United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland 20814

MEMORANDUM

DATE: November 14, 2008

TO : OGC

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: Section 101 Lead in Children's Products

COMMENT	DATE	SIGNED BY	AFFILIATION
1	09/29/08	Fred Winkler Director Product Safety & Regulatory Compliance	EMC Consumer Product Services 10 Long Hill Ave. Shelton, Ct 06484
2	10/02/08	Harry Lo	Musical Electronics Ltd Harrylo@musical.com.hk
3	10/08/08	Tim Pine Principle	TAP International, LLC 4310 Artesian Cover Denver, NC 28037
4	10/22/08	Troy Brantley Manager of Regulatory Compliance	AlphaGary Corporation 9635 Industrial Dr Pineville, NC 28134
5	10/23/08	Scott	scotth@soimpact.com
6	10/23/08	Stephanie Yeung	Syeung@moret.com
7	10/29/08	Gary Jones Senior VP Product Integrity	Learning Curve Brands Inc GLJONES@rc2corp.com
8	10/30/08	D. Schmeltzer	DSchmeltze@aol.com
9	10/30/08	S. Lester Vice President Intn'l Trade	Retail Industry Leaders 1700 N Moore St. Suite 2250 Arlington, VA 22209

Section 101 Lead In Children Products

10	10/30/08	Ted McGuire President	Thames & Kosmos 207 High Point Ave. Portsmouth, RI 02871
11	10/30/08	Peter Mangione President	Footwear Distributors and Retailers of America ptmangione@fdra.org
12	10/31/08	J. Calderwood	Zuckert Scoutt & Rasenberger, LLP 888 Seventeenth St, NW Washington, DC 20006
13	10/31/08	C. Keithley President	Toy Industry Association 1115 Broadway, Suite 400 New York, NY 10010
14	10/31/08	B. Markwalter Vice President Tech/Standards	Consumer Electronics Assoc. 1250 Eye St, NW - Suite 200 Washington, DC 20005
		Richard Gross Vice President Environment and Sustainability (ITI)	" " " " "
		Fern Abrams Director of Environmental Policy and Government Relations (IPC)	" " " " "
15	10/31/08	Robert Waller President	Juvenile Products Manufacturers Association 15000 Commerce Parkway Suite C Mt. Laurel, NJ 08054
16	10/31/08	K. Segerstad Manager Product Safety & Compliance	IKEA NA Services, LLC 420 Alan Wood Rd. Conshohocken, PA 19428
17	10/31/08	Peter Pettit Chair	Toxics in Packaging Clearinghouse, c/o of Northeast Recycling Council, Inc. 139 Main St, Suite 401 Brattleboro, VT 05301
18	10/31/08	David Murray	Willkie Farr and Gallagher 1875 K St, NW Washington, DC 20006

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19	10/31/08	C. McLean Exec. Director	Consumer Electronics Retailers Coalition 317 Massachusetts Ave, NE Suite 200 Washington, DC 20002
20	10/31/08	John Wackman Asst. General Counsel	Polaris Industries, Inc 2100 Highway 55 Medina, MN 55340
21	10/31/08	Riley Russell Sr. Department Assistant	Sony Computer Entertainment America, Inc. 919 E Hillsdale Blvd Foster City, CA 94404
22	10/31/08	M. McNamara	McNamara & L'Heureux, PC 6094 Franconia Rd Suite B Alexandria, VA 22310
23	10/31/08	C. Hudgins Vice President Gov. Relations & Policy	International Sleep Products Association 501 Wythe St. Alexandria, VA 22314
24	10/31/08	Rachel Meyer Principle	Toy Safety & Quality, Inc 1027 Lake St. San Francisco, CA 94118
25	10/31/08	K. Wittenauer (Britax) T. Emerson (Dorel Juvenile Group, Inc L. Harris Evenflo Co., Inc E. Lysaught Kolcraft Enterprises	Mary Weigand Mayer Brown LLp 1909 K St, NW Washington, DC 20006
26	11/03/08	P. Mangione President	Footwear Distributors and Retailers of America 1319 F St, NW - Suite 700 Washington, DC 20004
27	11/05/08	Kevin Burke President/CEO	American Apparel & Footwear Association 1601 North Kent St. Suite 1200 Arlington, VA 22209

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28	11/11/08	Carol P Nelson	Independent Safety Consulting 13713 Valley Drive Rockville, MD 20850
29	11/14/08	C. A. McLean Exec Director	Consumer Electronics Retailers Coalition 317 Massachusetts Ave, NE Suite 200 Washington, DC 20002

Stevenson, Todd

From: Fred Winkler [fwinkler@emc1.com]
Sent: Monday, September 29, 2008 12:15 PM
To: CPSC-OS
Subject: CPSIA Sect 101 - inaccessible components.

Dear CPSC staff,

Notwithstanding any needs to comply with the EU RoHS requirements, I believe it can be assumed that electronic components, such as printed circuit boards (pcb's) and the individual parts (resistors, etc.) attached to such pcb's by means of lead soldering, when completely enclosed within 'permanently assembled' plastic housings and not accessible without destroying the plastic parts and/or the assembly of plastic parts, could be described as component parts of a children's product that contain lead but are inaccessible.

As far as a definition of 'inaccessible' is concerned for lead-containing components, I would suggest something like: components that cannot be removed or made accessible without the use of special tool(s) or by destroying the item and rendering it 'unplayable', in which case the parts would be thrown away.

Unless specific additional test methods are developed for the direct intention of making lead-containing components accessible, it is my opinion that the existing test methods described in the ASTM F963 Toy Safety Standard and/or the Federal Register are adequate for evaluating toys and children's products for the purpose of determining whether hazardous internal components, with or without lead, are made accessible.

Many thanks and best regards,

Fred.

Fred Mills-Winkler
Director, Product Safety and Regulatory Compliance.
EMC Consumer Product Services, Inc.
10 Long Hill Ave.,
Shelton, CT 06484.
Tel: 203-924-9544
Fax: 203-924-2194
Mob: 203-859-8914
Email: fwinkler@emc1.com

Stevenson, Todd

From: Harry Lo [harrylo@musical.com.hk]
Sent: Thursday, October 02, 2008 10:34 PM
To: CPSC-OS
Subject: SECTION 101 LEAD IN CHILDREN'S PRODUCTS

Dear Sir/Madam,

There is a restriction of 600ppm (300ppm after August 14, 2009) of TOTAL LEAD in accessible substrate under the Consumer Product Safety Improvement Act of 2008. We got a couple of questions below requiring your clarification.

Q1. Some toys products are supplied with an earphone or a headphone for the pleasure of listening music or songs. These earphones or headphones incorporates a metal plug which is accessible to users. It is made of copper alloy; this substance usually contains a large amount of lead, usually over 10,000 ppm that greatly exceed the restriction limit of 300ppm or 600ppm under the CPSIA 2008. If no substitute material is found for replacment, will the CPSC consider an exemption for such substance (copper alloy)?

Q2. Will the CPSC publish an exemption list for it?

We are looking forward to your kind reply.

Yours faithfully,

Harry Lo
Musical Electronics Ltd.
Phone No.: (852) 2341 9281
Direct Line# (852) 2372 1174
Fax No.: (852) 2341 9964

Sent 101 3

Stevenson, Todd

From: Tim Pine [tapine@charter.net]
Sent: Wednesday, October 08, 2008 2:35 PM
To: CPSC-OS
Subject: Section 101 Lead in Children's Products
Attachments: Tim Pine Comments to CPSC on the CPSIA.doc

To the CPSC Office of the Secretary,

I have attached a file containing comments and information on Section 101 of the Consumer Product Safety Improvement Act (CPSIA). I understand that the staff of the CPSC has requested that comments be submitted to the CPSC Office of the Secretary at this email address not later than October 31, 2008.

Thank you for providing this opportunity for comments and for any consideration you give to my comments.

Sincerely,

Tim Pine
Principal
TAP International, LLC
4310 Artesian Cove
Denver, NC 28037
704-483-7552

Section 101 Lead in Children's Products
Comments of Tim Pine
TAP International, LLC
October 8, 2008

Comment #1 addresses Section 101 (b) (1) Exclusion of Inaccessible Component Parts and Certain Materials and Products. This section allows for the exclusion of specific products or materials from the lead prohibition if the Commission determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor have any other adverse impact on public health or safety. Therefore, on the basis of the evidence provided below, certain materials and products should absolutely be excluded and they are defined as follows:

"Exclusion of Inaccessible Component Parts and Certain Materials and Products"

All materials, components parts, and products which do not fit entirely within the Small Parts Cylinder of 16 CFR 1501.4, in any orientation and without being compressed, either prior to or after the appropriate "use and abuse" tests of 16 CFR 1500.51 and 1500.52.

Evidence/Rationale supporting this exclusion:

1. Substrates that contain lead do not create a health risk if they can not be swallowed/ingested.

   The Environmental Protection Agency published in the January 5, 2001 Federal Register a final rule on the identification of dangerous levels of lead. This rule, which became effective on March 6, 2001, addresses the potential hazards of lead in paint, dust, and soil. Most importantly, the EPA's concern relates only to the potential for lead ingestion, especially by children. Please note that the EPA standard limits the lead in soil to 400 parts per million (ppm) in play areas and 1,200 ppm (average) in the remainder of the yard.

   Additionally, the Washington State Department of Ecology in their public health Publication No. 01-09-008 dated June 2001 made the following statements:

   "Simply getting contaminated soil on the skin is not a big problem, since arsenic and lead in the soil are not absorbed very well through the skin. The main route of exposure is by swallowing [emphasis supplied] contaminated soil."
   "Also, contaminated dirt or dust that is suspended by the wind, lawn mowers, leaf blowers, vacuum cleaners, and other means can get into a person's nose or mouth and be swallowed."

   Clearly, it is recognized that lead becomes a health risk only when it is ingested into the body and broken down by stomach acid. If it is incapable of being ingested, then a health hazard does not exist.

2. Substrates do not present a significant risk of lead exposure from mouthing/sucking.

   European Standard EN 71 Part 3: Migration of Certain Elements specifies a testing procedure based on lead extraction using a simulated gastric solution (hydrochloric acid). The European Union clearly understands that substrates containing lead can present a risk if they are swallowed and subjected to the acids of the digestive system. EN 71 Part 3 also notes that "no significant extraction occurs with saliva simulator."

3. The Small Parts Cylinder provides a significant safety factor on the size of parts that can not be swallowed, because it defines parts that do not present a choking hazard.

   The Small Parts Cylinder was established for defining parts that are too large to present a choking hazard. It recognized that parts too large to be swallowed could still present a choking hazard, so the cylinder was designed large enough to eliminate the choking hazard. Therefore, some parts which can fit within the Small Part Cylinder are still too large to be swallowed. Relying on the Small Parts Cylinder represents a conservative standard for defining parts that can be swallowed. If materials or component parts do not fit entirely within the small parts cylinder, then they can not be swallowed.

4. Using a "total lead standard" instead of an "acid soluble lead standard" for substrates discounts bioavailability and overestimates the potential availability of lead in the body, thus resulting in a significant safety factor.

   European standard EN 71 – Part 3: Migration of Certain Elements states in Annex D, "The way bioavailability is defined in the Toy Safety Directive led to the test methods in the standard addressing the amount of soluble element migration from a toy material. The approach of total element determinations was discounted because of the following reasons. a) "The Directive indicates bioavailability limits and there has been no link to date between the availability of an element in a toy material with respect to extraction with simulated gastric solutions and the total element content of the material."

   The human digestive system is not capable of extracting all of the lead from substrates. Since all of the lead content of the substrate is not available to the human body, a total lead standard overstates any risk. The result is that a total lead standard is overly conservative and provides a significant safety factor over a soluble lead standard such as the one used in Europe.

   A standard having a significant safety factor may arguably be desirable, but it should only be applied to materials and component parts that truly present a potential health/safety risk.

In summary, it is scientifically valid and proper for the Commission to provide an exclusion for all substrates that do not become small parts during use and reasonably foreseeable abuse. This is based on objective, widely accepted scientific evidence that such materials will neither result in the absorption of any lead into the human body nor have any other adverse impact on public health or safety. We urge the Commission to acknowledge this evidence and grant this valid exclusion.

Comment #2 addresses Section 101 (b) (2) Exception for Inaccessible Component Parts and specifically Section 101 (b) (2) (B) Inaccessibility Proceeding. This section requires the Commission to promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).

For substrates, based on the evidence provided in comment #1, accessibility should logically be determined by whether the material or component part fits entirely within the Small Parts Cylinder in any orientation and without being compressed. Materials and component parts that do not fit entirely within the Small Parts Cylinder would be defined as inaccessible and therefore excluded from the total lead in substrate standard.

For paints and coating materials, the Commission should consider defining accessibility using the accessibility probes defined in 16 CFR 1500.48 (c) and 16 CFR 1500.49 (c). These accessibility probes have been successfully used by the Consumer Product Safety Commission and the toy industry for the past 30 years. Since they are used for defining/determining the accessibility of sharp points and sharp edges, it is appropriate that they also be used for determining accessibility of coating materials. Paints and coating materials that can not be contacted by the accessibility probe would be defined as inaccessible and therefore excluded from the total lead paint standard.

Thank you for providing this opportunity for comments.

Sincerely,

Tim Pine
Principal
TAP International, LLC
4310 Artesian Cove
Denver, NC 28037
704-483-7552
tapine@charter.net

AlphaGary
Market Leadership in Specialty Compounds

AlphaGary Corporation, 9635 Industrial Drive, Pineville, NC 28134 USA

October 22, 2008

Mr. Randy Butturini
Directorate for Engineering Studies
U.S. Consumer Product Safety Commission
4330 East West Hwy
Bethesda, MD 20814

Dear Mr. Butturini:

Our industry has long recognized the need to offer products that are less hazardous to workers, consumers and the environment. AlphaGary has been at the forefront of this trend to make products safer and to meet increasingly stricter laws and regulations. For many years, we have developed and offered products with diminishingly low amounts of cadmium, hexavalent chromium, lead and phthalates, to name some of the more important substances. Many of these products were also designed to comply with regulations such as the EU's RoHS Directive (2002/95/EC) and the phthalates directive (2005/84/EC). Furthermore, we have worked with various agencies and NGOs to come up with safe and practical solutions for our industry. This includes groups such as the Massachusetts Toxics Use Reduction Institute (TURI), the EPA and its Design for Environment (DfE) program and the Green Chemistry and Commerce Council (GC3).

Although we strongly support efforts to make products "less hazardous," we also see a growing problem for manufacturers trying to ensure compliance with stricter standards. The thresholds that were established under RoHS and the phthalates directive were reasonable and achievable with existing manufacturing technology and analytical test methods and instrumentation. While leading to safer products, they did not impose unreasonable demands on manufacturers and suppliers. However, tougher requirements and lower thresholds have begun to appear in recent years under various corporate and association standards as well as newer regulations such as HR4040. This current trend toward more stringent standards imposes new requirements that stretch the limits of existing manufacturing methods and test procedures.

In the effort to reduce acceptable thresholds for hazardous substances, one important concept often seems to get overlooked – the difference between a chemical substance that is intentionally added and one that occurs incidentally as a trace contaminant. It is this latter type of substance that creates certain challenges for manufacturers. Efforts to completely eliminate a chemical substance from a product can be undermined by the occurrence of trace contaminants from a variety of natural and synthetic materials. In most situations, it is impractical to remove these substances from raw materials prior to their use in a product. The cost to suppliers would be prohibitive. In some instances, we have been able to work with our suppliers on higher purity raw materials. Overall, however, manufacturers are still at the "mercy" of their suppliers and incoming raw materials.

Technology has advanced to the point where chemical substances can be measured at extremely low levels. However, this technology comes with a price and is, for the most part, not practical in manufacturing environments. Therefore, manufacturers must usually rely on techniques that combine acceptable speed, accuracy and efficiency with robustness and cost effectiveness. Unfortunately, such techniques are usually not up to the challenge when dealing with lower thresholds.

One such technique is X-ray Fluorescence, often referred to as XRF. This technique has found growing acceptance within our industry because it is quick, easy, non-destructive and robust. However, because of the level of uncertainty in this technique, it is commonly used as a screening method and, when necessary, supplemented by more advanced and costly methods. For example, if a product is analyzed by XRF for lead and shows readings between about 750 and 1000 ppm (indicating that it is RoHS compliant), it is highly recommended that another technique such as AAS (atomic absorption spectrophotometry) or ICP (inductively coupled plasma) testing be used to ensure that the level of lead is indeed under 1000 ppm. AAS and ICP both involve destructive testing of the sample.

As thresholds become tighter, manufacturers will be forced either to seek the help of third party testing services (since most manufacturers do not have these analytical capabilities) or to acquire that capability by making significant investments in equipment and laboratory talent. Outside testing will slow down the availability of materials to customers as manufacturers wait on test results before releasing their products. The cost of products will also rise to accommodate the increased cost of testing (whether internal or external).

Along with the increased analytical costs that will be required to comply / certify to lower threshold standards, there will be dramatically increased costs to extract trace substances deemed to be hazardous from each step of the Supply Chain. Assuming that each part of the Supply Chain might introduce trace amounts of these substances, without intentionally adding them, it will be virtually impossible to accurately quantify the source of the cumulative amounts. And each level of the Supply Chain will be asked to certify at even lower thresholds to minimize the liabilities of exceeding the consumer product threshold regulations. This all needs to be balanced against the ACTUAL IMPACT this effort has to decrease the health and environmental hazard of trace substances below current thresholds such as 1000 ppm lead or 100 ppm cadmium.

Recognizing these limitations, as well as the state of the art in our industry, the approach that AlphaGary takes when communicating to customers is as follows:

1) We provide statements or certifications with regard to substances that are not intentionally added to our formulations.

AlphaGary
Market Leadership in Specialty Compounds

AlphaGary Corporation, 9635 Industrial Drive, Pineville, NC 28134 USA

2) We identify certain raw materials as sources for hazardous substances and state our reliance on our suppliers to notify us about it.

3) When necessary, we conduct screening testing and sometimes supplement it with more sophisticated techniques, usually performed by a third party testing service.

4) We remind customers that as requirements become stricter, trace incidental substances introduced through raw materials will make compliance tougher to achieve with current technology.

