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

This document has been electronically approved and signed.

Memorandum

Date: July 12, 2011

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel
Kenneth R. Hinson, Executive Director

FROM : Robert J. Howell, Assistant Executive Director, Office of Hazard Identification and Reduction
Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences
Dominique Williams, Toxicologist, Directorate for Health Sciences
Mary F. Toro, Director, Regulatory Enforcement, Office of Compliance and Field Operations
John W. Boja, Ph.D., Lead Compliance Officer, Regulatory Enforcement, Office of Compliance and Field Operations
Deborah V. Aiken, Ph.D., Senior Staff Coordinator, Directorate for Economic Analysis
William W. Zamula, Directorate for Economic Analysis

SUBJECT : CPSC Staff Response to Commissioner Nord's Questions (Second Set): Technological Feasibility of 100 Parts Per Million Total Lead Content Limit

Introduction

The following is staff's response to Commissioner Nord's questions received on July 7, 2011, regarding the 100 ppm lead technological feasibility staff briefing package.

Responses

1. *If the Commission were to propose adoption of a different lead limit level for metals used in children's products that are not frequently contacted by young children and that are not likely to be mouthed or accidentally swallowed, what health consequences does Health Sciences staff believe may be associated with exposure to an amount of lead in metals greater than 100 ppm and less than 300 ppm?*

An important consideration in evaluating potential exposures to chemicals from products is the type and frequency of contact with the product. Products or component parts of products that are not expected to be contacted by children, or that would rarely be contacted by children, and especially parts that are not likely to be mouthed by a child, would tend to result in little, if any, exposure to chemicals that are present.

Staff does not have data on potential lead exposure, specifically from products that have lead content less than 300 ppm, but more than 100 ppm. Nor can staff compare the exposure potential of products containing lead between 100 ppm and 300 ppm with products containing less than 100 ppm. However, based on staff's general experience with exposure and risk assessment of lead-containing products, staff believes that products or component parts of products that contain less than 300 ppm and that are infrequently contacted by children would result in very little lead exposure.

Further, staff believes that implementation of the CPSIA, which required most children's products and components of children's products to comply with lead content limits of 600 ppm as of February 10, 2009, and with the 300 ppm lead content limit as of August 14, 2009, has resulted in the lead content of most materials and products being substantially below the mandated limits. Staff believes the lead content of some products and materials is well below the 100 ppm level. If the Commission adopts a limit for lead content for certain materials between 100 ppm and 300 ppm, staff believes that most products would still conform to the lower limit.

Staff expects that the contribution of products containing between 100 ppm and 300 ppm lead to the overall lead exposure in children is minimal.

2. *In order to facilitate an orderly transition of the marketplace to the new limits, mitigate what might be a significant cost increase to industry, while protecting children's health, and avoiding the unintended consequences of children on adult-sized ATVs, what action(s) does staff recommend the Commission take to help mitigate these potential problems? What are the pros and cons of an enforcement policy similar to the draft phthalates enforcement policy currently before the Commission presently?*

Currently, the testing and certification of youth ATVs is stayed until January 25, 2011. This stay could be extended or enforcement discretion granted on components of youth ATVs that appear to have trouble attaining the 100 ppm limit. Alternately, the Commission could find that it is not technologically feasible for some component parts of ATVs to be produced with less than 100 ppm of lead.

The draft phthalates enforcement policy currently before the Commission has elements that address the following:

- CPSIA's definition of a "children's toy" and "child care article";
- Phthalate limits applicable to plasticized component parts versus the entire article;
- Enforcement target descriptions;
- Which products that are not included in the enforcement targets are still required to comply, but are not subject to, third party testing and certification.
- The lack of necessity to test materials that are known not to contain phthalates or the lack of necessity to certify materials in which phthalates are absent; and
- Allowances for component parts testing and certification.

The issuance of a lead enforcement policy similar to the policy proposed for phthalates would state many elements that already exist or will be in place soon. For example, currently, we state:

- Consumer products designed or intended primarily for children 12 years of age or younger are defined at: http://www.cpsc.gov/about/cpsia/faq/children.html. The products that are subject to the lead content in paint are defined in 16 CFR part 1303.
- We have stated that lead limits apply to certain component parts of children's products that are accessible. Inaccessible parts are not subject to the rule, and do not need to be tested or certified. *Federal Register,* Vol. 74, No. 151, August 7, 2009, pp. 39535–39540. 16 CFR § 1500.87.
- Enforcement targets have not been identified because the lead requirements are well known and are easier to evaluate (*i.e.*, XRF screening). The publication of enforcement targets may help some manufacturers to identify products that would be targeted for enforcement. However, the exclusion of a product or class of products from the list may create a disincentive for manufacturers to comply with the lead limits for those products.
- The Commission has determined that certain materials do not exceed the lead content limits under section 101(a) of the CPSIA, provided that no lead or lead-containing metal has been added intentionally or if the product is of a natural origin. This determination was published in the *Federal Register,* Vol. 74, No. 164, August 26, 2009, pp. 43031–43042. 16 CFR § 1500.91.
- Like phthalates, staff is in the process of proposing an allowance of component part testing and certification for lead containing components.

3. *Page 29 of the Staff Briefing Package states, "The testing variability means that ensuring compliance with the 100 ppm limit may require that lead in components or products are, in fact, significantly below the limit. Levels significantly below 100 ppm may not be technologically feasible for some products." For which products may levels significantly below 100 ppm not be technologically feasible?*

The situation referred to in our analysis is hypothetical. We were simply acknowledging its possibility. We are not aware of a specific product for which meeting a lead content level significantly below 100 ppm is not technologically feasible.