UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: February 24, 2009

TO : Office of the General Counsel
Office of Hazard Identification and Reduction
Office of Compliance and Field Operations

FROM : Todd A. Stevenson, Director,
Office of the Secretary

SUBJECT : **Children's Products Containing Lead; Interpretative Rule on Section 101 Inaccessible Component Parts (CPSIA)**
Published in the *Federal Register* January 15, 2009
Comments due by February 17, 2009

COMMENT	DATE	SIGNED BY	AFFILIATION
1	1/09/09	Jason Simon	jasonsimon00@gmail.com
2	2/17/09	Christopher Hudgins Vice President Government Relations & Policy	International Sleep Products Association 501 Wythe Street Alexandria, VA 22314-1917
3	2/17/09	Wiz Chan Toy Testing Manager Toys and Children's Products Div.	Modern Testing Services wizchan@mts-global.com

COMMENT	DATE	SIGNED BY	AFFILIATION
4	2/17/09	Rachel Weintraub Director of Product Safety and Senior Counsel	Consumer Federation of America
		Donald L. Mays Senior Director, Product Safety & Technical Public Policy	Consumers Union
		Janell Mayo Duncan Senior Counsel	Consumers Union
		Nancy A. Cowles Executive Director	Kids in Danger
		Diana Zuckerman President	National Center for Women & Families
		David Arkush Director	Public Citizen's Congress Watch
		Ed Mierzwinski Federal Consumer Program Director	U.S. Public Interest Research Group
		Elizabeth Hitchcock Public Health Advocate	U.S. Public Interest Research Group
5	2/17/09	Brian Markwalter Vice President Technology & Standards	Consumer Electronics Association
		Richard E. Goss Vice President Environment and Sustainability	Information Technology Industry Council 1250 Eye St., NW, Suite 200 Washington, DC 20005
		Fern Abrams Director Environmental Policy and Government Relations	IPC – Association Connecting Electronics Industries

COMMENT	DATE	SIGNED BY	AFFILIATION
6	2/17/09	John O'Loughlin	Weil, Gotshal & Manges LLP 1300 Eye St., NW Suite 900 Washington, DC 20005
7	2/17/09	Steve Lamar & a coalition of 30 trade associations	American Apparel and Footwear Association
8	2/17/09	William Willen Counsel for American Honda Motor Co. Inc.	American Honda Motor Co. Inc. 1919 Torrence Boulevard MS: 5002C-10A Torrence, CA 90501-2746
		Annamarie Daley Counsel for Arctic Cat Inc.	Robins, Kaplan, Miller & Ciresi LLP 2800 LaSalle Plaza 800 LaSalle Avenue Minneapolis, MN 55402
		Michael A. Wiegard Counsel for Kawasaki Motors Corp., USA	Eckert Seamans Cherin & Mellot 1250 24th Street, N.W. Suite 700 Washington, DC 20006
		David P. Murray Counsel for Yamaha Motor Corp., USA	Willkie Farr & Gallagher 1875 K Street, N.W. Washington, DC 20006
		John B. Walsh Counsel for American Suzuki Motor Corporation	American Suzuki Motor Corporation 3251 Imperial Highway Brea, CA 92821

COMMENT	DATE	SIGNED BY	AFFILIATION
8 cont'd.	2/17/09	Yves St. Arnaud Counsel for Bombardier Recreational Products Inc.	Bombardier Recreational Products Inc. 726 Saint-Joseph Street Valcourt, Quebec, Canada J0E 2L0
		Mary McConnell Counsel for Polaris Industries Inc.	Polaris Industries Inc. 2100 Highway 55 Medina, MN 55340-9770
9	2/18/09	Peter T. Mangione President	Footwear Distributors and Retailers of America 1319 F Street, NW Suite 700 Washington, DC 20004

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Stevenson, Todd

From: Jason Simon [jasonsimon00@gmail.com]
Sent: Friday, January 09, 2009 7:51 PM
To: Lead Accessibility
Subject: Section 101 Inaccessible Component Parts

To whom it may concern:

I would just like to relay, that as a parent of three boys, that the consumer products safety commissions job it to protect citizens first and foremost without regard to lobbying and financial impact. Responsible companies will survive and make toys that are safe. In this day and age there will always be companies that concentrate on the bottom line first because their loyalty lies not with the consumer but with short term profits for their shareholders. I simply ask that you not bow to the requests of companies and lobbing firms. Companies will always cry foul if they have to spend extra money for improved quality testing. Additionaly with so many companies buying or manufacturing toys out of the country there needs to be some accountabity and quality inspections put in place by those companies to prove there toys are safe.

Thank you for your time
Jason Simon

ISPA
INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

February 17, 2009

Consumer Product Safety Commission
Office of the Secretary
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

Re: Section 101 Inaccessible Component Parts

The International Sleep Products Association (ISPA) submits the following comments on behalf of the mattress manufacturing industry in response to the Consumer Product Safety Commission's (CPSC) proposed "Interpretive Rule on Inaccessible Component Parts" and request for public comment (74 FR 2439).

Inaccessibility and the CPSIA

Section 101(b)(2) of the Consumer Product Safety Improvement Act (CPSIA) provides that component parts deemed as "inaccessible" shall be exempt from the lead limits contained in the law. The CPSIA defines an inaccessible component part as one that "is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product." ISPA believes that internal mattress and foundation components meet this definition and refer the Commission to our comments submitted on October 31, 2008.

In its Federal Register notice, the Commission states that it "preliminarily determines that an accessible component part of a children's product is one that a child may touch, and an inaccessible component part is one that is located inside the product that a child cannot touch" (74 FR 2440). ISPA supports this determination and, for the reasons discussed below, urges the Commission to conclude that internal mattress and foundation components are not accessible under this standard.

The Commission has defined mattresses and foundations in 16 CFR 1633.2. Mattresses are composed of a number of components that are encased in a sealed durable outer fabric (called the "ticking") or a similar material that completely encloses these internal components. These components may consist of various foams, steel innerspring coils, and other fabric and fiber products that are used to maximize comfort and reduce flammability. Components contained in mattress foundations (also known as box springs) are also enclosed by an outer cover that prevents a child or adult from accessing the internal parts. Testing by mattress manufacturers used to simulate product wear and tear over the use of the product has shown that the outer fabric ticking is unlikely to break down over the period of normal use. Furthermore, should the ticking become damaged and no longer enclose the internal components, the product becomes unusable and is likely either repaired or discarded and replaced at that time.

Fabric as a Barrier

In addition to stating in its request for comment that "an inaccessible part may be enclosed in **any** type of material, *e.g.*, hard or soft plastic, rubber or metal," the Commission seeks comment "on whether fabric coverings could be used as a barrier that would make lead within the product inaccessible to a child."

Fabric should be recognized by the Commission as an acceptable barrier for enclosing internal components. The outer fabric, ticking or similar material used to enclose the internal mattress and foundation components is a "sealed covering" that serves as a suitable material to make those components inaccessible to children.

Mattress manufacturers and ticking suppliers engineer and test their fabrics to prevent tearing and prevent the fabric from wearing through over time. The result is an outer cover that can usually be opened only as a result of deliberate cutting or tearing of the fabric with a knife or tool.[1] Furthermore, a typical manufacturer's warranty covers the repair of defective materials and workmanship, including the ticking.

Finally, a child is likely to use a mattress only when it is covered with sheets or other bed linens, adding one or more fabric layers above the outer cover of the mattress and foundation itself, and making it even more difficult to access internal mattress and foundation components.

For the forgoing reasons, ISPA urges the Commission to determine that the fabric ticking used on a mattress and foundation exterior is a material that makes the internal mattress and foundation components inaccessible to children, as defined by the statute.

Use and Abuse Tests and Inaccessibility Probes

ISPA supports the Commission's approach of applying the test methods codified in 16 CFR Part 1500 et seq. for purposes of the inaccessible parts provision in simulating normal use for toys and other products. Applying those criteria to mattresses and foundations provides further reasons for concluding that the outer cover of a mattress and foundation makes the internal components inaccessible to children. Specifically, mattresses and foundations would pass the Commission's child use and abuse standards codified at 16 CFR 1500.50-53, and the choking hazard standard codified at 16 CFR Part 1501.

The internal components of a mattress or a foundation would not become exposed when the product is subjected to the impact, bite, flexure, torque, tension and compression tests specified in Part 1500. Likewise, given the size and shape of mattresses and foundations, these products present no choking hazards.

Finally, given the function of a mattress and a foundation, it is unlikely for the following reasons that the internal components of these products would be exposed as a result of a child mouthing the product:

1. Unlike pacifiers, teethers and chew toys – products that are deliberately designed for a child to mouth – mattresses are neither intended nor designed for mouthing by a small child. The large rectangular shape and size of a mattress makes it difficult and awkward for a child to mouth. This would be even more true for a foundation, which is used beneath a mattress.
2. Scientific research shows that many children do not mouth products, but those that do spend the vast majority of their time mouthing pacifiers, teethers and other products designed for them to mouth.[2]
3. Given a young child's propensity to bed wetting, he or she usually sleeps on a mattress that has either a water repellant or resistant outer fabric or mattress protector placed over the sleep surface. This outer mattress cover or mattress protector further protects the mattress interior from exposure in the unlikely event that a child might mouth a mattress instead of a pacifier or other product designed for that purpose.

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[1] In this regard, we note that the Commission also preliminarily determines that "the intentional disassembly of products by children through the use of tools should not be considered in evaluating products for accessibility of lead-containing components" (74 FR 2440).

[2] See "Chronic Hazard Advisory Panel on Diisononyl Phthalate (DINP)," CPSC Directorate for Health Sciences (June 2001) at pp. 17-23, http://www.cpsc.gov/LIBRARY/FOIA/Foia01/os/dinp.pdf , for a summary of this scientific research. Furthermore, mouthing behavior tends to decrease as the child becomes older further minimizing this exposure risk. For example, one study showed that mouthing behavior increased up to the age of 12 months, and then rapidly diminished.

4. As noted above, mattresses are seldom if ever used without sheets and other bed linens. In the unlikely event that a child were to mouth his or her mattress, these bedding products would further protect the mattress interior from exposure.

The Commission also proposes the use of inaccessibility probes to determine whether particular components are inaccessible. That test may be appropriate for products that have exposed cavities. But in the case of mattresses and foundations, which are sealed and present no ability for a child to access the internal components without cutting through the outer fabric ticking, the use of an inaccessibility probe is unnecessary.

Summary
ISPA supports the Commission's proposed definition of inaccessibility as set forth in the Federal Register notice. The Commission's approach defines a clear and practical interpretation of inaccessibility that is consistent with the definition contained in the CPSIA. ISPA urges the Commission to recognize fabric and similar material as an acceptable material to make the internal mattress and foundation components inaccessible to children.

Thank you for the opportunity to share our remarks. Should you have any questions, please contact me at (703) 683-8371.

Sincerely,

Christopher Hudgins
Vice President, Government Relations & Policy

Stevenson, Todd

From: Chris Hudgins [CHudgins@sleepproducts.org]
Sent: Tuesday, February 17, 2009 1:08 PM
To: Lead Accessibility
Subject: Section 101 Inaccessible Component Parts
Attachments: ISPA Comments on Inaccessible Component Parts.pdf

Please see attached comments from the International Sleep Products Association regarding inaccessible component parts.

Chris Hudgins
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"Start Every Day With a Good Night's Sleep ™"

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Stevenson, Todd

From: Wiz Chan [wizchan@mts-global.com]
Sent: Tuesday, February 17, 2009 2:24 PM
To: Lead Accessibility
Subject: Section 101 Inaccessible Component

Dear Sir / Madam,

§ 1500.87 Children's Products Containing Lead: Inaccessible Component Parts.
(e) The use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50–1500.53 (excluding the bite tests of 1500.51(c) and 1500.52(c)) will be used to evaluate accessibility of lead-containing component parts of a children's product as a result of normal and reasonably foreseeable use and abuse of the product by children that are 18 months of age or less, over 18 months but not over 36 months of age, and over 36 months but not over 96 months of age.

In the above section the bite test according to 1500.51(c) and 1500.52(c) is excluded from the abuse tests, while 1500.53(c) is not included in the exemption. If the intention is not including bite test 1500.53(c) should be exempted as well.

Refer to 1500.48 & 1500.49, all bite test are exempted (.51, .52, .53). See below

(c) *Accessibility* —(1) *General.* Any point that is accessible either before or after these tests of §§1500.51, 1500.52, and 1500.53 (excluding the bite test—paragraph (c) of each section) are performed shall be subject to the sharp point test of paragraph (d) of this section.

