date of publication of the notice of initiation of the requested review. Ajubesteel withdrew its request for a review on January 13, 2009, which is within the 60–day deadline. Therefore, the Department is rescinding this new shipper review of Ajubesteel.

Notification

As the Department is rescinding this antidumping duty new shipper review, normally, the all–others rate in effect at the time of entry, 4.8 percent *ad valorem*, would be assessed on all exports of circular welded non–alloy steel pipe from the Republic of Korea by Ajubesteel entered, or withdrawn, from warehouse for consumption during the period of review (November 1, 2007, through October 31, 2008). However, Ajubesteel's shipments are subject to an administrative review of the order on circular welded non–alloy steel pipe from the Republic of Korea, covering the same period. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008). Because the sale(s) from this new shipper review also fall within the period of review of the administrative review, the Department will not issue assessment instructions to U.S. Customs and Border Protection (CBP) at this time. Upon the completion of the November 1, 2007, through October 31, 2008, administrative review, the Department will issue assessment instructions to CBP as appropriate.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This new shipper rescission and notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: February 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretaryfor Antidumping and Countervailing Operations.

[FR Doc. E9–3656 Filed 2–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Extension of the Time Limit for the Preliminary Results of the 2007/2008 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce (Department) published in the **Federal Register** an antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea (''Korea''). *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea*, 56 FR 25669 (June 5, 1991). The Department received timely requests from Kolon Industries Inc. (Kolon) and from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and Toray Plastics America Inc. (collectively, the petitioners), in accordance with 19 CFR 351.213(b)(2), for an administrative review of the antidumping duty order on PET film from Korea covering Kolon's sales for the period October 2, 2007, through May 31, 2008. On July 30, 2008, the Department initiated an administrative review with respect to Kolon. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

The deadline for completion of the preliminary results in this administrative review is currently March 2, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department requires additional time to analyze Kolon's questionnaire responses, and issue supplemental questionnaires. In particular, there are complex issues concerning Kolon's reported cost of production and U.S. sales that the Department requires additional time to analyze. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the completion of these preliminary results by 120 days. Therefore, the new deadline for completion of this review is June 30, 2009. The final results, in turn, will be due 120 days after the date of issuance of the preliminary results, unless extended.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. E9–3791 Filed 2–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–819, C–580–862]

Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 23, 2009.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson (Argentina) or John Conniff (Republic of Korea), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On January 26, 2009, the Department of Commerce (the Department) received countervailing duty (CVD) petitions concerning Ni-resist piston inserts from Argentina and the Republic of Korea (Korea) filed in proper form by Korff Holdings, LLC doing business as Quaker City Castings (Petitioner). *See* Imposition of Countervailing Duties on Ni-Resist Piston Inserts from Argentina and the Republic of Korea, dated January 26, 2009 (the petitions).

On January 29, 2009, and February 6, 9, and 10, 2009, the Department issued requests for additional information and clarification of certain areas of the petitions. Based on the Department's requests, Petitioner filed additional information supplementing the petitions on February 5, 10, 11, and 12, 2009.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioner alleges that manufacturers, producers, or exporters of Ni-resist piston inserts in Argentina and Korea receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and Petitioner has demonstrated sufficient industry support with respect to the CVD investigations that it requests the Department to initiate (*see* ''Determination of Industry Support for the Petitions'' section below).

Period of Investigations

The anticipated period of the investigations (POI) is January 1, 2008, through December 31, 2008. *See* 19 CFR 351.204(b)(2).

Scope of Investigations

The scope of these investigations includes all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names including, but not limited to, ''Ring Carriers,'' or ''Alfin Inserts.'' Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5%–17.5% Ni (nickel), 5.5%–8.0% Cu (copper), 0.8%–2.5% Cr (chromium), 0.5%–1.5% Mn (manganese), 1.0%–3.0% Si (silicon), 2.4%–3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.

