Please clarify section 101(f)(3) regarding lead paint testing and whether small areas are exempt from testing.

The new law does not exempt small painted areas from the applicable lead limits. It does allow the Commission to rely on x-ray fluorescence technology (XRF) or other alternative means to screen for products bearing lead paint where the total weight of such paint or surface coating is no greater than 10 milligrams or where the surface area of such paint or surface coating covers no more than 1 square centimeter of the surface area of such products. This alternative method for measurement may not allow more than 2 micrograms of lead in a total weight of 10 milligrams of paint or other surface coating or in a surface area of 1 square centimeter or less.

Once the ASTM F963-07 Toy Standard becomes mandatory, will toys need to be tested for lead and other heavy metals in paint according to F963-07 or according to 16 CFR § 1303.1 or both?

The answer to this question will change over the course of the next year. Until February 10, 2009, toys must meet CPSC's lead paint rule at 16 C.F.R. § 1303.1. For paint and similar surface coatings, and certain consumer products, 16 CFR § 1303.1 specifies that the maximum allowable *total* lead content is 0.06% based on the total weight of the non-volatile portion of the paint (which is equivalent to 600 ppm). As of August 14, 2009, the maximum allowable total lead content of such items will fall to 0.009% (which is equivalent to 90 ppm). The test method for compliance with 16 CFR § 1303.1 used by the CPSC staff is available on the CPSC website at: http://www.cpsc.gov/businfo/leadsop.pdf.

The Standard Consumer Safety Specification for Toy Safety, ASTM F963-07 becomes a mandatory consumer product safety standard on February 10, 2009. This standard *additionally* places limits on the amount of lead (and other heavy metals, namely antimony, arsenic, barium, cadmium, chromium, mercury and selenium) based on the *soluble* portion of that material using a specified extraction methodology given in the standard. Toys manufactured after February 10, 2009, will have to meet these requirements.
Beginning on August 14, 2009, however, the *soluble* limit testing for lead paint under ASTM F963-07 will not be necessary because the maximum total lead content in paint will be reduced to 90 ppm in 16 CFR § 1303.1, which would be a more stringent requirement in all cases. It will remain necessary to conduct ASTM F963-07 solubility testing for antimony, arsenic, barium, cadmium, chromium, mercury, and selenium, as those are not covered by 16 CFR § 1303.1.

Is compositing allowed for testing for lead in the surface paint/coating or in the substrates (that is the underlying materials that are painted or coated)?

The term "compositing" could refer to more than one type of combination. One type of compositing that labs have used is to combine like paint from several like parts or products to obtain a sufficient sample size for analysis where there is not sufficient quantity of paint on one item to perform the testing. This is appropriate in this circumstance and may even be necessary to obtain valid analytical results.

Another type of compositing is to combine *different* paints or substrates from one or more samples to reduce the number of tests run. This type of composite testing may fail to detect excessive levels of lead in one individual paint or substrate because they have been diluted. This approach is therefore not acceptable.

Under 16 CFR § 1303.2, electroplating is exempt from the ban on lead containing paint and similar surface coating materials, is this the same under the new statute? Would electroplating a substrate allow the substrate to be considered "inaccessible"?

For lead containing children's products, CPSIA specifically provides that paint, coatings, or electroplating may *not* be considered a barrier that would render lead in the substrate inaccessible to a child. Accordingly, electroplating a substrate will not provide a basis for exempting a children's product from having to meet the lead content limits specified in CPSIA. For items covered by 16 CFR part 1303, including paint, and certain painted items, the definition of paint and other similar surface coatings remains the same and still does not include electroplating.

Does the new requirement for total lead on children's products apply to children's books, cassettes and CD's, printed game boards, posters and other printed goods used for children's education?

In general, yes. CPSIA defines children's products as those products intended primarily for use by children 12 and under. Accordingly, these products would be subject to the lead limit for paint and surface coatings at 16 CFR part 1303 (and the 90 ppm lead paint limit effective August 14, 2009) as well as the new lead limits for children's products containing lead (600 ppm lead limit effective February 10, 2009, and 300 ppm lead limit effective August 14, 2009). If the children's products use printing inks or materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing, they would be excluded from the lead paint limit. However, these products are still considered to be lead containing products irrespective of whether such products are excluded from the lead paint limit and are subject to the lead limits for children's products containing lead. For lead containing children's products, CPSIA specifically provides that paint, coatings, or electroplating may *not* be considered a barrier that would render lead in the substrate inaccessible to a child.

