with the lead limits is not technologically feasible within such a schedule. Technological feasibility is based on the commercial availability of products, technology, or other practices that will allow compliance with the lead limits.

On September 26, 2008, the Commission staff requested comments on the CPSC Web site on section 101(b)(2), Exception for Inaccessible Component Parts, and section 101(b)(4), Certain Electronic Devices. Staff specifically requested comments and information regarding:

- The identification of children's electronic devices for which lead is currently used in any concentration in any part or component of the product.
- Whether it is technologically feasible to achieve in all parts of children's electronic devices the 600 ppm lead limit; the 300 ppm limit; the 100 ppm limit.
- Whether any children's electronic product currently on the market contains lead-containing component parts that are inaccessible, and the reasons why such component parts are considered inaccessible.
- Current compliance with or possibility of compliance with regulations, such as the European Union directive on the restriction of use of hazardous substances (EU RoHS Directive 2002/95/EC), or other standards including information on: The lead limit in the standard being met (e.g., EU RoHS lead limit is 1000 ppm); whether compliance with such a standard was being met because of the existence of an exemption that specifically allows the use of lead in some parts of a product, and identification of such lead-containing parts.

## B. Comments

Fourteen comments addressed the use of lead in children's electronic devices. Eight comments addressed the issue of the technological feasibility of certain electronic devices meeting the CPSIA lead limits, indicating that for certain materials or parts, it would be difficult to achieve the specified maximum lead limits. One commenter interpreted technological feasibility as referring to cost-benefit analysis.

The Commission's proposed exemptions are based in part on the information provided by these

commenters, along with other information provided by the Commission staff, regarding the difficulty in attaining compliance with the CPSIA for certain materials or products. Technological feasibility as defined in the CPSIA means commercial availability of materials or parts, or the possible future availability of materials or parts. It does not refer to economic considerations, such as cost-benefit analysis.

Six comments addressed electronic components that are generally enclosed within the product, asserting that only ingestible parts should be considered accessible, based on small parts testing. The CPSIA defines accessibility as physical exposure to lead-containing component parts. Based on staff's review, the Commission preliminarily determines that an accessible component part of a children's product is one that a child may touch or place in the mouth, not just a part that a child might ingest. Physical inaccessibility refers generally to a component part that is located inside a product that a child cannot touch. Accordingly, the Commission is recommending in a proposed interpretative rule published elsewhere in this **Federal Register**, the use of accessibility probes, as well as appropriate use and abuse testing, to evaluate access to lead-containing component parts.

Several comments were received on other standards that address the use of lead in electronic devices, specifically the European Union Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (often abbreviated as EU RoHS). Most comments stated that EU RoHS requirements would be appropriate for regulating children's electronic products. One comment cautioned that the EU RoHS directive does not allow an exemption for inaccessible parts and should not be adopted for use in the United States.

Because the Commission recognizes that it is currently not technologically feasible for certain parts of electronic devices to comply with the CPSIA lead limits, and because the exemptions published in the Annex to EU Directive 2002/95/EC are based, in part, on scientific technological feasibility, the Commission proposes to adopt, as exemptions to the CPSIA lead limits for electronic devices, those exemptions, provided that the exemption is based on a functional requirement both for the use of a lead-containing component and for the use of lead in such component. However, the Commission does not propose to adopt the EU RoHS

exemption for crystal glass or any other exemption for uses of lead that are solely decorative or otherwise non-functional since those articles would customarily be subject to the CPSIA lead limits. The current EU RoHS exemptions are available at <http://eur-lex.europa.eu/en/index/htm>, and an annotated version is attached to the staff briefing memorandum referenced in the list of relevant documents. Since the EU RoHS process for reviewing exemptions is ongoing, the Commission proposes to adopt future exemptions promulgated under EU Directive 2002/95/EC, if consistent with the Commission's determinations that are issued in a final rule on exemptions for certain electronic devices. The general lead limit in the EU RoHS directive is 0.1 percent (equivalent to 1000 parts per million (ppm)), while the CPSIA limits are 600 ppm as of February 10, 2009, 300 ppm as of August 14, 2009, and as of August 14, 2011, 100 ppm, if technologically feasible. Under the Commission's proposed approach, exemption is necessary for any accessible component exceeding the pertinent CPSIA lead limit.