5) We declare the compliance of our products with applicable regulatory requirements. This is done through letters, certificates of analysis, technical data sheets, material safety data sheets and other avenues of communication.

As noted earlier, AlphaGary supports any efforts to make our products safer. However, these efforts should be reasonable, practical and cost effective. The pursuit of lower thresholds should be substantiated through evidence of improved safety and reduced hazards. Lower thresholds should NOT be pursued just for their own sake, with arbitrary technical judgment or anecdotal information. If these threshold reductions can be shown to make products safer, we certainly support them wholeheartedly.

Sincerely,

Troy E Brantley

Troy E. Brantley
Manager of Regulatory Compliance
AlphaGary Corporation
Telephone (USA): 704-889-7821 x3207
Fax: 704-889-7861
Email: tbrantley@alphagary.com

Stevenson, Todd

From: Butturini, Randy
Sent: Wednesday, October 29, 2008 2:38 PM
To: OS - Office of the Secretary
Subject: Comment Letter on CPSIA Section 101 (Lead in Children's Products)
Attachments: CPSC Letter from AlphaGary 10-22-08.pdf

This letter was emailed to me by Mr. Dave Kiddoo of AlphaGary Corporation of Leominster, Massachusetts. Please include it in the comments received regarding the CPSIA requirements on lead and the lead paint rule.

Thanks,
Randy Butturini

Sent 10/15

Stevenson, Todd

From: Scott [scotth@soimpact.com]

Sent: Thursday, October 23, 2008 9:59 AM

To: CPSC-OS

Subject: Comments: Children's products containing lead; lead paint rule

To whom it concerns,
First I have a question. Is the wording lead paint rule accurate?
In other words, does this rule also apply to unpainted products, such as unpainted plastic products?
We are an accredited mechanical testing facility and most of the products we impact test are not painted but have plastic shells such as bicycle helmets and other sports helmets. So one question that has come up is, does this rule apply to unpainted products?

Second, again we are a mechanical testing facility and some of our customers are asking would helmets, like bicycle helmets be included in this rule as they are not something that would be mouthable by a child and again are not usually painted. They usually have a plastic covering and the helmet itself is made of shock attenuating foam, like polystyrene. The webbing made of nylon and buckles to hold the helmet onto the head are made of plastic.

Third is a cycling or sports helmet like a baseball batters helmet for use by children under the ages of 13 considered a children's toy or product and would it be effected by these rules, and tested for Lead or phthalates?

I appreciate your help in clarifying this for me.Once I have some clarification I will likely have comments to send in.

Best Regards,

Scott

Set 101 6

Stevenson, Todd

From: Stephanie Yeung [Syeung@moret.com]
Sent: Thursday, October 23, 2008 2:11 PM
To: CPSC-OS
Cc: Joey Habert
Subject: re: comments for consumer product safety Act

To Whom It May Concern:

Our company makes socks/hosiery in overseas and import to USA. We usually order the same styles/socks from different countries such as China, Taiwan, and Malaysia...etc all year round. If we need lab test report for each shipment, it will have lots of duplicated certifications. We would like to certify the yarn mills not the socks, because our product (sock) is yarn dye, except dying no other thing will have lead or phthalates, is it workable?

The only thing may has lead/phthalates is gripper/non-skid bottom on the socks. We are wondering a factory has approval on the gripper that they use passes lab test they should not have to re-test every time and every style.

Thanks,

Best Regards,
Stephanie Yeung | production manager | High Point Design, L.L.C. | 1411 Broadway, 8th Floor | new york, ny 10018 | 212.354.2400

Section 101 Lead in Children's Products

The following is in response to the request for comments and information for children's products containing lead:

1. This comment addresses Subsection 101(b) (2) which provides that limits for lead established in subsection (a) shall not apply to any component part of a children's product that is not accessible to a child.

- The issue of accessibility must be addressed in light of the hazard that is presented to the child during normal use or after foreseeable use and abuse. The CPSC should consider that in order for lead to become accessible to the extent that it is hazardous, it must be ingested and the material be broken down by gastric fluids that would enable the lead to enter the bloodstream. Without the ability of the lead in a component part to be ingested, there can be no hazard. It is unlikely that mouthing and skin contact will provide a significant route of exposure. The basis for accessibility for lead in substrates should be whether or not the component can be swallowed, which is provided for in Section 1501 of the Federal Hazardous Substances Act. The small parts cylinder provides an adequate standard since any item that cannot enter it cannot be swallowed. Therefore the logical approach for defining accessibility for lead in substrates should be whether it is a small part before or after use and abuse testing.

2. This comment addresses the question as to whether it is technologically feasible to achieve in all parts of children's electronic devices the 600 ppm lead limit; the 200 ppm limit; the 100 ppm limit:

- Many components utilize lead in processing in order to maintain electrical properties or to prevent failure of the device. While substitutes for lead solder are available, they require retooling and must be processed at higher temperatures, making it more likely that components will be damaged. Substitute solders are also prone to a condition called "tin whiskering" in which over time, metal projections emanate from the solder and create shorts across components, resulting in product failure.

- It is unlikely that the 600/300/100 ppm levels could be achieved on the circuitry of children's electronic devices but even if it were technologically feasible, there would be no benefit in reducing the level of lead since the electronic components are inaccessible to the users (See point 3 below).

3. This comment addresses the question of whether any children's electronic product currently on the market contains lead containing component parts that are inaccessible and the reasons why such component parts are considered inaccessible.

- Many children's electronic products contain lead containing component parts, ranging from brass contacts to lead/tin solder. Many components utilize lead in processing in order to maintain electrical properties or to prevent failure of the device. The lead containing components are isolated by plastic housings or the

like and there is no need for the user to access them. Lead containing components are inaccessible in children's products if tested using the probes that are utilized to determine the accessibility of sharp points and edges in 16CFR1500.48-49. This should also be the standard for accessibility of electronic components.

4. This comment addresses the issue of current compliance with or possibility of compliance with regulations such as the EU RoHS Directive 2002/95/EC:

- The RoHS Directive was implemented to reduce toxic materials, including lead, in the waste stream, not to protect consumers from hazards that could result from direct contact with electronic products. This is outlined in the directive;

  "The available evidence indicates that measures on the collection, treatment, recycling and disposal of waste electrical and electronic equipment (WEEE) as set out in Directive 2002/96/EC of 27 January 2003 of the European Parliament and of the Council on waste electrical and electronic equipment are necessary to reduce the waste management problems linked to the heavy metals concerned...In spite of those measures, however, significant parts of WEEE will continue to be found in the current disposal routes. Even if WEEE were collected separately and submitted to recycling processes, its content of mercury, cadmium, lead, chromium VI, PBB and PBDE would be likely to pose risks to health or the environment. Restricting the use of these hazardous substances is likely to enhance the possibilities and economic profitability of recycling of WEEE and decrease the negative health impact on workers in recycling plants."

Given that electronic components in toys and children's products are inaccessible to the consumer, there would be no health benefit to the users of such products by restricting the lead levels in those components to the levels of the RoHS Directive. The RoHS Directive addresses the environmental and handling hazards of toxic materials which are not in the scope of HR 4040.

Gary Jones
Sr. Vice President, Product Integrity
Learning Curve Brands, Inc.
October 28, 2008

Stevenson, Todd

From: Jones, Gary [GLJONES@rc2corp.com]
Sent: Wednesday, October 29, 2008 1:03 PM
To: CPSC-OS
Cc: Stoelting, Curt; Henseler, Pete; Kilrea, Greg; Michael J. Gidding; Gheith, Joseph; Li, Kenneth; Chan, Eric; Khongkrauphan, Supravan; Reyner, Mark
Subject: Section 101 of the CPSIA- Comments
Attachments: Section 101 Lead in Children-Comments to CPSC.doc

Attached are comments regarding Section 101 of the Consumer Product Safety Improvement Act.

Gary Jones
Learning Curve Brands, Inc.

<<Section 101 Lead in Children-Comments to CPSC.doc>>

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Stevenson, Todd

From: DSchmeltze@aol.com
Sent: Thursday, October 30, 2008 7:37 PM
To: CPSC-OS
Subject: Fwd: Guidance on Whether Certain Products Are Considered "Children's Product"

I neglected to caption this question with the "Section 101 Lead in Children's Products" suggested by your instructions.

From: DSchmeltze
To: cpsc-os@cpsc.gov
BCC: otejada@rashtiandrashti.com, mrashti@rashtiandrashti.com
Sent: 10/30/2008 7:18:00 P.M. Eastern Daylight Time
Subj: Guidance on Whether Certain Products Are Considered "Children's Product"

Certain products are not considered to be children's products by the importer or manufacturer but their customers want reassurance that the importer or manufacturer is correct. Is there any way the staff can confirm whether a product is or is not a children's product?

The factors provided in the statute are generally helpful but further guidance is essential.

David Schmeltzer
301-656-8377
Cell: 301-325-9730

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RETAIL INDUSTRY LEADERS ASSOCIATION
Retail's Future...Educate, Innovate, Advocate

1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: 703-841-2300 Fax: 703-841-1184
Email: info@retail-leaders.org www.retail-leaders.org

October 30, 2008

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Re: Section 101 Lead Restrictions

Dear Secretary:

Please accept the following comments from the Retail Industry Leaders Association (RILA) on behalf of its members in response to the Consumer Product Safety Commission's ("Commission") Request for Comments and Information; Children's products containing lead; lead paint rule Section 101 of the Consumer Product Safety Improvement Act ("CPSIA" or "Act"). To avoid confusion or possible conflicting direction, we urge the Commission to respond to the comments received by revising its existing "Guidance for Lead (Pb) in Consumer Products" found at 16 CFR §1500.230.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than $1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Definitions

Section 101(a) of the Act provides that "any children's product that contains [total lead in excess of 600 ppm in 180 days, 300 ppm in 1 year and 100 ppm in 3 years] shall be treated as a banned hazardous substance..."

Section 235(a)(16) defines the term "children's product" as "a consumer product designed or intended primarily for children 12 years of age or younger." This definition is clearly inclusive of all toys designed or intended primarily for children 12 years of age or younger. Consequently, the 90 ppm limit on total lead in surface coatings of Section 101(f) applies to toys for children 12 years of age or younger. However, ASTM F963, made law by Section 106 of the Act, contains a 90 ppm soluble lead limit for surface coatings on toys for children up to 14 years of age. The inconsistent age limits and lead measurement methodologies of Section 235 of the Act and

ASTM F963 create several questions for our members and their suppliers. First, will "toys" under Sections 101, 106 and 108 of the Act include toys designed or intended primarily for children up to 12 years of age or for children up to 14 years of age? Second, will the ASTM F963 soluble lead limit for surface coatings also apply, or will the Section 101 total lead limit control for all toys?

Fortunately, Congress foresaw and made provisions for the resolution of these inconsistencies. Section 101(c) of the Act provides that "[t]o the extent that any regulation promulgated by the Commission under this section (or any section of the Consumer Product Safety Act or any other Act enforced by the Commission, as such Acts are affected by this section) is inconsistent with the ASTM F963 standard, such promulgated regulation shall supersede the ASTM F963 standard to the extent of the inconsistency."

Hence, to the extent that the definition of "toy" in ASTM F963 is inconsistent with the definition of "children's product" under Section 235(a)(16), the definition of "children's product" under Section 235(a)(16) controls the application of Section 101(f) lead limits. Likewise, to the extent that ASTM F963 establishes a different limit on lead in surface coatings of toys, that limit is superseded by the limits of Section 101 of the Act. In any event, it is impossible to have more than 90 ppm of soluble lead and less than 90 ppm total lead. RILA therefore urges the Commission to clarify that the total lead limit on surface coatings found in Section 101(f) only applies to toys for children 12 years of age and younger, and the ASTM F963 soluble lead limit for surface coatings on toys is superseded by the Section 101 total lead limit for surface coatings on children's products.

RILA would also like the Commission to clarify whether packaging of children's products is covered by the lead limits of Section 101. Lead and other heavy metals are already limited under the toxics in packaging laws of 19 states. Those limits (100 ppm aggregate total of lead, cadmium, mercury and hexavalant chromium) are in fact lower than the lead limit of Section 101. Therefore, we urge the Commission to clarify that the lead limits of Section 101 do not apply to the packaging of children's products.

Exemptions

Section 101(b)(2)(A) clarifies 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 such product, as determined by the Commission. A component part is not accessible...if such component part 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. Reasonably foreseeable use and abuse shall include to (sic), swallowing, mouthing, breaking, or other children's activities, and the aging of the product."

Section 101(b)(1) permits the Commission, by regulation, to "exclude specific product or materials...if the Commission after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither (A) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing,

mouthing, breaking, or other children's activities, and the aging of the product, nor (B) have any other adverse impact on public health or safety."

Finally, section 101(b)(4) provides that "[i]f the Commission determines that it is not technologically feasible for certain electronic devices...to comply with [the lead limits], the Commission, by regulation, (A) shall issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices...and (B) establish a schedule by which such electronic devices shall be in full compliance with [the lead limit]...unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission."

Many household products contain varying amounts of metal alloys that are not easily substituted with alternatives. RILA urges the Commission to provide an exemption for the components made of these alloys, while allowing industry the option to petition the Commission at a later date for exclusions for other broad classes of products that contain metal alloys.

Specifically, in an effort to stay ahead of the product safety curve, our members have over the past year applied their own product safety restrictions to children's products. In implementing such restrictions, our member's suppliers have encountered significant difficulty sourcing certain kinds of components to meet the lead limits. Examples include: valve stems of bicycle tire inner tubes made of brass, keys made of brass, ball tips on ballpoint pens, certain parts of musical instruments made of brass, and electrical connectors (headphone/ear bud jacks of brass, antennae, USB connectors, electrical plugs, etc.). Many of these components are made of brass, and sufficient quantities of viable alternatives have been difficult or impossible to source. RILA urges the Commission to broadly interpret the meaning of "technologically feasible," taking into account that completely eliminating lead from such component parts would prevent a large swath of products from coming to market.

Similarly, certain materials used to make children's products may contain levels of lead by total weight that exceed permissible levels, but pose little hazard of exposure due to molecular structure or other reasons. Examples of such materials include glass, crystal and rhinestones. Viable alternatives to these materials may not be available for use in certain categories of products, like children's jewelry. As noted above, Congress recognized this scenario in section 101(b)(1) and granted the CPSC the authority to exclude certain materials. RILA urges the Commission to accelerate the rulemaking process specified in section 101(b)(1) to avoid the possibility of eliminating entire categories of products from the marketplace when section 101(a) becomes effective.

Enforcement

Our members are obviously concerned that even when the Commission provides guidance short of rulemaking on any provisions of the Act, that guidance may be ignored by state attorneys general. While state attorneys general provide a critical multiplier of enforcement capability under the Act, inconsistency of enforcement among state attorney generals and the Commission could render the Commission's considered judgment irrelevant. To avoid this calamity, our members urge the Commission to include state attorneys general, where possible, in the process of developing guidance on enforcement of the Act. Furthermore, our members hope that when

the Commission establishes enforcement discretion guidance, that guidance will be widely distributed among state attorneys general. The Commission should consider providing support and even training to state attorneys general as they enforce the Act. Finally, the Commission should make clear its expectation that the district court, in any action by a State Attorney General to enforce the provisions of the Act, will defer to the Commission's determinations about how the Act should be and should not be enforced.

Conclusion

RILA and our members will continue to stay engaged in the Commission's process to provide further guidance on implementation of the CPSIA and will take advantage of the opportunity to offer further constructive comments. On behalf of our members, we thank you for the work that you have undertaken and for the opportunity to offer some insights on how to make implementation of the CPSIA successful. We appreciate this opportunity to comment on the Commission's Request for Comments and Information; Children's products containing lead; lead paint rule Section 101 of the Consumer Product Safety Improvement Act. Should you have any questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2046 or by email at stephanie.lester@rila.org.

Sincerely,

Stephanie Lester

Stephanie Lester
Vice President, International Trade

Stevenson, Todd

From: Stephanie Lester [Stephanie.Lester@retail-leaders.org]
Sent: Thursday, October 30, 2008 4:46 PM
To: CPSC-OS
Cc: Andrew Szente; Amber Landis
Subject: RILA comments on lead
Attachments: Letter to CPSC re Lead Restrictions.pdf

Please find attached comments from the Retail Industry Leaders Association in response to the CPSC's Request for Comments on Section 101 of the CPSIA, Children's products containing lead; lead paint rule, specifically subsection 101 (b)(2), Exception for Inaccessible Component Parts, and subsection 101 (b)(4), Certain Electronic Devices.

Thank you for your consideration of these comments.

Stephanie Lester
Vice President, International Trade

Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209
Direct Dial: 703-600-2046
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stephanie.lester@rila.org

To learn more about RILA, go to www.rila.org

Thames & Kosmos

Comments on CPSIA Section 101 Lead in Children's Products

Dear CPSC,

Our company imports and distributes science kits from a German manufacturer. All of the kits are compliant with European standards and current US federal standards for toy safety. The age range of the product line is 5 to 14 years, with about one quarter of the kits intended for ages 5 to 7, about half for ages 8 to 11, and another quarter for ages 12 and older. In most of the instruction manuals that accompany the kits, we also recommend adult or parental supervision. Safety is very important to us.

In reviewing the CPSIA, we are particularly concerned by the new requirements for Total Lead in Children's Products (Sec. 101). Our science kits contain hundreds of individual parts, many of them simple components including:

Metal hardware, such as brass fasteners, metal screws, nuts, bolts, and metal rods;
Electronic components, such as diodes, transistors, wires, solar cells, resistors, and LEDs;
Labware, such as glass thermometers, glass test tubes, plastic beakers, and pipettes.

While we have not finished our own evaluations, we know there are some potential sources of small amounts of lead in parts like these, less than 1-2% but greater than the new 0.06% and 0.03% limits.

We feel that in science kits for younger children, namely below 8 years, the new CPSIA lead limits are appropriate. However, in science kits for children 8 years and older, it is very unlikely that small amounts of lead in parts and materials like those listed above would result in the absorption of lead in the body under reasonably foreseeable use and abuse, or have any other adverse impact on public health or safety.

