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Statement of Policy: Testing and Certification of Lead Content in Children's Products

This statement of policy is issued by the Commission to provide guidance on the testing and certification of children's products for compliance with the lead content limits established in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). The Commission has received a number of questions on compliance with the new lead limits. This document, which has been approved by the Commission, provides guidance. It does not impose legal requirements beyond those already contained in the CPSIA or other agency regulations.

We have received several questions asking us to explain a recent Commission determination that certain materials will not exceed the lead limits. (The determination appeared in a final rule that was published in the Federal Register on August 26, 2009 (74 Fed. Reg. 43031)). We also have received numerous questions on component testing. We address those issues using plain language to make it easier for readers to understand our approach.

A. What does the lead content law require?

The CPSIA provides that products designed or intended primarily for children 12 years old and younger ("children's products") cannot contain more than 300 parts per million (ppm) of lead in any accessible part. We call this a 300 ppm "lead content limit." This new lead content limit should not be confused with the Commission's 90 ppm limit on lead in paint used on certain products such as furniture and children's toys.

B. How and when must children's products be tested and certified to the 300 ppm lead content limit?

Children's products will need to be tested for compliance with the 300 ppm lead content limit. The tests must be done by a third party conformity assessment body (more commonly known as a third party laboratory) and, based on those tests, certified as compliant. The third party laboratory must be accredited and the accreditation must be recognized by CPSC. A listing of CPSC-recognized laboratories can be found at <http://www.cpsc.gov/cgi-bin/labapplist.aspx>. For more information on who needs to certify children's products for compliance, please see <http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf>.

The Commission has postponed the requirement to begin testing and certification to the 300 ppm lead content limit; therefore, we do not require such testing and certification until February 2010, at which time the Commission will vote on the stay. (See Notice of Stay of Enforcement of Testing and Certification Requirements, February 9, 2009 (74 FR 6396)). Companies, however, may not distribute or sell children's products that exceed the 300 ppm lead content requirement in the law. There are, however, two exceptions with respect to lead testing and certification: (a) lead in paint; and (b) lead in children's metal jewelry. Testing and certification of products subject to

the 90 ppm limit on lead in paint has not been postponed. Moreover, the Commission has not postponed the requirement for testing and certification of children's metal jewelry to the 300 ppm lead content limit.

C. What is a children's product that must be tested for lead content?

The Commission is often asked what products must comply with the lead content limit, *i.e.*, what is a "children's product" under the law. The answer is anything that is designed or intended primarily for a child 12 years of age or younger. "Primarily" is the key word used in the law. Not everything a child uses or touches must meet the lead content limit, only those things designed or intended primarily for a child 12 years old or younger. The Commission looks at each product on a case-by-case basis. We consider how the product is marketed as well as what the manufacturer has said about the product (if reasonable) and whether consumers commonly recognize the product as being intended for a child 12 or younger. For example, the Commission has previously said that an ordinary ball point pen is not primarily intended for children, and most consumers would not consider an ordinary ball point pen as being intended primarily for use by a child 12 years of age or younger. We realize that children, once they reach a certain age, might use a ball point pen, but an ordinary ball point pen is generally sold to consumers of all ages. In other words, an ordinary ball point pen is not designed or intended primarily for children. In this example, the ball point pen is *not* a children's product. (Although there are some instances when such a pen can become a children's product. See http://www.cpsc.gov/library/foia/foia09/petition/wima_resp.pdf). The Commission may provide further guidance on this issue in the future by rule.

D. Must all children's products be tested and certified for lead content?

Another common question is whether all children's products need to be tested and certified for compliance with the new 300 ppm lead content limits. The law limits our ability to exempt products from the lead content limit. However, we have found that certain products, by their nature, will never exceed the lead content limit so those products do not need to be tested and do not need certifications to show that they comply with the law. These products include:

1. Precious gemstones: diamond, ruby, sapphire, emerald;
2. Semiprecious gemstones and other minerals, provided that the mineral or material is not based on lead or lead compounds: e.g., aragonite, bayldonite, boleite, cerussite, crocoite, galena, linarite, mimetite, phosgenite, vanadinite, and wulfenite;
3. Natural or cultured pearls;
4. Wood (any paint on wood needs to be tested and certified);
5. 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 that soak into the paper and cannot be scraped off the surface;

6. CMYK process printing inks (inks that must meet the testing and certification requirements include spot colors, other inks that are not used in the CMYK process, and inks that can be scraped off the surface on which they are used or that are used in after-treatment applications, including screen prints, transfers, decals, or other prints);
7. Textiles (excluding after-treatment applications, such as screen prints, transfers, decals, or other prints) consisting of:
 - a. 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;
 - b. Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex;
8. 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, and untreated leather;
9. 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), provided that no lead or lead-containing metal is intentionally added. The non-steel or non-precious metal components of a product, such as solder or base metals in electroplate, clad, or fill applications must be tested and certified;
10. Precious metals: Gold (at least 10 karat); sterling silver (at least 925/1000); platinum; palladium; rhodium; osmium; iridium; ruthenium, titanium.

