INFORMATION COLLECTION REQUEST (ICR) SUPPORTING STATEMENT

CHILDREN'S PRODUCTS CONTAINING LEAD

A. Justification

1. Information to be collected and circumstances that makes the collection of information necessary

On August 14, 2008, Congress enacted the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016. Section 101(a) of the CPSIA provides for specific lead content limits in children's products. Section 3 of the CPSIA grants the Commission general rulemaking authority that can be used to make determinations that certain commodities or classes of materials or products inherently do not contain lead or would not exceed the lead limits prescribed in section 1010(a) of the CPSIA. In addition, Section 101 (b) (a) of the CPSIA provides that the Commission may, by regulation, exclude a specific product or material that exceeds the lead limits established for children's products under Section 101(a) of the CPSIA if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither result in the absorption of any lead into the human body, not have any other adverse impact on public health or safety. Accordingly, the Commission has proposed procedures and requirements for requesting a Commission determination on lead content limits or an exclusion under section 101(b)(1).

The proposed procedures and requirements for seeking a Commission determination that a specific material or product contains no lead or a lead level below the applicable statutory limit would require objectively reasonable and representative test results or other scientific evidence showing that the product or material does not, and would not, exceed the lead limit specified in the request. A justification submitted by an interested party for a determination must include a detailed description of the product or material; data on the lead content of parts of the product or the materials used in the production of a product; data or information on manufacturing processes through which lead may be introduced into the product or material; any other information relevant to the potential for the 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; and detailed information on the test methods used to support such data.

The proposed procedures and requirements for seeking an exclusion under section 101(b)(1) would require that a request for an exclusion be accompanied by the best-available, objective, peer-reviewed, scientific evidence, such as test results indicating how much lead is present in the product, how much lead comes out of the product and the conditions under which that may happen, and information relating to a child's interaction, if any, with the product.

The APA generally requires that a substantive rule be published not less than 30 days before its effective date, unless the agency finds for good cause shown, that a lesser time period is required

5 U.S.C. 553(d)(3). Because the Commission recognizes the need for providing procedures for Commission determinations and exclusions expeditiously, for good cause shown, the proposed effective date is the date of publication of a final rule in the Federal Register.

2. Use and sharing of collected information

The information required by the regulation is to be provided to the Commission and the Commission's technical staff for evaluation of the request. The staff will make preliminary determinations, and the Commission will decide whether to proceed with rulemaking that would provide the requested determination or exclusion. No information will be shared with other agencies or entities.

Based on a review of the proposed information collection activities, staff has found that the Privacy Act does not apply because no electronic information system or records subject to the Privacy Act will be created.

3. Use of information technology (IT) in information collection.
Interested person may submit the required information by e-mail, by mail or by delivery to the Commission's office in Bethesda, MD.

4. Efforts to identify duplication

The staff believes that a firm requesting an exemption using these procedures would be familiar with properties and uses of the material(s) for which they are requesting a Commission determination and therefore, the information required should be readily available to individual firms. We are not aware of any other source for this information.

5. Impact on Small Businesses

The Regulatory Flexibility Act (RFA), 5 U.S.C. Sections 601-602, requires federal agencies to consider the impact of regulations on small entities in developing proposed and final regulations. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, the RFA requires that an initial regulatory flexibility analysis be prepared and it or a summary of it be published in the Federal Register with the proposed rule. The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of these procedural requirements on small businesses. That assessment found that the procedural requirements would only impact those firms that believe a specific material that they use met the requirements in the rule and that the benefits of using the procedures to request a determination or exclusions from the Commission (i.e., reduced cost of testing the material) would exceed the costs of them making the request. Therefore, it would not result in any increase in the costs of production for any firm and would not have a significant economic impact on small entities under the RFA.

6. Consequences to Federal program or policy activities if collection is not conducted or is conducted less frequently.

If the records required by the regulation were not available, the Commission would not be able to determine lead content limits or whether an exclusion could be applied under section 101(b)(1).

7. Special circumstances requiring respondents to report information more often than quarterly or to prepare responses in fewer than 30 days

There are no special circumstances that would require respondents to provide information more often than quarterly or in fewer than 30 days.

8. Agency's Federal Register Notice and related information.

On January 9, 2009, the proposed rule was transmitted by the agency to the Federal Register for publication.

9. Decision to provide payment or gift

No gift or payment is permitted or given to firms fulfilling the requirements of this regulation.

10. Assurance of confidentiality

Information required by the requirements, that the manufacturer or importer claims to be confidential, is subject to 16 C.F.R. Part 1015, subpart B, that ensures withholding from public disclosure information which concerns "trade secrets and commercial or financial information." Disclosure of trade secrets and certain other types of confidential information is also prohibited by 18 U.S.C.

11. Questions of a sensitive nature

The requirements of this regulation do not include questions of a sensitive nature.

12. Estimate of hour burden to respondents

Based on comments received on the CPSIA lead content provisions thus far, staff estimates that approximately 250 firms may submit requests annually. The burden to assemble the information and prepare the submission may take approximately 40 hours.

The number of submission received annually would be expected to decline in later years, since the submissions need to be made only once for each material for which a Commission determination is being sought.

13. Estimate of total annual cost burden to respondents

The compensation, if performed by a senior level management employee, would be approximately $60 an hour (U.S. Department of Labor, Bureau of Labor Statistics), and the average cost of preparing a submission would be about $2,400 ($60 x 40 hours). An estimate of

the annual burden for the information collection could be $600,000.

14. Estimate of annualized costs to the Federal government

An estimate of the burden on the federal government to review each submission could be as much as 24 hours at an average hourly wage of $56, the equivalent of a GS-14 employee, or $1,344 for each submission ($56 x 24). If approximately 250 submissions are received, the cost of the annual burden to the federal government will be approximately $336,000.

15. Program changes or adjustments

Not applicable.

16. Plans for tabulation and publication

Not applicable, there are no plans to tabulate or publish the information. Because CPSC does not plan to disseminate the data collected, the requirements of the OMB and the CPSC Information Quality Guidelines do not apply.

17. Rationale for not displaying the expiration date for OMB approval

Not applicable.

18. Exception to the certification statement

Not applicable

B. Collection of information will not employ statistical methods.