We would like the CPSC to consider making an exception to CPSIA Subsection 101 (a) that would apply to **science educational sets** for children ages 8 and older. The definition of science educational set could be: "A set of parts and instructions specifically designed, marketed, and sold for the purpose of teaching science."

We suggest that the exception would provide that the limits for lead established in Subsection 101 (a) would not apply to parts in science educational sets for children ages 8 and older if the front panel of the packaging and the user manual had a warning along the lines of:

> Warning! Science Kit – May contain hazardous chemicals. Adult supervision required. Do not put parts in mouth. Wash hands after use. Read and follow all instructions.

In some regards, this is similar to 16 C.F.R. §1500.83 (a) (23), which has a hazardous chemical labeling exemption for chemistry sets and other educational sets.

It is our opinion that it is not reasonable to impose the same lead limitations on a plastic toy intended for a 3 year old and a science kit intended for a 10 year old. As a child's age increases, the hazards posed by lead in his or her toys decreases, and we feel that the lead limit regulations should reflect this.

We urge the CPSC to make a reasonable and practicable ruling on the exceptions to this section of the CPSIA.

Sincerely,
Ted McGuire
President

207 High Point Avenue
Portsmouth, RI 02871
www.thamesandkosmos.com

Phone 401-683-5535
Toll Free 800-587-2872
Fax 401-683-5539

Stevenson, Todd

From: Ted McGuire [ted@thamesandkosmos.com]
Sent: Thursday, October 30, 2008 2:48 PM
To: CPSC-OS
Cc: Jed Wilcox/Thames & Kosmos
Subject: Comments on Section 101 Lead in Children's Products
Attachments: Comments on CPSIA Section 101 Lead in Children's Products.pdf; ATT00001.htm

Dear CPSC,

Attached please find a one-page PDF document of comments I am submitting in response to your Request for Comments on Children's Products Containing Lead.

If you cannot access the PDF attachment, please let me know.

Sincerely,

Ted McGuire
President
Thames & Kosmos
207 High Point Avenue
Portsmouth, RI 02871
Phone: 401-683-5535
Fax: 401-683-5539
www.thamesandkosmos.com

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

October 30, 2008

Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission (CPSC)
4330 East West Highway, Room 502
Bethesda, MD 20814

Re: Section 101-Lead in Children's Products

Dear Mr. Stevenson:

The following comments are submitted on behalf of the Footwear Distributors and Retailers of America (FDRA). 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.

The U.S. footwear sector, which marketed approximately 2.4 billion pairs of shoes to U.S. consumers in 2007, is proud of its record of offering safe and reliable footwear. Given the billions of pairs of footwear sold each year, there have been remarkably few footwear safety recalls for any reason. (The few recalls there have been have primarily been associated with small parts.)

Indeed, we are not aware of any recall of footwear because of failure to comply with the lead paint limit.

According to U.S. Department of Commerce data, the U.S. imported 329,435,000 pair of children's shoes in 2007. Also, tens of millions more pairs of children's shoes were imported under headings that do not break out juvenile products separately, such as slippers, protective items (such as rubber boots), etc.

In light of this history, we believe it is highly appropriate for the CPSC to exercise its discretion and limit the applicability of the lead paint and lead level limits to only those footwear materials and components where there is the potential for hazard to children.

Introduction. The CPSC seeks comments on children's products containing lead, the lead paint rule, and the exception for certain inaccessible component parts and the rules, as they should apply with electronic devices contained in children's products. The following comments address all of these issues.

Products Containing Lead. Section 101(a) of the Consumer Product Safety Improvement Act (CPSIA) provides that as of February 12, 2009, the total lead content of any part in a children's product may not exceed 600 ppm by weight. Section 101(b)(2) provides that this limit does not apply to any part that is not accessible to a child through normal and reasonably foreseeable use and abuse. The section also provides that 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 through a reasonably foreseeable use and abuse including swallowing, mouthing, and breaking or other children's activities.

As a general proposition, footwear parts and components do not contain lead in any concentration. Typically, any concentration of lead in footwear materials or components arises from application of coloring, either through paint applied to the surface or coloring mixed in the material as in the case of vinyl, PVC, etc. The lead content, typically, would arise from the pigment or dye used in the color application. It is almost axiomatic that there is no discernable lead if there is no color and the lead level typically is lowest in muted and neutral type colors. Some children's footwear uses embedded electronic devices, such as "lights", which typically include a battery power source, some of which may contain lead.

Footwear typically consists of many internal components that are inaccessible by any reasonable standard, including normal and reasonably foreseeable use and abuse. We urge the CPSC to declare that the items listed below are deemed inaccessible component parts pursuant to section 101(b)(2), and, therefore, not subject to the lead limits or testing requirements. These components are neither visible nor tactile as they are firmly affixed to the interior of the shoe and are covered by upper material or the shoe lining. These components are not accessible, as they are in the interior of the shoe, and it is not possible to mouth, lick or chew any of these components through normal and reasonably foreseeable use and abuse.

They include, among others:

- Heel counters,
- Toe boxes,
- Insoles,
- Metal shanks,
- Insole boards,
- Cushion insoles and
- Steel toe reinforcements.

In addition, it may be appropriate for the CPSC to adopt a tube or instrument, similar to that in ASTM F-963, which could be used to determine whether a part or component of a shoe is inaccessible.

In sum, FDRA requests that the CPSC determine that footwear components that are not visible or tactile are exempt from lead testing requirements for the reason that they are not accessible.

Lead Paint. Some children's footwear, of course, has paint applied to the surface, which is accessible to children in normal and reasonably foreseeable use and abuse. Such footwear, of course, is subject to the existing limit found in 19 C.F.R. 1303.

Other footwear has paint applied in such a way that it is not accessible to children through normal and reasonably foreseeable use and abuse. An example of this would be a shoe with a painted action figure, where the entire figure itself is fully encased in a plastic covering, that is permanently attached to the exterior of the shoe.

Although the action figure is visible, it is not tactile because it is encased in plastic and permanently affixed to the upper (in this case by stitching). The plastic covering is designed to withstand normal and reasonably foreseeable use and abuse, making the painted surface below the encasement an inaccessible component part (See attached picture below).

Since the painted surface is not tactile, FDRA believes that the action figure on the subject footwear, and other encased figures on footwear, are not subject to the ban set out in 16 C.F.R. 1303, or the limits on total lead content, and, therefore, testing should not be required.

FDRA requests that the CPSC staff confirm this understanding.

Electronic Devices. Some children's footwear contain electronic devices, typically "lights" items, where a portion of the shoe is illuminated while the child walks. Such a device is incorporated in the item in the attached picture.

These light-emanating devices are typically embedded completely in the footwear and are powered by batteries, some of which may contain lead. The LEDs, connections and battery are sealed in the shoe and are encased in plastic. FDRA believes that these parts are, therefore, inaccessible.

Due to the thickness of the plastic the embedded parts will not become physically exposed through any normal and reasonably foreseeable use or abuse of the product. Therefore, a child could not mouth the area of the shoe, which has the embedded electronic devices, and if he or she did, they would not be able to penetrate the plastic. The embedded light device in the pictured shoe, thus, clearly meets the statutory definition of inaccessibility by reason of its sealed covering and casing.

We urge the CPSC staff to find that these electronic parts, when embedded in footwear, are considered inaccessible component parts and not subject to the lead limit or testing.

We greatly appreciate the attention of the staff to this request and would be happy to answer any questions or provide additional information.

Sincerely,

Peter T. Mangione

Stevenson, Todd

From: Peter Mangione [ptmangione@fdra.org]
Sent: Thursday, October 30, 2008 3:42 PM
To: CPSC-OS
Cc: Pellegrini, John B.
Subject: Section 101 Lead in Children's Products
Attachments: SECTION 1 RE LETTER 2 OCT 22.doc

Dear Mr. Secretary --- Enclosed pls find the comments submitted on the above captioned subject by the Footwear Distributors and Retailers of America.

Pls let me know if you have any questions.

Thank you.

Peter T. Mangione
President

202 737 5660

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

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JAMES A. CALDERWOOD jacalderwood@zsrlaw.com

October 31, 2008

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

Re: Consumer Product Safety Improvement Act;
Section 101 Lead in Children's Products

I am submitting comments on behalf of various manufacturers, importers and distributors of glass and ceramic consumer products regarding Section 101 of the Consumer Product Safety Improvement Act and its requirements for children's products containing lead as well as the lead paint rule.

Our comments will focus on Lead in Children's Products, since the existing CPSC Paint Rule specifically excludes "those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing." (CFR16, Part 1303.2)

Glass and ceramic tableware items such as mugs and plates must meet U.S. Food and Drug Administration (FDA) standards for release of lead into food or beverages. These standards apply for all ware that would come into contact with food or beverages, not just for children's products. Further, FDA monitors standards for release of lead from the lip and rim area of drinkware.

In addition, a certification program is already in place for ware imported from China, and a 1999 Memorandum of Understanding between FDA and the Chinese State Administration of Entry-Exit Inspection and Quarantine (SAIQ) has established a system where the China Import and Export Commodity Inspection Bureau (CCIB) inspects and certifies factories for eligibility to export ware to the U.S.

We do not believe that there is a risk of exposure to lead from glass and ceramic childrens' products that include vitrified ceramic glazes or borosilicate enamels on non-food contact surfaces. We also recognize that certain companies have opted to utilize "unleaded"

colors for some ware for a variety of reasons, and that these companies often utilize a 600ppm standard to define "unleaded" color options.

Lead is a ubiquitous element that is present at trace levels in many ores, clays and other materials from which ceramic glazes and borosilicate enamels are manufactured. The glass and ceramic industry has been working for many years to develop "unleaded" options, and some alternative materials are available; however, durability remains an issue.

Although some companies have been able to adapt to a 600ppm lead standard for particular products, there would be considerable difficulty achieving a 300ppm lead standard, and it would be technically impossible to achieve a 100ppm lead standard. All of these standards necessitate the use of materials to which lead has not been intentionally added. There is a practical limit below which a reliable lead limit cannot be achieved due to the presence of contaminants in raw materials and in the environment.

Imposition of a 100ppm lead standard for glass and ceramic children's products would have the effect of eliminating decoration on almost all such products, even though there is no risk of lead exposure as noted above. We, therefore, ask CPSC to determine whether it is technically achievable to reach a 100ppm standard for lead for glass and ceramic children's products, and to determine that no standard below the 300ppm standard that would apply on August 11, 2009 would be set.

Thank you for your consideration of our comments, and I welcome the chance to answer any questions on the subject.

Sincerely,

James A. Calderwood

James A. Calderwood

Stevenson, Todd

From: Andy Bopp [abopp@bostrom.com]
Sent: Friday, October 31, 2008 12:03 PM
To: CPSC-OS
Cc: James A. Calderwood
Subject: COMMENTS Section 101 Lead in Children's Products
Attachments: Section 101 Lead in Children's Products - Glass Ceramic Products.pdf

To Whom It May Concern:

Comments are attached. Please contact me if you have any questions.

Andy

Andrew Bopp
Bostrom Corp.
1444 I St. NW, Suite 700
Washington, DC 20005
202-712-9041

October 31, 2008

Cheryl Falvey, General Counsel
Office of the General Counsel
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Gib Mullan, Assistant Executive Director
Office of Compliance and Field Operations

RE: Comments on Section 101 Lead Requirements for Certain Children's Products

In response to the request by the Commission's staff, the Toy Industry Association, Inc (TIA), on behalf its 500 members, submits initial comments on subsections 101(b)(2) and (4) of the Consumer Product Safety Improvement Act of 2008 (CPSIA). TIA hopes that its initial comments help serve our mutual goal of ensuring that the dramatically expanded regulation of lead in children's products mandated by the CPSIA is implemented in an orderly fashion.

These subsections of the CPSIA are important and present some issues of first impression. Moreover, thinking about the implementation of these sections is still evolving; the Commission, for instance, will not hold a public information session focusing on these subsections until next week. TIA accordingly reserves the right to supplement or amend its comments concerning implementation of these subsections, as appropriate.

I. Background

The CPSIA § 101(a) lowers the amount of lead that can be in children's products, intended primarily for children 12 years of age or younger.

As to lead in surface coatings, 16 C.F.R. part 1303's current 600 parts per million total lead limit will be reduced to 90 parts per million total lead on August 14, 2009.

As to lead in the substrates of children's products, a new limit of 600 parts per million total lead becomes effective on February 10, 2009. One year from enactment, on August 14, 2009, the limit becomes 300 parts per million total lead, and after three years, on August 14, 2011, the limit becomes 100 parts per million total lead if the Commission finds that that further reduction is technologically feasible.

CPSIA § 101(b), however, creates three important exceptions. First, section 101(b)(1) excepts materials that the Commission finds will not result in the absorption of lead or otherwise pose a health risk.[1] Second, section 101(b)(2) mandates an exemption for all "inaccessible" components of children's products. Third, section 101(b)(4) excepts electronic

[1] The Commission has not yet requested comments or information concerning this exception.

devices or components for which the Commission finds compliance is not technologically feasible and, for such electronic devices or components, requires that the Commission both adopt means to reduce or eliminate the potential for exposure to or absorption of lead from those devices or components and set a schedule for eventual compliance, if feasible.

II. CPSIA Section 101(b)(2): Mandatory Exception For Inaccessible Components

A. Introduction

CPSIA Section 101(b)(2)(A) exempts from the lead requirements "any component part" that is "not accessible" to a child through "normal and reasonably foreseeable use and abuse" as "determined by the Commission." The section provides an example, noting that "[a] component part is not accessible" where it is not physically exposed because it is in a "sealed covering or casing" that will not become exposed through reasonably foreseeable use and abuse. It further elaborates that reasonably foreseeable use and abuse includes "swallowing, mouthing, breaking, or other children's activities, and the aging of the product."

Section 101(b)(2)(B) requires the Commission to promulgate a rule providing guidance as to what product components are inaccessible within one year, by August 14, 2009. However, industry requests interim guidance as soon as possible for two reasons. First, as noted, the requirement for lead in substrates initially takes effect months earlier, on February 10, 2009. Second, the Commission's General Counsel has advised that, on February 10, 2009, the requirement for lead in substrates will apply retroactively to all children's products in the stream of commerce, not just children's products manufactured on and after the effective date.

The mandatory exception for inaccessible components contained in Section 101(b)(2) poses a number of issues requiring interim guidance and interpretation, including: (1) what is a "component part;" (2) what is "not accessible," including what is a "sealed covering or coating;" (3) what constitutes "normal and reasonably foreseeable use and abuse;" and (4) what tests would be appropriate for lead in substrates?

B. "Component Part"

"Component part" is not self-defining. For example, most electronic and learning toys utilize computer chips. It would make little sense to consider each diode, the silicon wafer, and each wire as separate "component parts." Nor are the computer chips themselves a standalone "component part" because the actual computer chip created on a substrate of silicon or similar material is packaged in plastic or epoxy to protect the chip from damage.

TIA urges the Commission to adopt a functional definition of what constitutes a "component part." Only whole components capable of being detached from the body of the product should be considered component parts. This is consistent with the EU's approach. EN 71-3:1994, BS 5665-3:1995 *Specification for Migration of Certain Elements* A1: 2000 §7, for example, instructs that a laboratory sample for testing shall consist of a toy either in the form in which it is or was intended to be marketed with test portions taken from accessible parts of the sample.

C. "Not Accessible"

Accessibility has at least two dimensions.

First, lead in a component is "not accessible" if the component itself cannot be touched, licked or swallowed by a child. The Commission has an established history on this issue. In the context of sharp edges, the Commission's regulations use a reticulated probe, meant to simulate a child's finger at different ages. 16 C.F.R. 1500.48, 1500.49. If the probe cannot touch a portion of the toy, that portion is deemed inaccessible. A nearly identical approach has been adopted elsewhere around the world, including in the standard for the EU, *see* BS EN 71-1:2005+A6:2008 Part 1 §8.10, and the international standard, *see* ISO 8124-1:2000/Amd.2:2007(E).

Thus, at least on an interim basis, whether an object can be touched by the age-appropriate reticulated probe specified in the current regulations should determine this dimension of "accessibility."[2]

Second, there are a number of component parts of children's products that, although they may be capable of being touched by the reticulated probe, have lead that is inaccessible to children.

Substitution of lead in certain materials/applications is technically or scientifically impracticable; could have significant negative environmental or safety impacts; and the lead in these component parts is "inaccessible" to children.

For example:

- Components made of metal alloys, including structural steel, add strength and structural integrity that are critical to the safety of strollers, infant bouncer frames, latches, and toys.
- Metal alloys, including structural steel, typically contain lead.
- The lead in metal alloys importantly is "inaccessible" to children, including under established Commission protocols for conducting health risk assessments of lead exposure from children's products or other products to which a child may be exposed. *See, e.g., Consumer Product Safety Commission (CPSC) Interim Enforcement Policy for Children's Metal Jewelry Containing Lead - 2/3/2005; CPSC Standard Operating Procedure for Determining Lead (Pb) and Its Availability in Children's Metal Jewelry 2/3/2005; CPSC Staff Report on Lead and Cadmium in Children's Polyvinyl Chloride (PVC) Products 11/21/1997; CPSC Test Methodology for Accessible Lead in Vinyl Products; Testing for Lead in Consumer Products Dr. Joel R. Recht 5/13 2008.* These protocols provide a sound basis for informing the Commission's interim interpretation of "not accessible."

TIA urges the Commission to adopt both interim enforcement policies and final regulations under Section 101 that explicitly recognize that lead, if molecularly bound with other metals or substances in alloys other amalgamated substrate materials, is *per se* "not

[2] Consistent with longstanding reliance on the reticulated probe both in the U.S. and elsewhere, a "sealed covering or closing" need not be hermetically seal or cover a component; a component should be inaccessible if the sealed covering or closing prevents the component from being touched with the reticulated probe.

accessible" unless and until the Commission determines otherwise. Adopting this position is both an accurate and reasonable interpretation of Congressional intent and reflects the reality that metal alloys and similar substrate materials pose no health risk to children.

TIA requests specifically that the Commission interpret "not accessible" to include the component parts of children's products listed below, even though the component may be capable of being touched by the reticulated probe:

-Lead in alloys like steel, copper, and aluminium.

