



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

BALLOT VOTE SHEET

DATE: DEC 23 2008

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
Patricia Semple, Executive Director *PS*

FROM: Hyun S. Kim, Attorney, OGC *HSK*

SUBJECT: Children's Products Containing Lead; Proposed Interpretative Rule Providing Guidance on Inaccessibility

Ballot Vote Due: JAN - 5 2009

Attached is a staff memorandum "Consumer Product Safety Improvement Act of 2008 (CPSIA) Exclusions and Exemptions from Compliance with Limits for Lead: Inaccessibility and Certain Electronic Devices," that sets forth (1) recommended guidance for determining whether a component part of a children's product is accessible to a child, and (2) recommended exemptions for electronic devices which cannot meet the lead limits because it is not technologically feasible. By separate (restricted) memorandum the Office of the General Counsel is providing a draft Federal Register notice that would issue the staff recommendations on inaccessible component parts for notice and comment as a proposed interpretative rule.

Please indicate your vote on the following options.

- I. Approve publication of the draft proposed interpretative rule on inaccessibility in the *Federal Register* without change.

(Signature)

(Date)

Note: This document has not been
reviewed or accepted by the Commission.
Initials nh Date 12-23-08

CPSA 600(1) CLEARED for PUBLIC
NO MFRS/PRVTBLRS OR
PRODUCTS IDENTIFIED

CPSC Hotline: 1-800-638-CPSC(2772) ★ CPSC's Web Site: <http://www.cpsc.gov>

- II. Do not approve publication of the draft proposed interpretative rule on inaccessibility in the *Federal Register*.

(Signature)

(Date)

- III. Publish the draft proposed interpretative rule on inaccessibility in the *Federal Register* with changes.
(Please specify.)

(Signature)

(Date)

Attachment: Staff Memorandum: *Consumer Product Safety Improvement Act of 2008 (CPSIA) Exclusions and Exemptions from Compliance with Limits for Lead: Inaccessibility and Certain Electronic Devices.*



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
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Memorandum

Date: **DEC 23 2008**

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel **CAF**
Patricia Semple, Executive Director **PS**

FROM : Robert J. Howell, Acting Assistant Executive Director, Office of Hazard
Identification and Reduction **mao for RJH**
Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health **KA**
Sciences

SUBJECT : Consumer Product Safety Improvement Act of 2008 (CPSIA) Exclusions and
Exemptions from Compliance with Limits for Lead: Inaccessibility and Certain
Electronic Devices

Introduction

CPSIA subsection 101(a) establishes limits for the lead content of any part of a children's product. Subsection 101(b)(2) states that the lead limits do not apply to component parts of a product that are not accessible to a child. This subsection 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.

Subsection 101(b)(2)(B) 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. However, the Act places restrictions on the types of products or the characteristics of products that may result in a lead-containing component part being considered inaccessible. This is expressed in subsection 101(b)(3), which specifies that 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.

With respect to certain electronic devices for which complying with lead limits is not technologically feasible, Subsection 101(b)(4) provides that the Commission shall issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices.

In this memorandum, the CPSC staff seeks to provide a framework for determining whether lead-containing components of children's products are not accessible to children, and to address means for regulating certain electronic devices.

2-A 600001) CLEARED for PUBLIC

NO MFRS/PRVTLBLRS OR
PRODUCTS IDENTIFIED

EXCEPTED BY: PETITION
RULEMAKING ADMIN. PRCDG

Note: This document has not been
reviewed or accepted by the Commission.
Initials rlh Date 12-23-08

Proposed Accessibility Assessment

A component part of a product that contains lead at a level that exceeds the lead limits specified in the CPSIA may be excluded from compliance with the specified limits if the part is not accessible to a child. The Act specifies that accessibility is defined as physical contact with lead-containing component parts.

The staff would consider that an accessible component part of a children's product is one that a child may touch, and an inaccessible component part is one that is located inside the product, whether or not such part is visible to a user of the product, and cannot be touched by a child. While the staff believes that an inaccessible part may be enclosed in any type of material, *e.g.*, hard or soft plastic, rubber, metal, or fabric, the law does not allow for the use of surface treatments on a lead-containing component part in the form of paint, coatings, or electroplating as a barrier that would render lead in the substrate to be inaccessible to a child.

Since a lead-containing component part may be inside a product and not actually fully enclosed by another part of the product, children may have opportunities to contact lead-containing component parts; *e.g.*, they might touch a part with their fingers or tongues. The staff's proposed approach to addressing subsection 101(b)(2) is to describe means to test accessibility of potentially lead-containing component parts through evaluation of whether children might touch a lead-containing part.