Thanks

Wiz Chan
Toy Testing Manager
Toys and Children's Product Division
Modern Testing Services
Tel: 852 3604 1318
Fax: 852 2144 0669

*** Consumer Federation of America * Consumers Union * * Kids in Danger * National Research Center for Women & Families * Public Citizen * U.S. Public Interest Research Group ***

February 17, 2009

Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814
Via: Sec101InaccessibleRule@cpsc.gov
Facsimile (301) 504-0127

Comments of Consumer Federation of America, Consumers Union, Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group to the U.S. Consumer Product Safety Commission regarding "Section 101 Inaccessible Component Parts"

Introduction

Consumer Federation of America (CFA), Consumers Union of U.S., Inc. (CU), Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group (jointly "We") submit the following comments in response to the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") in the above-referenced matter ("Section 101 Inaccessible Component Parts").[1] The CPSC has published this Notice of Requirements in order to implement section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, ("CPSIA") which amends the Consumer Product Safety Act. In this Interpretative Rule, the CPSC "is proposing an interpretive rule providing guidance on inaccessible component parts."

Background

Section 101(a) of the CPSIA provides for specific lead limits in children's products and section 101(b)(2) of the CPSIA states that the lead limits are not applicable

[1] "Children's Products Containing Lead; Interpretative Rule on Inaccessible Component Parts: Proposed Interpretative Rule, 74 Fed. Reg. 2439 (January 15, 2009).

to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse. Further, Section 101(b)(2)(B) directs the Commission to promulgate a rule by August 14, 2009 that provides guidance about what component parts are considered to be inaccessible.

Recommendations

We urge the CPSC to adopt the following recommendations in its promulgation of an Interpretative Rule on inaccessible component parts consistent with the implementation of section 101(a) and 101(b)(2) of the CPSIA:

1. Definition of Accessible and Inaccessible Component Part of a Children's Product

The Commission preliminarily determines that "an accessible component part includes a part that a child may touch or place in the mouth, not just a component that a child might ingest, since exposure to lead may occur during direct mouthing of an object or mouthing of fingers/hands." The Commission has also preliminarily found that basing a definition of accessibility on exposure to lead such as through leaching or degradation is not consistent with the definition of accessibility in the CPSIA. We agree with these preliminary findings of the Commission since they are consistent with the plain language and intent of the CPSIA and are protective of public health.

The Commission has also preliminarily defined that an "inaccessible component part is one that is located inside the product that a child cannot touch." However, parts that can be exposed through reasonable foreseeable use and abuse will be considered accessible.

2. Methods for Testing Accessibility

A. Accessibility Probes

The Commission further preliminarily accepts staff's recommendation to access inaccessibility through both the use of accessibility probes and use and reasonable foreseeable use and abuse testing.

We agree with the Commission that accessibility probes that are defined in CPSC's regulations for evaluating sharp points or sharp edges could be used to determine

whether a component part is accessible to a child. The accessibility probes are designed to emulate the ability of a child's fingers to touch a product. We recommend that the Commission undertake further study to confirm that the use of both existing probes (the probe for children 36 months and younger as well as the probe for children up to eight years old) is adequate to evaluate the accessibility of a product to a child between 8 and 12 years old. While the Commission notes that older children's fingers would likely have more limited access to small holes, gaps or recesses, older children's fine motor skills are more developed and may be more nimble, thus overcoming a potentially larger size by increased agility. Further, as both CPSC's regulations and ASTM F 963 standards indicate, accessibility should be determined using these probes, both before and after use and abuse testing.

B. Use and Abuse Testing

The Commission preliminarily finds that appropriate use and abuse tests as defined in current CPSC regulations could be used to evaluate accessibility of a component part to a child through reasonably foreseeable use and abuse of the product. The Commission excludes the bite tests of 1500.51(c) and 1500.52(c) from consideration for use and abuse testing but does not provide an explanation for the exclusion. We request that such an explanation as biting is a reasonably foreseeable use of a children's product. While we generally support the Commission's preliminarily finding that use and abuse tests are appropriate for simulating children's use of a product, we are concerned with certain inherent limitations of existing use and abuse tests. For example, we believe that the test conditions for use and abuse testing be appropriate for the age of the child for which the product is intended. The CPSIA covers products intended for children up to and including age 12, therefore it is important to consider the strength and dexterity of older children when determining whether they could access lead-laden parts through foreseeable use and abuse.

We recommend that the Commission conduct further research including review of peer-reviewed human factors and child development studies to determine whether the existing use and abuse tests adequately encompass use of a product by an 8 to 12- year-old child. While the Commission has preliminarily concluded that applying use and abuse

tests described for products for children up to 8 years old to products for children through 12 years old is appropriate, we urge the Commission to further study this issue.

In addition, as the Commission points out, such use and abuse tests often fail to simulate aging of a consumer product. If aging or wear and tear would expose lead-laden components, we would expect the CPSC to consider these components accessible.

3. Barriers Rendering Component Parts Inaccessible

The CPSIA clearly specifies that accessibility is defined as physical contact with a component part and further specifies that the use of a surface coating such as paint or electroplating as a barrier is prohibited. We agree with the Commission that the critical aspect of this determination is physical access and not visibility. We further agree that an acceptable barrier to physical access includes enclosure of the component in a plastic, rubber, or metal material. The Commission is seeking comment about whether a fabric covering would be an acceptable barrier rendering a component inaccessible to a child. While it is reasonable that fabrics could provide an acceptable barrier, it is essential that the Commission determine that the barrier cannot be compromised through foreseeable use and abuse such that it would give access to any underlying lead-laden components. Further, the Commission must determine that a fabric barrier would effectively prevent the leaching of any lead enclosed within such fabric.

Conclusion

For the foregoing reasons, we urge the Commission to adopt these recommendations in its future implementation of section 101(a) and 101(b)(2) of the CPSIA.

Respectfully submitted,

Rachel Weintraub
Director of Product Safety and Senior Counsel
Consumer Federation of America

Donald L. Mays
Senior Director, Product Safety
& Technical Public Policy
Consumers Union

Janell Mayo Duncan
Senior Counsel
Consumers Union

Nancy A. Cowles
Executive Director
Kids in Danger

Diana Zuckerman
President
National Center for Women & Families

David Arkush
Director
Public Citizen's Congress Watch

Ed Mierzwinski
Federal Consumer Program Director
U.S. PIRG

Elizabeth Hitchcock
Public Health Advocate
U.S. PIRG

Stevenson, Todd

From: Rachel Weintraub [RWeintraub@consumerfed.org]
Sent: Tuesday, February 17, 2009 4:27 PM
To: Lead Accessibility
Subject: Consumer Group Comments on Section 101 Inaccessible Component Parts
Attachments: comments- interpretative rule on inaccessible component parts 2 17 09 final.pdf

Please accept the attached comments on behalf of consumer groups (listed in the attached document) regarding the comments sought by CPSC on section 101, on inaccessible component parts.

Thanks very much,
-Rachel Weintraub

Rachel Weintraub
Director of Product Safety & Senior Counsel
Consumer Federation of America
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Information Technology Industry Council
Leading Policy for the Innovation Economy

Association Connecting Electronics Industries

Consumer Electronics Association

February 17, 2009

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West highway
Bethesda, MD 20814

Subject: **Consumer Product Safety Improvement Act (CPSIA); Section 101: Inaccessible Component Parts**

The Information Technology Industry Council (ITI), Consumer Electronics Association (CEA), and IPC – the Association Connecting Electronics Industries, represent numerous manufacturers of a wide range of components, computers, televisions, video display devices, wireless devices, MP3 players, printers, printed circuit boards, and other electronic equipment. We appreciate the time you have taken to work with industry and ensure that the concerns of the high-tech electronics industry are addressed.

Our member companies have long been leaders in innovation and sustainability. Many of our members go beyond requirements on product safety, environmental design and energy efficiency, and lead the way in product stewardship efforts. We appreciate the opportunity to provide feedback to the Consumer Product Safety Commission (CPSC) on the proposed rule entitled, "Children's Products Containing Lead: Interpretative Rule on Inaccessible Component Parts. 74 Fed. Reg. 2439 et seq. (January 15, 2009) and appreciate the effort CPSC is putting forth to ensure stakeholder involvement. We look forward to continuing work with the CPSC to address issues relating to compliance and implementation of the Act and thank the Commission for their timely work in providing guidance.

Based on our evaluations, most electronic devices will not be considered children's products, as defined in the Act. For the most part, our members products are intended for general consumer use and not primarily intended for children age 12 years and younger, and therefore, are not subject to the lead-content limits under CPSIA. These comments are intended for the small number of electronic devices that may be considered children's products and therefore subject to the lead content limits under CPSIA. Most uses of lead in electronics will be inaccessible as defined in this proposed rule. The remaining uses of lead in electronic products that will be considered "accessible" will likely be exempted uses as defined in the Interim Final Rule: Children's Products Containing Lead; Exemptions for Certain Electronic Devices.

Sections B and C

We agree fully with the Commission's determination that components that cannot be touched and/or are inside of a device are inaccessible. We also support the CPSC proposal to reference the ASTM F963 standard as well as the 16 CFR 1500.48 and 1500.49 tests.

Section C.1.

ITI, CEA and IPC agree with the approach for testing accessibility as described in the proposed rule. Specifically, we agree that the accessibility probes specified for determining accessibility of sharp points or edges under 16 CFR 1500.48-49 are appropriate for determining whether a lead-containing part of a product is accessible to a child and that "a lead-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe."

We also wish to point out that most electronic components are actually composed of one or more smaller component parts. There may be some circumstances where a larger component part that is accessible may contain a smaller lead-containing component part that would be inaccessible because it is enclosed within the larger part. The discussion of the interim final rule entitled "Children's Products Containing Lead; Exemptions for Certain Electronic Devices; Interim Final Rule" recognizes that "[s]ome lead-containing component parts of electronic devices are, by design, not accessible to children because the lead is fully enclosed within a component that is itself within an electronic device." Accordingly, ITI, CEA and IPC suggest that the Commission also recognize in the interpretative rule on inaccessibility that some lead-containing component parts of electronic devices are, by design, not accessible to children because the lead is fully enclosed within a component that is itself within an electronic device. Therefore, the fact that a component can be touched by the accessibility probe should not affect whether a smaller component contained within the larger component is inaccessible.

Section C.2.

In general we agree with the Commission's determination to use the Use and Abuse Tests in 16 CFR 1500.50. However, the Commission expressly requested comments on the effect, if any, of product aging on the use and abuse evaluation. For children's electronic products, any aging that would result in an effect on the use and abuse evaluation would likely have already impaired the functioning of the product and rendered it unusable. The product lifespan for children's electronic products is considerably shorter than for other children's products. As such, the use and abuse testing proposed by the Commission in the interpretative rule is adequate and no additional testing to take account of aging would be necessary.

Section C.3.

ITI, CEA, and IPC believe that the Commission is correct in their assessment that the accessibility and use and abuse tests, while designed for children 8 and under, are adequate to protect children to age 12. We agree with the determination that the intentional disassembly or destruction of products by children older than 8 years by means of knowledge not generally available to younger children, including the use of tools, should not be considered in evaluating products for accessibility of lead containing component parts.

Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that if a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed during reasonable foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered a barrier that would render lead in the substrate to be inaccessible.

For the most part, all component parts inside of an electronic product are inaccessible under this definition. This is because all such products use a covering or casing, not just paint, coatings or electroplating, to protect the internal components from dust, moisture, exposure, and other influences that could damage the component parts or otherwise impact the functioning of the device. In many cases, the covering or casing can be removed by the use of tools, such as a screwdriver. The use of tools is not comparable to the activities listed in the CPSIA (i.e., swallowing, mouthing, breaking, or other children's activities). Because the use of tools to remove a covering or casing is not a "children's activity" and because older children (ages 9-12) have gained cognitive skills and knowledge to care for and appropriately use their products, accessibility through the use of tools should not be considered in accessibility and use and abuse testing. As such, we support the Commission's determination and proposed rulemaking in Section 1500.87(g) that would recognize that "[t]he intentional disassembly or destruction of products by children older than age 8 by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for inaccessibility of lead containing components."

Section G

Section A (background) contains useful guidance stating that "to the extent a component part is inaccessible to a child, that component part would be relieved from the testing requirement of section 102 of the CPSIA for purposes of supporting the required certification". For clarity, we suggest that the Commission include this statement in Part 1500.87.

Concluding Comments

On behalf of our combined membership, we appreciate the opportunity to provide comments on the proposed rule. We hope to continue working with the CPSC as these rules and additional rules and actions implementing the Act are developed. We would welcome the opportunity to have a small number of technical experts from our industry meet with CPSC to discuss these comments in more detail and answer any questions that you might have.

