

## § 1500.90

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. The Commission, by ballot vote, will render a decision on the staff's recommendation. The ballot vote and the staff memorandum will be posted on the CPSC Web site. Any determination by the Commission to grant a request will be published in the FEDERAL REGISTER for comment. If the Commission concludes that the request shall be denied, the requestor shall be notified in writing of the denial from the Office of the Secretary along with the official ballot results and the EXHR staff's memorandum of recommendation.

(h) Where the Office of Hazard Identification and Reduction's (EXHR) initial recommendation is to grant the request for a lead content determination, it will submit the basis for that recommendation to the Commission in a memorandum to be voted on by ballot, with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are 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 regula-

## 16 CFR Ch. II (1–1–14 Edition)

tions 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]

### **§ 1500.90 Procedures and requirements for exclusions from lead limits under section 101(b) 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) *Exclusion of certain materials or products and inaccessible component parts.* The CPSIA provides the following functional purpose exception from the lead limits stated in section 101(a) of the CPSIA.

(1) *Functional purpose exception*—(i) *In general.* The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit under paragraph (a) of this section for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that:

(A) The product, class of product, material, or component part requires the inclusion of lead because it is not

practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with paragraph (a) of this section by removing the excessive lead or by making the lead inaccessible;

(B) The product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

(C) An exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

(ii) *Measurement.* For purposes of paragraph (b)(1)(i)(C) of this section, there is no measurable adverse effect on public health or safety if the exception described in paragraph (b)(1)(i) of this section will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

(iii) *Procedures for granting exception—(A) Burden of proof.* A party seeking an exception under paragraph (b)(1)(i) of this section has the burden of demonstrating that it meets the requirements of such paragraph.

(B) *Grounds for decision.* In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the exception and any materials received through notice and a hearing.

(C) *Admissible evidence.* In demonstrating that it meets the requirements of paragraph (b)(1)(i) of this section, a party seeking an exception under such paragraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the party that relies on that information.

(D) *Scope of exception.* If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in paragraph (b)(1)(i) of this section are met with respect to every accessible component or accessible material of the product.

(iv) *Limitation on exception.* If the Commission grants an exception for a product, class of product, material, or component part under paragraph (b)(1)(i) of this section, the Commission may, as necessary to protect public health or safety:

(A) Establish a lead limit that such product, class of product, material, or component part may not exceed; or

(B) Place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under paragraph (b)(1)(iv)(A) of this section or the limit set forth under paragraph (a) of this section.

(v) *Application of exception.* An exception under paragraph (b)(1)(i) of this section for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

(vi) *Previously submitted petitions.* A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all requirements of this paragraph as required by paragraph (b)(1)(iii)(A) of this section.

(2) [Reserved]

[74 FR 10480, Mar. 11, 2009, as amended at 78 FR 41298, July 10, 2013]

**§ 1500.91 Determinations regarding lead content for certain materials or products under section 101 of the Consumer Product Safety Improvement Act.**

(a) The Consumer Product Safety Improvement Act provides for specific