Currently, the Commission addresses sharp points and sharp metal or glass edges on toys or other articles intended for use by children under age eight years. 16 CFR §§1500.48-1500.49 provide specific technical requirements for determining accessibility of sharp points or edges through use of accessibility probes specified in the subsections. Both subsections provide that a test of accessibility of sharp points or edges shall be applied both before and after use and abuse tests referencing 16 CFR §§1500.50 through 1500.53 (excluding the bite test—paragraph (c) of 16 CFR §§1500.51-1500.53). As defined in 16 CFR §§ 1500.48-1500.49, an accessible sharp point or edge is present in the product if the result of the test is that any part of the specified portion of the accessibility probe contacts the sharp part.

The ASTM F 963-07 Standard Consumer Safety Specification for Toy Safety also includes requirements for accessible sharp points and sharp edges through references to the definitions at 16 CFR §§1500.48-1500.49. As with the corresponding regulations, the ASTM F 963-07 standard indicates that accessibility is to be determined both before and after use and abuse tests.

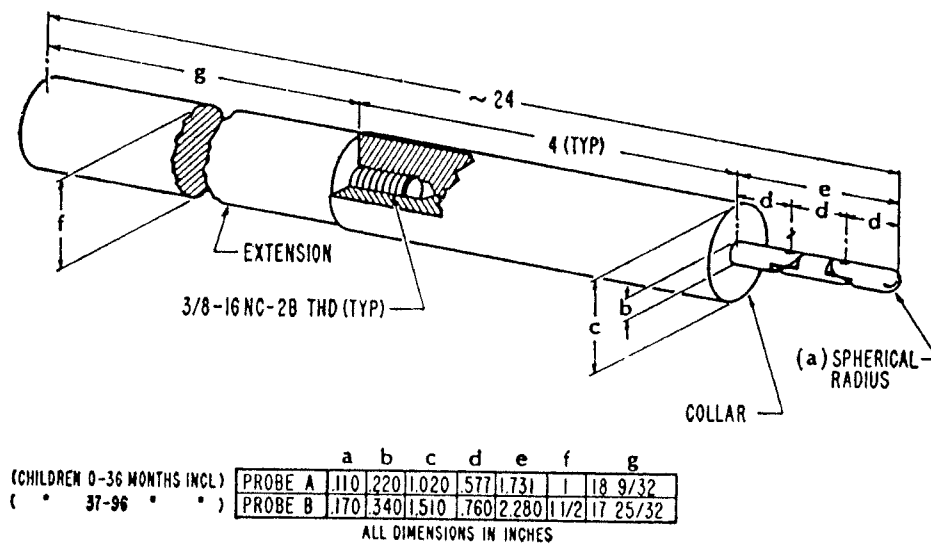
The staff proposes that the accessibility probes specified for determining accessibility of sharp points or edges be designated as appropriate for determining whether a lead-containing component part of a product is accessible to a child. An accessible lead-containing component part would be defined as one that contacts any portion of the specified segment of the accessibility probe. An inaccessible lead-containing component part would be defined as one that cannot be contacted by any portion of the specified segment of the accessibility probe. Under the provisions of the CPSIA, a lead-containing component part is not subject to the lead limits if it is not accessible to a child.

Description of accessibility probes

16 CFR §§1500.48-1500.49 provide technical requirements for two accessibility probes applicable to two categories of children's products, based on the age of the intended consumer. A detailed drawing is reproduced below as Figure 1.

The two probes differ by size for use with products intended for children aged three years or less (Probe A) or for children up to eight years (Probe B). The probe section of the test fixture is a jointed, three-segment cylindrical piece attached to a larger collared section (the part of the probe on the right side of the illustration in Figure 1). Under 16 CFR § 1500.48, for example, an accessible point is one that can be contacted by any portion forward of the collar. For children aged three years and younger, the probe section is 0.220 inches in diameter with each of the three sections 0.577 inches in length, for a total length of 1.731 inches.

Figure 1. Reproduction of Figure 2 from 16 CFR § 1500.48.



Use and abuse tests

16 CFR §§1500.50-1500.53 provide specific test methods for simulating normal use of toys and other articles intended for use by children as well as the reasonably foreseeable damage or abuse to which the articles may be subjected. The test methods are for use in exposing potential hazards that would result from the normal use or the reasonably foreseeable damage or abuse of such articles intended for children.