We look forward to continued, close cooperation as this important legislation is interpreted and implemented. Please do not hesitate to contact Megan Hayes, CEA, at mhayes@CE.org or 703-907-7660; Chris Cleet, ITI, at ccleet@itic.org or 202-626-5759; or Ron Chamrin, IPC, at RonChamrin@ipc.org or 703-522-0225 if you have any questions.

Sincerely,

Brian Markwalter
Vice President, Technology & Standards
Consumer Electronics Association

Richard E. Goss
Vice President of Environment and Sustainability
Information Technology Industry Council

Fern Abrams
Director of Environmental Policy and Government Relations
IPC – Association Connecting Electronics Industries

Stevenson, Todd

From: Cleet, Christopher [ccleet@itic.org]
Sent: Tuesday, February 17, 2009 6:08 PM
To: Lead Accessibility
Cc: Brian Markwalter; Goss, Richard; Fern Abrams
Subject: ITI-CEA-IPC comments on Section 101: Inaccessable Component Parts
Attachments: ITI-CEA-IPC comments on Section 101 inaccessible component parts.pdf

Dear Sir or Madam;

Please see the attached comments on the proposed rule on Inaccessible Component Parts from the Information Technology Industry Council (ITI), the Consumer Electronics Association (CEA), and IPC – The Association Connecting Electronics Industries.

Regards,
Chris Cleet
Director of Environmental Affairs
Information Technology Industry Council (ITI)
1250 Eye St, NW - Suite 200
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202.626.5759
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6

Stevenson, Todd

From: john.oloughlin@weil.com
Sent: Tuesday, February 17, 2009 9:10 PM
To: Lead Accessibility
Subject: Section 101 Inaccessible Component Parts

I represent a number of companies and organizations that manufacture, import, distribute and sell products regulated by the statutes under the jurisdiction of the Consumer Product Safety Commission, including the recently enacted Consumer Product Safety Improvement Act of 2008 (CPSIA). I appreciate the opportunity to comment on the Proposed Interpretive Rule: Children's Products Containing Lead; Interpretive Rule on Inaccessible Component Parts, 74 Fed. Reg. 2439, Jan. 15, 2009. My comments are not submitted on behalf of any specific client but, instead, are offered from the perspective of a practitioner seeking clarity and consistency as well as a common-sense approach to enforcement of the new law. My comments do not necessarily reflect the views of all of my firm's clients or of my firm.

The final rule should contain a statement clarifying how manufacturers should – or should not – deal with certificates of conformity and mandatory third-party testing for products that are exempt from the lead limits in accordance with the rule. In the preamble to the proposed rule, CPSC stated the following:

"To the extent a component part is inaccessible to a child, that component part would be relieved from the testing requirement of section 102 of the CPSIA for purposes of supporting the required certification." (74 Fed. Reg. 2439, Jan. 15, 2009.)

While this language is helpful, it (a) does not go far enough in clarifying the implications for testing and certification and (b) should be part of the final rule rather than just in the preamble. In the future, companies obligated to comply with the law will rely on the language in the Code and Federal Regulations and would not find much comfort in nonbinding language found only in the Federal Register.

Certificate of Conformity

Retailers and Customs inspectors may expect to see a certificate of conformity for all consumer products and, in particular, they may expect to see them for all "children's products." There are, however, many consumer products that are not covered by any consumer product safety rule or a similar rule, ban, standard, or regulation under the CPSC's jurisdiction and that, therefore, are not required to be accompanied by a certificate of conformity. In the case of children's products, there are products that are not covered by any specific CPSC rule other than -- potentially -- the lead concentration limits set forth in section 101(a) of CPSIA. For example, a "children's product" that is not a "toy" as defined in CPSIA would not be subject to the phthalates standard (CPSIA section 108) or the ASTM F963 Toy Safety Standard (CPSIA section 106). If the product has no external paints or coatings, it also would not be subject to the lead coating standard (16 CFR part 1303). If that children's product is exempt from the need for compliance with the lead concentration limits set forth in section 101(a) of CPSIA based on successfully passing the use-and-abuse and accessibility testing set forth in the proposed rule and is otherwise not covered by any other CPSC regulation, the manufacturer or importer would have no reason to issue a certificate of conformity. Those importers and manufacturers would have to explain (perhaps repeatedly) that the product does not require a certificate of conformity because it is exempt from the lead concentration limits and no other standards or bans apply to the product. As drafted, the proposed rule simply echoes section 101(b)(2) of CPSIA and states that the lead limits "do not apply" to inaccessible components. The passage quoted above from the preamble to the proposed rule implies that manufacturers and importers can issue certificates of conformity without the need for testing the substrate for lead, but the final rule should state clearly whether a manufacturer or importer should issue a certificate of conformity that cites to the accessibility rule as the basis for the written certification that the product complies with the law. Alternatively, the rule should state specifically that, if a product contains lead only in inaccessible components as determined in accordance with the rule, no certificate of conformity is required if no other CPSC rules or standards apply to the product.

Mandatory Third-Party Testing

Similarly, the final rule should clarify that producers of children's products that are not subject to any specific consumer product safety rule or a similar rule, ban, standard, or regulation under the CPSC's jurisdiction do not have to conduct the

use-and-abuse and accessibility testing at accredited third-party laboratories. If the only specific product safety rule that would apply to a children's product is the lead concentration limits of CPSIA section 101(a), but CPSIA section 101(b)(2) and the final rule state that the lead limits "do not apply" to products if they satisfy the use-and-abuse and accessibility test set forth in the rule, then by definition the product is not required to be tested at a third-party accredited laboratory as set forth in CPSIA section 102(a)(2). The passage quoted above from the preamble to the proposed rule implies that no third-party testing is required with regard to lead, but it would be helpful if the rule itself stated more clearly that no third-party testing is required to establish that the lead that may be present in component parts of the product is inaccessible. Obviously, if other consumer product safety rules, bans, standards, or regulations under the CPSC's jurisdiction apply to the children's product in question, then the manufacturer or importer may elect to have the use-and-abuse and accessibility test conducted by a third-party laboratory. But, the final rule should state that third-party testing is not required solely to demonstrate compliance with CPSIA section 101(b)(2) and the final accessibility rule.

Accessibility of Certain Component Parts

Section 101(b)(3) of CPSIA and section 1500.87(a) and (b) of the proposed rule each state that, for purposes of determining inaccessibility, "[p]aint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child." In several publications, the CPSC has stated that compact disks and DVDs may be considered children's products depending on their content and could therefore be subject to the lead content standards. (See, e.g., Guide to the Consumer Product Safety Improvement Act (CPSIA) for Small Businesses, Resellers, Crafters and Charities, CPSC, Feb. 10, 2009, at p. 3.) Compact disks and DVDs contain data on a reflective layer that is coated with an acyclic polymer layer that is UV-cured into a rigid protective surface to prevent the underlying data layer from becoming damaged during routine use. It is clear from the CPSC's other guidance that the disks that are children's products could be subject to the lead content limits and that any ink that becomes part of the disk's substrate would have to be tested for lead content (but not as a coating under 16 CFR part 1303). (See, Letter from Cheryl Falvey to Association of American Publishers, Jan. 15, 2009, at p. 1, note 1.) In the context of the inaccessibility analysis, however, the final rule should make clear that the UV-cured acrylic outer layer of a CD or DVD is not a "coating" and does, in fact, provide an inaccessible barrier for purposes of the lead content rule for the underlying layers of the disk. Manufacturers, importers, and distributors of prerecorded disks should not be forced to test the underlying layers of the disk for lead because they are inaccessible to children under any reasonably foreseeable use and abuse of the disk. In short, the final rule should state that the UV-cured acrylic outer layer of a data disk should not be considered a "coating" for purposes of the inaccessibility rule. This approach would preserve testing resources, is consistent with the CPSC's approach to other inaccessible components, and would provide a common-sense way to focus on lead risks that are truly accessible to children.

Conclusion

I appreciate the opportunity to comment on the Proposed Interpretive Rule and applaud the CPSC's efforts to provide practical guidance to the regulated community.

Respectfully submitted,

John O'Loughlin
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Washington, DC 20005
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February 17, 2009

Mr. Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway,
Bethesda, Maryland, 20814

Via Email: Sec101Determinations@cpsc.gov;
Sec101InaccessibleRule@cpsc.gov; Sec101Exclusions@cpsc.gov

REF: A. Section 101 Determinations of Certain Materials or Products NPR (74 FR 2433)

B. Section 101(b) Exclusions (74 FR 2428)

C. Section 101 Inaccessible Component Parts (74 FR 2439)

Dear Mr. Stevenson:

The undersigned organizations are providing these additional comments in connection with the captioned rule-makings.

Our associations, and the members we represent, are united in support of common-sense, enforceable product safety rules that are easy to understand, that are based on risk and data, and that are the result of a predictable process.

Many of our organizations, and individual members of these organizations, have participated in previous discussions at the Consumer Product Safety Commission ("Commission") on these and related issues and have provided information and evidence to the Commission. Please find attached a copy of a letter sent on January 30 that many of our organizations endorsed providing earlier comments with respect to the non incidence of lead in fabrics. Our comments below will elaborate and expand on those earlier comments and data that have been provided to the Commission.

A. Section 101 Determinations of Certain Materials or Products NPR (74 FR 2433)

To summarize our earlier submissions, there is extensive testing data using XRF and wet chemistry and other ***overwhelming evidence to support the conclusion that textiles are inherently lead-free.*** Because of these data already submitted as part of these rulemakings, we urge the Commission in the final rules amending 16 CFR 1500 to recognize that textile

materials are inherently lead-free and to exempt textile materials from the lead-testing requirements.

The "Statement of Commission Enforcement Policy on Section 101 Lead Limits" that the Commission announced on February 6 and published on Feb 9 [http://www.cpsc.gov/ABOUT/Cpsia/101lead.pdf] paves the way for such an exemption. While we are pleased that the Commission has moved in this direction, we urge the Commission to move quickly to publish final rules that make clear that textile materials, whether they be made from natural or manufactured fibers, regardless of whether such materials are undyed, dyed or otherwise processed, are exempt from lead testing.

The lack of an articulated and comprehensive exemption for textiles in a final mandatory rule continues to create confusion and misunderstanding. Until there is a clearly articulated finding by the Commission exempting textiles pursuant to the authorities under the Consumer Product Safety Improvement Act (CPSIA), the business community, and in particular small businesses and home crafters, will not have the predictability they need.

Accordingly, we ask that the Commission use the rulemaking, published in the ***Federal Register*** on January 15, 2009 to exempt from lead testing all textile materials, whether they be made from natural or manufactured fibers, regardless of whether such materials are undyed, dyed or otherwise processed. Similarly, we ask that the Commission extend this exemption to any children's article, including apparel and other children's products, which are made entirely out of exempt textile materials.

Specifically, we urge that the proposal "children's products containing lead; proposed determinations regarding lead content limits on certain materials or products" which was in the ***Federal Register*** Jan 15, 2009 , pp. 2433-2435 be modified in the following way.

Remove the references to textile materials in section 1500.91 (c) and include all textile references in a new 1500.91 (e) that would read:

(e) The following textile materials do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA, regardless of whether such materials are dyed, processed, or otherwise finished or altered:

> *(1) Natural fibers, including, but not limited to, cotton, silk, wool, hemp, rubber, and flax (linen).*
>
> *(2) Manufactured/man-made fibers, including, but not limited to, polyester, nylon, acrylic, spandex, olefin (polypropylene), rayon, acetate, and lyocell.*

(3) Products or components made exclusively from natural or manufactured/man-made fibers, or any blend thereof, including, but not limited to, yarns, fabrics, threads, trims, laces, elastic, ribbons, rope, string, legwear, footwear, garments, toys, travel goods, home furnishings and industrial fabrics.

We believe such a section would greatly clarify the level of exemption in a manner consistent with the data.

We also note that the CPSC enforcement guidance excludes metallic threads. We are unaware of any metallic threads that present a lead hazard. There are several basic processes that are used in manufacturing metallic fibers. Lead is not introduced in any case. The most common is the laminating process, which seals a layer of aluminum between two layers of acetate or polyester film. These fibers are then cut into lengthwise strips for yarns and wound onto bobbins. The metal can be colored and sealed in a clear film, the adhesive can be colored, or the film can be colored before laminating. There are many different variations of color and effect that can be made in metallic fibers, producing a wide range of looks. Metallic fibers can also be made by using the metalizing process. This process involves heating a non-lead metal until it vaporizes then depositing it at a high pressure onto the polyester film. This process produces thinner, more flexible, more durable, and more comfortable fibers. Finally, some metallic threads are actually dyed polyester or nylon filament and either contain no metals or only trace amounts of metals. In these cases, "metallic" is a term referencing a metallic appearance and not raw material content.

