



[Billing Code 6335-01]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[Docket No. CPSC-2009-0004]

Children's Products Containing Lead; Procedures and Requirements for Exclusions from Lead Limits Under Section 101(b) of the Consumer Product Safety Improvement Act

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing this rule to amend its existing regulations pertaining to procedures and requirements for exclusions from lead limits under section 101(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) to reflect statutory changes mandated by Public Law 112-28.

EFFECTIVE DATE: [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Hyun Sun Kim, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: hkim@cpsc.gov; telephone: 301-504-7632.

SUPPLEMENTARY INFORMATION:

Under section 101(a) of the CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain lead content in excess of 100 ppm are considered to be banned hazardous substances under the Federal Hazardous Substances Act (FHSA). The Commission previously published 16 CFR 1500.90 to

provide procedures and requirements for evaluating products or materials for possible exclusion from the lead limits under section 101(b)(1) of the CPSIA.

On August 12, 2011, Public Law 112-28 replaced section 101(b)(1) of the CPSIA in its entirety. Section 101(b)(1) of the CPSIA, as amended, now provides for a functional purpose exception from the lead content limits under certain circumstances and sets forth the procedures for granting an exception in the statute. 15 U.S.C. 1278(a)(b). Because the existing regulations at 16 CFR 1500.90 no longer reflect the current law, the Commission is amending that section to replace the current procedures and requirements with the statutory procedures and requirements set forth under Public Law 112-28. In addition, the Commission anticipates providing the public with a staff guidance on the applicable procedures for requesting an exemption, which will be made available on the CPSC website.

Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” In this circumstance, the Commission concludes that notice and comment is not necessary. The statutory provision upon which 16 CFR 1500.90 was based has been revised and there is no action the Commission could take in response to comments that would change the underlying statutory provision.

List of Subjects in 16 CFR Part 1500

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

For the reasons stated above in the preamble, 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 citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016, 125 Stat. 273.

2. In § 1500.90, revise paragraph (b) and remove paragraphs (c) through (h) to read as follows:

* * * * *

(b) *Exclusion of certain materials or products and inaccessible component parts.*

The CPSIA provides the following functional purpose exception from the lead limits stated in section 101(a) of the CPSIA.

(1) *Functional purpose exception.* (i) *In general.* The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit under paragraph (a) of this section for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that:

(A) The product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with paragraph (a) of this section by removing the excessive lead or by making the lead inaccessible;

(B) The product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable

use and abuse of such product, class of product, material, or component part by a child;
and

(C) An exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

(ii) *Measurement.* For purposes of paragraph (b)(1)(i)(C) of this section, there is no measurable adverse effect on public health or safety if the exception described in paragraph (b)(1)(i) of this section will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

(iii) *Procedures for granting exception.* (A) *Burden of proof.* A party seeking an exception under paragraph (b)(1)(i) of this section has the burden of demonstrating that it meets the requirements of such paragraph.

(B) *Grounds for decision.* In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the exception and any materials received through notice and a hearing.

(C) *Admissible evidence.* In demonstrating that it meets the requirements of paragraph (b)(1)(i) of this section, a party seeking an exception under such paragraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the

party that relies on that information.

(D) *Scope of exception.* If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in paragraph (b)(1)(i) of this section are met with respect to every accessible component or accessible material of the product.

(iv) *Limitation on exception.* If the Commission grants an exception for a product, class of product, material, or component part under paragraph (b)(1)(i) of this section, the Commission may, as necessary to protect public health or safety:

(A) Establish a lead limit that such product, class of product, material, or component part may not exceed; or

(B) Place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under paragraph (b)(1)(iv)(A) of this section or the limit set forth under paragraph (a) of this section.

(v) *Application of exception.* An exception under paragraph (b)(1)(i) of this section for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

(vi) *Previously submitted petitions.* A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all requirements of this paragraph as required by paragraph (b)(1)(iii)(A) of this section.

(2) [Reserved]

Dated: June 28, 2013

Todd A. Stevenson, Secretary
Consumer Product Safety Commission

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