The scope of these investigations does not include piston rings nor any other product manufactured using the Ni-resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of these investigations.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Governments of Argentina and Korea (GOA and GOK, respectively) for consultations with regard to the petitions. The Department held these consultations in Washington, DC, with representatives of the GOK on February 10, 2009, and with representatives of the GOA on February 13, 2009. *See* Memorandum to the File regarding ''Consultations with Officials from the Government of the Republic of Korea on the Countervailing Duty Petition regarding Ni-Resist Piston Inserts,'' (dated February 12, 2009), and Memorandum to the File regarding ''Consultations with Officials from the Government of Argentina on the Countervailing Duty Petition regarding Ni-Resist Piston Inserts,'' (dated February 13, 2009); these memoranda are on file in the Department's Central Records Unit (CRU), Room 1117 of the main Department of Commerce building.

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this

may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied,* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of these investigations. Based on our analysis of the information submitted on the record, we have determined that Ni-resist piston inserts as defined by Petitioner constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Countervailing Duty Investigation Initiation Checklist: Ni-Resist Piston Inserts from Argentina'' (Argentina Checklist), at Attachment II (Industry Support), and ''Countervailing Duty Investigation Initiation Checklist: Ni-Resist Piston Inserts from the Republic of Korea'' (Korea Checklist), at Attachment II (Industry Support) (dated February 17, 2009), on file in the CRU.

With regard to section 702(c)(4)(A) of the Act, in determining whether Petitioner has standing (*i.e.*, the domestic workers and producers supporting the petitions account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions), we considered the industry support data contained in the petitions with reference to the domestic like product as defined in the ''Scope of Investigations'' section above. To establish industry support, Petitioner indicated that it was the sole producer of the domestic like product and provided its production statistics for the domestic like product for the year 2008. We have relied upon data Petitioner provided for purposes of measuring industry support. No comments were submitted challenging Petitioner's industry support claims. For further discussion, *see* Argentina Checklist and Korea Checklist at Attachment II (Industry Support).

The Department's review of the data provided in the petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the petitions establish support from the domestic producer accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*i.e.*, polling). *See* section 702(c)(4)(D) of the Act and Argentina Checklist and Korea Checklist at Attachment II (Industry Support). Second, the domestic producer has met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producer who supports the petitions accounts for at least 25 percent of the total production of the domestic like products. *See* Argentina Checklist and Korea Checklist at Attachment II (Industry Support). Finally, the domestic producer has met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producer supporting the petitions accounts for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petitions. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Argentina Checklist and Korea Checklist at Attachment II (Industry Support).

The Department finds that Petitioner filed the petitions on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the CVD investigations that it is requesting the Department initiate. *See* Argentina Checklist and Korea Checklist at Attachment II (Industry Support).

Injury Test

Because Argentina and Korea are each a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from Argentina and Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of Ni-resist piston inserts from Argentina and Korea are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industries producing Ni-resist piston inserts. In addition, Petitioner alleges that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Argentina Checklist and Korea Checklist at Attachment III (Injury).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the CVD petitions on Ni-resist piston inserts from Argentina and Korea finds that the petitions comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of Ni-resist piston inserts from Argentina and Korea receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Argentina Checklist and Korea Checklist at ''Countervailing Duty Investigation Initiation Standard'' section.

I. Argentina

We are including in our investigation the following program alleged in the Argentina petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Argentina:

A. Tax Relief Under the Reintegro [1]

For further information explaining why the Department is investigating this program, *see* Argentina Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in Argentina:

A. Pre-Export Preferred Financing

Petitioner alleges that pre-export loans are widely available to specific industries in Argentina. Petitioner states that the pre-export program makes available to exporters pre-export funds for individual sales at an interest rate of one percent up to 180 days, to be repaid no later than 60 days after the effective export date. Petitioner also states that the funds are provided by the Central Bank of Argentina and disbursed through private commercial banks.

In *Cold-Rolled Carbon Steel*, the Department found that the pre-export financing provided by the Argentine Central Bank was terminated. *See Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62106 (October 3, 2002) (*Cold-Rolled Carbon Steel*), and accompanying issues and decision memorandum at ''Program Determined To Be Terminated'' (Cold-Rolled Memorandum). Petitioner has provided no evidence that the Central Bank may have resumed its pre-export financing program. Therefore, we do not plan to investigate this program.