The first of these four sections (16 CFR §1500.50) describes the objective, general application of the tests, and definitions; the next three sections detail the test methods for articles intended for specified age groups of children: 18 months of age or less, over 18 months but not over 36 months of age, and over 36 months but not over 96 months of age. Products for each of the age groups may be subject to up to five¹ different tests (impact test, flexure test, torque test, tension test, and compression test) depending on the specifications of the regulations and the characteristics of the product.

¹ Although the bite test was promulgated as part of the use and abuse tests, the Commission does not currently apply this test.

The staff concludes that these use and abuse tests (excluding the bite test) are appropriate for evaluating whether lead-containing component parts of a product become accessible to a child during normal and reasonably foreseeable use and abuse of the product by a child, since the stated purpose of the tests is to simulate use and damage or abuse of a product by children and to expose potential hazards that might result from use and abuse.

Testing products for children aged 12 years and under

The existing testing paradigms for accessibility of sharp points and edges are intended for products for use by children in designated age groups up to age eight years. The staff concludes that the application of the current accessibility tests is sufficient for products intended for children older than age eight years, given that the accessibility probes are designed to test whether children's relatively small fingers might enter small holes, gaps, or recesses where they could physically contact certain components, and considering that older children's larger fingers would likely have more limited access to such small holes, gaps, or recesses.

Use and abuse testing is also designated for products for children up to age eight years. While the staff recognizes that as children age they gain strength and dexterity and participate in a greater range of activities that could lead to inaccessible components eventually becoming accessible, older children (ages nine through 12 years) also gain cognitive skills and knowledge that they use to care for and appropriately use their toys and articles. The staff believes, therefore, that applying the use and abuse tests described for products for children up to age eight years to products for children through age 12 years will appropriately reveal inherent characteristics or possible defects in products that could result in accessibility of components.

Further, the staff recognizes that as children 12 years of age or younger grow and mature, they become, in many respects, indistinguishable from children older than 12 years, and even adults. Consequently, the staff believes that intentional disassembly or destruction of products by children older than age eight years by means or knowledge not generally available to younger children should not be considered in evaluating products for accessibility of lead-containing components. For example, accessibility arising from the use of tools, such as a screwdriver, should not be considered in accessibility and use and abuse testing.

On the other hand, testing of products should consider the normal and expected children's interactions with products. For example, children may be expected to operate zippers, open unsealed and unsecured compartments, or remove unsecured covers. Products with such features should be evaluated for accessibility in all the intended and likely configurations of the product during use by children.

Certain Electronic Devices

Electronic devices are included in the children's products regulated under the provisions of the CPSIA. The law provides, however, that the Commission shall 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.

Technological feasibility

The staff believes that in many cases it is not technologically feasible for electronic devices to comply with the lead limits. For example, cathode ray tubes in television sets or computer

monitors, certain electrical solders, and certain other electrical components may contain lead at levels that exceed the CPSIA lead limits.

Accessibility

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 after consideration 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 §§1500.48-1500.49, before and after use and abuse tests at 16 CFR §§1500.50-1500.53 (excluding the bite test). If a component is not accessible to a child, it is not subject to the lead limits.

International regulations and possible exclusions

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.

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. European Union Directive 2002/95/EC (attached Appendix A)² on the restriction of the use of certain hazardous substances in electrical and electronic equipment (often abbreviated as EU RoHS), 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. The staff believes that some exempted uses of lead cannot be made inaccessible, such as the cathode ray tubes discussed above, and certain other components that create electrical connections or that are required for product functions.

² European Union Directive 2002/95/EC and amendments to the directive are available at <http://eur-lex.europa.eu/en/index.htm>.

Because the EU RoHS exemptions were established in part considering the technological feasibility of limiting the use of lead, the staff recommends that the Commission consider adopting, as exemptions to the CPSIA lead limits for electronic devices, the exemptions published in the Annex to the 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 (Appendix B). 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 staff recommends that if the Commission adopts the EU RoHS exemptions, the crystal glass exemption and any other exemption for decorative or non-functional uses of lead should not be extended to children's electronic devices subject to the CPSIA lead limits.

Other considerations

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 staff recommends 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 meets the criteria for exemption, such as under the possible exemptions with respect to EU RoHS.

