

Revised Commissioner Mohorovic Amendment to the  
"Draft Direct Final Rule and Notice of Proposed Rulemaking: Toys; Determination Regarding Heavy  
Elements Limits for Unfinished and Untreated Wood"

**AMENDMENT**

***In the draft Federal Register notice, in the document title, strike the word "Determination" and insert "Determinations."***

***In the draft Federal Register notice, in the document title, after the word "Wood," insert the following:***

"; International standards; Heavy elements for other materials; Materials less than 10 milligrams"

***In the draft Federal Register notice, in the document header, in the field designated "ACTION," before the period, insert the following:***

"; Notice of Proposed Rulemaking."

***In the draft Federal Register notice, in the document header, in the field designated "SUMMARY," after the final period, insert the following:***

"The Commission is also issuing a Notice of Proposed Rulemaking. This proposed rule would determine 1) that toys successfully tested to certain international standards should be deemed to conform with the applicable U.S. standard, 2) that materials comprising less than 10 milligrams of a product's mass should be exempt from third-party testing, and 3) that heavy element testing should not be required for certain materials that do not normally contain such heavy elements."

***In the draft Federal Register notice, in the document header, in the field designated "DATES," in the first sentence, strike the phrase, "The rule," and insert the following:***

"The Direct Final Rule"

***In the draft Federal Register notice, in the document header, in the field designated "DATES," after the final period, insert the following:***

"Such withdrawal shall apply only to the Direct Final Rule portion of this publication and shall not withdraw or otherwise disturb the Notice of Proposed Rulemaking portion. Submit comments regarding the Notice of Proposed Rulemaking by **[insert date 30 days after publication in the FEDERAL REGISTER].**"

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***In the draft Federal Register notice, on page 3, after the phrase  
"SUPPLEMENTARY INFORMATION," before the colon, insert the following:***

***“, DIRECT FINAL RULE”***

***In the draft Federal Register notice, on page 8, strike the entire  
paragraph that begins, “As discussed in . . .”***

***In the draft Federal Register notice, on page 20, before the section  
header that reads, “List of Subjects,” insert the following:***

**“SUPPLEMENTARY INFORMATION, NOTICE OF PROPOSED RULEMAKING**

In addition to the Direct Final Rule above, the CPSC also issues the following Notice of Proposed Rulemaking. The Commission proposes to issue rules determining further instances in which a manufacturer or importer of a consumer product would be exempt from the obligation to conduct third-party testing of that product for conformity with the statutes and rules administered by the Commission.

**A. Description of the Proposed Rule**

*International Equivalence*

First, the proposed rule would amend the Commission’s rule on testing of children’s toys (16 C.F.R. part 1107) to allow manufacturers and importers to test and certify their products to well-respected international standards – ISO 8124 or EN-71 – in place of testing and certifying to the United States standard, ASTM F963. This substitution approach would allow the CPSC to continue to ensure a high degree of safety in each toy manufactured and imported while lowering testing costs by eliminating redundant or even conflicting testing.

The proposed rule is drafted to extend the substitution option *only* when a laboratory has been accepted by the CPSC to test to one or both of the identified standards. This acceptance could occur only after the Commission has issued a Notice of Requirements under 16 C.F.R. part 1112. The Commission does not issue such Notice in or by the current proposed rule.

*De Minimis Exemption*

Second, utilizing the Commission’s discretion in the enforcement of the statutes it is charged with administering, the proposed rule would create a *de*

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*minimis* exemption that would exempt any material that makes up less than 10 mg of a product from testing for phthalates, lead, and heavy elements. This *de minimis* exemption would apply *only* to testing. Products would still be required to meet all of the underlying composition requirements.

#### *Heavy Element Determinations*

Third, the proposed rule would extend CPSC's determinations regarding lead in a variety of materials (found at 16 C.F.R. § 1500.91) to the heavy elements described in ASTM F963 and discussed at length in the Direct Final Rule. These lead determinations provide a meaningful exemption that spares manufacturers and importers the expense of testing for lead where the Commission has determined lead will not be found. The proposed rule extends the principle of the lead determination to the other F963 heavy elements.

#### **B. Effective Date**

Because this proposed rule would provide relief from existing testing requirements under the CPSIA, the Commission proposes that the rule become effective 60 days after publication of a Final Rule in the Federal Register.

#### **C. Regulatory Flexibility Act**

As discussed in the preamble to the Direct Final Rule, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b).