As a final note, we continue to urge the Commission to move quickly with respect to component-level testing. Many children's articles that contain textiles may also contain other components for which lead testing is appropriate. However, unless there is a clear path to compliance that involves testing at the component level or supplier certifications, which can be combined with the textile exemptions we are seeking herein, the relief for textiles will be limited to only a few children's products.

B. Section 101(b) Exclusions (74 FR 2428)

The Commission proposal articulates a process through which the Commission can make future determinations that materials or products may be excluded because they are inherently lead-free or contain lead below the statutory limits. The Commission is also proposing a process to exclude products or materials where lead in such products or materials will not result in the absorption of any lead into the human body during normal and reasonably foreseeable use and abuse by a child, or otherwise result in adverse impact on public health or safety.

Among other things, this process will help enable a component, even if it potentially contains lead, not to be deemed to present a risk because the lead is not bio-available to the child. Simply put, if there is detectable lead in the

product, but it is not accessible because it is not soluble in saliva or able to be ingested or inhaled, it is not a risk because there is little or no chance of exposure. Thus, if there is no or very little exposure, then the lead, even if detectable, poses minimal risk or no risk to the child.

We strongly support such a process and applaud the Commission for taking steps to articulate the rules through which this process can be followed. We would strongly urge as well that the Commission (a) articulate a timeline for the process, (b) announce how individual petitions will be publicly disclosed and (c) advise how companies can protect business-confidential information. These modifications would ensure more predictability and confidence in the process so that petitioners and other stakeholders could better track efforts to secure exclusions.

C. Section 101 Inaccessible Component Parts (74 FR 2439)

The Commission proposal articulates guidelines regarding inaccessible components. The statute defines inaccessibility narrowly to occur when a "component part is not physically exposed through a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product." The statute further disqualifies barriers such as paint, coatings, or electroplating.

In its proposal, the Commission seeks guidance as to whether "fabric coverings could be used as a barrier that would make lead within the product inaccessible to a child."

We strongly support a determination that fabric be classified as a barrier. The plain reading of the statute supports this conclusion since fabric would render a covered or encased component not physically exposed.

Moreover, there is precedence for this with respect to fabrics by the Commission. In a Jan 9, 2006 document, by Thomas and Brundage of the Commission, "Quantitative Assessment of Potential Health Effects from the Use of Fire Retardant (FR) Chemicals in Mattresses" (for additional information, please see: http://www.cpsc.gov/library/foia/foia06/brief/matttabd.pdf), which was part of a briefing package for the flammability standard for mattresses, the CPSC reported the results of quantitative assessment of potential risk of health effects from FR chemicals that could be incorporated in mattresses. Migration/exposure assessment studies on FR-treated mattress barriers were conducted, including aging studies and all applicable routes of exposure (i.e., oral, dermal and inhalation) were evaluated. The results of the exposure and risk assessment were used to determine products that are not expected to pose any appreciable health risk to consumers because the lead in internal components is inaccessible.

Moreover, we urge the Commission to explore other inaccessibility scenarios. If lead in a component is not accessible to a child through normal, foreseeable use

(i.e., whether children using the product could be exposed to the lead that is present), then the Commission should consider the lead inaccessible and the component should not have to be tested for total lead content.

By incorporating these modifications and clarifications into the final rules, the Commission can help reduce costly, unnecessary testing and compliance burdens of products and components that are inherently lead free or contain lead in amounts that are clearly below the lowest CPSIA lead limit and instead focus critical resources on products and components where there is the most risk.

Thank you for your attention to this matter.

Sincerely,

American Apparel & Footwear Association (AAFA)
American Fiber Manufacturers Association (AFMA)
American Manufacturing Trade Action Coalition (AMTAC)
American Specialty Toy Retailing Association (ASTRA)
California Fashion Association (CFA)
Coalition for Safe and Affordable Childrenswear, Inc.
Craft & Hobby Association (CHA)
Craft Yarn Council of America
ETAD – The Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers
Fashion Accessories Shippers Association (FASA)
Fashion Incubators Association
Gemini Shippers Association
Georgia Traditional Manufacturers Association (GTMA)
Halloween Industry Association (HIA)
Handmade Toy Alliance (HTA)
INDA, Association of the Nonwoven Fabrics Industry
International Sleep Products Association (ISPA)
Juvenile Products Manufacturers Association (JPMA)
National Association of Resale & Thrift Shops (NARTS)
National Cotton Council (NCC)
National Council of Textile Organizations (NCTO)
National Retail Federation (NRF)
National School Supply & Equipment Association
National Textile Association (NTA)
Outdoor Industries Association (OIA)
Real Diaper Industry Association (RDIA)
Retail Industry Leaders Association (RILA)
Rubber and Plastic Footwear Manufacturers Association (RPFMA)
SEAMS Association
Secondary Materials and Recycled Textiles (SMART)
Specialty Graphic Imaging Association (SGIA)
Sporting Goods Manufacturers Association (SGMA)
The Hosiery Association (THA)
Toy Industry Association (TIA)
Travel Goods Association (TGA)
U.S. Association of Importers of Textiles and Apparel (USA-ITA)

ATTACHMENT

January 30, 2009

Mr. Todd Stevenson
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East-West Highway,
Bethesda, Maryland, 20814

REF: Follow Up to January 22 Textiles Meeting

Dear Mr. Stevenson:

Thank you for providing an opportunity to present data and scientific evidence regarding the incidence of lead in textiles, apparel, and other children's products containing textiles during a public meeting on January 22, 2009 at the headquarters of the Consumer Product Safety Commission (CPSC).

To sum up, our panel of textile, apparel, and retail scientific and compliance experts presented information that showed the lack of lead in textiles using XRF and wet chemistry data and explained the science of textile fibers and production of finished textiles from those fibers that explains why lead is not detected in textile materials. Specifically, we presented the following results in summary:

- The XRF and wet chemistry testing correlation was very high in data sets where both tests were used on the same components.

- XRF and wet chemistry test results of more than 3000 garments representing a wide range of natural, manufactured/man-made fiber and blended fabrics, fabric constructions, and processes failed to reveal any samples where lead was detected in the textile components at a level greater than 300 ppm. In fact, in all but four cases, test results confirmed a non-detect level.

- In a few cases, XRF testing, followed up with wet chemistry, did detect lead in amounts exceeding 100ppm, 300ppm, or 600ppm in certain metal and plastic accessories, such as buttons, zippers, snaps, and rhinestones. The incidence of these failures was extraordinarily low – representing less than 5 percent of all samples. Moreover, in many cases, it was only *part* of the component that triggered a positive lead result. For example, in one case, a garment that otherwise passed was deemed to fail because a single sub component of the zipper component – the zipper stop – failed. The relatively rare occurrence of lead in accessories does not account for the fact that new production is showing near 100 percent compliance, even in the accessories.

- Lead is not found in natural and manufactured textile fibers or introduced in the variety of textile processes used to produce thread, yarns, fabrics, garments or other textile products. Preparation for dyeing and finishing essentially removes all non-fiber chemical, including metals. No chemicals intentionally containing lead are intended to be used for coloration of apparel textiles. To prove this point to the CPSC staff, laboratory tests, based on historical information that was never commercialized, were used to try to deliberately create a lead mordant dyed sock. These tests failed to achieve satisfactory color, thereby demonstrating why lead is not an effective mordant to fix a dye to fibers. There can be traces of lead as a contaminant with the dye formulation but lead is never part of the dye molecule that colors the fiber. Data were presented that showed that even if trace amounts of lead were to be in a dye formulation, wet chemistry tests of the dyed threads still yield a non-detect lead level at the thread level.

Given this strong evidence confirming the zero risk of lead in textiles, and the extremely low risk of lead in accessories related to garments, we would like to make the following recommendations:

First, we ask that the Commission use the ongoing rule making, published in the ***Federal Register*** on January 15, 2009 to exempt from lead testing of all textile materials, whether they be natural or manufactured, regardless of whether such materials are dyed or otherwise processed. Similarly, we ask that the Commission extend this exemption to any children's article that is made entirely out of exempt textile materials.

Specifically, we urge that the proposal "children's products containing lead; proposed determinations regarding lead content limits on certain materials or products" which was in the ***Federal Register*** Jan 15, 2009 , pp. 2433-2435 be modified in the following way.

Remove the references to textile materials in section 1500.91 (c) and include all textile references in a new 1500.91 (e) that would read:

(e) The following textile materials do not exceed the 600 ppm or 300 ppm lead content limits under section 101(a) of the CPSIA, regardless of whether such materials are dyed, processed, or otherwise finished or altered:

(1) Natural fibers, including, but not limited to, cotton, silk, wool, hemp, rubber, leather, and flax (linen).

(2) Manufactured/man-made fibers, including, but not limited to, polyester, nylon, acrylic, spandex, olefin (polypropylene), rayon, acetate, and lyocell.

(3) Products or components made exclusively from natural or manufactured/man-made fibers, or any blend thereof, including, but not limited to, yarns, fabrics, threads, trims, laces, legwear, footwear, garments, toys, travel goods, home furnishings and industrial fabrics.

Second, since the test data presented showed a strong correlation between XRF testing and wet chemistry test data, we urge the CPSC to move quickly to authorize the use of XRF technology to support testing that can be used as the basis of certifications on general conformity certificates.

Third, an exemption for textile components will help relieve testing burdens for companies making products that rely upon textiles. We believe this burden can be reduced further, without any harm to public safety, through the authorization of component level testing. To help companies source and ship compliant products, the need for component testing is crucial. This will allow end product manufacturers to create a supplier matrix early in the manufacturing process, and develop relationships that will support the CPSIA requirements. Of course, many companies will supplement component testing by conducting periodic and random audits of end products, and by relying upon other ongoing validation and certification procedures they may use. Relying solely upon testing after production is complete, as is the case with the current system, will only increase costs and the adverse impact of non-compliance, and not allow the manufacturer or importer enough time to take corrective actions. Thus, we urge the Commission to move quickly to adopt these needed reforms, including clear and practical definitions for key terms such as components and batches, at the earliest possible moment.

Fourth, we note that the comment period (i.e., comments are due February 17) on several of these rule makings is going to continue past the February 10 date when the new lead rules are currently scheduled to take effect. This issue was discussed briefly during our meeting on January 22. Given that final regulations will not be promulgated, much less digested, understood and implemented, until well after the February 10 date, we believe a delay in the implementation of the February 10 lead limits is appropriate. We note that a coalition led by the National Association of Manufacturers recently submitted a letter, co-signed by many of the organizations and entities listed below, that urges a delay until August 14, 2009, or 90 days after the publication of final rules, whichever comes later. We strongly support that request.

Finally, we refer back to the letter dated November 14 by Ms. Cheryl Falvey, CPSC General Counsel, relating to a "Request for Reconsideration of Application of the Consumer Product Safety Improvement Act's (CPSIA) Limit on Lead Permissible in Children's Products in Regard to Unsold Inventory as of February 2009". That letter advised the respondent to petition the Commission directly for relief to be able to sell inventory that cannot be brought into compliance by the February 10 deadline. In our presentation on January 22, we provided overwhelming evidence that textiles and the majority of accessories in garments present no risk

of lead exposure. At the same time, we note that there may be isolated cases of lead detection in some accessories in inventory. This is not surprising since new lead standards enacted by the CPSIA on August 14, 2008 were not known a year earlier when buying decisions for those accessories were being made. Although testing and compliance requirements for new accessories will achieve significantly improved compliance rates moving forward, it is simply not possible to retroactively bring the affected inventory into full compliance with either the 600 ppm or the 300 ppm limit.

Given these facts, and the data supporting our contention that there is very low incidence of lead in inventories, we herewith petition the Commission, on an emergency basis, to permit the sale of such items out of inventory.

Thank you for your attention to this matter.