-Lead used in compliant pin connector systems.

-Lead in bronze bearings and bushings.

-Ball Point Pens.

-LHAMA Compliant products[3]

-Metallic/Ceramic components that do not have potential for ingestion[4].

- Gemstones.[5]

Any other interim result could preclude the sale of a wide range of children's products starting on February 10, 2009, including electronic toys, child care articles, bicycles, etc.[6]

D. "Use and Abuse" Testing

The Commission has a long history of prescribing "use and abuse" testing. 16 C.F.R. 1500.50-53, *et seq.* set forth testing procedures to simulate reasonable use and abuse by children. 16 C.F.R 1501, *et. seq.* also incorporate such requirements and set forth additional criteria for determining accessible hazardous toy small parts. Substantially these same "use and abuse" tests have been adopted elsewhere. *See, e.g.,* BS EN 71-1:2005+A6:2008 Part 1 §5.1, A.26, and ISO 8124-1:2000/Amd.2:2007(E) §4.2, 5.24, E3.

These familiar, proven "use and abuse" testing protocols should also be adopted here, at least pending promulgation of a rule by August 14, 2009, as an interim safe harbor. Indeed,

---

[3] Craft items and art materials, as defined under LHAMA provisions in the amended Federal hazardous Substances Act (FHSA) (15 U.S.C. 1261 et seq. and see 16 CFR 1500.14(b)(8)), should be excepted because CPSIA § 102 already provides for safe harbor treatment of LHAMA compliant product.

[4] Glass/Ceramic/Metallic toys or components which do not fit entirely within the "small parts cylinder" are not tested because there is no hazard from ingestion and no significant extraction occurs with saliva simulator, (reference = EN71-3, ANNEX, D.10.1)

[5] Many of these same components likely would qualify for an exception under CPSIA § 101(b)(1) for materials that, based on the available scientific evidence, will have no adverse health effect on children due to the absorption of lead or any other adverse impact on public health or safety. However, as noted earlier, the Commission has not requested comments on this provision yet.

Likewise, as noted below, to the extent that these components are used in electrical devices and components, such as jacks and plugs, they may well be subject to exception under CPSIA § 101(b)(4).

[6] The CPSIA § 101(b)(1) and (4) exemptions require Commission rulemaking, the pendency of which does not excuse noncompliance. *See* CPSIA § 101(e).

given that these "use and abuse" tests are intended to guard against severe injury, including death, from choking and other hazards, they should be more than sufficient for purposes of CPSIA § 101(b)(2).

The Commission also requested comment on the "use and abuse" of products intended for children ages 9 through 12. TIA is not aware of any developed set of criteria in this regard, including in the familiar "use and abuse" testing protocols specified in the Commission's regulations. There is a reason for this. "Use and abuse" testing takes into account not only the physical abilities of children at various ages, but also their cognitive abilities. The Commission has studied this matter. Based on its research, including a "review of more than 200 articles" that were "most representative of the research literature" on the topics of "play, toys, materials, and the developmental behaviors of children" and a research study consisting of "observations of children interacting with carefully selected toys," the Commission recognized that children over the age of 8 have "skills that are approaching adult levels" and are "responsible." *Age Determination Guidelines: Relating Children's Ages To Toy Characteristics And Play Behavior,* September 2002 at 4 and 262. At a minimum, children over age 8 are neither (i) likely to mouth or ingest portions of their toys, as the current "use and abuse" testing protocols recognize;[7] nor (ii) likely to use their full physical powers to intentionally destroy the kinds of "collectable", "finely detailed", "ornate", and "realistic" toys that the *Age Determination Guidelines* repeatedly recognize are primarily intended for this age group. TIA accordingly perceives no reason not to proceed in a fashion that is consistent with the Commission's judgment concerning "use and abuse" testing for potentially life-threatening choking and other risks.

This is particularly true as an interim matter: There would be no practical way for industry to ensure that the children's products being made now and in the coming weeks could be sold after February 10, 2009 if the Commission were going depart from established practice and require use of an as yet unidentified, newly-minted "use and abuse" test for any product.

E. Appropriate Tests for Lead In Substrates

At the outset, it is important to recognize a distinction between tests used for screen purposes and validated tests used to quantify precisely the level of lead in a substrate.

1. Screening Tests

Efficient and effective screening tests must be permitted and encouraged, even if not used by the Commission as the basis for regulatory enforcement.

For example, it is TIA's understanding that the vast majority of third-party conformity assessment bodies use composite testing of paints and substrates as a screening tool.

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

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[7] CPSC Mouthing Study on toys and other articles intended for use by children; demonstrating that mouthing of toys diminishes after 14 months of age.

Another type of compositing is to combine different paints or substrates from one or more samples to reduce the number of tests run. If the lead content of a composite sample consisting of 10 different materials of equal weight is below 60 parts per million total lead, then none of the ten different materials could exceed 600 parts per million lead. If the lead content is higher, it may be possible that a composite test may fail to detect noncompliant levels of lead in one material in the composite sample. However, the test may nonetheless be effective for screening and certification purposes if lower limits are used in the testing paradigm or when combined with other screening methods used by third-party conformity assessment bodies.

Similarly Congress expressly recognized that efficient screening tools might be effective for testing lead when it mandated study of XRF scanners, despite the fact that the CPSC staff recently determined that the state of the technology was currently not consistently reliable enough to use for regulatory determinations.

2. Tests For Lead In Substrates

Selection of Test Portions – see EN71-3 Section 7

3.1 Test Procedure – Total

3.1.1 Digest (wet ash) the prepared samples in nitric acid or a mixture of nitric, sulfuric and hydrochloric acids. Measure the total concentration of lead (Pb) by GFAA, ICP or ICPMS.

3.2 Sample removal/preparation procedure – Total

3.2.1 Polymeric and similar materials – see EN71-3 Section 8.2.1

3.2.2 Paper and paperboard – see EN71-3, Section 8.3.1 Paragraphs 1 and 2

3.2.3 Textiles, whether natural or synthetic – see EN71-3, Section 8.4.1

3.2.4 Pliable modeling clays and gels – see EN71-3, Section 8.8.1

3.2.5 Glass/Ceramic/Metallic materials – see EN71-3, Section 8.5.1

III. CPSIA § 102(b)(4): Electronic Devices And Components

CPSIA § 102(b)(4) directs the Commission to except certain electronic devices, including devices that contain batteries, or electronic components from compliance with the new lead limits if the Commission determines that it is not technologically feasible to comply. In that event, the Commission is also directed to issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices and to establish a timetable, if feasible, for full compliance.

TIA submits that the CPSC staff should recognize the EU's RoHS directive 2002/95/EC, (RoHS directive) as implemented in July 2005, as the basis for determining the types of electronic devices and components that should be excluded from the CPSIA's requirements now as an enforcement policy and, later, after the requisite regulatory proceedings.

While metals used in electronics are separated in processing, reducing lead to the levels otherwise required by the CPSIA from all metals would not be technologically feasible. The RoHS directive, on which the Commission expressly invited comment, restricts the use of lead

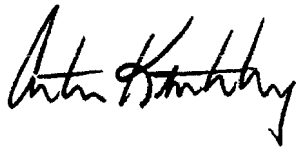
with a maximum concentration value (MCV) of 1000 parts per million for homogenous material (and other compounds) in electronics, but also grants exemptions where there are no "technically feasible" or environmentally preferable substitutes. To date, the EU Technical Adaptation Committee (TAC) has allowed for 22 applications of lead. In the case of lead as an alloying material in steel, aluminum, and copper the regulations allow for up to 4.0% (or 40,000 parts per million). These lead limits have been transposed to other RoHS-like legislation in California and other countries as well.

The ability of TIA's members to comply with respect to electronic components, such as electronic jacks, wires and connectors, is exacerbated because these components are standard "off the shelf" items. They are purchased by *all* manufacturers of electronic devices, not just TIA members. TIA members use these electronic components in a wide variety of electronic toys and educational learning aids. Electronic jacks, wires, and connectors and other electronic components that comply with the CPSIA's 600 parts per million total lead standard (let alone the reduced limits of 300 and 100 parts per million, if feasible) cannot be purchased today.

Most of these electronic components, moreover, are "not accessible." Even those metal electronic components, such as electronic jacks, wires, and connectors that are capable of being touched by a reticulated probe, are not "small parts" capable of being swallowed and are otherwise "not accessible" under the second dimension of accessibility discussed earlier. And, the use of lead in these electronic components is important to functionality as, for instance, an alloying element or to soften metals to enable the production of "turned" or lathed connectors, screws, prongs, and other machine parts into a specific shape and size.[8]

Thank you for the opportunity to continue our participation in you deliberations on how to implement the Consumer Product Safety Improvement Act. Should you have any questions or need clarification on the above comments, please do not hesitate to contact Rob Herriott at rherriott@toyassociation.org or 646-520-4843.

Sincerely,



Carter Keithley
President
Toy Industry Association

[8] TIA notes that, should the Commission conclude that it is not technologically feasible for these electronic components to comply with the lead standard, one permissible means of minimizing exposure to lead in these components under the CPSIA would be electroplating, even though reliance on electroplating is proscribed in other contexts. *See* CPSIA § 102(b)(3).

Stevenson, Todd

From: Herriott, Rob [rherriott@toyassociation.org]
Sent: Friday, October 31, 2008 1:36 PM
To: CPSC-OS; Wolfson, Scott; Falvey, Cheryl; Parisi, Barbara; Smith, Timothy; Mullan, John
Cc: Lawrence, Joan; Keithley, Carter; Desmond, Edward
Subject: TIA comments on lead
Attachments: TIA Comments on Lead10.31.08.pdf

Attached please find the comments by the Toy Industry Association regarding the new lead standards. We appreciate your consideration of our views and are happy to add further clarification if you deem it necessary.

If any questions arise, please do not hesitate to contact me.

Rob Herriott
Director of International Relations
and Regulatory Affairs
Toy Industry Association
1115 Broadway, Suite 400
New York, NY 10010
646-520-4843
rherriott@toy-tia.org

Information Technology Industry Council
Leading Policy for the Innovation Economy

Association Connecting Electronics Industries

October 31, 2008

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

Subject: **Consumer Product Safety Improvement Act;**
Section 101: Children's Products Containing Lead; Lead Paint Rule

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, 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) 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.

Based on our evaluations, most electronic devices will not be considered children's products as defined in the Consumer Product Safety Improvement Act (CPSIA). By definition, a "children's product" is a "consumer product designed or intended primarily for children 12 years of age or younger." 15 U.S.C. 2052(a)(16). While there are some computers and other electronics that are specifically designed for use by children, the majority of electronic products (e.g., servers, laptop computers, desktop computers, mobile internet devices, etc.) are not generally viewed as "children's products," even though they may be used by children from time to time under the supervision of adults in homes or schools. In the near future, we will be submitting additional, more detailed, comments on the definition "children's product" as it is applied to electronic products.

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.

Where is lead used in electronics?

The European Union's Directive on the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment (the "RoHS Directive") severely restricts the use of lead (and other compounds). The RoHS Directive establishes a maximum concentration value (MCV) of

1,000 ppm per homogenous material in electronics, but also grants exemptions where there are no technically feasible or environmentally preferable substitutes. To date, the EU Technical Adaptation Committee (TAC) has allowed for 22 applications of lead above the MCV of 1000 ppm. In the case of lead as an alloying material in steel, aluminum, and copper the regulations allow for up to 4.0% (or 40,000 ppm). These threshold limits for lead have been transposed to other RoHS-like legislation in Korea, Japan and California. China has also set the lead threshold limit for notification at 1,000 ppm.

The European Union set the lead limits in the RoHS Directive at 1,000 ppm at the homogeneous material level because 1) "a total avoidance (of lead) is impossible to achieve" and 2) that level was considered to "ensure a high level of protection."[1] First, lead is a very ubiquitous element in nature, is found in concentrations of around 50 ppm in virtually all soil, and in concentrations of around 600 ppm in most iron ore. While these metals are separated in processing, removing *all* lead from all metals is virtually impossible. Therefore, the electronics industry has been working at ensuring a 1,000 ppm limit where technically feasible.

For electronics, lead is used in discrete instances for specific performance or safety reasons. Annex C of the RoHS Guidance Notes issued by the United Kingdom's Department for Business, Enterprise and Regulatory Reform (UK BERR) contains a list of RoHS exemptions and descriptions of where these are used in electrical and electronic equipment. These are attached for reference. However, it is important to note that most of these uses do not have applications in children's products. For example, network infrastructure equipment (exemption 7.2) and high-power loudspeakers (exemption 27) are not used by children. Most of these exempted uses of lead are also internal to the device, either inside a chassis or casing or sealed entirely in glass.

The one instance where lead may potentially be used in accessible parts is exemption #6 – lead as an alloying element. Certain connectors, screws and prongs that are machined (also called "turned" parts or lathed parts) to a specific shape and size for use need to have lead in specific amounts in order to soften the metal being shaped.

Is the lead in electronics accessible?

The lead limits for "children's products" do not apply to any component part that is "not accessible to a child through normal and reasonably foreseeable use and abuse of such product." Section 101(b)(2)(A). By definition, the CPSIA states that "a component part is not accessible...if such component part 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." Id. "Reasonably foreseeable use and abuse" includes "swallowing, mouthing, breaking, or other children's activities, and the aging of the product." Id. Nonetheless, "paint, coatings, or electroplating may not be considered a barrier that would render lead in the substrate inaccessible to a child." Id. at (b)(3).

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 to protect the internal components from dust, moisture, exposure, and other influences that could damage the component parts or otherwise impact the function of the electronic device. In most cases, the covering or casing can be removed by the use of tools (e.g., a screwdriver). The use of tools to remove a covering or casing is not a "children's activity." Therefore, we recommend that the

[1] See EU Commission Decision 18 August 2005 amending Directive 2002/95/EC.

CPSC clarify that component parts inside of an electronic children's product that can only be accessed by the use of tools are considered "inaccessible" for purposes of the general lead ban in Section 101(a).

In some instances, electronic products may have panels that can be removed without the use of tools. However, in such instances, such products are generally not considered "children's products," and the panels usually require multiple steps (for example lifting and sliding) that smaller children typically cannot accomplish. Even if the component parts within these electronic products were viewed by the CPSC as "accessible" to children, most of the component parts themselves are inaccessible because the lead within these component parts is not accessible to the child. For example, most computer chips are really a component part within a component part. The actual computer chip is created on a substrate of silicon or a material with similar properties. This chip is then packaged within a plastic and epoxy package to protect the chip from damage.

For semiconductor chips, lead has been used inside of the package to connect the chip with the connectors on the outside of the plastic and epoxy package, and to the computer motherboard. There is no way to remove the lead from the computer chip inside the package without destroying the entire chip, which is not something a child could do under normal or reasonably foreseeable use or abuse of the component part. In addition, because of the EU RoHS Directive, many applications of lead in semiconductor chips have been replaced or are in the process of being replaced by other materials. Accordingly, the CPSC should clarify a component part still is viewed as inaccessible and exempt from the general lead ban in Section 101(a) if either of the following two circumstances exist:

1. Even if a component part could be considered accessible, if that accessible component part renders a smaller component part containing lead inside of the accessible component part inaccessible, or
2. If lead is inaccessible because it is covered, encased or joined to another part and therefore not physically exposed.

How is accessibility tested?

As mentioned above, most general-use electronic products are not likely to be "children's products." For those specific electronic products that are designed and intended primarily for children, most of the lead used in those products is inaccessible.

In 1981 the CPSC generated accessibility guidelines, addressing simulated use and abuse, sharp points, sharp metal, glass, for 8 years and younger and addressing choking and ingestion for children under 3 years. A similar standard was developed by the American Society for Testing and Materials (ASTM) with almost identical guidelines. Although it will need to be modified to address issues for children up to 12 years old, we believe that ASTM F963 standard is a good starting point for a common industry practice for determining accessibility or inaccessibility.

In electronic devices, is it technologically feasible to achieve the 600, 300 or 100 ppm lead limits?

As mentioned before, the EU RoHS Directive provides a list of exemptions where it was determined that there are no technically feasible or environmentally preferable substitutes for

specific uses of lead in electronics. While industry is continuing to analyze alternatives, it has not been possible to identify a viable alternative in all cases.

The question of whether "it is technologically feasible for all parts" to meet lead limits of 600, 300 or 100 ppm is a difficult one. As mentioned before, the RoHS Directive set the lead limits at 1,000 ppm at the homogeneous material level because 1) "a total avoidance (of lead) is impossible to achieve" and 2) that level was considered to "ensure a high level of protection." However, it is important to note that this 1,000 ppm limit is at the homogeneous material level rather than the part level. Therefore, we suggest that the lead limit for accessible component parts for electronic products designed and intended primarily for children under 12 be set at 1,000 ppm.

We also suggest the CPSC establish a list of exemptions for which a higher lead use is permissible. Like the CPSIA, the EU RoHS Directive recognized that it is not technologically feasible for certain electronic products to meet the established lead thresholds. As a result of this, the EU Commission approved a number of specific exemptions where it could be demonstrated that removal of the lead was "technically and scientifically impracticable." Because of the limited time provided by the CPSIA for the CPSC to develop the regulation of exemptions for certain electronic devices, we suggest that the CPSC take note of the extensive work already done by the EU in implementing the RoHS Directive, and we request that the CPSC not require the electronics industry to once again prove in a very tight timeframe that removal of lead in specific applications is not technically feasible.

Instead, in the interest of time, the CPSC should recognize the work already done by the EU and develop exemptions for all component parts (and electronic devices containing such component parts) that are based on the EU RoHS Directive exemptions. For lead in component parts of an electronic device that is considered accessible, the CPSC should, by regulation, provide an exclusion for that lead under Section 101(b)(4), if the component part is or would be considered compliant with the EU RoHS Directive.

