

UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

AND

UNITED STATES CENTERS FOR DISEASE CONTROL AND PREVENTION,
NATIONAL CENTER FOR ENVIRONMENTAL HEALTH and the AGENCY FOR
TOXIC SUBSTANCES AND DISEASE REGISTRY

MEMORANDUM OF UNDERSTANDING FOR SHARING INFORMATION

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made this 12 day of March, 2010 between the United States Consumer Product Safety Commission ("CPSC") and the United States Centers For Disease Control and Prevention/National Center for Environmental Health ("CDC") and the Agency for Toxic Substances and Disease Registry, both agencies of the United States Department of Health and Human Services ("DHHS") and jointly termed "CDC/ATSDR" (hereafter referred to jointly as the "Parties"):

Understanding the mutual benefits of protecting the public health and safety through cooperation and exchange of information with regard to ongoing investigations of drywall;

Recognizing that such cooperation can improve and promote the public health and safety of the citizens of the United States;

The Parties have agreed as follows:

1. The Parties agree to share information for law enforcement, and consumer protection purposes relating to on going investigations of the public health and corrosive effects of drywall as described in this MOU.

2. The CPSC is an independent regulatory agency of the United States government charged with protecting the public from unreasonable risks associated with consumer products. 15 U.S.C. § 2051 *et seq.* Under section 29(f)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2078(f)(1), the CPSC has authority to enter into a confidential MOU with CDC/ATSDR for the sharing of information to facilitate law enforcement, and consumer protection purposes regarding the manufacture, importation, distribution, or sale of consumer products, including drywall, so long as the information shared will be maintained in confidence and be used only for such official law enforcement or consumer protection purposes, including instances where the disclosure would further the Commission's investigation or enforcement of a matter or involve the investigation of practices substantially similar to practices prohibited by any law administered by the CPSC. Such information is hereafter described as "confidential information."

3. The CDC/NCEH is an agency of the DHHS. Pursuant to Section 301 of the Public Health Service Act, 42 U.S.C. Section 241, as amended, CDC has the authority to cooperate with, and render assistance to, other public authorities in the conduct of investigations and studies relating to the causes, diagnosis, treatment, control and prevention of physical diseases and impairments of man. In accordance with that authority, CDC may enter into a confidential MOU with the CPSC to share information to facilitate such investigations and studies, including those relating to the public health effects of imported drywall upon consumers. CDC will use the information shared by CPSC only for the purposes outlined in this agreement and will maintain the information in confidence to the extent allowable by federal law. Such information is hereafter described as "confidential information."

4. The ATSDR is an agency of the DHHS. Pursuant to Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9604(i), the ATSDR has the authority to conduct health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. In accordance with that authority, ATSDR may enter into a confidential MOU with the CPSC to share information to facilitate such health studies, including those relating to the health effects of imported drywall upon consumers. ATSDR will use the information shared by CPSC only for the purposes outlined in this agreement and will maintain the information in confidence to the extent allowable by federal law. Such information is hereafter described as "confidential information."

5. "Confidential information" means any information voluntarily exchanged pursuant to this MOU which has not previously been made public.

6. "Drywall" means a building material used for the construction of interior walls and primarily made of natural or synthetic gypsum as further described by ASTM Standard No. C1396 and sold or marketed under various brand and product names including, but not limited to, drywall, plasterboard, wallboard, gypsum board or other names.

7. The Parties agree that sharing confidential information under this MOU is voluntary. The Parties further agree that any confidential information shared under this MOU will be used only for purposes of investigating or engaging in enforcement proceedings related to possible violations of laws regulating the manufacture, importation, distribution, or sale of drywall or public health activities (i.e., investigations, studies, assessments) related to the health effects of imported drywall upon consumers.

8. The Parties agree to maintain the confidentiality of any and all information disclosed under this MOU.

- a. All information provided by CDC/ATSDR to the CPSC under this MOU shall remain confidential and will not be disclosed to the public or any other third party except as required by applicable federal law, including the Consumer Product Safety Act, 15 U.S.C. § 2055 and 2078, and the

Freedom of Information Act, 5 U.S.C. §552. Should the CPSC believe that release of confidential information may be warranted or required by law, the CPSC agrees that it will immediately notify CDC/ATSDR in writing and provide CDC/ATSDR with the opportunity to respond, unless otherwise required by law.

- b. All information provided by the CPSC to CDC/ATSDR under this MOU shall remain confidential, including pursuant to the Trade Secrets Act, 18 U.S.C. §1905, and will not be disclosed to the public or any other third party except as required by applicable federal law, including the Freedom of Information Act, 5 U.S.C. §552. Should the CDC believe that release of confidential information may be warranted or required by law, the CDC/ATSDR agrees that it will immediately notify CPSC in writing and provide CPSC with the opportunity to respond, unless otherwise required by law.

9. When disclosing confidential information pursuant to this MOU, the disclosing Party shall expressly mark or otherwise identify to the receiving Party such material as confidential.

10. The Parties acknowledge that this MOU does not restrict, in any way, either Party's obligations to respond to proper requests for information from Congress or prevent, in any way, a Party from complying with an order of a court of the United States in an action commenced by the United States or the CPSC.

11. The Parties agree that if either Party fails to maintain the confidentiality of the information pursuant to this MOU or if either Party uses the information for any purpose other than that set forth in this MOU, either Party may abrogate this MOU.

12. No changes or modifications to the terms of this MOU shall be valid unless made in writing, agreed to, and signed by the Parties.

13. This Memorandum of Understanding between the CPSC and the CDC/ATSDR does not confer any right or obligation on any other Party.

14. This Memorandum of Understanding shall remain in effect indefinitely, but may be terminated by either of the signing Parties to the Agreement. Termination may be made at any time by either of the signing Parties contingent upon a written notice 10 days prior to the intended date of termination.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the date first above.

Inez M. Tenenbaum

Inez M. Tenenbaum
Chairman
United States Consumer Product
Safety Commission

Date *3/11/10*

Thomas A. Falk for *3/12/2010*

Dr. Henry Falk, MD/MPH
Acting Director
National Center for Environmental
Health/Agency for Toxic Substances and
Disease Registry
Centers for Disease Control and Prevention
United States Department of Health and
Human Services