



CONSUMER PRODUCT SAFETY COMMISSION

Notice of Commission Determination Regarding Technological Feasibility of Lead Content Reduction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Consumer Product Safety Improvement Act, the Consumer Product Safety Commission (Commission or CPSC) has evaluated whether to revise lead limits for children's products and paints or similar surface-coating materials, including toys and other articles intended for use by children and furniture articles for consumer use, that bear lead-containing paint. The Commission has determined that current regulations already require the lowest amount of lead that is technologically feasible to achieve. Therefore, the Commission is not revising these lead limits at this time.

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SUPPLEMENTARY INFORMATION:

The CPSC regulates the lead content in certain consumer products under the Consumer Product Safety Improvement Act of 2008 (CPSIA). Section 101(a) of the CPSIA (15 U.S.C. 1278a(a)) limits the lead content in any component of a children's product intended primarily for children 12 years old and younger to 100 ppm. Paints or similar surface-coating materials, including toys and other articles intended for use by children and furniture articles for consumer use, that bear lead-containing paint that contains 0.009% or more lead by weight are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act. 15 U.S.C. 1278a(f) (codified at 16 CFR part 1303). Manufacturers and importers of children's products

subject to the lead requirements are required to certify their product using a CPSC-accepted third-party laboratory. 15 U.S.C. 2063.

Section 101 of the CPSIA requires periodic review and possible further reductions of the lead limit for children's products and paints or similar surface-coatings and states that the Commission "shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth ... no less frequently than every 5 years after promulgation of the limit ... to require the lowest amount of lead that the Commission determines is technologically feasible to achieve." 15 U.S.C. 1278a(a)(2)(E) and (f)(2).

Section 101(d) of the CPSIA provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

- a product that complies with the limit is commercially available in the product category;
- technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;
- industrial strategies or devices have been developed that are capable, or will be capable of, achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or
- alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

15 U.S.C. 1278a(d).

CPSC staff conducted the required assessment under Section 101 of the CPSIA. The CPSC currently maintains some of the most stringent lead restrictions in the world for children's products, consumer paints and certain painted products. Although lead is sometimes intentionally added to materials to create a desirable functional property, such uses generally result in lead concentrations considerably above the current lead limits for children's products,

consumer paints and certain painted products. Relatively low lead levels, such as near or below the current limits, may be considered as unintentional or contaminant levels of lead.

Measuring lead at low “trace” levels requires careful analysis using appropriate methods and sophisticated and sensitive laboratory instruments. The CPSC has published several test methods to determine the total lead content in children’s metal and non-metal products and paints or similar surface coating materials: CPSC-CH-E1001-08.3 Total Lead (Pb) in Children’s Metal Products (Including Children’s Metal Jewelry), CPSC-CH-E1002-08.3 Total Lead (Pb) in Non-Metal Children’s Products, and CPSC Test Method CPSC-CH-E1003-09 Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings.¹

Staff assessed the technological feasibility of reducing both the current total lead content limit by weight to under 100 ppm and the current lead limit in paints to under 90 ppm based on the current testing capabilities and limits of detection for lead. Since the enactment of section 101(a) of the CPSIA, there have been no new or improved testing capabilities generally available to commercial or government laboratories that would support reproducible and reliable testing for lead content significantly lower than the current limits. The two main analytical methods CPSC uses to measure lead are X-ray Fluoresce spectroscopy (XRF) and Inductively Coupled Plasma Optical Emission Spectroscopy (ICP-OES). Limits of Detection (LODs) are the lowest level an instrument can detect in a certain substrate and are determined using ideal, homogeneous materials. LODs for both XRF- and ICP-based methods have not significantly changed over recent years. As such, achievable limits of quantification for real-world children’s product samples have remained unchanged since passage of the CPSIA. Therefore, staff recommend that the current lead limit for children’s products remain at 100 ppm and the current lead limit for paints remain at 0.009 percent.

¹ www.cpsc.gov/Business--Manufacturing/Testing-Certification/Lab-Accreditation/Test-Methods

Based on CPSC staff's assessment, the Commission determines that current regulations already require the lowest amount of lead that is technologically feasible to achieve. Therefore, the Commission is not revising these lead limits at this time.

Alberta E. Mills,

Secretary,

Consumer Product Safety Commission.

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