

Commentary”).² The 1990 Commentary provided broad guidance on the Commission’s interpretation of the provisions of the FCRA, but specified that the interpretations were not trade regulation rules or regulations and did not have the force or effect of statutory provisions.³

II. Basis for Removal of the 1990 Commentary

Since the publication of the 1990 Commentary, the FCRA has been amended several times in the ensuing years. The two most extensive amendments were the Consumer Credit Reporting Reform Act of 1996 (the “1996 amendments”) ⁴ and the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).⁵

The 1996 Amendments expanded the duties of consumer reporting agencies (“CRAs”), and also increased the obligations of *users* of consumer reports, particularly employers. Most significantly, the 1996 Amendments imposed duties on a class of entities not previously treated by the FCRA—*furnishers* of information to CRAs—by including requirements related to accuracy and the handling of disputes by the entities that provided information to CRAs.

In 2003, the FACT Act ⁶ further expanded the FCRA.⁷ It added several sections to assist consumers and businesses in combating identity theft and reducing the damage to consumers when that crime occurred, including granting consumers the right to request free annual reports from nationwide CRAs. The Commission, often in conjunction with the Federal financial agencies, issued numerous rules to

implement the various FACT Act provisions.⁸

As a result of these significant changes in the FCRA, as well as the passage of time, the 1990 Commentary has become partially obsolete.

In addition, on July 21, 2010, President Obama signed into law the Consumer Financial Protection Act of 2010 (“CFPA”).⁹ Under the CFPA, much of the authority of the Commission and the Federal financial agencies to publish rules, regulations, or guidelines under the FCRA transfers to the CFPB. Although the CFPA provides for the transfer of existing regulations and guidelines to the CFPB, the Commission does not believe that it is appropriate to transfer the Commentary given its staleness. Indeed, in some respects, the Commentary is in conflict with the law as it has been amended. Accordingly, the Commission is rescinding 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act.

Under 5 U.S.C. 553(b)(A), the requirement to provide prior notice and an opportunity for public comment does not apply to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. Further, under 5 U.S.C. 553(d)(2), the rescission may take effect immediately upon publication of this document in the **Federal Register**. Accordingly, the Commission rescinds 16 CFR 600.1, 600.2, and the Appendix to Part 600—Commentary on the Fair Credit Reporting Act, effective immediately.

III. Regulatory Flexibility Act

Because these statements of general policy and interpretations are not “rules” subject to the Regulatory Flexibility Act, *see* 5 U.S.C. 601(2), the Commission is not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. *See* 5 U.S.C. 603(a), 604(b).

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

■ Accordingly, for the reasons set forth above, under the authority of 16 U.S.C. 1681s, the Commission amends Title 16, Chapter I, Code of Federal Regulations, by removing and reserving part 600.

⁸ The Commission’s FACT Act rules are listed on the agency Web site at <http://www.ftc.gov/os/statutes/fcrajump.htm>.

⁹ Title X, Public Law 111–203 (Dodd-Frank Wall Street Reform and Consumer Protection Act).

By direction of the Commission.

Donald S. Clark,
Secretary.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

[Docket No. CPSC–2010–0080]

Children’s Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Notice of Effective Date of 100 ppm Lead Content Limit in Children’s Products

AGENCY: U.S. Consumer Product Safety Commission

ACTION: Notice of statutory requirement.

SUMMARY: Section 101(a) of the Consumer Product Safety Improvement Act (“CPSIA”) provides that, as of August 14, 2011, children’s products may not contain more than 100 parts per million (“ppm”) of lead unless the Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”) determines that such a limit is not technologically feasible. The determination can only be made after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children’s products. On February 16, 2011, we conducted a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children’s products and associated public health considerations. Through this document, we announce that children’s products must meet the statutory 100 ppm lead content limit on August 14, 2011, unless otherwise excluded under CPSC regulations.¹

DATES: The 100 ppm lead content limit for children’s products is effective on August 14, 2011.

FOR FURTHER INFORMATION CONTACT: Dominique Williams, Directorate for Health Sciences, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7597; e-mail: dwilliams@cpsc.gov.

SUPPLEMENTARY INFORMATION:

¹ The Commission voted 3–2 to publish this notice, without changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, Commissioners Thomas Moore and Robert Adler voted to publish the notice. Commissioners Nancy Nord and Anne Northup voted against publication of the notice. Chairman Tenenbaum and Commissioners Nord and Northup filed statements regarding the vote. The statements may be viewed at <http://www.cpsc.gov/pr/statements.html>.

² 55 FR 18804 (May 4, 1990). The 1990 Commentary followed a proposal published in August 1988. 53 FR 29696 (Aug. 8, 1988). It included eight interpretations that the Commission had issued in the 1970s (former 16 CFR 600.1 through 600.8).

³ 16 CFR 600.2, citing 16 CFR 1.73.

⁴ Title II, Subtitle D, Chapter 1, of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Public Law 104–208 (Sept. 30, 1996).

⁵ Public Law 108–159 (Dec. 4, 2003).