Current compliance with the RoHS directive

Most global manufacturers (the ITI, CEA and IPC membership) design, manufacture and distribute products on a global basis and do not develop separate product lines for sale into the United States. The vast majority of manufacturers that are selling into the EU are compliant with the Directive. The UK National Weights and Measures Laboratory, the agency in the UK charged with enforcing the Directive, reported that in 2007, they issued 20 notices, one warning letter and took one case to justice.[2] If a device is not sold into the EU, it is not subject to the Directive. Some devices, such as radio-based devices, must be made specifically for the US (or at least the radio components must be US-specific) and some smaller manufacturers do not sell into the EU. However, there is significant evidence that the global supply chain is rapidly becoming RoHS compliant. Therefore, it is very likely that in the near future even devices that are not designed nor intended to be sold into the EU will be compliant with the materials limits of the Directive.

Compliance with the Directive is being achieved by both reducing and substituting lead use and by relying on exemptions. Where lead could be eliminated, for example in most cases of solder, it has been. However, where it is not feasible, such as low-melting solder, certain leaded glass and other specialty parts, that use has been exempted, as discussed before. Most, if not all,

[2] See UK NWML 2007 RoHS report

electronic devices manufactured today contain one or more component parts that rely on one of these EU RoHS Directive exemptions for lead.

Concluding Comments

On behalf of our combined membership, we appreciate the opportunity to provide information and suggestions regarding the use, accessibility and feasibility of lead in electronics. As we noted in the introduction, most electronics will not fall into the scope of "children's products." Based on conversations with CPSC staff, we feel that further clarification of how to determine whether a product is a children's product will be beneficial to the electronics and other industries. We hope to continue a dialogue with the CPSC as you develop a rulemaking for accessibility as well as the appropriate levels to set the lead limits in electronics. 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 Ms. Megan Hayes, CEA, at mhayes@CE.org or 703-907-7660 or 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: Friday, October 31, 2008 3:34 PM
To: CPSC-OS
Subject: ITI CEA and IPC comments to CPSC RFC on Section 101
Attachments: Final ITI-CEA-IPC RFC.pdf

Dear Sir or Madam;

Please see the attached response to the Request for Comments on Section 101 of the Consumer Product Safety Improvement Act. These comments are on behalf of the Information Technology Industry Council (ITI), the Consumer Electronics Association (CEA) and IPC.

If you have problems opening this attachment, please e-mail or call.

Thank you and regards,
Chris Cleet
Director of Environmental Affairs
Information Technology Industry Council (ITI)
1250 Eye St, NW - Suite 200
Washington, DC 20005
202.626.5759
www.itic.org

October 31, 2008

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

RE: JPMA Comments on Section 101 Lead Requirements for Certain Children's Products

The Juvenile Products Manufacturers Association (JPMA) is a national trade organization of more than 300 companies in the United States, Canada and Mexico. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers.

The Juvenile Products Manufacturer's Association is submitting the following comments related to implementation required under Section 101 of the Consumer Product Safety Improvement Act of 2008 (the "CPSIA").

These comments are submitted in response to the Commission's request, by JPMA on behalf of its 300 members. JPMA is committed to an orderly implementation of the dramatically expanded regulation of accessible lead in children's products as mandated under the CPSIA.

The CPSIA lowers the amount of lead that can be in children's products. Section 101 sets new limits for the lead content in children's products and the amount of lead in the paint used on those products. A "children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors will be considered: a statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable; whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger; whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and, the Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines[1].

Section 101 Lead in Substrate Limits

Under the CPSIA provisions the limits on the amount of lead in children's products are phased in over the course of three years. By February 10, 2009 (180 days after enactment), products

[1] AGE DETERMINATION GUIDELINES: Relating Children's Ages To Toy Characteristics and Play Behavior

Juvenile Products Manufacturers Association, Inc.
15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525
Email: jpma@ahint.com • Web site: www.jpma.org

designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. Children's products that contain more lead than 600 ppm are banned in the U.S. after February 10, 2009, and the sale of those products can result in significant civil and criminal liability. After one year from enactment, or August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. The limit goes down to 100 ppm after three years, or August 14, 2011, unless the Commission determines that it is not technologically feasible. The statute provides that paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child. Accordingly, electroplating a substrate will not provide a basis for exempting a children's product from having to meet the lead content limits.

Exceptions Mandated and Permitted

Some children's products are expressly exempted from these new lead limits if the only parts containing lead are inaccessible. In addition, if the component part of a toy containing lead is inaccessible, it is expressly excluded from testing for the new lead limits. In particular, a component part is not accessible if the component part 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[2]. The CPSIA directs the Commission to provide guidance by rule on what component parts are considered inaccessible.

The Commission is also directed to except certain electronic devices, including devices that contain batteries, or components from compliance with the new lead limits. If the Commission determines that it is not technologically feasible for certain electronic devices to comply with such limits, the Commission by regulation will issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices. JPMA submits that the CPSC staff should recognize the European Union RoHS Directive 2002/95/EC (the "RoHS directive"), as implemented in July 2006, as the basis for determining the types of electronic devices and parts that should reasonably be excluded from regulation. While metals used in electronics are separated in processing, removing "all" lead from all metals is virtually impossible. In such products lead is used in discrete applications for specific performance or safety reasons. Most electronic component use is internal to the device, either inside a chassis or casing or sealed entirely. The one use of lead that may potentially be used in accessible parts is as an alloying element. Certain connectors, screws and prongs that are machined (also called "turned" parts or lathed) to a specific shape and size for use need to have lead in specific amounts in order to soften the metal being shaped. The RoHS directive restricts the use of lead

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[2] 16 C.F.R. 1500.48-53, et seq. currently sets forth test requirements that simulate reasonable use and abuse by children.

16 C.F.R 1501, et.seq. also incorporates such requirements and set forth additional criteria for determining accessible hazardous toy small parts. The cognitive ability of children age 8 and older to recognize and avoid mouthing and ingestion of small parts also indicates that mouthing and ingestion of toys or toy arts is not likely to occur at older ages.

with a maximum concentration value (MCV) of 1000 ppm per homogenous material (and other compounds) in electronics, but also grants exemptions where there are no "technically feasible" or environmentally preferable substitutes. To date, the EU Technical Adaptation Committee (TAC) has allowed for 22 applications of lead. In the case of lead as an alloying material in steel, aluminum, and copper the regulations allow for up to 0.4% (or 4000 ppm). These lead limits have been transposed to other RoHS-like legislation in California and other countries as well.

CPSC staff is urged to recognize the exceptions provided therein related to lead in functional electronic components. Similarly the CPSC staff should exempt electronic components which are technically accessible but which carry electrical current, such as electronic jacks, wires and connectors. These components are not exclusive to our industry and are used in a wide variety of electronic safety and convenient juvenile products.

The Commission may also, by regulation, exclude a specific product or material from the prohibition in subsection (a) if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither, (A) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor (B) have any other adverse impact on public health or safety. In addition, craft items and art materials as those terms are defined under LHAMA provisions in the amended Federal Hazardous Substances Act ("FHSA") (15 U.S.C. 1261 et seq. and see 16 CFR 1500.14(b)(8)) should be excepted. CPSIA Section 102 already provides for safe harbor treatment of such LHAMA compliant product.

Additional Categories of Products & Materials That Should Be Excluded From Substrate Testing

CPSC has established well established protocols for conducting health risk assessments on lead exposure from children's products, or products to which a child is likely to be exposed. Although such protocols are not applicable for many children's products as defined under the CPSIA, given the total lead limitations required, they are useful as the CPSC staff considers certain materials which should be exempted from the testing[3]. For example, certain structural steel components which add strength and structural integrity to stroller or infant bouncer frames and latches may contain lead within metal alloys which is not accessible from the product component and doesn't present a human health hazard. Important safety features may rely upon such

[3] CPSC Interim Enforcement Policy for Children's Metal Jewelry Containing Lead - 2/3/2005

CPSC Standard Operating Procedure for Determining Lead (Pb) and Its Availability in Children's Metal Jewelry 2/3/2005

CPSC Staff Report on Lead and Cadmium in Children's Polyvinyl Chloride (PVC) Products 11/21/1997

CPSC Test Methodology for Accessible Lead in Vinyl Products

Testing for Lead in Consumer Products Dr. Joel R. Recht 5/13 2008

component parts. In such cases adherence to such protocols can and should provide a reasonable basis to except the materials from total regulatory limits. In addition lead contained in electronic component parts is inaccessible to the child. For example, most computer chips are really a component part within a component part. The actual computer chip is created on a substrate of silicon or a material with similar properties. This chip is then housed within a plastic and epoxy package to protect the chip from damage. For semiconductor chips, lead often is used inside of the package to connect the chip with the connectors on the outside of the plastic and epoxy package.

In addition, the proposed exemptions indicated below reflect the fact that substitution of lead (Pb) in certain materials/applications is technically or scientifically impracticable and the negative environmental/health, and /or consumer safety impact caused by substitution would be likely to outweigh the environmental, health, or consumer safety benefits:

- Lead in alloys like steel, copper, and aluminium
- Lead used in compliant pin connector systems
- Lead in bronze bearings and bushings
- Ball point pens
- LHAMA Compliant products
- Metallic/Ceramic components that do not have potential for ingestion[4]
- Gemstones

Some of these materials are necessary to imbue strength and integrity into the products. Baby bouncers, infant swings, strollers, bicycles, beds all contain structural steel or other metal alloys where lead may be present, but doesn't leach out so as to be absorbed in the blood at levels that present any health hazard. The CPSC should seriously consider excepting structural metal components that may be accessible to a probe, but present no health risk.

Recommended Test Protocols

Accessibility

Given the express exclusion from regulation of inaccessible parts or components and extensive existing simulated use and abuse protocols for certain toys and articles intended for use by children, CPSC can rely upon existing regulations and test protocols to determine accessibility of component parts. Under existing protocols certain accessibility probes are routinely employed to make such determinations (See 16 CFR 1500.48 and 1500.49), both before and after various applicable use and abuse testing (see in 16 CFR 1500.50-53), which is dependent upon the age range of children likely to use the products. Please note that paint, coatings, or electroplating are not considered as barriers that would render the substrate to be inaccessible (i.e. a painted,

[4] Glass/Ceramic/Metallic toys or components which do not fit entirely within the "small parts cylinder" are not tested because there is no hazard from ingestion and no significant extraction occurs with saliva simulator, (reference = EN71-3, ANNEX, D.10.1)

coated, or electroplated substrate that is contacted by the accessibility probe is considered accessible).

Similarly, the existing Small Parts Regulation (See 16 CFR 1501, et. seq.) has been consistently recognized by the CPSC (after repeated study) as an effective test protocol for assessing accessible small parts capable of being mouthed by the child population most likely to be at risk of ingestion.[5] Such regulations provide a reliable method for simulating use and abuse of toys and other articles intended for use by children. These should also be acceptable criteria under any CPSIA imposed requirement for use and abuse testing of product. The existing Small Parts Regulation provides a readily defined method for identifying component parts likely to be mouthed, which should be the same method employed for identifying product components which are reasonably capable of being mouthed for the purposes of identifying parts to be tested to the newly required lead limits.

For the most part, all component parts inside of an electronic product or mechanical product are inaccessible. This is because all such products are contained in a covering or casing to either i) protect the internal electronic components from contamination that can damage the component or otherwise impact the function of the electronic device; or ii) restrict access by the child user to moving mechanical metal parts. In most cases, the covering or casing can't be removed or can only be removed by the use of tools or manipulation by adult caregivers. Therefore the Association recommends that the CPSC clarify that component parts inside a children's product, that otherwise comply with the use and abuse regulations be considered "inaccessible" for purposes of the general lead ban in CPSIA Section 101(a).

Lead in Paint Limit

In addition, after 1 year or August 14, 2009, the Act provides that paint and similar surface-coating materials for consumer use must be reduced from 600 ppm to 90 ppm. In all other respects the lead in paint rule remains unchanged. If the children's products use printing inks or materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing, are excluded from the lead paint limit (but will be subject to the alternative substrate limits as noted above). Until February 10, 2009, toys must meet CPSC's lead paint rule at 16 C.F.R. § 1303.1. For paint and similar surface coatings, and certain consumer products, such rule specifies that the maximum allowable total lead content is 0.06% based on the total weight of the non-volatile portion of the paint (which is equivalent to 600 ppm). As of August 14, 2009, the maximum allowable total lead content of such items is reduced to 0.009% (which is equivalent to 90 ppm)[6]. The Standard Consumer Safety Specification for Toy Safety, ASTM F963-07 becomes a mandatory consumer product safety standard on February 10, 2009. This standard additionally places limits on the amount of lead (and other heavy metals, namely antimony, arsenic, barium, cadmium, chromium, mercury and selenium) based on the soluble

[5] CPSC Mouthing Study on toys and other articles intended for use by children; demonstrating that mouthing of toys diminishes after 14 months of age.

[6] CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint

portion of each material using a specified extraction methodology in the standard. Toys manufactured after February 10, 2009 will have to meet these requirements. However, on August 14, 2009 soluble lead testing under the ASTM standard provisions will not be necessary because the maximum "total lead" content in paint will be reduced to 90 ppm in 16 CFR § 1303.1, which would be a more stringent requirement in all cases. Yet, it will remain necessary to conduct ASTM F963-07 solubility testing for antimony, arsenic, barium, cadmium, chromium, mercury, and selenium, as those are not covered by 16 CFR § 1303.1.

Recommended Test Protocols

Test Methodologies

Selection of Test Portions – see EN71-3 Section 7

- 3.1 Test Procedure – Total
  - 3.1.1 Digest (wet ash) the prepared samples in nitric acid or a mixture of nitric, sulfuric and hydrochloric acids. Measure the total concentration of lead (Pb) by GFAA, ICP or ICPMS.
- 3.2 Sample removal/preparation procedure – Total
  - 3.2.1 Polymeric and similar materials – see EN71-3 Section 8.2.1
  - 3.2.2 Paper and paperboard – see EN71-3, Section 8.3.1 Paragraphs 1 and 2
  - 3.2.3 Textiles, whether natural or synthetic – see EN71-3, Section 8.4.1
  - 3.2.4 Pliable modeling clays and gels – see EN71-3, Section 8.8.1
  - 3.2.5 Glass/Ceramic/Metallic materials – see EN71-3, Section 8.5.1

Efficient Effective Test Screening Methodologies must be Permitted and Encouraged; Even if not used by the CPSC as the Basis for Regulatory Enforcement

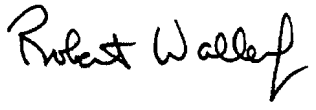
One type of compositing that labs have used is to combine like paint from several like parts or products to obtain a sufficient sample size for analysis where there is not sufficient quantity of paint on one item to perform the testing. This is appropriate in this circumstance and may even be necessary to obtain valid analytical results. Another type of compositing is to combine different paints or substrates from one or more samples to reduce the number of tests run. According to the CPSC staff, this type of composite testing may fail to detect excessive levels of lead in an individual paint and compositing to combine different substrates from one or more samples may fail to detect excessive levels in one part merely because they are diluted. Accordingly, CSC staff has expressed concern that compositing of plastics or other materials to test for lead in substrates is generally not appropriate. However a review of laboratory testing methodologies indicates that such composite testing may be effective for screening purposes when lower threshold limits for lead are used. Congress expressly recognized the need for cost effective testing methods when it mandated CPSC to study XRF technology as a possible screening tool.

Preemption

The new lead limits for lead paint and lead content expressly preempt state law. The enactment of the CPSIA lead provisions, including the exceptions from testing and the timetable for implementation are considered by Congress to be an FHSA regulation upon enactment (CPSIA Section 101 (g). Thus states and localities are prohibited by the FHSA (Section 18, 15 U.S.C 1261n) from imposing non-identical schemes of regulation. However, they are free to supplement enforcement of identical requirements, as interpreted by CPSC to be applicable. In connection with the provision mandating the voluntary toy safety standard ASTM F963-07 as a mandatory consumer product safety standard (CPSIA Section 106 (h)) such requirements are also preemptive although there Congress has provided a mechanism to grandfather in certain existing state laws on toy safety. In such cases state laws that deal with the same risk of injury as the ASTM F963-07 toy safety standard may remain in effect; provided that in order to qualify for an exemption from preemption from a toy safety standard under ASTM F963-07, the state toy safety laws must have been in effect on August 13, 2008 and states must submit them to CPSC by November 12, 2008. ASTM F-963-07 is a highly technical, product specific consensus safety standard. As such it is highly unlikely that any state has regulations that meet the threshold requirement of addressing the same risk of injury and the same population involved, related specifically to the toy characteristics and substances as regulated under the ASTM standard.

Thank you for providing us with the opportunity to comment on these important issues. JPMA respectfully reserves the right to file additional comments and we urge the CPSC to provide additional guidance and clarity by publishing a rule on the provisions in question contained herein.

Respectfully submitted,



Robert Waller, Jr., CAE
President
(856) 642-4402

Stevenson, Todd

From: Yarissa Reyes [yreyes@ahint.com]
Sent: Friday, October 31, 2008 4:02 PM
To: CPSC-OS
Cc: fblocker@ahint.com; Mike Dwyer; Bob Waller
Subject: Section 101 Lead in Children's Products
Attachments: CPSIA Section 101 Comments-Lead Requirements.pdf

Importance: High

To Whom It May Concern:

On behalf of the Juvenile Products Manufacturers Association, attached please find comments on Section 101 of the Consumer Product Safety Improvement Act - Lead in Children's Products.

Sincerely,

Robert Waller, Jr., CAE
President
Juvenile Products Manufacturers Association
(856) 642-4402
www.jpma.org

101
16

Stevenson, Todd

From: KRISTER HÅRD AF SEGERSTAD [KRISTER.HARDAFSEGERSTAD@MEMO.IKEA.COM]
Sent: Friday, October 31, 2008 4:09 PM
To: CPSC-OS
Cc: NEIL.MORGAN@MEMO.IKEA.COM; HANNA.GARLIN@MEMO.IKEA.COM; KARIN.WINNERHOLT@MEMO.IKEA.COM; MALIN.NASMAN@MEMO.IKEA.COM
Subject: Re: Comments to Children's products containing lead; lead paint rule
Attachments: Comments to Children's Products Containing Lead.doc

--- Received from IKEA2.KRISTER 6108340180X5314 08-10-31 15.09 --

Gentlemen,

Please see below and in attachment, comments from IKEA North America, LLC to Section 101 of the CPSIA.