Is compositing of plastics and other materials allowed in regards to lead testing in substrates?

No. Compositing to combine *different* substrates from one or more samples may fail to detect excessive levels in one part merely because they are diluted. Accordingly, compositing of plastics or other materials to test for lead in substrates is not appropriate.

How will the new legislation affect previously issued CPSC guidelines on lead and are there any developments on the CPSC rulemaking activities on lead in children's jewelry?

The existing lead guidelines will be superseded to the extent they conflict with the statutory requirements of CPSIA. In addition, the rulemaking commenced by the Commission on children's metal jewelry is also superseded by the statutory requirements of CPSIA.

Does packaging have to comply with the lead requirements? Does it matter if the packaging is intended to be reused (e.g., heavy gauge reusable bag with zipper closure to store a set of blocks)?

CPSIA defines children's products as those products intended primarily for use by children 12 and under. Packaging is generally not intended *for use* by children, given that most packaging is discarded and is not used or played with as a children's product. However, if the packaging is intended to be reused, or used in conjunction with the children's product, such as a heavy gauge reusable bag used to hold blocks, it becomes a component or part of the product, and would be subject to the lead requirements of CPSIA. It should also be noted that many individual states have adopted packaging laws which address toxics in packaging or packaging components and which have *not* been preempted by Commission action.

In interpreting section 101(f) of the CPSIA and 16 CFR § 1303.1, to what does the 90 ppm lead in surface-coating limit apply?

The lead limit in paint and surface coatings applies to (i) paint and other similar surface coatings; (ii) toys and other articles intended for use by children; and (iii) certain furniture articles that are not otherwise exempt under our regulations.

16 CFR part 1303 states that the liquid paint (e.g., a can of paint) must meet 600 ppm, I am curious as to how children's products can meet 90 ppm unless the paint manufacturers lower the limit. Are the paint manufacturers required by law to meet 90 ppm?

Yes. Paint sold for consumer use must meet the 90 ppm limit by August 14, 2009 under 16 C.F.R. part 1303, which will be revised to reflect the 90 ppm lead limit specified in the CPSIA. The exemptions from the ban provided under 16 C.F.R. § 1303.3 continue to remain in effect.

Can someone import a product that has lead based paint on it? The product in question is a type of "stilt" that professional painters use to reach high ceilings and walls.

The lead paint limits only apply to certain products as described above and only apply to consumer products. In your example, the lead paint and lead content limits do not apply. Generally, a painter's stilt is not a "consumer product" as defined under section 3 of the Consumer Product Safety Act. For example, it is not customarily sold to or used by a consumer, but rather, by professional painters in the scope of their employment. Moreover, painter's stilts are not children's products under the CPSIA.

Do all children's products require testing for lead or is it only products with some type of surface coating? We sell products that are used in physical education classes (e.g. hula-hoops) that are made from polyethylene and are not painted or coated. Will this product require third-party testing and certification for lead content under the new CPSIA?

All children's products (as defined by the CPSIA) subject to the lead limit of the Act will eventually require testing for lead, not just those with surface coatings. It is important to distinguish between the rules that apply to lead paint and surface coatings and the rules that apply to lead content. The CPSIA provides limits to the amount of lead in paint and surface coatings and limits to the amount of lead in the content of the product itself. Children's products that are painted, or have surface coatings are also subject to the lead paint limit, in addition to the lead content limits.

When do the lead paint limits go into effect for children's products?

The lead paint limit is currently 600 ppm for children's products. It will be lowered to 90 ppm on August 14, 2009.

What certifications are required for children's products that are tested for lead paint?

For currently effective lead paint limits (600 ppm), general conformity certification is required for products manufactured after November 12, 2008 based on a test of the product or a reasonable testing program for products. Third-party testing of the product for currently effective lead paint limits by accredited third party laboratories is required for products manufactured after December 21, 2008.

When the lead paint limit is lowered to 90 ppm on August 14, 2009, third-party testing by accredited third party laboratories will be required for children's products manufactured after that date.

When do the lead content limits go into effect for children's products?

The lead content limits for all children's products go into effect February 10, 2009 (600 ppm) and will be lowered again on August 14, 2009 (300 ppm).

What certifications are required for children's products that are tested for lead content?