Sincerely,

American Apparel & Footwear Association (AAFA)
American Fiber Manufacturers Association (AFMA)
American Manufacturing Trade Action Coalition (AMTAC)
California Fashion Association (CFA)
Coalition for Safe and Affordable Childrenswear, Inc.
Craft Yarn Council of America
ETAD – The Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers
INDA, Association of the Nonwoven Fabrics Industry
International Sleep Products Association
National Cotton Council (NCC)
National Council of Textile Organizations (NCTO)
National Retail Federation (NRF)
National Textile Association (NTA)
Outdoor Industries Association (OIA)
Retail Industry Leaders Association (RILA)
Secondary Materials and Recycled Textiles (SMART)
Specialty Graphic Imaging Association (SGIA)
Sporting Goods Manufacturers Association (SGMA)
The Hosiery Association (THA)
Travel Goods Association (TGA)
U.S. Association of Importers of Textiles and Apparel (USA-ITA)

Stevenson, Todd

From: Steve Lamar [slamar@apparelandfootwear.org]
Sent: Thursday, February 19, 2009 5:28 PM
To: Steve Lamar; Lead Determinations; Lead Accessibility; Lead Exclusions
Cc: Stevenson, Todd; Rebecca Mond; Hatlelid, Kristina
Subject: FW: Joint Submission by Coalition of Trade Associations Regarding Lead and Textiles in Connection with Feb 17 Comment Requests - 4 additional signatories
Attachments: Multi Association Follow Up Letter Feb 17.doc

Please find attached a revised submission to add in 4 additional signatory trade associations. Those four trade associations are:

Craft & Hobby Association (CHA)
Halloween Industry Association (HIA)
Juvenile Products Manufacturers Association (JPMA)
Toy Industry Association (TIA)

Respectfully Submitted on behalf of this coalition by:

Steve Lamar,
American Apparel and Footwear Association

From: Steve Lamar
Sent: Tuesday, February 17, 2009 6:04 PM
To: 'Sec101Determinations@cpsc.gov'; 'Sec101InaccessibleRule@cpsc.gov'; 'Sec101Exclusions@cpsc.gov'
Cc: 'tstevenson@cpsc.gov'; Rebecca Mond; 'Hatlelid, Kristina'; Steve Lamar
Subject: Joint Submission by Coalition of Trade Associations Regarding Lead and Textiles in Connection with Feb 17 Comment Requests

Please find attached a joint submission by a coalition of 30 trade associations regarding the 3 comment periods that close today. The joint letter contains information for each of the Federal Register notices so please make sure a copy is provided for each docket. Thanks.

Associations signing on to this letter include:

American Apparel & Footwear Association (AAFA)
American Fiber Manufacturers Association (AFMA)
American Manufacturing Trade Action Coalition (AMTAC)
American Specialty Toy Retailing Association (ASTRA)
California Fashion Association (CFA)
Coalition for Safe and Affordable Childrenswear, Inc.
Craft Yarn Council of America
ETAD – The Ecological and Toxicological Association of Dyes and Organic Pigments Manufacturers
Fashion Accessories Shippers Association (FASA)
Fashion Incubators Association
Gemini Shippers Association
Handmade Toy Alliance (HTA)
INDA, Association of the Nonwoven Fabrics Industry
International Sleep Products Association (ISPA)
National Association of Resale & Thrift Shops (NARTS)

National Cotton Council (NCC)
National Council of Textile Organizations (NCTO)
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Sporting Goods Manufacturers Association (SGMA)
The Hosiery Association (THA)
Travel Goods Association (TGA)
U.S. Association of Importers of Textiles and Apparel (USA-ITA)

Respectfully Submitted on behalf of this coalition by:

Steve Lamar,
American Apparel and Footwear Association

BEFORE THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION

JOINT COMMENTS
OF
AMERICAN HONDA MOTOR CO., INC.,
AMERICAN SUZUKI MOTOR CORPORATION,
ARCTIC CAT INC.,
BOMBARDIER RECREATIONAL PRODUCTS INC.,
KAWASAKI MOTORS CORP., U.S.A.,
POLARIS INDUSTRIES INC., and
YAMAHA MOTOR CORPORATION, U.S.A.

Children's Products Containing Lead: Proposed Interpretative Rule on Inaccessible Component Parts	)	**SECTION 101 INACCESSIBLE COMPONENT PARTS**
74 Fed. Reg. 2,439 (Jan. 15, 2009)	)	

February 17, 2009

I. INTRODUCTION

American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc. and Yamaha Motor Corporation, U.S.A. (the "Companies")[1] submit these comments in response to the Consumer Product Safety Commission's ("CPSC") proposed interpretative rule regarding inaccessible component parts.[2] The rule proposed by the CPSC fails to give effect to all of the language of the CPSIA. In particular, the proposed rule fails to take into account that accessible parts are only those that are accessible "through normal and reasonably foreseeable use and abuse," which is in turn defined to include "swallowing, mouthing, breaking, or other children's activities, and the aging of the product." In order to give effect to the CPSIA's language, the CPSC should focus on items that can be swallowed or put in a child's mouth. If the Commission chooses not to take this approach, at a minimum, it should include a human factors related test in the interpretative rule to determine the areas of a product that are accessible to a child "through normal and reasonably foreseeable use and abuse" before utilizing the accessibility probe described in the proposed rule to determine what parts in those identified areas are actually accessible. By including either of these options in the proposed rule, unnecessary testing will be eliminated without any increased risk of lead ingestion by children.

II. RELEVANT STATUTORY PROVISIONS

Section 101(a) of the CPSIA establishes a new limit of 600 ppm on lead content in any part of a children's product. Section 101(b)(2)(A) of the Act provides that this lead content limit

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[1] The Companies are manufacturers, importers and/or distributors of youth model all-terrain vehicles ("ATVs"), intended for children 12 years of age and younger. Four of the Companies – American Honda Motor Co., Inc., American Suzuki Motor Corporation, Kawasaki Motors Corp., U.S.A., and Yamaha Motor Corporation, U.S.A. – also manufacture, import and/or distribute off-road motorcycles intended for children 12 and younger.

[2] These comments are supported by two technical reports prepared by Applied Safety and Ergonomics, Inc. in Ann Arbor, Michigan, copies of which are attached at Appendices A and B.

shall not apply to any component part of a children's product that "is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission." The Act further states that reasonably foreseeable use and abuse shall include "swallowing, mouthing, breaking, or other children's activities, and the aging of the product."

The Commission has taken the position that the statute defines accessibility as physical contact with lead containing parts, apparently based on the example in the law that states that a component is not accessible if it "is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through normally foreseeable use and abuse of the product." However, this is only an example. The statute does not indicate that this is the only circumstance in which a component part is not accessible to a child through normal and reasonably foreseeable use and abuse of the product and the language of the law suggests a broader scope to defining inaccessibility. First, the statute commits the question of the accessibility of particular components through normal and reasonably foreseeable use and abuse to a determination by the Commission. In addition, by defining reasonably foreseeable use and abuse as including "swallowing, mouthing, breaking or other children's activities," the statute clearly provides that a human factors analysis of how a child interacts with the product is to be part of that determination, and its language relating to swallowing and mouthing suggests that the proper inquiry for accessibility should focus on whether parts are ingestible or mouthable. To the extent that the proposed interpretative rule ignores the reference to swallowing and mouthing and focuses only on physical contact in defining accessibility, we suggest that this interpretation is inconsistent with the law as written and request that the Commission reconsider it in light of the reference to mouthing, swallowing, etc.

III. COMMENTS ON PROPOSED GUIDANCE FOR INACCESSIBLE COMPONENT PARTS

A. Interpretation of "Accessible" Components

As previously noted, Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of the product. Section 1500.87(b) of the proposed interpretative rule contains a purported restatement of this statutory provision (i.e. "Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child") which erroneously omits the essential qualification "through normal and reasonably foreseeable use and abuse of such product." This omission of a fundamental component in the statutory calculus for determining accessibility infects the entire proposed interpretative rule. For example, the preamble states that "the CPSIA specifies that accessibility is defined as physical contact with lead-containing component parts" while likewise omitting the key qualifier "through normal and reasonably foreseeable use and abuse" of the product. 74 Fed. Reg. at 2440. While the statute contains no such specification of general applicability, this mistaken reading in turn has led the Commission to wrongly accept a staff recommendation to consider that an accessible component of a children's product "is one that a child may touch," and that an inaccessible component part is one that is located inside the product and "not capable of being touched" by the child (emphasis added). In fact, the correct interpretation, in view of the omitted statutory language, is to consider that an accessible component part is one that a child can mouth or ingest as a result of or during normal and reasonably foreseeable use and abuse of the product or, in the alternative, as one a child will actually touch during such use or abuse. An inaccessible component part is conversely one that a

child cannot mouth or ingest or alternatively does not touch during normal and reasonably foreseeable use and abuse of the product.

When properly interpreted, the determination of whether a component part is accessible and thus subject to the lead limits necessarily involves a human factors analysis of how children 12 or younger interact with the product during normal and reasonably foreseeable use and abuse. This is further confirmed by the fact that the statute specifically defines "reasonably foreseeable use and abuse" as including various children's behaviors (i.e. "swallowing, mouthing, breaking, or other children's activities") in interacting with the product. Thus, as the proposed rule recognizes, use and abuse testing provide one measure of breakage that can lead to ingestion or exposure.

The improper interpretation that an "accessible" component is any part that a child may conceivably touch may not make a significant difference for small items where a child will foreseeably contact all external components on a recurrent basis during use and abuse of the product. However, it results in a sweepingly over-broad application of the lead content requirements to large, complex children's products such as youth ATVs and off-road motorcycles with literally hundreds of different parts that conceivably could be touched but which a child will in fact never ingest, swallow, or contact during reasonably foreseeable use and abuse of the product.

This overbroad interpretation will result in the lead content requirements applying to hundreds of parts that a child will not contact when using or even abusing the product and which thus present no risk of lead exposure. By definition, if a child cannot contact a part, the issue of ingestion or swallowing is irrelevant, and, if he or she can contact it but not swallow or mouth it, the harm that Congress sought to address is virtually not existent. Conversely, subjecting these

parts to the third party testing and certification requirements for lead content will impose substantial economic cost on the manufacturers with no commensurate safety benefit to consumers.

Further, this interpretation may ultimately result in discontinuance of these product lines because some of these parts are made from metal alloys which unavoidably contain small quantities of lead in excess of the CPSIA limits – although not in excess of the lead limits set forth in various European Union Directives for such alloys in motorized vehicles and motorcycles. (The lead in these metal alloy components is unavoidable either because small amounts of lead are needed for safe operation or functionality of the part, or because lead cannot feasibly be removed from recycled materials.)[3] By potentially making new youth ATVs unavailable to consumers, this interpretation may ultimately lead to greater inappropriate use by children 12 and under of adult-sized ATVs on which they are at substantially greater risk of serious acute injury or death.

B. Test Methods

This misreading of the lead content requirements as applying to any component part that a child might conceivably touch rather than component parts that a child will swallow or ingest or, in the alternative, actually touch during normal and reasonably foreseeable use and abuse of the product has likewise led the Commission to propose an inappropriate test method for determining "accessibility." The Commission is proposing that the accessibility probe specified for sharp points or edges under 16 C.F.R. §§1500.48 and 1500.49 be used to determine the

[3] Based on analysis circumstances and European Union Directives, CPSC has issued an interim final rule exempting components made of these same metal alloys in electronic devices from the CPSIA lead content limits on the grounds that the presence of lead is necessary for proper functioning of the components and substitution of the lead is not yet technologically feasible. 74 Fed. Reg. 6990, 6992 (Feb. 12, 2009).

accessibility of lead-containing component parts of children's products. The component part would be considered accessible if it is contacted by any portion of the specified segment of this accessibility probe during a one-time touch test.

The sharp point test is designed to identify potential risks of acute injury in the form of puncture or laceration from a single touch of the point. 16 C.F.R. §1500.48(a). The test method for sharp edges is likewise intended to identify potential risks of acute injury in the form of laceration or avulsion from a single touch of the edge. 16 C.F.R. §1500.49(a). In each case, the potential acute injury can or will occur from the contact itself with the sharp point or edge.

In contrast, the lead content limits of the CPSIA are aimed at preventing the hazard of exposure to lead, primarily through chronic ingestion or absorption. While lead poisoning may occur from the one-time ingestion of a small object containing lead, it does not result from a one-time touching of an in-place component part containing lead. The Commission's proposed use of a test method for determining potential risks of acute injury in the form of puncture, laceration or avulsion resulting from a single touch to determine the potential risk of chronic lead exposure from recurrent touching and hand-to-mouth ingestion of lead is neither technically nor scientifically appropriate.