#### **D. Environmental Considerations**

The Commission reiterates its belief that safety standards for products normally have little or no potential for affecting the human environment, 16 C.F.R. 1021.5(c)(1), and that nothing in this proposed rule alters that expectation."

***In the draft Federal Register notice, on page 22, after the final period and before the date, insert the following:***

"16 C.F.R. § 1107.20 is amended by inserting the following after the final period in paragraph (c) and re-designating the succeeding paragraph accordingly:

(d) Except where otherwise specified by a children's product safety rule, if a toy has been tested by a third party conformity assessment body that has been

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accepted by the CPSC to test products to international toy standards ISO 8124 or EN-71 under 16 C.F.R. part 1112, and such body has determined that the toy conforms with all provisions of the standard(s) for which such body has been accepted, then

- (1) The Commission deems the manufacturer or importer of such toy to have satisfied the third party testing requirements of paragraph (a) of this section and
- (2) Such test result may be used to support the certification requirements of 16 C.F.R. part 1110, provided the manufacturer or importer of such product complies with all other applicable requirements in issuing such certificate.

(e) Except where otherwise specified by a children's product safety rule, if a children's product contains no more than 10 milligrams (10 mg) of a particular material or substance, then the material or substance shall be exempt from the testing requirements of this section with regard to:

- (1) the limits on total lead content established under 15 U.S.C. § 1278a(a);
- (2) the limits on lead in paint established under 15 U.S.C. § 1278a(f);
- (3) the limits on non-lead heavy elements established under 15 U.S.C. § 2056b; and
- (4) the limits on phthalates established under 15 U.S.C. § 2057c.

This exemption may be used to support the certification requirements of 16 C.F.R. part 1110, provided the manufacturer or importer of such product complies with all other applicable requirements in issuing such certificate.

This exemption from third party testing shall not be construed as an exemption from the requirements expressed in the content limitations identified herein. This exemption notwithstanding, both the material or substance for which testing was not required and the product itself must comply with such requirements.'

16 C.F.R. part 1251 is amended by adding the following:

**§ 1251.2 Materials exempt from third party testing requirements.**

- (a) The following materials do not exceed the limits for the heavy elements established in section 4.3.5 of the toy standard with a high degree of assurance as that term is defined in 16 C.F.R. Part 1107, provided that the material(s) in question has been neither treated nor adulterated with

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materials that could result in the addition of any of the heavy elements listed in the toy standard at levels above their respective solubility limits:

- a. Precious gemstones: diamond, ruby, sapphire, emerald;
  - b. Semiprecious gemstones and other minerals, provided that the mineral or material is not based on compounds containing any of the heavy elements listed in the toy standard and is not associated in nature with any mineral based on the heavy elements listed in the toy standard;
  - c. Natural or cultured pearls;
  - d. Wood;
  - e. Paper and similar materials made from wood or other cellulosic fiber, including, but not limited to, paperboard, linerboard and medium, and coatings on such paper which become part of the substrate;
  - f. CMYK process printing inks (excluding spot colors, other inks that are not used in CMYK process, inks that do not become part of the substrate under 16 C.F.R. part 1303, and inks used in after-treatment applications, including screen prints, transfers, decals, or other prints);
  - g. Textiles (excluding after-treatment applications, including screen prints, transfers, decals, or other prints) consisting of:
    - i. Natural fibers (dyed or undyed) including, but not limited to, cotton, kapok, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, sisal, silk, wool (sheep), alpaca, llama, goat (mohair, cashmere), rabbit (angora), camel, horse, yak, vicuna, qiviut, guanaco; or
    - ii. Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex; or
  - h. Other plant-derived and animal-derived materials including, but not limited to, animal glue, bee's wax, seeds, nut shells, flowers, bone, sea shell, coral, amber, feathers, fur, leather.
- (b) The following metals and alloys do not exceed the limits for the heavy elements established in section 4.3.5 of the toy standard with a high degree of assurance as that term is defined in 16 C.F.R. Part 1107, provided that the material(s) in question has been neither treated nor adulterated with materials that could result in the addition of any of the

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heavy elements listed in the toy standard at levels above their respective solubility limits:

- a. Surgical steel and other stainless steel within the designations of Unified Numbering System, UNS S13800-S66286, not including the stainless steel designated as 303Pb (UNS S30360) or
- b. Precious metals: Gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium; titanium."

***Make any necessary conforming or technical changes.***