## C. Exemptions for Certain Electronic Devices

Electronic devices are included in certain children's products regulated under the provisions of the CPSIA. The CPSIA provides authority for the Commission under section 101(b)(4), to issue regulations concerning certain electronic devices to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices if it is not technologically feasible to comply with the lead limits set by the Act.

### 1. Inaccessible Electronic Devices

Some lead-containing component parts of electronic devices are, by design, not accessible to children because the lead is fully enclosed within a component that is itself within the electronic device. Other components could be made to be inaccessible, taking account of normal and reasonably foreseeable use and abuse by children. Accessibility of the lead-containing component may be evaluated through application of the accessibility probes described in 16 CFR 1500.48 and 1500.49, before and after use and abuse tests at 16 CFR 1500.50 through 1500.53 (excluding the bite tests of 1500.51(c) and 1500.52(c)). If a component, whether an electronic device or not, is not accessible to a child, it is not subject to the lead limits under the CPSIA. A proposed guidance rule on

inaccessibility is published elsewhere in this **Federal Register**.

## 2. Accessible Electronic Devices That Are Exempt

Certain components cannot be produced without lead for safety reasons and cannot be made physically inaccessible. An example is a cathode ray tube, in which the lead in the glass protects users from the x-ray radiation generated by the device during normal operation.

The European Union and other countries and authorities have adopted restrictions on the use of lead and other chemicals in electronic devices. The purpose of the restrictions is to address concerns related to human health and environmental impacts of waste electrical and electronic equipment. EU Directive 2002/95/EC<sup>1</sup> on the restriction of the use of certain hazardous substances in electrical and electronic equipment, implemented July 1, 2006, specifies that substances such as lead be substituted with safer materials. The directive specifies a maximum concentration for lead of 0.1 percent (equivalent to 1000 parts per million (ppm)) in each homogeneous material in an electronic device.

The directive allows certain exemptions "if substitution is not possible from the scientific and technical point of view or if the negative environmental or health impacts caused by substitution are likely to outweigh the human and environmental benefits of the substitution," but it also specifies that exemptions must be reviewed at least every four years with the aim of removing such exemptions if it becomes technologically or scientifically possible to replace the lead in a particular application. Most exemptions refer to specific types of products or components or other applications without providing restrictions on lead concentration. Other exemptions allow applications that exceed the generally applicable 1000 ppm limit for lead content, but specify alternate maximum lead concentrations for the indicated materials. There is no exemption in the directive based on inaccessibility, since the goal is to restrict the overall use of lead in products.

Some of the EU RoHS exemptions involve lead-containing components that would likely be inaccessible to children using electronic devices. Under the CPSIA, if the component is not accessible to a child, it would not be subject to the lead limits. A proposed

guidance rule on inaccessibility is published elsewhere in this **Federal Register**. However, the Commission believes that some exempted uses of lead, such as the cathode ray tubes discussed above, and certain other components that create electrical connections or that are required for product functions, cannot be made inaccessible. With respect to children's electronic devices, the Commission seeks comments on what components listed in the EU Directive 2002/95/EC, other than cathode ray tubes, cannot currently be made inaccessible to a child and why.