Consequently, the proposed rule should be changed to incorporate a human factors related component to ensure that only things that will be swallowed or mouthed, or, in the alternative, touched during normal and reasonably foreseeable use and abuse are deemed accessible. For example, as outlined above, human factors experts would likely conclude that the entire surfaces of certain smaller items would be accessible (ingestible, mouthable or touchable); whereas, many portions of a youth ATV such as suspension and engine components would not be considered accessible because, although capable of being touched, it is simply not

foreseeable that they would in fact be touched by children 12 and under or otherwise accessible in a manner that would allow them to be mouthed or swallowed. If the Commission chooses to base its definition of accessibility on touching rather than swallowing or mouthing components, including a human factors component in the proposed rule would still allow the use of the accessibility probe, but its use would be limited to those areas of a product that a child will contact during normal and reasonably foreseeable use and abuse. In that circumstance, combining appropriate human factors analysis of foreseeable use and abuse with the use of an accessibility probe is essential to give proper effect to the express statutory factors established by Congress, and would more than adequately protect children from the risks of lead exposure while eliminating the cost and burden of unnecessary testing of component parts that simply will not be swallowed, mouthed, or touched by children in reasonable foreseeable circumstances.[4]

IV. ACCESSIBILITY OF COMPONENTS DURING REASONABLY FORESEEABLE USE AND ABUSE OF YOUTH ATVS AND OFF-ROAD MOTORCYCLES

Youth model ATVs are intended and recommended for use by children from 6 to 12 years of age. Small models of off-road motorcycles are similarly intended for use by children in this same age range.

As an initial matter, it bears emphasis that we are not aware of any scientific data showing any ingestion or absorption by children ages 6 to 12 of lead from component parts of youth model ATVs or small model off-road motorcycles during normal and reasonably foreseeable use and abuse of these products. Further, the scientific literature shows that children

[4] We agree that the Commission's proposed use of the test methods in 16 C.F.R. §§1500.50 through 1500.53 for simulating normal use and reasonably foreseeable damage or abuse of articles is appropriate for determining whether any components may become detached in a shape or size which is ingestible or mouthable by younger children. In addition, the Commission has correctly determined that the intentional disassembly or destruction of products by children, including use of tools, should not be considered in evaluating products for accessibility of lead-containing components.

ages 6 to 12 do not exhibit the types of compulsive and indiscriminate "mouthing" and "swallowing" behaviors that have been observed in younger children 3 years of age and under. See S. Young, T. Rhoades, J. Diebol, "Comments on Consumer Product Safety Improvement Act (CPSIA) Section 101 Lead in Children's Products: All-Terrain Vehicles and Off-Highway Motorcycles" (October 31, 2008) at 1-4 (attached hereto as Appendix A). Hand-to-mouth behaviors are also expected to be infrequent for children ages 6 to 12. See S. Young, R. Shah, T Rhoades, J. Diebol, "Comments on Consumer Product Safety Improvement Act (CPSIA) Section 101 Inaccessible Component Parts: All-Terrain Vehicles and Off-Highway Motorcycles," (February 17, 2009) at 7 (attached hereto as Appendix B).

In addition, ATVs and off-road motorcycles are gasoline-containing products that typically are not stored in the home. Given their value and mobility, these vehicles are normally stored in secure locations such as sheds or garages to which children 3 and under should not (and are not reasonably expected to) have unsupervised access. Moreover, all ATV and off-road motorcycle operators, including children 12 and under, are advised in on-product labels and in owner's manuals and training courses to always wear protective clothing and gloves during operation. Nonetheless, it is reasonably foreseeable that at least some children age 6 through 12 may choose not to wear gloves when operating youth model ATVs and off-road motorcycles.

In determining parts that are accessible, human factors experts look at parts of a product that children are instructed to touch to utilize the product; parts that, although not instructed to touch, it is foreseeable that a child will touch while utilizing a product and other parts that a child may reasonably be expected to contact while on or around the product. With regard to youth ATVs, human factors experts have concluded that children are instructed to touch things such as the handgrips and brake and throttle levers as part of the normal operation of the vehicle. They

have also determined that children, although not instructed to do so, would also touch things like the choke knob and the pull cord starter. Finally, while sitting on or standing around an ATV, children would touch things like the fenders and gas cap.

Conversely, human factors experts have concluded that it is not foreseeable that children would touch things like the engine, suspension, exhaust pipe. As an initial matter, it is not ergonomically comfortable, or in most cases even possible, to come in contact with these component parts when the operator is in the riding position. Furthermore, owner's manuals and trade association safety publications and training materials specifically instruct parents to be responsible for both pre-ride checks and periodic maintenance of the vehicle. Children 6 through 12 therefore cannot reasonably be expected to engage in repair or maintenance of the above type of components, which are in the vehicle's sub-structure, during normal or reasonably foreseeable use and abuse. Accordingly, they would not be deemed accessible and subject to the probe.

V. CONCLUSION

The Companies appreciate the opportunity to submit these comments and look forward to working with CPSC in the implementation of the CPSIA lead content requirements. However, the Commission's proposed interpretation of "accessible" components erroneously fails to focus on analysis and consideration of whether a child will have contact with a component through normal and reasonably foreseeable use and abuse of the product, let alone on whether that contact will occur in a manner that can result in mouthing or ingestion. In addition, CPSC inappropriately proposes to identify accessible components by using the "single touch" test method for sharp points and edges that present a hazard of acute injury from a potential single contact without any analysis of those components that it is foreseeable that a child will actually touch. If touching is to be the standard, adding a human factors element to determine the areas

of a children's product that it is foreseeable that a child will actually touch, before using the accessibility probe will give full effect to the language of the CPSIA while ensuring that children are protected from lead exposure during normal and foreseeable use and abuse of the product.

Respectfully submitted,

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APPENDIX A

Comments on Consumer Product Safety Improvement Act (CPSIA) Section 101 Lead in Children's Products: All-Terrain Vehicles and Off-Highway Motorcycles

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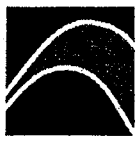

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Introduction

Applied Safety and Ergonomics, Inc. (ASE) was contacted by counsel representing all-terrain vehicle (ATV) and off-highway motorcycle (OHM) manufacturers to consider normal and reasonably foreseeable use and abuse of youth ATVs and OHMs as part of an assessment related to Section 101 of the Consumer Product Safety Improvement Act ("the Act"). Specifically, we were asked to consider swallowing and mouthing behaviors as those activities are identified in Sections 101(b)(1)(A) and 101(b)(2)(A) of the Act. Contact with parts resulting from breakage is excluded from our analysis due to the durable nature and construction of these products, and the fact that they are not intended for children under age 6.

Our analysis considers mouthing and swallowing behaviors based on existing literature. This analysis clearly shows that an ATV or OHM is qualitatively different from the types of objects that have been identified in the literature as being a concern for child mouthing behaviors. In addition, the literature shows that children ages 6 through 12 do not mouth objects in the environment in the way or to the same degree as do children ages 3 years and younger.

Review of Literature Regarding Child Swallowing and Mouthing

The general literature on child development shows that children instinctively exhibit rooting and sucking behaviors immediately after birth. Mouthing and sucking behaviors continue throughout childhood for both nutritive (e.g., breast-feeding) and non-nutritive (e.g., pacification) reasons (Turgeon-O'Brien, 1996). Because of this natural tendency for children to mouth objects in the environment, research has been conducted to identify the types of objects that children mouth and the potential risks associated with such behaviors. Research has also sought to identify the extent and pattern of mouthing behaviors of children across different ages. These studies support two general propositions as they relate to ATVs and OHMs:

1. An ATV or OHM is qualitatively different from the types of objects that have been identified in the literature as being a concern for child mouthing behaviors.
2. Children age 6 through 12 years do not mouth objects in the environment in the way or to the same degree as do children ages 3 years and younger.

These two propositions will be addressed individually in the following sections.

Types of Objects Mouthed by Children

Several studies have examined child mouthing behaviors (i.e., sucking, licking, chewing, etc.) with a view toward identifying risks to children from ingestion of objects. These studies have identified the types of objects that children mouth in naturalistic settings. For example, Norris and Smith (2002) identified a number of items that were mouthed by children ages 5 years and below (see Table 1). Similarly, Juberg et al. (2001) identified a similar list of objects mouthed by children ages three years and below (see Table 2).

Table 1. Items mouthed by children in Norris and Smith (2002)

Building block	Hair band/clip/scrunchie	Bath toy
Pen/pencil	Fork and toy fork	Brush/hairbrush
Spoon and toy spoon	Modeling clay	Buttons
Toy figures and accessories	Necklace and toy necklace	Toy car wheel
Play food	Straws	Dice/domino
Ball	Clothes peg	Hat bobbles
Remote control (TV, CD player)	Fridge magnet	Pencil sharpener
Toothbrush	Fur	Toy pliers
Paper	Bamboo cane/stick/ lollipop stick	Rope
Baby wipes/tissues		Seashell
Crayon	Cassette tape, reel of tape	Soap
Jigsaw piece	Toy screwdriver/ screw	Soil
Stacking cups/rings	Comb	Tape measure
Balloons	Dressing gown belt	Cable tie
Doll accessories	Emery board/nail file/sandpaper	Cafetiere plunger
Sponge		Can
Cuddly toy	Knife and toy knife	Candle
Key and toy key	Lip salve/lipstick/ make-up	Chalk
Pen top	Pebble	Toy drill bit
Coin and toy coin	Scissors	Toy fire engine ladder
Straps/cords	String	Toy fishing rod
Chocolate wrapper/crisp packet/cake cup/packet	Zip	Gasket
	Ball bearings/ marbles	Pastry cutter
Cables (electrical, telephone, games controllers)	Coat hanger	Radiator cap
	Eraser	Rubber band
Bottle lids/tube lids/bottle tops e.g. shampoo, glue, toothpaste	Magnet	Shredded paper
	Badges	Syringe
Toy traffic lights	Beads	Toy bolt
Cloth	Cotton thread/wool	Toy fire extinguisher
Ring and toy ring	Laces	
Bag	Whistle	

Table 2. Items mouthed by children in Juberg et al. (2001)

Animals	Christmas tree beads	Newspaper
Balls	Christmas tree ornament	Nickel
Barn	Christmas lights	Paper (ate it)
Beads	Coat zipper	Pen and top of pen cap
Blocks	Cordless phone antenna	Pencil
Candy dispenser	Cotton swab	Pencil holder
Car	Crayon	Penny
Cups	Cup handle	Picture frame
Doll house figures	Diaper rash ointment tube	Piece of rubber
Keys	Dog food	Pine needles
Fence	Dog biscuit	Plastic bag
Play food	Dog bone (ate it)	Plastic end to blind cord
Rattle	Doll house figures	Plastic spoon
Rubber ducky	Egg carton	Playing card
Shapes	Electrical cord	Play money
Stack rings	Empty baby food jar and lid	Ponytail holders
Toy figures	Empty vitamin bottle	Scissors
Toy phone	Eraser	Sister's necklace
Toy thermometer	Extension cord	Small play fork
Trucks	Eyeglasses	Soda pop can
Tub toy	Eye piece of binoculars	Stroller handle
Wand	Foil	Stuffed animals
Action figure sword	Frosting tube top	Styrofoam peanuts
Adult necklace	Hairbrush	TV Remote control
Bar of soap	Highchair strap	Telephone
Barretts	Keys and key chain	Tissue
Battery	Lint	Toy truck wheels
Blanket	Lip balm	Toothbrush
Blue chalk (ate it)	Magnet	Toy cars/fire trucks
Bobby pin	Make-up brush	Twistie
Books	Marble	Vacuum hose attachment
Bowl	Marker and cap	Vanity cabinet knobs
Button	Molding clay	Wash cloth
Candy dispenser	Nail file	Wooden spoon
Car keys (metal part)	Nail polish bottle	Wrapping paper, ribbon
Chalk	Nail clippers	

These studies indicate that children may exhibit mouthing behaviors toward a variety of objects in the household. However, ATVs and OHMs are not on any of these lists and they are not qualitatively similar to the types of objects that are commonly mouthed by children. Unlike many of the household items on these lists, ATVs and OHMs do not naturally "afford" (i.e., lend themselves to) mouthing behaviors.

Mouthing Behavior as a Function of Age

Most studies on child mouthing behaviors have examined children ages three years and younger because these ages are the most susceptible to compulsive and indiscriminant mouthing. For example, Juberg et al. (2001) examined mouthing behavior of children ages 0 to 36 months and found that mouthing time for non-pacifier objects was significantly greater for children 0-18 months than for children 19-36 months. These authors concluded that their findings were "consistent with patterns of child development, which show a peak period for mouthing activity that is positively correlated with teething and negatively correlated with increased mobility" (p. 140).

Other studies have examined mouthing behavior of children up to age five. Tulve et al. (2002) employed a recursive partitioning algorithm to divide children into two age groups with regard to mouthing frequency: ≤24 months and >24 months. At ages greater than 24 months, mouthing behaviors were significantly less frequent than they were for younger children. Also consistent with previous findings, this study showed that "toys and hands were preferentially mouthed as compared to other body parts and household surfaces" (p. 264). Similar findings have been observed in other studies of children's mouthing behaviors (see Norris & Smith, 2002; EPA, 2002).