⁶ *Id.*

⁷ During the seven years between the 1996 Amendments and the FACT Act, there were a number of more modest revisions, the most significant of which was a 1999 amendment that specifically authorized the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, and National Credit Union Administration to promulgate regulations under the FCRA for the banks and other entities subject to their jurisdiction. Section 506 of the Gramm-Leach-Bliley Act (Pub. L. 106–102 (Nov. 12, 1999); FCRA § 621(e)).

I. Background

Section 101(a)(2)(C) of the CPSIA (15 U.S.C. 1278a(a)(2)(C)) provides that, as of August 14, 2011, children's products may not contain more than 100 ppm of lead unless the Commission determines that such a limit is not technologically feasible. The Commission may make this determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products. Section 101(d) of the CPSIA (15 U.S.C. 1278a(d)) provides that a lead limit shall be deemed technologically feasible with regard to a product or product category if:

(1) A product that complies with the limit is commercially available in the product category;

(2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;

(3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or

(4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

On July 27, 2010, we published a notice in the **Federal Register** (75 FR 43942), requesting comment and seeking information concerning the technological feasibility of meeting the 100 ppm lead content limit for children's products that are not otherwise excluded from the lead content limits under 16 CFR 1500.87 through 1500.91. After initial consideration of the comments and information received in response to the July 27, 2010 notice, we published a notice in the **Federal Register** (76 FR 4641) on January 26, 2011, announcing that we would be conducting a public hearing to receive views from all interested parties about the technological feasibility of meeting the 100 ppm lead content limit for children's products and associated public health considerations. The hearing was held on February 16, 2011. On March 9, 2011, we published another notice in the **Federal Register** (76 FR 12944), reopening the hearing record to allow hearing participants to submit relevant studies and supplementary data in response to additional questions from certain Commissioners.

Participants who submitted comments and hearing testimony regarding the

technological feasibility of meeting the 100 ppm lead content limit and associated public health considerations included consumers, consumer groups, manufacturers, retailers, associations, and laboratories. Comments submitted in this proceeding are available at <http://www.regulations.gov>, under Docket No. CPSC-2010-0080. The video webcast of the hearing, as well as the presentations and written comments from the hearing, are available at the CPSC web site: <http://www.cpsc.gov/webcast/previous.html>. A transcript of the hearing and supplemental information provided by hearing participants are also available at <http://www.regulations.gov>, docket CPSC-2010-0080.

II. Technological Feasibility of 100 ppm

We evaluated the technological feasibility of the 100 ppm lead content limit for children's products based on available technical information, written public comments, public hearing oral comments, and other available information. CPSC staff's analysis regarding the technological feasibility of materials and products to meet the 100 ppm lead content limit is contained in the staff briefing package available on the CPSC Web site at: <http://www.cpsc.gov/library/foia/foia11/brief/lead100tech.pdf> and <http://www.cpsc.gov/library/foia/foia11/brief/100ppmlead.pdf>. We evaluated the technological feasibility of meeting the 100 ppm lead content limit in materials such as plastics, glass, and metals; reviewed the economic impacts of reducing the lead content limit from 300 ppm to 100 ppm; and considered the public comments received in this proceeding, including comments on public health protectiveness, economic burdens, availability of compliant materials, and variability in test results. Based upon this analysis, the staff could not recommend that the Commission make a determination that it is not technologically feasible for a product or product category to meet the 100 ppm lead content limit for children's products under section 101(d) of the CPSIA. No such determination has been made by the Commission. Therefore, all children's products sold, offered for sale, manufactured for sale, distributed in commerce, or imported for sale in the United States must meet the 100 ppm lead content limit beginning August 14, 2011 as statutorily mandated by the CPSIA unless otherwise excluded under 16 CFR 1500.87 through 1500.91. With respect to bicycles and related products and youth motorized recreational vehicles, a stay of enforcement regarding the lead content in certain

parts, including metal components, is currently in effect until December 31, 2011 (76 FR 6765).

Dated: July 18, 2011.

Todd A. Stevenson,
Secretary, Consumer Product Safety
Commission.

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BILLING CODE 6355-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038-AD00

Process for Review of Swaps for Mandatory Clearing

AGENCY: Commodity Futures Trading
Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to implement certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These regulations establish the process by which the Commission will review swaps to determine whether the swaps are required to be cleared.

DATES: Effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Special Counsel, 202-418-5096, edonovan@cftc.gov, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2010, the Commission published proposed regulations to implement certain provisions of the Dodd-Frank Act regarding the mandatory clearing of swaps.¹ The Commission is hereby adopting Regulation 39.5² to establish procedures for: (1) Determining the eligibility of a DCO to clear swaps; (2) the submission of swaps by a DCO to the Commission for a mandatory clearing determination; (3) Commission-initiated reviews of swaps; and (4) staying a clearing requirement.

Section 723(a)(3) of the Dodd-Frank Act provides that "it shall be unlawful for any person to engage in a swap unless that person submits such swap

¹ See 75 FR 67277 (Nov. 2, 2010).

² Commission regulations referred to herein are found at 17 CFR Ch. 1.