Because the EU RoHS exemptions were established in part to consider the technological feasibility of limiting the use of lead, the Commission proposes to adopt, as exemptions to the CPSIA lead limits for electronic devices, the exemptions published in the Annex to the EU Directive 2002/95/EC, provided that the exemption is based on a functional requirement both for the use of a lead-containing component and for the use of lead in such component. The existing EU RoHS exemptions for cathode ray tubes and certain components or the metal alloys used to make certain components allow the use of lead in applications for which substitution of the lead is not yet feasible. On the other hand, the directive provides an exemption for crystal glass used solely for decorative purposes. Since such use is not required for the function of the electronic device, the Commission proposes to disallow the crystal glass exemption and any other exemption for decorative or non-functional uses of lead for children's electronic devices subject to the CPSIA lead limits.

Except for crystal glass and other non-functional uses of lead for children's electronic devices, to the extent that a lead-containing component part is used in an electronic device and is within the exemptions published in the Annex to the EU Directive 2002/95/EC, or is otherwise inaccessible to a child, that component part would be relieved from the testing requirement of section 102 for purposes of supporting the required certification. The current EU RoHS exemptions are available at <http://eur-lex.europa.eu/en/index/htm>, and an annotated list of the exemptions are attached to the staff briefing memorandum referenced in the list of relevant documents. Since the EU RoHS process for reviewing exemptions is ongoing, the Commission proposes to adopt future exemptions promulgated under EU Directive 2002/95/EC, if consistent with the Commission's determinations that are issued in a final

rule on exemptions for certain electronic devices.

Of course even where a component part has been relieved of the testing requirement, other component parts that are accessible or that do not fall within the scope of the EU RoHS exemptions must still meet the statutory lead level requirements, and would be subject to the testing requirement of section 102 of the CPSIA. 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.

## 3. Removable or Replaceable Component Parts

Some components of electronic devices may be removable or replaceable. For example, battery packs and light bulbs may be provided as spare or replacement parts. Until such components are installed in the product, lead-containing parts may be accessible to a child. However, the Commission proposes that spare parts or other removable components be considered inaccessible under the provisions of the CPSIA, provided that the lead-containing component is inaccessible when the product is assembled in functional form or if the component itself meets the criteria for exemption, such as under the possible exemptions with respect to EU RoHS.

## 4. Accessible Electronic Devices Which Are Not Exempt

All component parts of electronic devices that exceed the CPSIA's specified lead limits which cannot be made inaccessible and that are not exempted on the basis of exemptions adopted by the Commission from EU RoHS must comply with the lead limits specified in the CPSIA. The Commission notes that the implementation of EU RoHS and similar regulations has resulted in enormous advances in electronics technologies. On the basis of the preliminary information obtained by the staff, the Commission believes that in many, if not most, cases, materials and components used in electronic devices that meet the EU RoHS directive's general lead limit at 1000 ppm will also meet the CPSIA's 600 ppm limit, and possibly the 300 ppm limit. Therefore, the Commission's expectation is that, with the exception of a few particular applications such as cathode ray tubes, many electronic devices will be in compliance with the CPSIA lead provisions either because they already meet the lead content limits or through the exception for inaccessibility of lead-

<sup>1</sup> European Union Directive 2002/95/EC and amendments to the directive are available at <http://eur-lex.europa.eu/en/index.htm>.

containing component parts. However, to the extent that an accessible component part does not qualify for EU RoHS exemption, it must continue to meet the CPSIA lower lead limits, not the EU RoHS lead limit of 1000 ppm.

#### 5. Periodic Review

Because of the changing state of technology and continuing progress in replacing lead with other substances, and consistent with the CPSIA mandate to conduct periodic reviews under section 101(b)(5), the Commission will direct staff to reevaluate the technological feasibility of compliance with the lead limits for electronic devices, including the status of EU RoHS limits and exemptions, no less than every five years.