The products on this list are all things the Commission has determined do not contain lead over 100 ppm, which is within the allowable 300 ppm limit. Thus, they will comply with the law (and must always comply) and, therefore, do not need testing and certification. They do not need to be tested by a third party laboratory to prove they are, in fact, made of something on the list, and they do not need to be tested to prove that they meet the lead content limits. For example, we have determined that natural fibers, such as cotton, by their nature do not contain lead in excess of the lead content limit; this means that cotton blankets or t-shirts (without buttons or appliqués), do not need to be tested by a third party laboratory for lead content. It also means that a third party laboratory would not need to test the cotton shirt to show that it is, indeed, made out of cotton. Some retailers may want manufacturers and importers to test and certify their products, but those tests and certificates are not required by the Commission for the materials or products on the list.

The Commission is aware that a children's product may be made of numerous materials and component parts and that some may be on the list shown above while others are not. Many questions have been raised about how to handle a product where some parts do not need to be tested for lead content and others do. Questions have been

raised as to whether testing a "final product" is necessary when some components of that product are made of materials (such as paper or fabric) that would not need to be tested if marketed separately, or whether only some of the component parts of a final children's product need to be tested. The Commission intends to address component part testing and establish protocols and standards for testing for compliance in an upcoming rulemaking. (For convenience, we will refer to the future rule as the "testing rule.") The Commission currently plans to have a public meeting where the public will have a chance to discuss testing issues. Until then, to provide some guidance on testing and certification of component parts for lead content, the Commission provides the following guidance for testing for lead content.

1. The Commission does not require separate tests of the parts of the product that are made entirely of items on the list above that have been determined not to exceed the lead limits.
2. The Commission does not require testing for lead content of those parts of a children's product that are inaccessible, i.e., that cannot be touched by a small child's finger. This is further explained in the Commission's rule on inaccessibility and lead, which can be found on our website at <http://www.cpsc.gov/businfo/frnotices/fr09/leadinaccessibilityfinalrule.pdf>.
3. The Commission does not require lead content testing of certain components of electronic devices designed or intended primarily for children 12 and younger. The rule on electronic devices can be found on our website at <http://www.cpsc.gov/businfo/frnotices/fr09/electronicinterim.pdf>.

To help firms test for lead content, the Commission provides the following examples.

1. A book made with a cardboard cover glued to pages made with paper and printed with CMYK process printing inks does not need to be tested for lead content and no certificate is required by the Commission. The paper, cardboard, and CMYK ink are all on the list of materials and products that we have determined not to contain lead above the 100 ppm limit, and the glue used for binding is inaccessible. If, however, the book was bound with metal spiral binding rather than inaccessible glue, the metal spiral bindings would need to be third party tested for compliance with the 300 ppm lead content limit, and the product would need to be certified. If the metal spiral binding was painted, in addition to testing the metal spiral binding for lead content, the paint also would need to be tested to assure that it complies with the 90 ppm lead in paint limit and certified as complying with that standard as well.
2. A children's coat, size 6x, is made of a variety of fabrics and a zipper. The fabric does not need to be tested for lead content because textiles are on the list of materials and products we have determined to not contain lead above the 100 ppm limit. The lead content of any plastic, metal, or painted parts of the zipper, however, would need to be tested to verify that they do not exceed the lead limits. A zipper may consist of several parts including the zipper

teeth, which come as one part on a ribbon. Only the teeth need to be tested for their lead content and not the ribbon. Any other part of the zipper, for example, the zipper pull, would also need to be tested for lead content and, if painted, for compliance with the separate lead in paint limit. A certificate would need to be generated for the coat, certifying compliance of the zipper on that coat to the total lead content limit of 300 ppm and the lead in paint limit of 90 ppm.

We hope these examples will help answer the questions about how to test products for compliance with the 300 ppm lead content limit until the Commission completes the testing rule. The testing rule will address component part testing, when some parts of the product do not need to be tested and other parts do need to be tested, and may address topics such as how often tests need to be conducted, whether a manufacturer can rely on tests performed by a supplier, and what records need to be kept. Until a final testing rule is issued, the Commission will, on an interim basis, accept certifications of component parts if the component tested is the same in all material respects to the component used on the product.