Children's products manufactured after February 10, 2009, when the lead limit may not exceed 600 ppm, will need a general conformity certification based on a test of the product or a reasonable testing program for products after that date. Children's products manufactured after August 14, 2009, when the lead limit may not exceed 300 ppm, will have to be certified based on third-party testing of the product by accredited third party laboratories after that date.

If you have a "children's product" with possible lead content, do you have to have a certificate on November 12, 2008, even though the lead rule is not effective?

No. The lead content limits for children's products do not go into effect until February 10, 2009. As stated above, children's products manufactured after February 10, 2009 (600 ppm), will need a general conformity certification based on a test of the product or a reasonable testing program for products and children's products manufactured after August 14, 2009 (300 ppm), will have to be certified based on third-party testing of the product by accredited third party laboratories.

Will toys manufactured outside the United States be allowed to be imported to the US for lead testing or will the testing have to be performed outside the US (and pass the new standards) prior to being imported into the US?

Manufacturers may submit samples of products for testing in the United States without certifying them. However, before shipping any products other than these samples, *i.e.*, products imported for consumption or warehousing or distribution in commerce in the United States, the products must have the required certifications.

Does the CPSIA envision stuffed animals falling within the scope of the CPSIA's lead limits or phthalate limits?

Most stuffed animals would be considered to be children's products and presumably toys. A manufacturer would need to determine whether the design of the stuffed animals is such that it is subject to the lead paint limits, the lead content limits or the phthalate limits.

How will the lead in substrate provision be applied to products like strollers, playpens and other juvenile products? Will it be applied to every single part, including rivets?

The new lead limits will apply to the total lead content by weight for any part of the product. Some children's products or component part of products may be exempted or excluded from the new lead limits if the parts containing lead are inaccessible. Inaccessible parts do not need to meet the lead limits and the Commission will provide guidance by rule within one year on what component parts are considered inaccessible. Until that time, it is the manufacturer's responsibility to determine which parts of its products are accessible and therefore must meet the statutory lead limits.

Is the use of XRF analysis for compliance testing with regard to lead in substrates under consideration or will wet chemistry be the only method used for testing lead content in substrates?

The use of XRF analysis for lead content is being considered. CPSC Directorate for Laboratory Sciences, Chemistry Division (LSC) will post the methods it will be using on the CPSC website in the next few months.

Can XRF technology be used to support general conformity certification as to lead paint or lead content limits?

Yes. Where third-party testing by an accredited laboratory is required as the basis for certification, that testing cannot be based on XRF technology at this time; however, XRF testing, either by a manufacturer or by a laboratory, may serve as the basis for general conformity certification. Manufacturers are cautioned, however, to be careful in their use of XRF for this purpose given the difficulties in screening for lead in paint with that technology.

What test method is CPSC requiring for surface coating lead testing and total lead content testing? When will this information be provided?

The test method for 16 CFR § 1303.1 used by the CPSC Product Testing Laboratory, Chemistry Division (LSC) is available on the CPSC website at: http://www.cpsc.gov/businfo/leadsop.pdf. Other laboratories should consider using these procedures to ensure they obtain results that are consistent with CPSC staff's for purposes of compliance with 16 CFR part 1303. In addition, the LSC is currently developing other testing methodologies to use for total lead content testing, which will be posted on the CPSC website in the next few months.

We sell craft materials, some packages of beads can have 12 or more colors of beads. Can we composite 3 or more colors at a time to test the beads?

No. Compositing to combine *different* paints or substrates from one or more samples to reduce the number of tests run may fail to detect excessive levels of lead in one individual paint or substrate because of the effect of dilution by non-lead-containing samples. This approach is therefore currently not acceptable. The only exception to "compositing" is when labs have to combine like paint from several like parts or products to obtain a sufficient sample size for analysis because there is an insufficient quantity of paint on one item to perform the testing.

Are chemistry sets, science education sets and other educational materials excluded from the lead limits for content and paint and surface coatings if they bear adequate labeling under 16 C.F.R. § 1500.85?

16 C.F.R. § 1500.85 provides that certain articles that are intended for children for educational purposes are exempt for classification as a banned hazardous substance under the FHSA and the lead limits under CPSIA if the *functional purpose* of the particular educational item *requires* inclusion of the hazardous substance, and it bears labeling giving adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings. For example, an electronics kit or robotics kit would be considered educational and the inclusion of a lead-containing component would not subject the kit to the lead testing requirements because the use of lead in some components is required to make the electronic device. Similarly, the materials used for examination or experimentation for science study such as soil, rocks, chemicals, dissections, etc. would also be exempt.