These studies, taken as a whole, indicate that younger children (i.e., under age 3) are significantly more likely to mouth a wide variety of objects in the environment, but the frequency of mouthing behaviors decreases significantly for older children (>3) and they become more discriminating about the types of objects they mouth. While there can be variability in the nature and frequency of mouthing behaviors across different children, the available literature shows that children ages 6 through 12 are not part of the age demographic that is prone to compulsive and indiscriminant mouthing of objects in the environment. Coupled with the notion that ATVs and OHMs are not objects that are likely to be mouthed (see discussion above), this literature indicates that it is extremely unlikely that children ages 6 to 12 would mouth ATVs and OHMs.

Conclusions

The literature reviewed clearly shows that an ATV or OHM is qualitatively different from the types of objects that have been identified in the literature as being a concern for child mouthing behaviors. ATVs and OHMs do not naturally "afford" (i.e., lend themselves to) mouthing behaviors. In addition, the literature indicates that children ages 6 through 12 do not mouth objects in the environment in the way or to the same degree as do children ages 3 years and younger. Based on the literature reviewed, we believe it is extremely unlikely that children ages 6 though 12 would mouth ATVs or OHMs during reasonably foreseeable use and abuse.

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Biography of the Authors

Stephen L. Young is a Senior Consultant at ASE. Dr. Young holds a Ph.D. in Engineering Psychology from Rice University and has lectured at Harvard University and the University of Michigan on topics including human error, warnings and safety communications and design of displays and controls. Prior to joining ASE, Dr. Young served as a Senior Research Associate at the Liberty Mutual Research Center for Safety and Health. Dr. Young has authored numerous publications related to warnings, hazard communication, and risk perception, and he has served as a reviewer for various scientific journals including Ergonomics, Applied Ergonomics, and the Journal of Safety Research. Dr. Young has served on the ANSI Committee Z535 on warning signs, labels, symbols, tags and colors and was a leading author of the new draft standard Z535.6 Standard for Safety Information in Product Manuals, Instructions and Other Collateral Materials.

Timothy P. Rhoades is a Senior Consultant and a founder of ASE. He is a professional engineer and certified professional ergonomist (CPE) specializing in human factors engineering and ergonomics. He also serves as an adjunct faculty member at the University of Michigan. His research, design, and consulting interests include occupational and consumer safety, product use behaviors, warnings, vehicle visibility, and human movement. He holds B.S.E., M.S.E., and Ph.D. degrees in Industrial and Operations Engineering from the University of Michigan. He has served as a member of several consensus standards committees involved with vehicle visibility, biomechanics, and other ergonomics and safety issues, and he served in a standards management role as a member of Standards Development Committee of the American Society of Safety Engineers. He currently serves on the American National Standards Institute (ANSI) Z535.6 Subcommittee on Product Safety Information in Product Manuals, Instructions, and Other Collateral Materials. He is a professional engineer and certified professional ergonomist (CPE). Dr. Rhoades is also a member of various professional societies, including the Human Factors Society, the Society of Automotive Engineers, the American Society of Safety Engineers, and the Institute of Industrial Engineers.

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APPENDIX B

Comments on Consumer Product Safety Improvement Act (CPSIA) Section 101 Inaccessible Component Parts: All-Terrain Vehicles and Off-Highway Motorcycles

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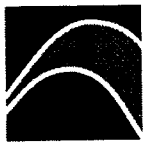

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Introduction

Applied Safety and Ergonomics, Inc. (ASE) was contacted by counsel representing all-terrain vehicle (ATV) and off-highway motorcycle (OHM) manufacturers to consider normal and reasonably foreseeable use and abuse of youth ATVs and OHMs as part of an assessment related to Section 101 of the Consumer Product Safety Improvement Act ("the Act"). Specifically, we were asked to evaluate the potential for children to touch parts of youth ATVs and OHMs that may contain lead and then to put their hands into their mouths. Contact with parts resulting from breakage is excluded from our analysis due to the durable nature and construction of these products, and the fact that they are not intended for children under age 6.

As it relates to lead exposure risks, there are three modes of ingestion by children that are typically considered in the literature: direct ingestion of lead-containing objects or lead paint, direct mouthing of objects that contain lead or are contaminated by lead dust, and handling of lead-containing objects with subsequent hand-to-mouth activity. This report focuses on the last of these modes in the context of potential lead exposure from children's use of ATVs and OHMs.[1] This report addresses the potential for children to touch parts of youth ATVs and OHMs and then to put their hands into their mouths.

In evaluating the potential for children to be exposed to lead from youth ATVs and OHMs as a result of hand-to-mouth behaviors, we have addressed several factors that have been considered and deemed relevant by the Consumer Product Safety Commission (CPSC), including the age and foreseeable behavior of children using youth ATVs and OHMs (Section 1) as well as patterns of use for these products (Section 2).[2]

Section 1 – Age and Foreseeable Behavior

A child's age is an important consideration in lead-related hazard evaluations because young children are more sensitive to the effects of lead than are adults. In addition, non-nutritive mouthing (NNM) behaviors in children vary as a function of age, and such behaviors can contribute to the risks of lead exposure. This section addresses the relationship between NNM behaviors and the use of youth ATVs or OHMs as a function of age.

Overview of Non-Nutritive Mouthing Behaviors

Children are born with the ability and desire to mouth and suck objects in the environment. Initially, this behavior is instinctive, adaptive and beneficial as it allows the infant to ingest food. Later in infancy (at about 7 to 8 months of age), it also serves to soothe teething pain and allows the infant to explore and sample their environment. As soon as infants gain sufficient control of their limbs, they start to exhibit mouthing

[1] The potential for direct ingestion and mouthing of ATV components are addressed in a previous report (Young et al., 2008).

[2] The CPSC considers a number of other factors when evaluating the potential hazard associated with products that contain lead, including: the total amount of lead in the product, the bioavailability of such lead, accessibility of the lead to children, the foreseeable duration of exposure, marketing, and the life cycle of the product (CPSC, 1998).

behaviors toward non-nutritive objects in their environment. The most common form of NNM behaviors in young children is mouthing objects such as blankets, pacifiers, toys, etc. as well as sucking on fingers, thumbs and toes. Another common mouthing behavior in older children (e.g., ages 3 to 16) is nail biting. Thumb sucking and nail biting will be considered separately in the next two sections. Effects of age and situational factors on the likelihood of these behaviors are discussed.

Thumb Sucking

Thumb sucking is the most common form of NNM in children under age six—far more common than mouthing behaviors with any other object, including pacifiers (Friman, Byrd & Oksol, 2001). For the purposes of this discussion, thumb sucking includes mouthing behaviors toward other fingers, but the thumb is more commonly sucked than are other digits.

Thumb sucking is almost universal in newborns and its absence is sometimes interpreted as an indication of physical or developmental problems. Thumb sucking is a common childhood behavior that is estimated to occur in 23% to 46% of children aged 1 to 4 years (Infante, 1976; Larsson & Dahlin, 1985; Traisman & Traisman, 1958). Other estimates suggest that thumb sucking occurs in approximately 50% of children between ages 2 and 3 years (Klackenberg, 1949; Ozturk & Ozturk, 1977; Popovich & Thompson, 1974). The incidence of thumb sucking declines as children age, and on average thumb sucking typically ceases at 3.8 years of age (Traisman & Traisman, 1958). It is estimated that only 25% of five year olds suck their thumbs (Klackenberg, 1949; Mahalski & Stanton, 1992). Honzik and McKee (1962) showed that thumb sucking decreased in a near-linear fashion as age increased (see Figure 1):

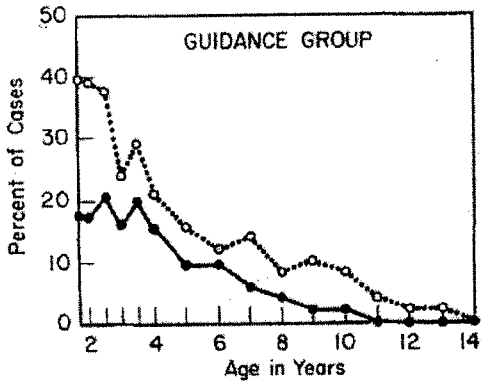

Figure 1. Thumb sucking as a function of age & gender (girls = dotted line; boys = solid line).

Most children cease sucking their thumb or fingers without intervention before they enter school (Friman & Schmitt, 1989; Traisman & Traisman, 1958). At the same time, children who continue to suck their thumbs after around age five often face discouragement and pressure from parents and their peers (Friman, McPherson, Warzak, & Evans, 1993; Sigelman & Begley, 1987). At about age five, doctors become concerned about a greater risk for dental malocclusion (Friman, 1987; Schmitt, 1987), digital

deformities (Reid & Price, 1984), and speech difficulties (Luke & Howard, 1983). As a result, the incidence of thumb sucking in children age five and above is significantly lower than with younger children (Mahalski & Stanton, 1992) and thumb sucking occurs with variable duration and intensity and mostly only when the child is alone (Ellingson et al., 2000).

Thumb sucking is not considered a "disorder" (except in rare cases) and it is not considered chronic or problematic unless it occurs in two or more environments (e.g., home and school) after age five (Friman & Schmitt, 1989). Thumb sucking appears to be beneficial to younger children through its capacity to modulate arousal (i.e., it has a "pacifying" effect) and this primitive benefit of thumb sucking (and other NNM behaviors) is replaced as the child ages by more complex, mature, and productive responses satisfying the same function. While a child's internal desire for thumb sucking decreases with age, the negative pressure from parents and peers is additional motivation for them to discontinue the behavior. The weight of available evidence suggests rather strongly that ingestion of toxins or pollutants from the environment as a result of thumb sucking is increasingly remote as the child become older starting at around age five.

Nail Biting

Nail biting (*onychophagia*) is a habit involving repetitive biting and/or chewing of the fingernails and, to a lesser extent, the toenails. Unlike with thumb sucking, the literature on nail biting varies considerably in terms of methodology, definitions, and consistency. As such, it is difficult to quantify the incidence of nail biting as a function of age. For example, at age 13, one study estimated the incidence of nail biting to be as high as 44% (Wechsler, 1931) while another study estimated it to be 12% (Deardoff, Finch, & Royall, 1974). Friman, Byrd, and Oksol (2001) tried to estimate the occurrence of nail biting by age, while noting that these were necessarily broad and imperfect age ranges and estimates:

> *"Based on our collective impressions of all the research, we offer the following tentative estimates of the prevalence of nail biting. Although it is very rare in children younger than three years, there appears to be a marked and sudden rise in incidence after that age. Between 20% and 40% of preschool children over the age of three years bite their nails. The prevalence appears to peak between the ages of 8-12 years of age, with estimates ranging from 25% to 60%. Prevalence declines through the teen years with estimates between 20% and 30% for late teens. Prevalence in young adults ranges between 10% and 25 % and declines to below 10% for adults over 35." (p. 214).*

Several authors suggest that estimates like these are inflated because of their failure to differentiate between frequent and infrequent nail biting. For example, Brosh and Fuqua (2004) observed that about 53% of college students reported biting their nails, but this rate dropped to about 18% when a slightly more stringent criterion was used to define nail biting (i.e., five episodes or more per day). Thus, there may be many children who are reported to be nail biters when, in fact, they do not exhibit this behavior with any significant regularity or frequency.

It should also be noted that nail biting does not occur for the same reasons as thumb sucking. As mentioned above, thumb sucking occurs to "pacify" the child or to reduce anxiety. There is a good deal of evidence to suggest that nail biting is motivated by the reinforcement received by even minor motor activities when most, if not all, other motor actions are restricted (see Woods et al. 2001). Put another way, when children are "sitting still" or otherwise restricted in their movements, they may revert to non-purposeful, stereotypic behaviors (e.g., biting nails, chewing on hair, etc.). Freeman et al. (2001) stated "Most hand-to-mouth...activities were observed during the children's inactive periods, particularly when watching television." (p. 507). Thus, nail biting is less likely to occur in situations where other motor behaviors are allowed, recommended or required. Consistent with this conclusion, Xue et al. (2007) observed that mouthing behaviors were significantly more likely to occur when a child is indoors than when he or she is outdoors.

Conclusions

The available evidence suggests that one of the primary modes of hand/finger-to-mouth contact (thumb sucking) is not a behavior that 6 to 12 year old youth ATV or OHM operators are likely to engage in. Nail biting is more likely than thumb/finger mouthing in this age range. However, the available evidence suggests that published incidence rates (by age) are likely inflated to some degree. Moreover, nail-biting behavior is significantly less likely to occur in conditions of youth ATV or OHM use—when children are physically active and outdoors.