B. Post-Export Preferred Financing

Petitioner alleges that the post-shipment financing program (*aka*, Circular OPRAC 1–9 Post-Shipment Financing) provides shipment-specific, short-term preferential loans to exporters after a product has been exported. Petitioner states that, similar to the pre-export financing, the length of the loan is limited to 180 days and interest is paid quarterly. Petitioner adds that the loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid and that the interest rate on the loans is the indexed market rate used by the commercial banks as required under Central Bank regulations.

In *Cold-Rolled Carbon Steel*, the Department found the post-export financing provided by the Argentine Central Bank was terminated. *See* Cold-Rolled Memorandum at ''Program Determined To Be Terminated.'' Further, Petitioner has provided no evidence that the Central Bank may have resumed its post-export financing program. Therefore, we do not plan to investigate this program.

C. Tax Relief Under the Zero Tariff Turnkey Bill

Petitioner states that the purpose of this program is to provide an incentive to import goods and equipment that will be used to modernize productive processes in Argentina. Petitioner claims that the program achieves its objective by allowing the importation of new merchandise and equipment without the payment of import duties. Petitioner states that the GOA, through the state-owned Investment and Foreign Trade Bank, provides the duty exemption/reductions, which are contingent on export performance.

In *Cold-Rolled Carbon Steel*, the Department found that the Zero Tariff Turnkey Bill to be not countervailable. *See* Cold-Rolled Memorandum at ''Program Determined To Be Not Countervailable.'' Specifically, the Department found that this program is neither *de jure* nor *de facto* specific as described in section 771(5A)(D) of the Act. Petitioner has not provided any evidence that the Zero Tariff Turnkey Bill may now be specific either in law or in fact. Therefore, we do not plan to investigate this program.

D. Tax Relief Under Decrees Nos. 379/2001 and 502/2001

Petitioner states that the objective of this program is to create an incentives regime for Argentine manufacturers of capital goods. Under the program, Petitioner alleges there is a tax bond, which is applied to the payment of national taxes, equivalent to 10 percent of the amount resulting from the deduction from the sales price of the value of imported manufacturing inputs, parts or components, incorporated into the final product and cleared through customs at an import duty of zero percent. Petitioner claims that Ni-resist piston insert producers can use this program because the term ''capital goods'' can be used to refer to anything that is not an end-product. Petitioner claims that a Ni-resist piston insert is not an end-product as its only purpose is to assist in the proper functioning of diesel pistons within diesel engines.

We do not plan to investigate this program, which provides a tax incentive to manufacturers of capital goods. Ni-resist piston inserts are not capital goods and, therefore, producers of the subject merchandise could not use this program.

II. Korea

We are including in our investigation the following programs alleged in the Korea petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Korea:

A. Energy Rate Reductions Under the Request Load Adjustment Program.

B. Short-Term Export Financing.

C. Loans under the Industrial Base Fund (IBF).

D. Export Loans by Commercial Banks Under the Export-Import Bank of Korea (KEXIM) Trade Bill Rediscounting Program.

E. Reserve for Research and Manpower Development Fund Under Article 9 of the Restriction of Special Taxation Act (RSTA) (Formerly Article 8 of Tax Exemption and Reduction Control Act).

F. Reserve for Investment Funds.

For further information explaining why the Department is investigating these programs, *see* Korea Checklist.

Respondent Selection

Normally for an investigation, the Department selects respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI. In this case, the HTSUS category that includes subject merchandise is broad and includes products other than products subject to these investigations. Therefore, such CBP data would not be informative to our selection of respondents for these investigations. In the petitions, Petitioner identified the following producers/exporters of Ni-resist piston inserts from Argentina and Korea as having exported the subject merchandise to the United States during the POI: Clorindo Appo SRL and Incheon Metal Co., Ltd., respectively. We are setting aside a period for interested parties to submit comments on the selection of Clorindo Appo SRL and Incheon Metal Co., Ltd. as respondents in these investigations. The Department requests interested parties to submit such comments within five calendar days after the publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of

[1] In the Argentina petition, Petitioner submitted a subsidy allegation for the program ''Tax Relief under the Reembolso'' (*see* petition at page 19). ''Reembolso,'' however, is the former name of the tax relief program. In a prior Argentina CVD proceeding, the Department learned that the successor program is named ''Reintegro.'' *See Notice of Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina,* 67 FR 9670, 9673 (March 4, 2002). Therefore, we are initiating on the program as ''Tax Relief under the Reintegro.''

