§ 1500.89 Procedures and requirements for determinations regarding lead content of materials or products under section 101(a) of the Consumer Product Safety Improvement Act.

(a) The Consumer Product Safety Improvement Act provides for specific lead limits in children’s products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 years of age or younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 years of age or younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit will be further reduced to 100 ppm, unless the Commission determines that this lower limit is not technologically feasible. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child or prevent the absorption of any lead in the human body through normal and reasonably foreseeable use and abuse of the product.

(b) The Commission may, either on its own initiative or upon the request of any interested person, make a determination that a material or product does not contain lead levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable.

(c) A determination by the Commission under paragraph (b) of this section that a material or product does not contain lead levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable does not relieve the material or product from complying with the applicable lead limit as provided under paragraph (a) of this section.

(d) To request a determination under paragraph (b) of this section, the request must:

1. Be e-mailed to cpsc-os@cpsc.gov, and titled “Section 101 Request for Lead Content Determination.” Requests may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address.
2. Be written in the English language.
3. Contain the name and address, and e-mail address or telephone number, of the requester.
4. Provide documentation including:
   (i) A detailed description of the product or material and how it is used by a child;
   (ii) Representative data on the lead content of parts of the product or materials used in the production of a product;
   (iii) All relevant data or information on manufacturing processes through which lead may be introduced into the material or product;
   (iv) An assessment of the likelihood or lack thereof that the manufacturing processes will result in lead contamination of a material or product that ordinarily does not contain lead;
   (v) All relevant data or information on the facilities used to manufacture the material or product, and any other materials used in the product;
   (vi) An assessment of the likelihood or lack thereof that the use of leaded materials in a facility will result in lead contamination of a material or product that ordinarily does not contain lead;
   (vii) Any other information relevant to the potential for lead content of the product or material to exceed the statutory lead limit specified in the request, that is 600 ppm, 300 ppm, or 100 ppm, as applicable;
(viii) Detailed information on the relied upon test methods for measuring lead content of products or materials including the type of equipment used or any other techniques employed and a statement as to why the data is representative of the lead content of such products or materials generally; and
(ix) Any data or information that is unfavorable to the request that is reasonably available to the requestor.

(e) Where a submission fails to meet all of the requirements of paragraph (d) of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the request may be resubmitted when the deficiency is corrected.

(f) Upon receipt of a complete request for a determination, the Office of Hazard Identification and Reduction (EXHR) will assess the request to determine whether the product or material is one that does not contain lead in excess of the limits as provided under paragraph (a) of this section. EXHR will make an initial recommendation within thirty (30) calendar days, to the extent practicable. EXHR may request an extension from the Executive Director of the CPSC, if necessary, to make its initial determination. A complete request is one that does not require additional information from the requestor for EXHR to make an initial recommendation to the Commission.

(g) Where the Office of Hazard Identification and Reduction’s (EXHR) initial recommendation is to deny the request for a lead content determination, it will provide, in a staff memorandum to the Commission, submitted to the Commission for ballot vote, the basis for the denial with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are not presented. If the notice of proposed rulemaking (NPR) is published, it will invite public comment in the FEDERAL REGISTER. EXHR will review and evaluate any comments and supporting documentation before making its final recommendation to the Commission for final agency action, by staff memorandum submitted to the Commission. If the Commission, after review of the staff’s final recommendation, determines that a material or product does not and would not exceed the lead content limits, it will decide by ballot vote, on whether to publish a final rule in the FEDERAL REGISTER.

(i) The filing of a request for a determination does not have the effect of staying the effect of any provision or limit under the statutes and regulations enforced by the Commission. Even though a request for a determination has been filed, unless a Commission determination is issued in final form after notice and comment, materials or products subject to the lead limits under section 101 of the CPSIA must be tested in accordance with section 102 of the CPSIA, unless the testing requirement is otherwise stayed by the Commission.

[74 FR 10480, Mar. 11, 2009]