All component parts of electronic devices that cannot be made inaccessible and that may not be excluded on the basis of exemptions such as those in the EU RoHS legislation must comply with the lead limits specified in the CPSIA if compliance is technologically feasible. The staff specifically refers to materials or components that comply with the EU RoHS directive on the basis of the general lead limit at 1000 ppm. The staff notes that the implementation of EU RoHS and similar regulations has resulted in enormous advances in electronics technologies. On the basis of preliminary and limited information obtained by the staff, the staff believes that in many, if not most, cases, materials and components used in electronic devices that meet the 1000 ppm limit will also meet the CPSIA's 600 ppm limit, possibly the 300 ppm limit, and even the 100 ppm limit in some cases. Therefore, the staff's expectation is that, with the exception of a few particular applications such as cathode ray tubes, electronic devices will comply with the CPSIA either through meeting the lead content limits or through the exception for inaccessibility of lead-containing component parts.

Because of the changing state of technology and continuing progress in replacing lead with other substances, staff will reevaluate the technological feasibility of compliance with the lead limits for electronic devices, including the status of EU RoHS limits and exemptions, at intervals of less than five years.

Conclusions

The staff believes that the current approach under existing regulations and voluntary standards for evaluating whether potentially hazardous sharp points or edges of children's products are accessible to a child is appropriate for gauging accessibility of lead-containing component parts of children's products. The established test procedures measure physical accessibility, *i.e.*, the ability of children to contact lead-containing parts with their fingers. Further, the staff concludes

that a reasonable application of use and abuse testing, as described in existing regulations and voluntary standards, is appropriate to assess the possibility that product breakage or children's activities could result in lead-containing component parts becoming accessible to a child.

For electronic devices, certain lead-containing components cannot be made inaccessible to children. Given that it is not technologically feasible to eliminate the use of lead or reduce the levels used in certain components, the staff recommends that the Commission adopt, as exemptions from the CPSIA lead limits for electronic devices, the exemptions published in the EU RoHS directive, 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. Specifically, the staff recommends that if the Commission adopts the EU RoHS exemptions, the crystal glass exemption and any other exemption for non-functional uses of lead should not be extended to children's electronic devices subject to the CPSIA lead limits.

The staff notes that in many cases, materials and components used in electronic devices that meet the 1000 ppm limit specified in EU RoHS will also meet the CPSIA's 600 ppm limit, possibly the 300 ppm limit, and even the 100 ppm limit in some cases. If the Commission adopts exemptions such as those in the EU RoHS legislation, then electronic devices could comply with the CPSIA by meeting any one of three conditions: 1) by meeting the lead content limits of the CPSIA; 2) by meeting the requirements for inaccessibility of lead-containing component parts; or 3) on the basis of the allowed exemptions.

Staff will reevaluate the technological feasibility of compliance with the lead limits for electronic devices, including the status of limits and exemptions in EU RoHS, or similar legislation, if adopted, at intervals of less than five years.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

Memorandum

Date: DEC 23 2008

TO : Mary Ann Danello, Ph.D., Associate Executive Director, Directorate for Health Sciences

THROUGH: Lori E. Saltzman, M.S., Director, Division of Health Sciences, Directorate for Health Sciences ✓

FROM : Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences KU
Joanna M. Matheson, Ph.D., Toxicologist, Directorate for Health Sciences jmm

SUBJECT : Response to Public Comments*

Introduction

The Consumer Product Safety Improvement Act of 2008 (CPSIA) establishes limits for lead content of children's products and provides for certain exclusions from compliance with the specified lead limits.

On September 26, 2008, the staff posted on the CPSC website a request for public comments on CPSIA section 101(b)(2), Exception for Inaccessible Component Parts, and section 101(b)(4), Certain Electronic Devices. In particular, the staff requested comments and information on lead-containing component parts of children's products; whether any children's product contains lead-containing component parts that are inaccessible, and the reasons why such component parts are considered inaccessible; whether test methods or processes exist that are used or may be used to assess the accessibility by children of component parts of products; whether it is technologically feasible to achieve the lead limits in all parts of children's electronic devices; and whether children's electronics were or could be compliant with other regulations that restrict lead content of products. The comment period closed October 31, 2008.

Twenty-nine comments were received through November 14, 2008. All of the comments received were from firms, representatives of firms, industry associations, or industry consultants. This memorandum provides a summary of the submissions and the staff's responses to them. Similar or related comments are addressed together under a single issue category. Comments that were not related to the requested information are not addressed here. The index of the public comments is in Appendix A.

I. Comments on CPSIA section 101(b)(2), Exception for Inaccessible Component Parts

Seventeen comments addressed issues related to accessibility or inaccessibility of lead-containing component parts of children's products, including methods for evaluating accessibility.

*These comments are those of the CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the Commission.

