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Consumer Federation of America
*** Public Citizen ***
*** U.S. Public Interest Research Group ***

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Office of the Secretary
Consumer Product Safety Commission
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**Comments of Consumers Union, Consumer Federation of America, Public
Citizen, and the U.S. Public Interest Research Group to the U.S. Consumer
Product Safety Commission
on
"Section 101 Electronic Devices Interim Rule"**

Introduction

Consumers Union of U.S., Inc. (CU), Consumer Federation of America (CFA), Public Citizen and the U.S. Public Interest Research Group (jointly "We") submit the following comments in response to the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") in the above-referenced matter.¹

Background

Section 101 of the Consumer Product Safety Improvement Act, Public Law 110-314, 122 Stat. 3018 ("CPSIA"), provides for specific lead limits in children's products. Under Section 101(b)(4), "if the Commission determines that it is not technologically feasible for certain electronic devices, including devices containing batteries, to comply..."² the CPSC is authorized to "issue requirements to eliminate or minimize the potential for exposure to and

¹ "Children's Products Containing Lead; Exemptions for Certain Electronic Devices; Interim Final Rule," 74 Fed. Reg. 6990 (February 12, 2009).

² See CPSIA Section 101(b)(4).

accessibility of lead in such devices....”³ Under the same section, the CPSC is authorized to set a schedule for compliance with these requirements, unless it determines that full compliance is not technologically feasible within the time limit set.

Under Section 101(b)(2), lead limits will not apply to component parts of a children's product that are not accessible to a child through normal and reasonably foreseeable use and abuse of the product. Section 101(b)(4) of the CPSIA provides that if the CPSC determines that it is not technologically feasible for certain electronic devices to comply with the lead limits, the CPSC must, by regulation, issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices. A compliance schedule must be established unless the Commission determines that full compliance is not technologically feasible. Pursuant to Section 101(b)(4), the CPSC is issuing this interim final rule (“Interim Final Rule”) concerning certain electronic devices for which it is not technologically feasible to meet the lead limits as required under Section 101 of the CPSIA. For electronic devices for which it is not technologically feasible to meet the lead limits, the CPSC has proposed requirements in this NPR designed to eliminate or minimize the potential for exposure and accessibility of lead.

In developing the exclusions, the CPSC staff has reviewed the European Union restrictions and exemptions on the use of lead in electronic devices⁴ as well as the Korean Act for Resource Recycling of Electrical and Electronic Equipment and Vehicles (Korea RoHS), and the patterns of use of lead in children's products.⁵ Based upon the staff's review, the CPSC proposes in the

³ Id.

⁴ The European Union directive on the restriction of use of hazardous substances, EU RoHS Directive 2002/95/EC (“EU RoHS Directive 2002/95/EC” or “Directive”), specifies that certain hazardous substances in electronic and electrical equipment must be substituted with safer materials – specifying the maximum concentration of lead at 0.1%. The Directive allows exemption to the restrictions for devices where substitution of the lead is not yet technologically feasible. However, the Directive is broad, and allows a maximum lead limit of 1000ppm. See 74 Fed. Reg. at 6991.

⁵ Id. at 6991-6992.

Interim Final Rule to adopt the following exclusions, as part of proposed 15.

C.F.R. § 1500.88:

(1) Lead blended into the glass of cathode ray tubes, electronic components and fluorescent tubes.

(2) Lead used as an alloying element in steel. The maximum amount of lead shall be less than 0.35% by weight (3500 ppm).

(3) Lead used in the manufacture of aluminum. The maximum amount of lead shall be less than 0.4% by weight (4,000 ppm).

(4) Lead used in copper-based alloys. The maximum amount of lead shall be less than 4% by weight (40,000 ppm).

(5) Lead used in lead-bronze bearing shells and bushings.

(6) Lead used in compliant pin connector systems.

(7) Lead used in optical and filter glass.

(8) Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring as well as in print pastes.

(9) Lead oxide in the glass envelope of Black Light Blue (BLB) lamps.⁶

Proposed section 15 C.F.R. 1500.88(e) states that:

(e) Components of electronic devices that are removable or replaceable such as battery packs and light bulbs that are inaccessible when the product is assembled in functional form or are otherwise granted an exemption are not subject to the lead limits in paragraph (a) of this section.⁷

No less than every five years after publication of a Final Rule on children's electronic devices, the Commission staff will be required to reevaluate and report to the CPSC "on the technological feasibility of compliance with the lead limits in for children's electronic devices, including the technological feasibility of making accessible component parts inaccessible, and the status of the exemptions...."⁸

⁶ *Id.* at 6993, proposed 15 C.F.R. § 1500.88(d).

⁷ *Id.*, proposed 15 C.F.R. § 1500.88(e).

⁸ *Id.* See proposed 15 C.F.R. § 1500.88(f).

Recommendations

Narrow Exemptions

Although many of the proposed exclusions are specific to certain types of components used in the manufacture of electrical goods, some are broad general exclusions for materials. For example, lead used in steel alloys, lead used in the manufacture of aluminum, and lead used in copper alloys are excluded without identifying the lead-containing components contemplated. For that reason, this provision is over-broad because a general materials exemption will give great discretion to manufacturers who may choose to add lead to metal alloys despite the fact that it may not be technologically necessary to do so. Exclusions for the listed materials and components should be granted only when it is clearly supported that it is not technologically feasible for the component to be produced without the addition of lead.

Clarify Removable or Replaceable Component Parts

The Commission finds that spare parts or other removable components shall 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 of the component itself meets the criteria for exclusions. Designating "removable components" as inaccessible may leave a large loophole that might result in unnecessary harm to children. Manufacturers may interpret this provision as granting exemption to any component that can be removed from the product. For example, light bulbs in children's flashlights contain lead. Because bulb replacement is often necessary, unless rendered inaccessible as suggested by this *Interim Final Rule*, the bulb must be considered to be accessible. Unless it is rendered inaccessible and remains so after use and abuse testing -- easily removable and replaceable parts should still be required to meet the lead limits specified by the CPSIA.

Increase Periodic Review

The European Union Directive 2002/95/EC specifies that exemptions must be reviewed 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. In contrast, the Interim Final Rule says that "staff will reevaluate the technological feasibility of compliance with the lead limits for children's electronic devices, including the technological feasibility of making parts inaccessible, and the status of the exemptions, no less than every five years. We recommend that the CPSC adopt the same four year review cycle as in the EU.

Conclusion

For the foregoing reasons, we urge the Commission to adopt these recommendations in its implementation of Section 101 of the CPSIA.

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