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petitions has been provided to the GOA and GOK. As soon as possible and to the extent practicable, we will attempt to provide a copy of the public version of the petitions to each company named in the petitions, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of subsidized Ni-resist piston inserts from Argentina and Korea are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: *February 17, 2009.*

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–3795 Filed 2–20–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (CPSIA) section 108 permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of three specified phthalates. Section 108 of the CPSIA also prohibits on an interim basis ''toys that can be placed in a child's mouth'' or ''child care articles'' containing more than 0.1 percent of three additional phthalates. These prohibitions became effective on February 10, 2009. The purpose of this notice is to seek public comment on the draft approach prepared by CPSC staff for determining which products constitute a ''children's toy or child care article'' and therefore are subject to the requirements of section 108 of the CPSIA.[1]

DATES: Comments and submissions in response to this notice must be received by March 25, 2009.

ADDRESSES: Comments should be filed by e-mail to *section108definitions@cpsc.gov*. Comments also may be filed by telefacsimile to (301) 504–0127 or mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7530. Comments should be captioned ''Notice of Availability of Draft Guidance Regarding Which Children's Products are Subject to the Requirements of CPSIA Section 108.'' Depending upon comments received in response to this notice, the Commission will consider issuing a notice of proposed rulemaking addressing these issues.

FOR FURTHER INFORMATION CONTACT: Michael A. Babich, PhD, Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 600, Bethesda, MD 20814; telephone (301) 504–7253; e-mail *mbabich@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

Introduction [2]

Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) [3] permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of three specified phthalates.[4] Section 108 also prohibits on an interim basis ''toys that can be placed in a child's mouth'' or ''child care articles'' containing more than 0.1 percent of three additional phthalates.[5] These prohibitions became effective on February 10, 2009.

The terms ''children's toy,'' ''toy that can be placed in a child's mouth,'' and ''child care article'' are defined in section 108, and the definitions apply only to this section of the Act. The staff of the U.S. Consumer Product Safety Commission (CPSC) has received many inquiries from manufacturers seeking clarification on which products are subject to the requirements of section 108 and, in response, has developed a possible approach to guide manufacturers in determining which products might be subject to the requirements.

The purpose of this notice is to seek public comment on the CPSC staff's draft approach for determining which products are subject to the requirements of section 108 of the CPSIA, and to seek additional information on how the approach could be applied to particular product classes. The examples discussed below are not comprehensive. Rather, they are intended to illustrate the staff's approach. Additionally, conclusions that are generally true for a class of products may not necessarily apply to each specific product in that class, for example, due to the way the product is advertised.

The requirements of section 108 apply to subsets of ''consumer products'' as defined by the Consumer Product Safety Act (CPSA).[6] Products such as food, cosmetics, and medical devices that are regulated by other federal agencies are generally not considered ''consumer products.'' However, some products may fall under the jurisdiction of more than one agency. For example, articles such as infant bottles and cups are under the jurisdiction of both CPSC and the U.S. Food and Drug Administration (FDA). FDA has jurisdiction over indirect food additives, that is, when there is a possibility that a chemical may migrate from the article into a food or beverage. CPSC generally has jurisdiction over the outer portion of the product, which directly contacts the consumer. However, section 108 is based on phthalate concentration within the product and does not distinguish between exposure pathways. Therefore, for the purpose of CPSIA section 108, articles such as infant bottles and cups are regarded as consumer products.

Children's Toys

Section 108 of the CPSIA defines a ''children's toy'' as a ''consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the

[1] The Commission voted unanimously (2–0) to publish the **Federal Register** Notice without change.

[2] This report was prepared by the CPSC staff; it has not been reviewed or approved, by, and may not necessarily reflect the views of, the Commission.

[3] Public Law 110–314.

[4] Di-(2-ethylhexyl)phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP).

[5] Diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP).

[6] 15 U.S.C. 1261(f)(2), 1960; it should be noted, however, while certain products are carved out of the definition of consumer product, they may be regulated by the Commission under the Federal Hazardous Substances Act (FHSA), should they pose a health hazard within the meaning of that Act.