Comment: Accessibility or inaccessibility of lead-containing components.

Three commenters (11, 23, 27) discussed fully enclosed parts that should be deemed inaccessible. Four commenters (12, 13, 15, 24) asserted that accessibility should refer to exposure to lead, *e.g.*, leaching of lead from the product, not physical accessibility. Two comments (18, 25) suggested that only materials that physically degrade or break down should be considered as resulting in accessibility. Fourteen (1, 3, 7, 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26) stated that accessible parts should be only those that are ingestible, and refer to testing for small parts. Seven comments (1, 7, 14, 15, 19, 21, 25) stated that the use of tools should not be considered in evaluating accessibility.

CPSC Staff Response:

The CPSIA specifies that accessibility is defined as physical contact with lead-containing component parts. The staff would consider that an accessible component part of a children's product is one that a child may touch, and an inaccessible component part is one that is located where a child cannot touch it. Thus, the staff agrees that enclosed component parts of a product could be considered inaccessible, and has recommended means to test accessibility of potentially lead-containing component parts through application of accessibility probes and use and abuse testing.

Further, the staff would consider an accessible component part as one that a child may simply touch or place in the mouth, not just a component part that a child might ingest, since exposure to lead may occur during direct mouthing of an object or mouthing of fingers/hands. In addition, a definition of accessibility that refers solely to exposure to lead, *e.g.*, resulting from leaching of lead from a part, or degradation of a material, is not consistent with the definition of accessibility provided in the CPSIA.

The staff agrees that intentional disassembly of products by children through the use of tools should not be considered as making otherwise inaccessible parts accessible in the evaluation of products for accessibility of lead-containing components.

Comment: Accessibility probes.

Several commenters (7, 11, 13, 14, 15, 24) suggested that the accessibility probes for evaluating accessibility of sharp points or sharp metal or glass edges could be used to evaluate accessibility of lead-containing components.

CPSC Staff Response:

The staff agrees that the accessibility probes could be used to determine whether a lead-containing component part of a product is accessible to a child.

Comment: Use and abuse tests.

Three commenters (3, 13, 15) suggested that use and abuse tests could be used to assess whether a product contains ingestible small parts.

CPSC Staff Response:

The staff agrees that appropriate use and abuse tests could be part of an evaluation of whether certain component parts of a product become accessible to a child during normal and reasonably foreseeable use and abuse of the product by a child. However, the staff does not agree that accessibility refers only to ingestion of lead-containing components. Rather, the definition of

accessibility provided in the CPSIA is physical contact with lead-containing component parts, and the staff considers this to include touching, placing in the mouth, or ingestion of a part of a product.

II. Comments on CPSIA section 101(b)(4), Certain Electronic Devices

Fourteen comments addressed the use of lead in children's electronic devices.

Comment: Technological feasibility of compliance of electronic devices.

Eight comments (7,12,13,14,19,21,22,29) 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 (19) interpreted technological feasibility as referring to cost-benefit analysis.

CPSC Staff Response:

The CPSIA provides that the Commission shall 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. The staff recommendations concerning certain electronic devices are based in part on the information provided by these commenters, along with other information available to the staff, and acknowledge the difficulty in attaining compliance with the CPSIA for certain materials or products. The staff notes that 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.

Comment: Inaccessibility of electronic device components.

Six commenters (1,7,13,14,15,19) addressed inaccessibility of lead-containing components of electronic devices. Comments discussed electronic components that are generally enclosed within the product, as well as the idea that only ingestible parts should be considered accessible, and refer to small parts testing.

CPSC Staff Response:

The CPSIA specifies that accessibility is defined as physical contact with lead-containing component parts. The staff would consider 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. The staff agrees that physical inaccessibility refers generally to a component part that is located inside a product that a child cannot touch. Staff recommends the use of accessibility probes, as well as appropriate use and abuse testing, to evaluate access to lead-containing component parts.

Comments: Compliance with other regulations restricting lead content of electronic devices.

Several commenters (4,7,9,13,14,15,16,19,21,25,29) mentioned 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 commenters stated that EU RoHS requirements would be appropriate for regulating children's electronic products. One commenter (7) cautioned that the

EU RoHS directive does not allow an exemption for inaccessible parts and should not be adopted for use in the U.S.