Comments to Children's products containing lead; lead paint rule Section 101 of the Consumer Product Safety Improvement Act ("CPSIA")

CPSC Q # 1. The identification of any component part of any children's product that currently contains lead in any concentration?

Whether any children's product currently on the market contains lead-containing component parts that are inaccessible, and the reasons why such component parts are considered inaccessible (keeping in mind that the CPSIA excludes paint, coatings, or electroplating as barriers with respect to accessibility by children)?

Answer: A number of metal and alloy assembly fittings used on Children's IKEA furniture products have been identified as containing lead in amounts ranging from 0.005% to 3.5%.

Aluminum:

Lead is normally present only as a trace element in commercial aluminium, but it is added in some alloys to improve machineability. It also has an impact on tensile properties.

Brass:

Lead is added for increasing machine ability and cutting efficiency. The presence of lead in brass has a lubricating effect providing low friction and wear properties needed in some applications.

Zamak alloys:

A small amount of lead is added for preventing intergranular corrosion in combination with Magnesium. There are no other available alloys on the market which can be used for fittings.

Free-cutting Steel:

Lead is added for increasing machine ability and cutting efficiency.
There are lead free alloys on the market which can be used.

Work is ongoing to determine accessibility. At this point in time, based on our knowledge of child behavior, for the purposes of the CPSIA IKEA considers assembly fittings to be inaccessible.

==========

CPSC Q # 2. Current compliance with or possibility of compliance with regulations, such as the European Union directive on the restriction of use of hazardous substances (EU RoHS Directive 2002/95/EC), or other standards including information on:

* The lead limit in the standard being met (e.g., EU RoHS lead limit is 1000 ppm).
* Whether compliance with such a standard is being met because of the existence of an exemption that specifically allows the use of lead in some parts of a product, and identification of such lead-containing parts.

Answer : IKEA is RoHS compliant and has in some situations gone beyond the requirements of the directive. RoHS permits exemption of materials and components if the elimination or substitution of them is technically or scientifically impracticable, or where the negative environmental, health and/or consumer safety impacts caused by substitution are likely to outweigh the environmental, health and/or consumer safety benefits thereof.

An example of where an IKEA children's product contains accessible lead exempted under RoHS is copper alloy used on the contact pins on electrical plugs. This may contain up to maximum 40,000 ppm lead but is typically less than 20,000 ppm.
==========

Krister Hård af Segerstad

Manager, Product Safety & Compliance
IKEA NA Services, LLC
420 Alan Wood Road
Conshohocken, PA 19428

Phone: +1 (610) 834-0180 x/5314
Fax: +1 (610) 834-0872
e-mail: krister@memo.IKEA.com

---- 08-10-31 15.09 ---- Sent to ----------

-> CPSC-OS@cpsc.gov
CC:
-> IKEA1.NEIL NEIL MORGAN 24/46 1688 IDC L&S
-> IKEA1.HANX HANNA GÅRLIN IOS BA40
-> IKEA1.KARQ KARIN WINNERHOLT IOS BA40
-> IKEA2.MNNN MALIN NÄSMAN L&S NA

Comments to Children's products containing lead; lead paint rule Section 101 of the Consumer Product Safety Improvement Act ("CPSIA")

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An example of where an IKEA children's product contains accessible lead exempted under RoHS is copper alloy used on the contact pins on electrical plugs. This may contain up to maximum 40,000 ppm lead but is typically less than 20,000 ppm.

==========

Toxics in Packaging Clearinghouse
C/o Northeast Recycling Council, Inc.
139 Main Street, Suite 401
Brattleboro, VT 05301

101 17

October 31, 2008

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

RE: Section 101 Lead in Children's Products

Dear Sir/Madam:

The Toxics in Packaging Clearinghouse (TPCH) appreciates the opportunity to provide comments on Section 101, of the Consumer Product Safety Improvement Act (CPSIA). The goals of this letter are: 1) to ensure that the Consumer Product Safety Commission (CPSC) is aware of state toxics in packaging laws that restrict the use of lead (as well as cadmium, hexavalent chromium, and mercury) in packaging of all products, including children's; and 2) to request that the CPSC **not** include lead in packaging under its regulatory authority as the issue is being managed through current state packaging laws and the coordination provided by the TPCH.

Nineteen U.S. states have toxics in packaging laws that prohibit the intentional use of ***any amount*** of heavy metals (lead, cadmium, mercury and hexavalent chromium) in ***any*** packaging and packaging components sold or distributed in their state. These laws also limit the incidental presence of the sum of the four restricted metals to 100 ppm. The purpose of toxics in packaging laws is to prevent the unnecessary use of toxic substances in packaging materials that, when discarded, comprise one-third of U.S. municipal solid waste generation and go into our nation's landfills, waste incinerators, and recycling streams, where these toxic constituents are difficult to control and may impact the environment and public health.

It is our understanding that the CPSC is considering whether packaging for children's products is considered part of a children's product under the definition of the CPSIA. TPCH and its member states are concerned that any regulation of packaging under the CPSIA would lead to arguments from interested parties that such federal regulation would preempt state laws. This could lead to unnecessary "regulatory confusion."

It is important to note that while both the CPSIA and the existing state packaging laws address the presence of lead, they are not aimed at the same risk of illness or injury. Rather, the state packaging laws were and are intended to prevent environmental and associated health risks from the disposal of product packaging. On the other hand, the CPSIA is specifically focused on preventing harm to children who come into contact with lead in children's products. Thus, this letter is not intended to imply that TPCH, or its member states, is of the opinion that the CPSIA

would necessarily result in the preemption of state packaging laws. Rather, we are merely flagging this issue to bring it to your attention.

State packaging laws are:

1) **More restrictive.** State toxics in packaging laws prohibit the intentional use of ***any amount*** of lead in packaging or packaging components. Further, the legal limit in state laws for the incidental presence (i.e., not intentional use) of the 4 restricted metals combined is currently **100 ppm**. In contrast, the CPSIA allows the intentional use of lead provided it does not exceed a specified level. For the first 3 years, the legal limit under the CPSIA, if packaging is included, will be higher than is currently allowed by state toxics in packaging laws.

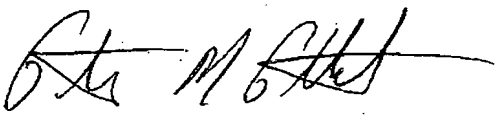
2) **More extensive.** State toxics in packaging laws address four heavy metals, including lead. These laws also address all packaging and packaging components, not just packaging for children's products.

Member states of the TPCH are concerned that the inclusion of packaging under the CPSIA definition of children's packaging might lead to higher levels of lead in these packages in the initial years when CPSIA limits for lead content are 600 ppm and 300 ppm. Additionally, the CPSIA would not provide limits for the three additional metals restricted by state packaging laws. We further expect that the inclusion of packaging under the CPSIA will cause confusion among the regulated community.

The Toxics in Packaging Clearinghouse coordinates implementation of toxics in packaging laws among its ten member states (California, Connecticut, Illinois, Iowa, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, and Washington), and serves as a single point of contact for organizations and companies seeking information and clarifications. The attached Fact Sheet provides further information on toxics in packaging legislation, including a list of the 19 states with such laws.

Thank you for taking into consideration the request of TPCH on behalf of its member states. If you have any questions or comments, please contact me at (518) 402-8705 or pmpettit@gw.dec.state.ny.us; or Patricia Dillon, TPCH Program Manager at (802) 254-8911 or info@toxicsinpackaging.org.

Sincerely,



Peter Pettit
Chair – Toxics in Packaging Clearinghouse &
NY Department of Conservation

Enclosure:
Fact Sheet – Toxics in Packaging Clearinghouse

cc:
Ron Ohta, CA Department of Toxic Substances Control
David Westcott, CT Department of Environmental Protection
Becky Jayne, IL Environmental Protection Agency
Kathleen Hennings, Iowa Department of Natural Resources
John Gilkeson, MN Pollution Control Agency
Sharon Yergeau, NH Department of Environmental Services
Dana Lawson, NJ Department of Environmental Protection
Beverly Migliore, RI Department of Environmental Management
Alex Stone, WA Department of Ecology
Patricia Dillon, Toxics in Packaging Clearinghouse
Lynn Rubinstein, Northeast Recycling Council, Inc.

Toxics in Packaging Clearinghouse

c/o Northeast Recycling Council, Inc. (NERC)
139 Main Street, Suite 401 ■ Brattleboro, VT 05301
802 254 8911 ■ www.toxicsinpackaging.org

FACT SHEET

Introduction

The Model Toxics in Packaging Legislation was developed in 1989 to reduce the amount of four heavy metals in packaging and packaging components sold or distributed throughout the states. As of July 2004, legislation based on this model has been adopted by nineteen states:

- California
- Connecticut
- Florida
- Georgia
- Illinois
- Iowa
- Maine
- Maryland
- Minnesota
- Missouri
- New Hampshire
- New Jersey
- New York
- Pennsylvania
- Rhode Island
- Vermont
- Virginia
- Washington
- Wisconsin

The influence of the Model Legislation extends beyond US borders. The European Union, for example, used the Model as the basis of its packaging requirements (94/62/EC).

Incidental Presence Concentration Limits

No intentional introduction of any amount of the four metals is allowed. The sum of the concentration levels of incidentally introduced lead, mercury, cadmium, and hexavalent chromium present in any package or packaging component shall not exceed the following:

- 600 parts per million, two years after enactment
- 250 parts per million, three years after enactment
- 100 parts per million, four years after enactment

Who is Responsible?

- Manufacturers of packaging and packaging components
- Suppliers of packaging and packaging components
- Product manufacturers or distributors who use packaging

How to Comply

The manufacturer or supplier to the purchaser must submit a certificate of compliance stating that a package or packaging component is in compliance with the requirements of the law. (This provision does not apply to the individual making retail purchases or to retail storeowners.) The purchaser, manufacturer and supplier should keep a copy of the signed certificate of compliance on file as long as that package is in use. The certificate of compliance can be subject to state and public review upon request.

Enforcement

Enforcement of the Model Toxics in Packaging Legislation is at the discretion of each individual state. However, violation information will be shared among the Clearinghouse member states, and will be pursued in a consistent manner, to the extent possible.

Exemptions

Details of these exemptions can be found in the individual state laws, and specific exemptions may vary by state. All packages and packaging components are subject to the law except:

- Packages and packaging components with a code indicating that the date of manufacture was prior to the effective date of the law.
- Packages and packaging components to which heavy metals have been added in order to comply with heath and safety requirements specified by federal law. *(2-year exemption—requires approval)*
- Packages and packaging components that would not exceed the maximum contaminant levels, but for the addition of recycled materials. This exemption does not apply to use of the metals when they have already been recovered and separated for use as a metal or metallic compound. *(Expires Jan. 1, 2010)*
- Packages and packaging components to which heavy metals have been added in the manufacturing process for which there is no feasible or technical alternative. *(2-year exemption—requires approval)*
- Packages and packaging components that exceed the contaminant levels, but are reused; and the enclosed product, its transportation and disposal are regulated by federal health and safety requirements. *(Expires Jan. 1, 2010)*
- Packages and packaging components that exceed the contaminant levels but have a controlled distribution and are reused. *(Expires Jan. 1, 2010—requires approval)*
- A glass package or packaging component that has a vitrified label.

More Information Online

See **www.toxicsinpackaging.org,** which includes:

- 2004 revised model legislation
- Q&A document, which lists the most commonly asked questions regarding the toxics in packaging legislation
- Sample certificate of compliance and certificate of exemption
- Comparative Analysis, presenting a side-by-side comparison of the model legislation and existing state laws.

Interested in Joining?

Membership categories include:

- States that have enacted toxics in packaging legislation
- States considering adoption of the legislation
- Industry/Trade Associations
- Non-Profit Organizations

Revised January, 2005

Stevenson, Todd

From: Patty Dillon [patty.dillon@verizon.net]
Sent: Friday, October 31, 2008 4:40 PM
To: CPSC-OS
Cc: Lynn Rubinstein (E-mail); Erika Giorgi (E-mail); Colleen Heck (E-mail); info@toxicsinpackaging.org; Alex Stone (E-mail); Becky Jayne (E-mail); Beverly Migliore (E-mail); Dana Lawson (E-mail); David Westcott (E-mail); John Gilkeson (E-mail); Kathleen Hennings (E-mail); Peter Pettit (E-mail); Ronald Ohta (E-mail); Sharon Yergeau (E-mail)
Subject: Section 101 Lead in Children's Products
Attachments: CPSC letter October 2008 final.doc; TPCH fact sheet Jan 2005.pdf

The Toxics in Packaging Clearinghouse is pleased to submit the attached comments on Section 101 of the CPSIA.

Patricia Dillon
Program Manager
Toxics in Packaging Clearinghouse
tel (802) 254 8911
info@toxicsinpackaging.org

101 18

October 31, 2008

VIA ELECTRONIC MAIL

U.S. Consumer Product Safety Commission
Office of the Secretary, Room 502
4330 East West Highway
Bethesda, MD 20814-4408

Re: Section 101 Lead in Children's Products

Dear Sir or Madam:

These joint comments are submitted on behalf 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. (the "Companies") in response to the Consumer Product Safety Commission's ("CPSC") request for comments and information regarding the new requirements with respect to lead content in children's products pursuant to Section 101 of the Consumer Product Safety Improvement Act ("CPSIA"). The Companies are manufacturers, importers and/or distributors of youth model all-terrain vehicles ("ATVs"). 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 distribute off-road motorcycles intended for children 12 years of age and younger. These comments are supported by a technical report prepared by Applied Safety and Ergonomics, Inc. in Ann Arbor, Michigan, a copy of which is attached at Appendix A[1].

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

[1] 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.

other children's activities, and the aging of the product." In addition, the statute specifies that a component which "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" is not to be considered accessible.

II. ANALYSIS AND INTERPRETATION

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 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 Appendix A at 1-4. 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 generally do not) have unsupervised access.

A. Accessible Parts on Youth Model ATVS and Off-Road Motorcycles

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.

The following component parts of youth model ATVs and off-road motorcycles are made with vinyl, rubber and/or synthetic material which may potentially be susceptible to the effects of aging, possibly including deterioration or breakage:

- seat;
- hand grips;

- wrist tether strap;
- handlebar pad (if any);
- vinyl sheathing on cables; and
- ignition key.

Children age 6 to 12 could potentially contact these components with their hands when mounting, operating and dismounting from these vehicles during normal and reasonably foreseeable use and abuse of the product.

The foregoing parts of youth model ATVs and off-road motorcycles intended for children age 12 and under would accordingly appear to be "accessible to a child through normal and reasonably foreseeable use and abuse" within the meaning of Section 101(b)(2)(A) of the CPSIA, and thus subject to the lead content requirements of Section 101 of the CPSIA.

B. Inaccessible Parts on Youth Model ATVs and Off-Road Motorcycles

The remaining components on youth model ATVs and off-road motorcycles are metals, metal alloys, rigid, durable plastic, or other hard materials, and unlike the previously identified vinyl, rubber and/or synthetic components, are not potentially susceptible to aging-related breaking and/or deterioration.

Moreover, youth model ATVs and off-road motorcycles are designed and manufactured to specifications which are intended to prevent mechanical breakage or any other type of separation of these integral components from the vehicle during normal and reasonably foreseeable use and abuse. These vehicles are made to withstand operation in potentially rough off-road conditions, and are designed and tested to stringent durability specifications. In particular, given that any such breakage or separation would essentially disable the vehicle, these specifications are significantly more stringent than the test procedures for simulating use and abuse of toys and other articles intended for use by children up to 8 years of age. See 16 C.F.R. §1500.53.

Because all these remaining components are made from materials that are not subject to breakage or other separation from the vehicle, they are also not susceptible to becoming discrete parts small enough to be swallowed or mouthed by younger children. Under Section 101(b)(2)(A) of the CPSIA, they are properly deemed "not accessible to a

child through normal and reasonably foreseeable use and abuse of the product" and thus not subject to the lead content limits imposed in Section 101 of the Act.

III. CONCLUSION

The Companies appreciate the opportunity to submit these comments and look forward to working with CPSC in the implementation of the lead content requirements with respect to those component parts of youth ATVs and off-road motorcycles that are properly deemed "accessible" to a child during normal and reasonably foreseeable use and abuse pursuant to Section 101(b)(2)(A) of the CPSIA.

Sincerely,

William Willen
AMERICAN HONDA MOTOR CO., INC.
1919 Torrance Boulevard
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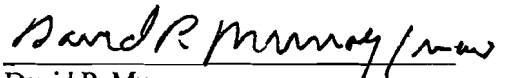

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APPENDIX A

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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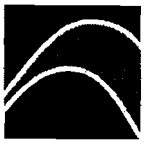
October 31, 2008



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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/	Rope
Baby wipes/tissues	lollipop stick	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	Cafetiere plunger
Sponge	file/sandpaper	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	Zip	Gasket
packet/cake cup/packet	Ball bearings/ marbles	Pastry cutter
Cables (electrical, telephone,	Coat hanger	Radiator cap
games controllers)	Eraser	Rubber band
Bottle lids/tube lids/bottle tops	Magnet	Shredded paper
e.g. shampoo, glue, toothpaste	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.

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: Friday, October 31, 2008 4:36 PM
To: CPSC-OS
Cc: Falvey, Cheryl; Mullan, John
Subject: Comments on "Section 101 Lead in Children's Products"
Attachments: COMMENTS. SECTION 101 LEAD IN CHILDREN'S PRODUCTS (N0093444).PDF

The attached comments on "Section 101 Lead in Children's Products" 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: COMMENTS. SECTION 101 LEAD IN CHILDREN'S PRODUCTS (N0093444).PDF)

101

Consumer Electronics Retailers Coalition

www.ceretailers.org

October 31, 2008

Todd A. Stevenson
Secretary
Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, Maryland 20814

RE: Section 101 – Comments and Information: Children's Products Containing Lead; Lead Paint Rule.

Dear Mr. Stevenson:

Please accept the following comments from the Consumer Electronics Retailers Coalition (CERC) in response to the Commission's Request for Comments and Information: Children's Products Containing Lead; Lead Paint Rule.