To the extent that hand-to-mouth behaviors have been a concern with respect to lead ingestion, there is reason to believe that this may be limited primarily to children younger than age six. For example, the CPSC's concern over hand-to-mouth ingestion of lead dust from vinyl miniblinds has been limited to homes with children ages six and younger (CPSC, 1996). In addition, the CPSC, in 1997, analyzed the potential for lead exposure from a number of vinyl-containing products. Part of the criteria for lead exposures included whether or not the products were expected to be handled or mouthed by "young" children (CPSC, 1997).

Section 2 – Patterns of Use

In evaluating potential patterns of youth ATV and OHM use, we consider both instructed behaviors and additional behaviors that may be expected from children age 6 through 12. Specifically, "instructed behaviors" refer to those child behaviors intended based on operator's manuals and training materials. "Additional behaviors" refer to those actions that are not explicitly prescribed in such materials but where ATV or OHM component contact may occur based on the nature of the component involved (e.g., storage compartment) or based on general child behavior (e.g., leaning or resting of hands on components while standing near the vehicle or sitting in the operator's position).

To determine components contacted during instructed behaviors, we reviewed product owner's manuals, as well as training manuals available from the ATV Safety Institute (ASI) and the Motorcycle Safety Foundation (MSF). These manuals instruct children to

wear protective gear, including gloves (SVIA, 2008, p. 7; MSF, 2005, p. 11; Polaris, 2007, p. 29). However, it is reasonably foreseeable that children may, on occasion, choose not to wear gloves and may contact components with their bare hands.

Instructed behaviors for children include mounting and dismounting the vehicle, operating controls, and, in some cases, performing a pre-ride check. When mounting and dismounting the ATV or OHM, youth are instructed to place their hands on the handlebars and their feet on the footrests (SVIA, 2008, p. 8; MSF, 2005, p. 12). For ATVs or OHMs equipped with a wrist tether strap, youth are also instructed to attach the strap to their wrist and to the vehicle before riding (Polaris, 2007, p. 30). Youth are instructed to operate controls, including the parking brake, front and rear brakes, throttle control lever, engine stop switch, and shift lever if equipped (SVIA, 2008, pp. 10-11, 13-14, 18, 20-22; MSF, 2005, pp. 13-15, 17-18, 22-26; Polaris, 2007, pp. 19-23). Some manufacturers instruct youth to perform a pre-ride check, which includes testing controls, making sure the seat is locked in place, and having an adult check gas and oil (Polaris, 2007, pp. 25-7).

During these instructed behaviors, when children do not wear gloves, contact with the following components may be expected:

- Operator seat
- Hand grips
- Engine stop switch
- Engine stop switch housing
- Ignition key
- Ignition housing
- Wrist tether strap
- Brake lever
- Parking brake lever
- Throttle control lever
- Throttle control housing
- Shift lever

In addition to instructions directed to children, materials reviewed describe activities to be performed by adults. These include inspecting the vehicle before each use (SVIA, 2008, pp. 15-16; MSF, 2005, pp. 19-20), starting the vehicle (SVIA, 2008, pp. 16, 20; MSF, 2005, pp. 20, 24-5), refueling the vehicle (SVIA, 2008, p. 16; MSF, 2005, p. 20; Polaris, 2007, p. 26), operating speed limiters or other supervisor control features (MSF, 2005, p. 15; SVIA, 2008, p. 11), and maintaining the vehicle according to the owner's manual (SVIA, 2008, pp. 15-16; MSF, 2005, pp. 19-20). Although starting the vehicle is included as an adult and not a child activity, it is foreseeable that some older youth operators under age 12 may choose to start, or re-start, the engine themselves. This activity, if performed without gloves, may involve bare-hand contact with the following components:

- Fuel control valve
- Choke
- Kickstart lever or pull cord

In addition to the behaviors and components described above, other foreseeable behaviors include those that are not explicitly prescribed but where component contact may occur based on the nature of the component involved or general child behavior. Based on the nature of the component, we believe it is foreseeable that children age 6 through 12 may use the front or rear carry bars and access the under-seat storage area, if provided. During these behaviors, if not wearing gloves, children may, on occasion, contact the following components:

- The interior surface of the storage area
- Front and/or rear carry bars

Similarly, based on general child behaviors, we believe it is foreseeable that children may lean or rest their hands on the following components while standing near the vehicle or sitting in the operator's position:

- Fenders
- Body panels
- Sides
- Gas tank
- Gas cap
- Brake fluid reservoir on handlebar

In addition, during these behaviors, children may, on occasion, come into contact with the following components:

- Headlight
- Taillight
- Reflectors

Although children may be instructed to perform a pre-ride check of controls (Polaris, 2007, pp. 25-27), the instructional materials reviewed direct adults, and not children, to perform maintenance and more comprehensive inspection activities, such as inspecting the vehicle before each use (SVIA, 2008, pp. 15-16; MSF, 2005, pp. 19-20; Polaris, 2007, pp. 84-86), adjusting speed limiters (SVIA, 2008, p. 11; MSF, 2005, p. 15), and maintaining the vehicle according to the owner's manual (SVIA, 2008, pp. 15-16; MSF, 2005, pp. 19-20). Given these instructions, the nature of these inspection and maintenance activities, and the age range of the children involved, components for which contact with bare hands is not expected on a frequent and recurrent basis during reasonably foreseeable use and abuse include (but are not limited to):

- Engine
- Transmission
- Drive train
- Frame nuts, bolts, and fasteners
- Axles
- Suspension
- Exhaust pipe
- Muffler
- Air filter

- Dipstick
- Tires
- Tool kit

Summary and Conclusions

Our evaluation of potential patterns of youth ATV and OHM use shows that bare-hand contact with some components may occur during reasonably foreseeable use or abuse based on instructed behaviors. Some additional components have a lower probability or expected frequency of contact based on consideration of additional behaviors. For the remaining components, we expect no reasonably foreseeable frequent and recurrent bare-hand contact.

In addition, hand-to-mouth behaviors are expected to be infrequent for children ages 6 to 12. Specifically, the available evidence suggests that one of the primary modes of hand/finger-to-mouth contact (thumb sucking) is not a behavior that 6 to 12 year old youth-ATV or -OHM operators are likely to engage in. Nail biting is more likely than thumb/finger mouthing in this age range. However, the available evidence suggests that published incidence rates (by age) are likely inflated to some degree. Moreover, nail-biting behavior is significantly less likely to occur in conditions of youth ATV or OHM use—when children are physically active and outdoors.

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Biography of the Authors

Stephen L. Young is a Senior Consultant at ASE. Dr. Young holds a Ph.D. in Engineering Psychology from Rice University and has lectured at Harvard University and the University of Michigan on topics including human error, warnings and safety communications and design of displays and controls. Prior to joining ASE, Dr. Young served as a Senior Research Associate at the Liberty Mutual Research Center for Safety and Health. Dr. Young has authored numerous publications related to warnings, hazard communication, and risk perception, and he has served as a reviewer for various scientific journals including Ergonomics, Applied Ergonomics, and the Journal of Safety Research. He has served on the ANSI Committee Z535 on warning signs, labels, symbols, tags and colors and was a leading author of the new draft standard Z535.6 Standard for Safety Information in Product Manuals, Instructions and Other Collateral Materials. Dr. Young is also a certified professional ergonomist (CPE).

Raina J. Shah is a Managing Consultant in the Human Factors and Product Safety Group and directs chemical risk communication activities. She is a Certified Product Safety Manager (C.P.S.M.) and a Certified Professional Ergonomist (CPE). Her professional activities include the design and evaluation of hazard communications, analysis and investigation of product and occupational accidents, analysis and evaluation of standards and regulations, and research activities related to user processing of information. Ms. Shah holds a Master's degree in Industrial and Operations Engineering from the University of Michigan. She also holds two Bachelor's degrees from the University of Michigan, one in Psychology and another in Industrial and Operations Engineering. She has guest lectured at the University of Michigan on the topic of Hazard Communications and is a member of the Human Factors and Ergonomics Society, the Society for Chemical Hazard Communication, and the American National Standards Institute (ANSI) Z535.4 Subcommittee on Product Safety Signs and Labels.

Timothy P. Rhoades is a Senior Consultant and a founder of ASE. He is a professional engineer and certified professional ergonomist (CPE) specializing in human factors engineering and ergonomics. He also serves as an adjunct faculty member at the University of Michigan. His research, design, and consulting interests include occupational and consumer safety, product use behaviors, warnings, vehicle visibility, and human movement. He holds B.S.E., M.S.E., and Ph.D. degrees in Industrial and Operations Engineering from the University of Michigan. He has served as a member of several consensus standards committees involved with vehicle visibility, biomechanics, and other ergonomics and safety issues, and he served in a standards management role as a member of Standards Development Committee of the American Society of Safety Engineers. He currently serves on the American National Standards Institute (ANSI) Z535.6 Subcommittee on Product Safety Information in Product Manuals, Instructions, and Other Collateral Materials. Dr. Rhoades is also a member of various professional societies, including the Human Factors Society, the Society of Automotive Engineers, the American Society of Safety Engineers, and the Institute of Industrial Engineers.

Julia K. Diebol is a Project Analyst in the Human Factors and Product Safety Group. She holds a Bachelor's degree in Industrial and Operations Engineering from the University of Michigan. Her professional activities include analysis of technical literature, standards and regulations related to risk communication, human performance and product safety. Ms. Diebol is a Certified Product Safety Manager (C.P.S.M.).

Stevenson, Todd

From: MWiegard@eckertseamans.com
Sent: Tuesday, February 17, 2009 4:45 PM
To: Lead Accessibility
Cc: Falvey, Cheryl; Mullan, John
Subject: Comments on "Section 101 Inaccessible Component Parts"
Attachments: SECTION 101 INACCESSIBLE COMPONENT PARTS (n0096469).pdf

The attached comments on the proposed interpretative rule on "Section 101 Inaccessible Component Parts," 74 Fed. Reg. 6990 (Jan. 15, 2009), are submitted on behalf of the seven identified companies, which include manufacturers, importers and/or distributors of youth model all-terrain vehicles and small off-road motorcycles intended for children age 6 to 12.

(See attached file: SECTION 101 INACCESSIBLE COMPONENT PARTS (n0096469).pdf)

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Via Electronic Mail

February 18, 2009

Mr. Todd Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Section 101 Inaccessible Component Parts

Dear Mr. Stevenson:

We write on behalf of the Footwear Distributors and Retailers of America ("FDRA")[1] and in response to the solicitation of comments by the Consumer Product Safety Commission ("CPSC") regarding the proposed interpretative rule on inaccessible component parts.

Section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA") provides that the lead limits do not apply to component parts that are not accessible to children through normal and reasonably foreseeable use and abuse.

The proposed interpretive rule is generally acceptable to FDRA. FDRA believes that the proposed rule reflects a practical approach to the issue of inaccessible parts. Accordingly, FDRA's comments are limited to an inquiry by the Commission concerning whether fabric coverings could be used as a barrier that would make lead within the product inaccessible to a child.

FDRA believes that fabric in general, and certainly the type of fabric used in the manufacture of footwear, provides a barrier that would make a lead containing component inaccessible to a child under reasonably foreseeable use and abuse. This is certainly the case since under proposed section 1500.87(g) the use of tools (scissors, knives) is not considered in evaluating accessibility.

Fabrics used in the manufacturer of footwear must be durable. Fabric typically appears in a footwear upper which is designed to protect the foot and must be able to withstand significant abrasion and other forms of abuse. Typically, the fabric used in footwear does not wear out over the expected life of the shoe. Fabric that will wear out is not suitable for use in footwear.

FDRA appreciates the opportunity to comment on this topic and urges that its views be adopted.

[1] FDRA is the trade association representing an estimated three-quarters of all footwear sales in the United States through its retailer, importer, distributor and manufacturer members.

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Peter T. Mangione, President: ptmangione@fdra.org

Please feel free to contact me if you have any questions on this submission.

Sincerely,

Peter T. Mangione

\7290472.1

Stevenson, Todd

From: Peter Mangione [ptmangione@fdra.org]
Sent: Tuesday, February 17, 2009 12:59 PM
To: Lead Accessibility
Cc: Pellegrini, John B.
Subject: Section 101 Inaccessible Component Parts
Attachments: CPSC Submission on Inaccessible Parts Feb 17,2009.DOC

Dear Mr. Secretary --- Enclosed pls find the comments submitted by the FDRA on the above captioned subject.

Pls contact us if you have any questions.

Best regards.

Peter T. Mangione
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