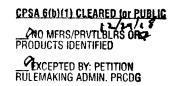


BALLOT V	OTE SHEET	DATE: DEC 2 4 2008
то:	The Commission Todd A. Stevenson, Secretary	
THROUGH	: Cheryl A. Falvey, General Counsel Patricia Semple, Executive Directo	CAE 1
FROM:	Hyun S. Kim, Attorney, OGC	
SUBJECT:	Content Limits on Certain Material	ad; Proposed Determinations Regarding Lead s or Products; Notice of Proposed Rulemaking
<b>Ballot Vote</b>	Due:	
2008 (CPSIA Content," that materials and prescribed un Office of the rulemaking of	A): Certain Materials or Products that at sets forth staff's recommendations of certain metals and their alloys inherender section 101(a) of the CPSIA. By General Counsel is providing a draft on determinations regarding lead contact indicate your vote on the following	for finding that certain naturally occurring ently do not exceed the lead content limits v separate (restricted) memorandum the Federal Register notice of proposed ent limits for certain materials or products.
(Sign	nature)	(Date)
II. Do no	ot approve publication of the draft pro	oposed rule in the Federal Register.
(Sign	nature)	(Date)



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

Publish the draft proposed rule in the <i>Federal Register</i> with changes. (Please specify.)		
(Signature)	(Date)	

Attachment: Staff Memorandum: Consumer Product Safety Improvement Act of 2008 (CPSIA): Certain Materials or Products that Do Not Exceed the Limits for Lead Content



#### Memorandum

Date: DEC 2 3 2008

TO The Commission

Todd A. Stevenson, Secretary

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

Robert J. Howell, Acting Assistant Executive Director, Office of Hazard FROM

Identification and Reduction That for RI Howell

Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health

Sciences

SUBJECT : Consumer Product Safety Improvement Act of 2008 (CPSIA): Certain

Materials or Products that Do Not Exceed the Limits for Lead Content

## Introduction

Subsection 101(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) establishes, as of February 10, 2009 (180 days after the enactment of the Act), a limit for lead of 600 parts per million (600 ppm) by weight in any part of a children's product<sup>1</sup>. Lead content of any part of a children's product is limited to 300 ppm as of August 14, 2009 (one year after the enactment of the Act), and subsequently to 100 ppm as of August 14, 2011, if technologically feasible.

This memorandum describes the staff's technical rationale for possible Commission findings that certain naturally occurring materials and certain metals and their alloys inherently do not exceed the lead content limits in CPSIA section 101(a).

### Recommendations

The staff has identified a number of materials that do not contain lead or that contain lead at levels that do not exceed the CPSIA lead limits<sup>2</sup>.

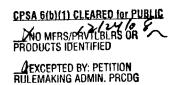
Agency for Toxic Substances and Disease Registry (ATSDR) (2007) Toxicological Profile for Lead (Update). U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Atlanta, GA 30333. August 2007. Fry, D.M. 2004. Analysis of lead in California condor feathers: Determination of exposure and depuration during feather growth.

Calif. Dept. Fish and Game, Habitat Conservation Planning Branch, Species Conservation and Recovery Program Report, 2004-02. Sacramento, CA. 18 pp.

Mineralogy Database: http://webmineral.com/index.shtml.

Mineralogy Database: http://www.mindat.org/index.php.

Pan C, Zheng G, Zhang Y (2008) Concentrations of metals in liver, muscle and feathers of tree sparrow: age, inter-clutch variability, gender, and species differences. Bull Environ Contam Toxicol 81(6):558-60.



Note: This document has not been reviewed or accepted by the Commission. Initials The Date 12-24-08

<sup>1 &</sup>quot;Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger as defined in the Consumer Product Safety Act as amended by the CPSIA section 235.

<sup>&</sup>lt;sup>2</sup> Selected References:

### Certain Natural Materials

The staff recommends that the following natural materials be found by the Commission not to exceed the CPSIA lead limits based on the available scientific information and the staff's best professional judgment that such materials do not contain lead or contain lead at levels that do not exceed the CPSIA lead limits. The staff recommends that these findings only apply to a material that is untreated and unadulterated by the addition of materials or chemicals including pigments, dyes, coatings, finishes or any other substance, and has not undergone any processing that could result in lead content that exceeds the CPSIA lead limits.