By way of background, the Consumer Electronics Retailers Coalition (CERC) is a public policy issue organization consisting of the major specialty retailers of consumer electronics products and retail associations. CERC members include Amazon.com, Best Buy, Circuit City, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading retail industry trade associations – NRF, NARDA, and RILA.

Section 101 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) establishes a set of standards for children's products containing lead. The CPSIA reduces the allowed amount of lead (in parts per million) in children's products over the course of the three years after the CPSIA's enactment. CERC supports the general goal of reducing the risk posed to children who use these products. However, further clarification is necessary, particularly with regard to the extent to which a product is a children's product, the exceptions for inaccessible component parts and certain electronic devices established at Section 101(b). Because the first lowered lead limit goes into effect only 180 days after the enactment of the CPSIA, it is important that CPSC issues regulations providing guidance regarding these exceptions as soon as possible.

I. General Review of the Exceptions

The CPSC's Request for Comments focuses on two separate exceptions to the general lead ban in Section 101(b). The first, Section 101(b)(2), exempts inaccessible component parts from the lead limits. The second, Section 101(b)(4), exempts electronic

devices when the Commission has determined that it would be technologically infeasible to bring these devices into compliance.

A natural reading of Sections 101(b)(2) and 101(b)(4) indicates that a product or some of its component parts would have two distinct ways in which to be exempt from the lead limits. First, a component part with lead is exempt from the product's lead limit if that part is inaccessible to a child through normal and reasonably foreseeable use and abuse of said product. A product will still be subject to the lead limits of the Act.

If a product is noncompliant even with the exclusion of certain inaccessible parts, the product may still be exempt under the second exception if it meets the following criteria: 1) it is an electronic device; 2) the Commission has determined that it is not currently technologically feasible for it to comply; 3) it complies with Commission-issued requirements to eliminate or minimize the potential for lead exposure and accessibility; and 4) the Commission establishes a schedule by which the device shall be in full compliance with the lead limits, if full compliance is at all technologically feasible. This exception, which is triggered by technological infeasibility, focuses on adapting the product so that it can come as close to compliance as is feasible. The long-term goal of the exception is to lower the lead level, if possible, until the product is compliant. In the meantime, however, it authorizes the CPSC to require changes to the product that will minimize lead exposure, such as adding child-resistant covering or casings. In setting appropriate technically feasible limits, CERC notes the importance of recognizing that lead is a naturally occurring element and that the CPSC's reviews of technical feasibility ought, as the CPSIA suggests in Section 101(b)(5), to focus on the best available scientific information.

Below, CERC responds to specific questions from CPSC regarding the accessibility and electronics devices exceptions, and highlights the importance of CPSC providing more clarity on various terms used in the CPSIA. CERC requests that CPCS define these terms, and identify examples of items that will qualify for exemption.

II. Exception for Inaccessible Component Parts

The CPSIA exempts parts that are inaccessible to a child through normal and reasonable use and abuse of the product, as determined by the Commission. This provision is very relevant to the types of consumer electronics products CERC's members sell. The CPSC asks for comments on whether any children's products currently on the market contain component parts with lead that are inaccessible and for comments on what makes a part inaccessible.[1]

The statute indicates that 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 through reasonably foreseeable use and abuse of the product, including

[1] CERC notes that many of the consumer electronics products sold by CERC members would not be subject to the CPSIA because they do not meet the definition of children's product. See further discussion in Section III below.

swallowing, mouthing, breaking, or other children's activities and the aging of the product. CERC seeks further clarification of the term "normal and reasonable use and abuse." Because the lead ban targets products made for children from birth until the age of twelve, CERC believes that in its determination, CPSC should recognize that "normal and reasonably foreseeable use and abuse" of a product may vary depending on the age gradation of the product. As to the issue of physical exposure, it is CERC's position that a component part is inaccessible if active disassembly would be required to expose it.

Although lead is a fairly common component in electronic devices, most of the lead contained in these types of products is inaccessible. Many component parts that contain lead are rendered inaccessible by a cover or enclosure. Typical examples include components on a circuit board. Lead solder, one of the main components on a circuit board, is used to secure components to printed circuit boards and/or to solder wires to other components and connectors. Because of the product's outer casing, in most cases, significant effort (i.e. removal of screws, sonic welds, or glue) is required to access these components). CERC would therefore argue that the lead present in a circuit board is exempted from lead limits of the product because it is inaccessible. CERC believes that the exclusion of lead in contact in battery compartments would also be considered inaccessible under this analysis if the compartments are enclosed with screw covers or other technique which makes the contacts difficult to access.

There also may be cases where lead is in a product component such as a glass or crystal element which poses either no risk where contact can transfer lead to skin or mouth or where the component by its very nature does not leach lead. These types of product components should also be determined to be "inaccessible" and exempt.

Once the Commission defines "inaccessibility," it should clarify what type of test will be sufficient for determining whether a part qualifies as such. Currently, manufacturers use a "finger probe" test developed by ASTM to determine whether a child's fingers, when inserted into openings in a product, would come in contact with a part. This test, ASTM F963 can be used to determine whether a part is accessible or not.

III. Exception for Electronic Devices

CERC seeks a definition of what an "electronic device" is under CPSIA. On its face, the term "electronic devices" seems to encompass much more than the children's products the CPSIA seeks to regulate. In fact, many electronic products are never marketed toward, or intended for use by, children. It is important that CPSC clarify that such products are not subject to the CPSIA. A current CPSC regulation draws the distinction between "adult" electronics and "children's" electronics, defining an "electrically operated toy or other electrically operated article intended for use by children" as:

> any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110-125 v.) branch circuits. . . . This definition does not include components which are powered by circuits of

30 volts r.m.s. (42.4 volts peak) or less, articles designed primarily for use by adults which may be used incidentally by children, or video games.

16 CFR §1505.1. It is CERC's position that the same definition should be used to define the scope of products that might be eligible for the consumer electronics exceptions under the CPSIA.

The Commission requested the "identification of any component part of any children's product that currently contains lead in any concentration." CERC is concerned that, to the extent that any such list of parts or products is created, CPSC may inadvertently send a signal that it is pre-judging products' compliance. Therefore, CERC recommends that the CPSC focus on the types of metal that contain lead in any concentration and the general categories of children's electronics products in which they may be included as component parts.

Alloys are the primary example of accessible component parts containing lead. Various alloys use lead to achieve certain properties necessary to form or make the part, including steel, aluminum, and copper-based alloys are used in numerous children products. Examples of such products include: battery contacts; audio and video connectors; battery chargers; and AC adapters. Brass alloy which is particularly malleable, can be cast and machined and is a commonly used metal. It can be molded into usable products more accurately and at a faster rate, making it particularly useful in small metal parts, and in antenna parts for electronic devices ranging from radios to remote-controlled cars. For the reasons stated below, we believe that component parts of this nature would be exempt from meeting the CPSIA lead standard because it would not technologically feasible for them to do so.

A. **Technological Feasibility**

Because the exception for electronic devices focuses on "technological feasibility," the way in which the Commission construes that term is crucial. The CPSIA defines a limit to be deemed "technologically feasible" with regard to a product or product category if:

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

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

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

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

Consumer Product Safety Improvement Act of 2008, Section 101(d).

It is imperative that CPSC consider the importance of Congress' use of the term "commercial availability." Given the first two prongs of the "technological feasibility" test, it is clear that Congress intended to inject some cost-benefit analysis into the CPSIA. The statute does not ban products based on the mere existence of technology that would make compliance possible. Rather, it focuses on the commercial availability of compliant products and technology that would allow for compliance. This indicates that, while the Commission should certainly be concerned with whether compliance is technically possible, it must also consider the realities of cost prohibitions and marketability.[2]

CERC, of course, recognizes that the use of lead in electronic devices has been regulated for some time, both by individual states, and by other countries in which products are marketed. For instance, the European Union limits the use of lead in electronic equipment to 1000 ppm. Recognizing that the 1000 ppm limit was impossible to meet in every product, the EU has allowed 22 applications above its lead standard. Within these exceptions, the EU recognizes the utility of lead alloys, even as an external component in products, by creating an exception for "lead as an alloying element in steel containing up to 0.35% lead by weight [3,500 PPM], aluminum containing up to 0.4% lead by weight [4,000 PPM] and as a copper alloy containing up to 4% lead by weight [40,000 PPM]."[3]

After the expenditure of much effort and money, a majority of electronics that are sold in the global market are attempting compliance with RoHS standards, which now serve as the worldwide benchmark. However, there are some markets where even those standards are not met because of the cost impact to meet RoHS. Items produced around the world are made to comply with these standards, and therefore products with lower standards and the technology to create such lower standards are both commercially unavailable. To comply with standards lower than those set out in RoHS would raise the cost of producing children's electronics in a significant manner and may alter the ability of manufacturers to produce certain children's electronics even though these products pose no meaningful risk to children..

At a minimum, the CPSC should provide immediately temporarily exempt electronics products according to RoHS. Without this retailers will be forced to pull products from shelves even though the risk factors remain low and can't at this time be minimized.

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[2] Because Congress intended to focus on the commercial availability of compliant products and compliance technology, the use of the phrase "available practices, best practices, or other operation changes" must be construed narrowly. To construe those terms broadly, as requiring compliance any time it is possible regardless of cost or marketability, would render the first three prongs of the test nonsensical. Instead, it is CERC's belief that the fourth prong is intended to correct the problem of residual lead on manufacturing equipment.

[3] EU Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008, Annex.

B. **Ability to eventually meet CPSIA Limits**

CERC recommends that CPSC study the EU standard as a guide to the technological feasibility of eliminating lead from electronic devices. Without the exception in the RoHS, compliance with that regulation would be impossible; especially considering the short timeframe adopted in 180 days. CERC agrees with ITI/CEA/IPC's position that it is not technologically feasible at this time to achieve lead levels under 1000 ppm in all parts of children's electronic devices within the timeline set forth in the CPSIA. In addition, the CPSC needs to consider the exemptions adopted in the RoHS requirements. CERC's members recommend that the CPSC establish a working group which would analyze the ability to achieve lower lead limits over time.

Conclusion:

CERC strongly believes in protecting the safety of our customers and children. CERC appreciates the opportunity to respond to the CPSC's Request for Comments on the Exceptions provided for inaccessible component parts and certain electronic devices. CERC looks forward to its continued work with the CPSC as it implements these provisions.

Respectfully,

Christopher A. McLean
Executive Director
Consumer Electronics Retailers Coalition
317 Massachusetts Avenue, NE
Suite 200
Washington, DC 20002
(Tel.) 202.292.4600

Stevenson, Todd

From: Glen Cooney [glen.cooney@e-copernicus.com]
Sent: Friday, October 31, 2008 5:02 PM
To: CPSC-OS
Subject: Section 101 - Lead in Children's Products
Attachments: CERC CPSC LEAD Comments 10 31 08 (4).DOC

CPSC Staff:

Pease accept the attached document on behalf of the Consumer Electronics Retailers Coalition (CERC).

The attached letter offers comments and information on '**Section 101: Comments and Information: Children's Products Containing Lead; Lead Paint Rule.**

Thank you,

Glen Cooney
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October 31, 2008

VIA ELECTRONIC MAIL

U.S. Consumer Product Safety Commission
Office of the Secretary, Room 502
4330 East West Highway
Bethesda, MD 20814-4408

Re: Section 101 Lead in Children's Products

Dear Sir or Madam:

These joint comments are submitted on behalf of Arctic Cat Inc., Bombardier Recreational Products Inc. and Polaris Industries Inc. (the "Companies") in response to the Consumer Product Safety Commission's request for comments and information regarding the new requirements with respect to lead content in children's products pursuant to Section 101 of the Consumer Product Safety Improvement Act. The Companies are manufacturers, importers and distributors of youth model snowmobiles. The Companies are also manufacturers of youth ATVs and adopt the comments regarding youth ATVs that are being submitted separately by ATV manufacturers. In addition, a technical report prepared by Applied Safety and Ergonomics, Inc. ("ASE") in Ann Arbor, Michigan is attached and submitted. As set forth in ASE's report, mouthing behaviors are done by children three and under. Youth snowmobiles are intended for children six years and older. Accordingly, children who use youth snowmobiles are not of the age that would engage in mouthing behaviors. Further, no evidence has been presented showing any ingestion by children six and above of lead from component parts of youth snowmobiles. Moreover, the conditions under which such products are used, i.e. cold weather, result in virtually all youth wearing gloves or mittens in connection with the use of the product.

Because the only health risk from lead in children's products results from ingestion, the Companies submit that the only components that should be deemed "accessible" for purposes of the lead content standard are those that are small enough to be ingested by a child, under conditions of reasonably foreseeable use and abuse, including aging. These would include components that can be removed, or broken off, by a child, or components that age in a manner that generates lead-containing dust that could be transferred from hand to mouth.

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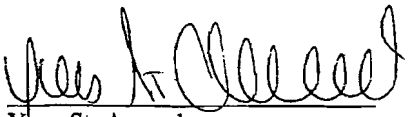

Yves St. Arnaud
BOMBARDIER RECREATIONAL PRODUCTS INC.
726 Saint-Joseph Street
Valcourt, Quebec, Canada J0E 2L0

Counsel for Bombardier Recreational Products Inc.

Stevenson, Todd

From: John Wackman [john.wackman@polarisind.com]
Sent: Friday, October 31, 2008 5:17 PM
To: CPSC-OS
Subject: FW: Scanned document from John Wackman
Attachments: Canon39B3B5-Exchange-10312008-161227.pdf

Dear Sir or Madam, Enclosed are joint comments on lead content as they relate to youth snowmobiles. These are submitted by Polaris Industries Inc., Arctic Cat Inc. and Bombardier Recreational Products Inc.

Thanks,

John J. Wackman
Assistant General Counsel
Polaris Industries Inc.
2100 Highway 55
Medina, MN 55340

From: John Wackman
Sent: Friday, October 31, 2008 4:12 PM
To: John Wackman
Subject: Scanned document from John Wackman

Riley R. Russell
Chief Legal Officer, General Counsel
Sony Computer Entertainment America
919 East Hillsdale Blvd.
Foster City, California 94404-2175
650 655 8040
650 655 8047 Fax
riley_russell@playstation.sony.com

October 31, 2008

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

Re: **Section 101 Lead in Children's Products**

To Whom It May Concern:

On behalf of Sony Computer Entertainment America, Inc. (SCEA), I am writing in response to the Consumer Product Safety Commission's (CPSC) request for comments and information on Section 101 ("Children's products containing lead; lead paint rule") of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We applaud Congress for adopting, and the Commission for implementing, the most comprehensive reform of product safety regulation in CPSC history. This legislation will improve significantly the safety and quality of consumer products sold in the United States. SCEA greatly appreciates the opportunity to share with the Commission its comments concerning Section 101 of the CPSIA, and we look forward to working with CPSC over the upcoming months as the Agency develops regulations and industry guidance.

Company Background

By way of background, SCEA, a wholly-owned subsidiary of Sony Computer Entertainment, Inc. (SCE), distributes and markets the PlayStation® computer entertainment systems in North America, develops and publishes software for the PlayStation game console, and manages the U.S. third party licensing program. SCE contracts with suppliers worldwide to supply high-quality and safe parts and materials for use in products distributed by the corporation and its subsidiaries, including SCEA, and demands that each supplier comply strictly with all applicable laws and regulations in each jurisdiction. Consumer safety is SCEA's greatest concern, and these strict quality-control procedures ensure the safety of our products for consumer use.

As a threshold matter, SCEA believes that because its products are designed and marketed primarily to teenagers and young adults, these products do not constitute "children's products" as defined in the CPSIA. SCEA nevertheless submits these comments in an

abundance of caution. SCEA urges CPSC to adopt the European Community's 2002 RoHS (Restriction on the use of certain Hazardous Substances) Directive for electronic equipment sold in the United States. In addition, we ask the Commission to determine that a component part is "not accessible" or "inaccessible" within the meaning of the CPSIA if gaining access to the component parts requires the use of a tool.

Lead Currently Is Used in a Broad Array of Electronics Products

Generally speaking, the electronics industry has historically used lead in the manufacture of most, if not all, consumer electronics products. For example, lead was generally used as a stabilizer in polyvinyl chloride wire and power cord casings, and as a major component of solder to decrease its melting point and reduce its brittleness. While most manufacturers have eliminated some uses of lead in their products, low levels (<0.1%) may still be present in a wide variety of electronic products that children may use, ranging from plastic keyboards to desktop computers. In fact, lead may be present at <0.1% in "lead-free" solder in the majority of electronic products used by children and adults alike, either to impart certain beneficial properties, or because of the technical difficulties involved in refining the constituent metals of the solder, such as tin, to much higher levels of purity than are generally available. Lead may also be present at levels above 0.1% in certain metal alloys, such as brasses and bronzes, to impart desirable metallurgical properties to the alloys.

Reducing the Lead Limit for All Parts of Children's Electronic Devices to 600 Parts Per Million and Less is Impractical and Confers No Offsetting Benefits

Complete replacement of lead-containing materials and components would significantly and adversely affect the quality, cost, and possibly the safety of electronic products. For component parts that are inaccessible to users, these disadvantages would not be offset by any advantages. The presence of lead, especially in traditional tin/lead (Sn/Pb) solders, imparts highly beneficial technical properties that have been difficult to reproduce completely with alternative materials.

For example, many electronic components that manufacturers in the consumer electronics industry previously connected to one another using Sn/Pb solder are now being connected with lead-free solder. Components connected in this way have not been able to withstand the higher melt temperatures required for lead-free soldering. As a result, manufacturers have had to develop new components. In addition, higher temperature soldering in multiple locations places stress on circuit board laminates, requiring alternative laminates to be developed. Fluxes have had to be reformulated, and cleaning of these new flux residues has become more critical to the stability of the new solder formulations. Some lead-free replacement solders, especially those high in tin, are corrosive to many metals, even stainless steel, that are used in the manufacturing equipment. Further, there have been reports of increases in electronic equipment failure, such as short circuiting or the breaking of joints made with more brittle lead-free solder, potentially increasing the risk of fire hazards.