#### 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 excluding certain electronic devices from the requirements of Section 101(a) of the CPSIA. That assessment found that the potential cost of the rule consists of the continued risk associated with the absorption of lead from the children's electronic products that, in the absence of the exemption, would not have been available for use. The potential benefit, on the other hand, consists of the value that consumers attach to having the otherwise barred children's electronic devices available for use. Because the rule would allow the continued use of some lead-containing electronic devices intended for the use of children, when it is not technologically feasible to produce the devices without lead, there would be some amount of exposure of lead from these products. However, the exemptions are not expected to increase the lead exposure to children from electronic devices, relative to pre-CPSIA levels. In some cases, limitations on the exemptions should help reduce lead exposure. For example, under the exemptions proposed in the rule, the use of lead crystal with children's electronic products for decorative purposes would not be allowed. Additionally, the exemptions could, in some cases, ultimately result in reduced

lead exposure if, in the absence of the exemptions, parents would have substituted for their children's use electronic products intended for the general public—products not subject to the lead limitations of the CPSIA.

The number of small businesses that will be directly affected by the rule is unknown but could be considerable. However, because the proposed rule is designed to exempt certain specified materials from the requirements of section 101(a) of the CPSIA, 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 exempted materials.

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 use of lead over what is occurring at the present time. Therefore, the Commission does not expect the proposal 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 Federal Hazardous Substances Act. 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 it grants an exemption. 5 U.S.C. 553(d)(1). Because the proposed rule would grant exemptions from the existing requirements, the effective date will be the date of publication of a final rule in the **Federal Register**.

#### H. Request for Comments

Interested persons are invited to submit comment on the proposed rule. 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.

#### I. 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) Exclusions and Exemptions from Compliance with Limits for Lead: Inaccessibility and Certain Electronic Devices." December 2008.

(2) Memorandum from Robert Franklin, Economist, Directorate for Economic Analysis, "Preliminary Regulatory Analysis of a Rule Exempting Certain Electronic Devices from Section 101(a) of the Consumer Product Safety Improvement Act." 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.

#### J. Conclusion

For the reasons stated above, the Commission amends 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 § 1500.88 to read as follows:

#### § 1500.88 Exemptions from Lead Limits under section 101 of the Consumer Product Safety Improvement Act for Certain Electronic Devices.

(a) The Consumer Product Safety Improvement Act (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. 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 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.

(c) Lead-containing component parts in electronic devices unable to meet the lead limits set forth in section (a) due to technological feasibility are granted exemptions published in the Annex to the European Union Directive 2002/95/EC, as amended through European Union Commission Decision of January 24, 2008, provided that the exemption is based on a functional requirement both for the use of a lead-containing component and for the use of lead in such component, and does not include the crystal glass exemption and any other exemption for decorative or non-functional uses of lead.

(d) Components of electronic devices that are removable or replaceable such as battery packs and light bulbs that are inaccessible when the product is assembled in functional form or are otherwise granted an exemption published in the Annex of European Union Directive 2002/95/EC are not subject to the lead limits in section (a).

(e) Commission staff is directed to reevaluate and report to the Commission on the technological feasibility of compliance with the lead limits in section (a) no less than five years after publication of a final rule in the **Federal Register** on electronic devices.

Dated: January 9, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

#### Children's Products Containing Lead; Interpretative Rule on Inaccessible Component Parts

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed interpretative rule.

**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(a) 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. Section 101(b)(2)(B) of the CPSIA further directs the Commission to promulgate by August 14, 2009, a rule providing guidance with respect to what product components or classes of components will be considered to be inaccessible. In this document, the Commission is proposing an interpretative rule providing guidance on inaccessible component parts.

**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 [Sec101InaccessibleRule@cpsc.gov](mailto:Sec101InaccessibleRule@cpsc.gov). Comments should be captioned "Section 101 Inaccessible Component Parts." 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 parts per million (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. 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.

To the extent a component part is inaccessible to a child, that component part would be relieved from the testing requirement of section 102 of the CPSIA for purposes of supporting the required certification. Of course even where a component part has been so relieved of the testing requirement, other component parts that are accessible must still meet the statutory lead level requirements, and would be subject to the testing requirement of section 102. 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 the limits are exceeded in accessible parts.