- Precious gemstones: diamond, ruby, sapphire, emerald;
- Certain semiprecious gemstones, defined as any of many minerals and other materials commonly used to make jewelry and other adornments
  - provided that the mineral or material is not based on lead or lead compounds and is
    not associated in nature with any mineral that is based on lead or lead compounds;
    minerals that contain lead or are associated in nature with minerals that contain lead
    include, but are not limited to, the following: aragonite, bayldonite, boleite, cerussite,
    crocoite, linarite, mimetite, phosgenite, vanadinite, and wulfenite
- Natural or cultured pearls;
- Wood;
- Natural fibers, including cotton, silk, wool, hemp, flax, and linen
- Other natural materials including coral, amber, feathers, fur, and untreated leather

# Certain Metals and Alloys

The staff recommends that the following materials be found by the Commission not to exceed the CPSIA lead limits based on the available scientific information and the staff's best professional judgment that such materials do not contain lead or contain lead at levels that do not exceed the CPSIA lead limits.

- Surgical steel;
- Precious metals: gold (at least 10 karat), sterling silver (at least 925/1000), platinum, palladium, rhodium, osmium, iridium, ruthenium

The staff recommends that this determination apply solely to the specified metals and common precious metal alloys of such metals provided that no lead or lead-containing metal is intentionally added. The staff recommends that the determination not extend to the non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications.

Note 2 continued:

US EPA (2006) Investigation of Ringwood Mines/Landfill Site, Ringwood, NJ http://www.epa.gov/region02/superfund/npl/ringwood/.

Ward NI, Brooks RR (1979) Lead Levels in Wool as an Indication of Lead in Blood of Sheep Exposed to Automotive Emissions. Bull Environ Contam Toxicol 21:403-408.



### Memorandum

Date:

23 December 2008

TO

: Kristina Hatlelid, Ph.D., Project Manager, HS

**FROM** 

Gregory B. Rodgers, Ph.D., AED, EC

Robert Franklin, EC MF

SUBJECT:

Preliminary regulatory analysis of a rule making determinations that certain

materials or products do not have lead contents that exceed the limits

established in section 101(a) of the CPSIA

### Introduction

On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314. Subsection 101(a) of the Act establishes, as of February 10, 2009, a lead limit of 600 parts per million (ppm) by weight for any part of a children's product. Lead content is thereafter limited to 300 ppm as of August 14, 2009, and 100 ppm as of August 14, 2011, if technologically feasible.

The Commission is considering notice of proposed rulemaking under Section 3 of the CPSIA that would make preliminary determinations that certain materials or products inherently do not contain lead in excess of the limits established in subsection 101(a) of the CPSIA. The effect of the determinations would be, in effect, to relieve the materials or products from the testing and certifications requirements established in section 102 of the CPSIA

The proposed determinations are limited to certain natural materials and certain metals and alloys, based on the likelihood that such materials that do not contain lead or contain lead as levels that do not exceed the CPSIA limits. The Commission is considering making preliminary determinations for these materials because they inherently do not contain lead in amounts that exceed CPSIA limits and thus present little or no risk of injury due to the absorption of lead into the body. Moreover, the preliminary determinations would apply only to materials that are untreated and unadulterated with the addition of materials or chemicals, including pigments, dyes, coatings, finishes or any other substance that could result in the addition of lead.

#### Regulatory Analysis

Because the effect of the rule being considered would be to relieve manufacturers and importers of the materials from the testing and certification requirements of Section 102 of the CPSIA, the potential costs of the rule consist of the risk that some hazardous exposures to lead could occur that would have been prevented had the materials or products been tested and certified. But because the materials and products for which the preliminary determinations are

being considered were chosen precisely because they do not present a risk of injury due the absorption of lead, the costs of the rule, if any, should be negligible.

The potential benefits of the rule consist of the reduced testing costs that would have been incurred by firms to test materials that inherently are not expected to contain lead in excess of the statutory requirements but would have had to be tested anyway under the requirements of the CPSIA. While the benefits are difficult to quantify, they are positive. Consequently, the benefits of the rule are likely to exceed the rule's costs.

## Impact on Small Businesses

Section 605 of the Regulatory Flexibility Act (RFA) requires the Commission to consider the impact of the rule on small businesses.

The number of small businesses that will be directly affected by the rule is unknown but could be considerable. However, because the effect of the proposed rule would be to relieve the manufacturers and importers of the specified materials from the testing and certification requirements the CPSIA, it will not result in any increase in the costs of production for any firm. Its only effect on businesses, including small businesses, will be to reduce the costs that would have been associated with testing the specified materials. Consequently, the Commission could certify that this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

# **Environmental Assessment**

The National Environmental Policy Act requires that the Commission consider the impact of its actions on the environment. The preliminary determinations that are the subject of the notice of proposed rulemaking would only relieve manufacturers and importers of certain materials and products that inherently do not contain lead in excess of the CPSIA limits from testing the materials and products for lead content. This rule does not fall into one of the categories of actions described in the CPSC environmental review regulations as having the potential to the produce environmental effects (16 CFR 1021.5) and is in fact highly unlikely to produce an environmental effect.