CPSC Staff Response:

Because the staff 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 (EU RoHS) are based in part on scientific and technological feasibility, the staff is recommending that the Commission adopt, as exclusions to the CPSIA lead limits for electronic devices, those exemptions, provided that the EU RoHS 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. Specifically, the staff recommends that if the Commission adopts the EU RoHS exemptions, the crystal glass exemption and any other exemption for uses of lead that are solely decorative or otherwise non-functional should not be extended to children's electronic devices subject to the CPSIA lead limits. The staff has noted that the EU RoHS directive does not allow exemptions based on inaccessibility, since the goal of EU RoHS is to restrict the overall use of lead in products. Because the CPSIA allows exclusion from the lead limits for component parts that meet the CPSIA requirements for inaccessibility, the staff does not recommend that the EU RoHS directive be adopted in its entirety.

The staff notes that 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 100 ppm as of August 14, 2011, if technologically feasible. The staff is recommending that if the Commission adopts exemptions such as those in the EU RoHS legislation, then electronic devices could comply with the CPSIA by meeting any one of three conditions: 1) by meeting the lead content limits of the CPSIA; 2) by meeting the requirements for inaccessibility of lead-containing component parts; or 3) on the basis of the allowed exemptions.

APPENDIX A



United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland 20814

MEMORANDUM

DATE: November 14, 2008

TO : OGC

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: Section 101 Lead in Children's Products

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
1	09/29/08	Fred Winkler Director Product Safety & Regulatory Compliance	EMC Consumer Product Services 10 Long Hill Ave. Shelton, Ct 06484
2	10/02/08	Harry Lo	Musical Electronics Ltd Harrylo@musical.com.hk
3	10/08/08	Tim Pine Principle	TAP International, LLC 4310 Artesian Cover Denver, NC 28037
4	10/22/08	Troy Brantley Manager of Regulatory Compliance	AlphaGary Corporation 9635 Industrial Dr Pineville, NC 28134
5	10/23/08	Scott	scotth@soimpact.com
6	10/23/08	Stephanie Yeung	Syeung@moret.com
7	10/29/08	Gary Jones Senior VP Product Integrity	Learning Curve Brands Inc GLJONES@rc2corp.com
8	10/30/08	D. Schmeltzer	DSchmeltze@aol.com
9	10/30/08	S. Lester Vice President Intn'l Trade	Retail Industry Leaders 1700 N Moore St. Suite 2250 Arlington, VA 22209

Section 101 Lead In Children Products

10	10/30/08	Ted McGuire President	Thames & Kosmos 207 High Point Ave. Portsmouth, RI 02871
11	10/30/08	Peter Mangione President	Footwear Distributors and Retailers of America ptmangione@fdra.org
12	10/31/08	J. Calderwood	Zuckert Scoutt & Rasenberger, LLP 888 Seventeenth St, NW Washington, DC 20006
13	10/31/08	C. Keithley President	Toy Industry Association 1115 Broadway, Suite 400 New York, NY 10010
14	10/31/08	B. Markwalter Vice President Tech/Standards	Consumer Electronics Assoc. 1250 Eye St, NW - Suite 200 Washington, DC 20005
		Richard Gross Vice President Environment and Sustainability (ITI)	" " " " "
		Fern Abrams Director of Environmental Policy and Government Relations (IPC)	" " " " "
15	10/31/08	Robert Waller President	Juvenile Products Manufacturers Association 15000 Commerce Parkway Suite C Mt. Laurel, NJ 08054
16	10/31/08	K. Segerstad Manager Product Safety & Compliance	IKEA NA Services, LLC 420 Alan Wood Rd. Conshohocken, PA 19428
17	10/31/08	Peter Pettit Chair	Toxics in Packaging Clearinghouse, c/o of Northeast Recycling Council, Inc. 139 Main St, Suite 401 Brattleboro, VT 05301
18	10/31/08	David Murray	Willkie Farr and Gallagher 1875 K St, NW Washington, DC 20006

Section 101 Lead in Children's Products

19	10/31/08	C. McLean Exec. Director	Consumer Electronics Retailers Coalition 317 Massachusetts Ave, NE Suite 200 Washington, DC 20002
20	10/31/08	John Wackman Asst. General Counsel	Polaris Industries, Inc 2100 Highway 55 Medina, MN 55340
21	10/31/08	Riley Russell Sr. Department Assistant	Sony Computer Entertainment America, Inc. 919 E Hillsdale Blvd Foster City, CA 94404
22	10/31/08	M. McNamara	McNamara & L'Heureux, PC 6094 Franconia Rd Suite B Alexandria, VA 22310
23	10/31/08	C. Hudgins Vice President Gov. Relations & Policy	International Sleep Products Association 501 Wythe St. Alexandria, VA 22314
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