We do not believe it will be possible to start and complete the massive amount of research and testing that would be required to further reduce the lead content of solder and other

inaccessible electronic components from 1000 ppm to 600, 300, and finally 100 ppm in accordance with the short time-frame dictated in the CPSIA. Even if manufacturers meet these limits, it is possible that products made entirely from components containing such low levels of lead would, paradoxically, jeopardize performance and safety in ways that are presently difficult to predict. Further, as discussed in more detail below, we do not believe there would be any tangible health benefit to meeting these strict requirements for electronic components containing up to 1000 ppm lead in children's products that remain inaccessible to children through the use of screw-on or completely sealed covers.[1]

The Interior Components of an Electronic Product that Require a Tool to Access Should Be Deemed "Inaccessible" or "Not Accessible" Under the CPSIA

In general, any electronic components in children's electronic products that might contain lead exceeding the limits established in the CPSIA are situated such that consumers cannot access these components without making deliberate and focused efforts to do so. For electronics products that children use, such as a toy cell phone, the electronics compartment is either sealed shut (when access for repair would not be a commercially viable proposition considering the low cost of the toy), or is rendered inaccessible to a child by means of a screwed-down compartment cover that requires a screwdriver or other tool to open. Moreover, the electronics compartments in most adult electronic products that children might also be allowed to use are generally sealed shut or are accessible only by means of a cover that cannot be opened without the use of a Phillips-head screwdriver, an Allen wrench, or even a special tool that is not generally available to the public. For some products, attempts by a consumer to gain access to the electronic components will void the warranty for the product because the electronic parts and circuitry are not designed to be serviced by consumers. For such products, access screws are often embedded in a sealant that indicates tampering if broken. Children would not be expected to attempt the relatively difficult task of opening sealed or screwed-down access covers in electronic products either made explicitly for children, or made primarily for adults and teenagers but which may sometimes be shared with children.

Accordingly, CPSC should deem interior component parts "inaccessible" if access to such parts by a consumer requires the use of a tool. This recommendation is consistent with the standards set forth in ASTM International Standard F963-07 (*Standard Consumer Safety Specification for Toy Safety*), which has just been adopted as a CPSC standard under the CPSIA. Specifically, to protect children under 14 from swallowing or otherwise accessing batteries in children's electrical or electronic toys, ASTM F963 requires small batteries (and all batteries in the case of toys for children under three) to be made inaccessible "without the use of a coin, screwdriver, or other common household tool".[2] No reason appears to justify defining "inaccessibility" for an electronics compartment more stringently than for a battery compartment.

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[1] Should CPSC determine that it is technologically feasible for children's electronic products to meet the CPSIA's current lead-reduction schedule, we request that the Commission (i) issue regulations immediately requiring child-resistant safety covers or casings and (ii) establish a new compliance schedule, in accordance with the provisions of the Act. We are concerned the electronics industry will not be able to meet the quickly-approaching lead deadlines (600 ppm beginning February 10, 2009 and 300 ppm beginning August 14, 2009). .

[2] ASTM F963-07 §§4.25.4 and 4.25.5.

The Commission Should Adopt the RoHS Directive as the Standard for Electronic Equipment Sold in the United States

Most reputable multinational corporations sell children's products in the United States that comply with the European Community's 2002 RoHS (Restriction on the use of certain Hazardous Substances) Directive's limit of 1000 ppm lead for most materials, and the equivalent internationally recognized definition of "lead-free" for solder (namely, no more than 1000 ppm lead).[3] We believe the Commission should adopt the RoHS standards for electronic equipment in the United States, including electronic products that may be used by children, so long as any components containing lead above the CPSIA limits (i.e., for accessible portions of a product) but below the RoHS limit of 1000 ppm are restricted to compartments rendered inaccessible to children by screws, seals, or similar devices.[4] Adoption of a standard equivalent to RoHS in the United States would offer far more protection to human health in general, including the health of children, than the application of the new CPSIA lead limits to the inaccessible parts of children's electronic products.

In summary, the restrictions established in the RoHS Directive are the optimal solution to the use of lead in electronic equipment, taking into account not only the risks to both human health and the environment from the use and disposal of such products, but also the available scientific and technical data to support the lead limit of 1000 ppm. In addition, the RoHS restrictions fully consider the practical limitations on substituting other materials for lead and the possible risks to safe operation that might result from such a substitution.

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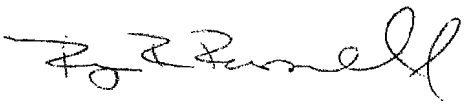
[3] 2002/95/EC. The European Community's 2002 RoHS Directive (Restriction on the use of certain Hazardous Substances), and the subsequent Commission Decision that set Maximum Concentration Values for these hazardous substances, were established after a wide review of relevant scientific studies by the European Commission, and much consideration and debate across the European Community and within the European Parliament. The Directive was also the result of the consolidation of a number of pre-existing individual national standards. The goal was to establish the most effective level of protection for both human health and the environment from the hazardous substances commonly used in electrical and electronic equipment, while setting concentration limits that were achievable by industry without unacceptable adverse effects on product performance or without making the necessary manufacturing changes cost-prohibitive. The law became effective July 1, 2006, and it is vigorously enforced within the European Union. No listed electrical or electronic equipment, including electronic toys, may be put on the market in any of the Member States of the EU if it contains any of the identified hazardous substances (lead, mercury, hexavalent chromium, cadmium, PBB or PBDE) above the established Maximum Concentration Values in any homogeneous material (with certain specified exemptions). European manufacturers have all been forced to comply with this law, and all major reputable foreign manufacturers that export to the EU have found it expedient to make all of their affected products also comply with the law, even if they are only destined for their own domestic markets. *See, also,* United States Environmental Protection Agency, "Solders in Electronics: A Life-Cycle Assessment Summary," EPA-744-S-05-001, Aug. 2005, p. 31 ("Question 8: What are the challenges to implementing lead-free soldering. Components"); Karl J. Pulitz, "Overview of Lead-Free Solder Issues Including Selection". In "Handbook of Lead-Free Solder Technology for Microelectronic Assemblies" (ed. Karl J. Pulitz, Kathleen A. Stalter), CRC Press, 2004, p. 12; Intel Corporation, "ROHS/Lead (Pb) Free Solutions", *available at* http://www.intel.com/technology/silicon/leadfree.htm (last updated March 10, 2007).

[4] It is clear from the RoHS Directive itself and its legislative history that its purpose was not only to protect the environment as a result of land disposal of waste electrical and electronic equipment (WEEE), but also human health in general, including the health of consumers handling such equipment during its useful life as well as workers involved in recycling WEEE and people who might be impacted by land disposal of WEEE. For example, the original European Commission proposal described RoHS as "the most effective way of ensuring the significant reduction of risks to human health and the environment..." Official Journal C 365E, 19.12.2000, p. 195.

Thank you for your consideration of this submission.

Sincerely,



Riley R. Russell

Stevenson, Todd

From: Julie_Iverson@Playstation.sony.com
Sent: Friday, October 31, 2008 7:26 PM
To: CPSC-OS
Cc: Ingrid_Leverett@PlayStation.Sony.Com
Subject: Letter re Section 101 Lead in Children's Products
Attachments: SCEA Ltr re Section 101.10.31.080001.pdf

To Whom It May Concern-

As a follow-up to the fax sent today, attached please find a copy of the above referenced letter.

(See attached file: SCEA Ltr re Section 101.10.31.080001.pdf)

Julie Iverson
Sr. Department Assistant
Sony Computer Entertainment America Inc
919 E. Hillsdale Blvd
Foster City, CA 94404
tel: (650) 655-5521
fax; (650) 655-5901

51 pt
22

Stevenson, Todd

From: Mary Martha McNamara [mmcnamara@mclh.com]
Sent: Friday, October 31, 2008 11:49 PM
To: CPSC-OS
Subject: Children's products containing lead; lead paint rule

This is in response to the Commission's request for information to assist it in its rulemakings on inaccessible component parts and certain electronic devices as directed by Section 101 of the Consumer Product Safety Improvement Act ("CPSIA") concerning lead in children's products. Thank you for this opportunity to submit comments with respect to lead in an inaccessible electronic device in a children's product manufactured by our client.

I. The identification of children's electronic devices containing lead

Our client manufactures and sells a paper decorative/novelty item that contains an electronic component to produce sound or light. The product may come in a variety of designs, most of which are intended for adults, but some variations may be primarily intended for children 6+. The product is not a toy and is not intended for play - it is meant for celebration or commemoration of an event. It is intended for a "single use" in that the normal life of the electronic device that produces sound or light is about 50 activations.

The electronic device is inside the product, sealed by a well-glued thick paper covering. The covering keeps the electronic device sealed during reasonable use and normal abuse. Because the product is an article made of paper and intended for children 6+, it is currently exempt from the small parts regulations found at 16 CFR 1500.19 and 1501.3(b). However, if the paper covering is breached, that could possibly expose the electronic device inside.

If the component is exposed, it is does not present a risk of ingestion by a child. The electronic component is too large to be swallowed or ingested.
The tactile nature of the electronic component (namely its uneven surfaces and protrusions) makes it unlikely to be licked or otherwise handled by a child. The lack of any play value also renders the electronic device unattractive to children. Thus the manufacturer does not believe that there is any acute or chronic hazard presented even if the component is exposed. Indeed, the company has not received reports of children breaching the cover and handling the electronic device.

II. Technological Feasibility of Achieving Lead Levels

The electronic device may have lead in two places. First, the 8-10 solder points on the electronic module connecting several wires or components to a circuit board may contain lead in excess of 600 ppm. Due to the small weight of the electronic device overall, the total amount of lead on the entire electronic component may exceed 600 ppm due solely to the solder points (since solder is hand applied for several connections, the exact amount of solder may vary by board and may be under 600 ppm in total for some boards and be over 600 ppm for others, though the manufacturer believes more will be over than under).

Our client identified the presence of lead-containing solder in early 2008 in response to early evaluation of the proposed CPSIA bills. It took the company until late summer 2008 to identify acceptable and reliable sources of low-lead (<100ppm) solder, evaluate its performance in the electronic component, and re-work manufacturing lines to apply the new solder. Due to different melting temperatures, different application procedures and different performance characteristics, replacing one solder for another is not a simple replacement. From analysis to full production at numerous production suppliers, the change to low-lead solder took this manufacturer approximately eight months to accomplish. While

this switch allows for current production of low-lead electronic components, this company, and likely others, still have significant current inventory at distribution and retail of electronic components with lead-containing solder. Due to the common nature of solder in electronic components, their relative inaccessibility and the significant time required to identify solder uses and accomplish a transition to new low-lead solder, the CPSC should apply a phase-in for solder in electronic components for an additional eight months, which is representative of this manufacturer's required timeline.

Second, the electronic device may also contain resistors attached to the circuit board. The manufacturer's current assessment of these resistors shows that although they meet the current 600 ppm level, standard resistors are not available that would reliably meet a 300 ppm threshold.

III. Inaccessibility of Component Parts

Currently, the electronic components are inaccessible by way of a sealed paper covering. That sealed covering keeps the electronic device completely covered and inaccessible during regular use and even normal abuse. However, that inaccessibility is based on the historical recognition by the agency that paper products must be subjected to a different "standard" to determine inaccessibility than products made from more robust materials. See the exemptions found at 16 CFR 1500.19 and 1501.3(b) referenced above. If CPSC failed to consider the special requirements of paper products, then they would not be able to withstand the full use and abuse tests under 16 CFR Section 1500.51 et. seq. and the electronic device inside might be considered an accessible part.

IV. EU Directives

Please be advised that the United Kingdom has issued Government Guidance that general types of products for similar purposes are not considered to fall within the scope of the EU RoHS Directive, as the primary purpose of the product is not the delivery of sound or light:

> iii. Products where the electrical or electronic components are not needed to fulfil the primary function
>
> This is related to, but not always the same as the above situation. Some products, particularly toys and novelty items contain an electrical or electronic element that gives added value to the product. Often there are similar products on the market fulfilling the same function, but without these components. Examples might include musical greetings cards or soft toys with electronic components, which still fulfil their primary function without their electronic components and could be considered to be outside the scope of these Regulations. See UK, Government Guidance Notes JULY 2007, at page 7, (www.berr.gov.uk/files/file40576.pdf).

V. Recommendation

We believe that the Commission should continue to consider the special requirements of paper products for determining "inaccessibility". There is nothing in the CPSIA that requires the agency to mandate the full application of its use and abuse tests to all products regardless of materials. Moreover, there is nothing in the CPSIA that requires the agency to abandon its long-standing exemptions for paper products such as our client's products. Rather we believe that Congress specifically granted the Commission the flexibility to determine what constitutes an inaccessible part for purpose of the lead rule precisely because it recognized that it was impossible to develop one rule for all products. Therefore, we would urge the

CPSC to issue guidance allowing the determination of what is accessible according to use and abuse testing commensurate with the nature of the product, including its intended and reasonably foreseeable use and abuse, along with the actual risk of ingestion presented by the product.

Likewise, with respect to electronic devices, we would recommend that the CPSC utilize its discretion to permit a phased-in approach for electronic devices and well as for their components, such as solder or resistors. To the best of our knowledge, complying electronic devices and their components will take time to replace and utilize in actual production and may never be available at the lead levels anticipated by the CPSIA. Moreover, the agency should consider a "de-minimus" exemption for those component parts of electronic devices where the risk of ingestion is particularly small and where there are merely isolated instances of lead-containing materials.

We trust that you will find this information to be of assistance to you. My client would be happy to offer additional information or clarification of the above if that would be helpful. Please do not hesitate to contact us.

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Alexandria, VA 22310
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101 23

INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

October 31, 2008

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

Re: Section 101 Lead in Children's Products

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) request for public comment regarding the inaccessible parts exception to the new lead testing requirements set by the Consumer Product Safety Improvement Act (CPSIA):

Section 101(b)(2) of the CPSIA provides as follows:

> EXCEPTION FOR INACCESSIBLE COMPONENT PARTS.—
> (A) IN GENERAL.—The limits established under subsection (a) 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. A component part is not accessible under this subparagraph if such component part 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. Reasonably foreseeable use and abuse shall include to, swallowing, mouthing, breaking, or other children's activities, and the aging of the product

The Commission has defined a mattress and foundation as follows:

> (a) Mattress means a resilient material or combination of materials enclosed by a ticking (used alone or in combination with other products) intended or promoted for sleeping upon. This includes mattresses that have undergone renovation as defined in paragraph (d) of this section.
> (1) This term includes, but is not limited to, adult mattresses, youth mattresses, crib mattresses (including portable crib mattresses), bunk bed mattresses, futons, flip chairs without a permanent back or arms, sleeper chairs, and water beds or air mattresses if they contain upholstery material between the ticking and the mattress core. Mattresses used in or as part of upholstered furniture are also included; examples are convertible sofa bed mattresses, corner group mattresses, day bed mattresses, roll-away bed mattresses, high risers, and trundle bed mattresses. See Sec. 1633.9 Glossary of terms, for definitions of these items.
> (2) This term excludes mattress pads, mattress toppers (items with resilient filling, with or without ticking, intended to be used with or on top of a mattress), sleeping bags, pillows, liquid and gaseous filled tickings, such as water beds and air mattresses that contain no upholstery material between the ticking and the mattress core, upholstered furniture which does not contain a mattress, and juvenile product pads such as car bed pads, carriage pads,

501 Wythe Street ▪ Alexandria, Virginia 22314-1917 ▪ (703) 683-8371 ▪ Fax (703) 683-4503
www.sleepproducts.org ▪ info@sleepproducts.org

> basket pads, infant carrier and lounge pads, dressing table pads, stroller pads, crib bumpers, and playpen pads. See Sec. 1633.9 Glossary of terms, for definitions of these items.
> (b) Foundation means a ticking covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.

16 CFR Part 1633.2.

Mattress producers today use a variety of components that are enclosed within a resilient sealed outer cover for most mattresses and a fabric ticking cover for most foundations. In the case of mattresses, these internal materials may include some of the following: polyurethane foam, latex foam, steel innersprings and coils, adhesives, fabrics and fiber products made from natural and synthetic fibers, and metal and synthetic fasteners. In the case of foundations, these internal materials may include some of the following: steel springs, wood, fabrics and fiber products made from natural and synthetic fibers, adhesives and fasteners. The resilient outer covers of both products are sealed closed with thread or other mechanism.

The outer cover on mattresses and foundations make their interior components inaccessible to the consumer. Moreover, mattresses and foundations would pass the Commission's child use and abuse standards codified at 16 CFR Part 1500, Sections 50-53, and the choking hazard standard codified at 16 CFR Part 1501.

Specifically, 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 to an even greater extent, a foundation, it is unlikely that the internal components of these products would be exposed as a result of a child mouthing the product for several reasons. First, unlike pacifiers, teethers and chew toys – products that are deliberately designed for mouthing by a small child – mattresses are neither intended nor designed to be mouthed by a small child. In fact, 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.

Second, various scientific studies show 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. 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. For example, one study showed that mouthing behavior increased up to the age of 12 months, and then rapidly diminished.

Third, 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 a water repellant or resistant mattress protector has been placed over the sleep surface. This outer mattress cover or mattress protector further protects the interior of a mattress from exposure in the unlikely event that a child might mouth a mattress instead of a product designed for that purpose.

Finally, 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.

Given these facts, we urge the Commission to conclude that the sealed outer covering on mattresses and foundations makes the components of those products inaccessible within the meaning of Section 101 of the CPSIA.

Sincerely,

Christopher Hudgins
Vice President, Government Relations & Policy

Stevenson, Todd

From: Chris Hudgins [CHudgins@sleepproducts.org]
Sent: Friday, October 31, 2008 2:59 PM
To: CPSC-OS
Subject: Section 101 Lead in Children's Products
Attachments: ISPA Comments on Lead.pdf

Please see attached comments from ISPA on lead.

Chris Hudgins
Vice President, Government Relations & Policy
International Sleep Products Association
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Alexandria, VA 22314
Ph: (703) 683-8371 x1113
Fax: (703) 683-4503
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"Start Every Day With a Good Night's Sleep ™"

2008 ISPA Industry Conference and Exhibition
November 12-14
Omni Orlando Resort at Championsgate
Orlando, Florida
www.sleepproducts.org/IndustryConference

101 Lead Paint 25

Rachel Murray Meyer
Toy Safety and Quality, Inc.
1027 Lake Street, San Francisco, CA 94118
RachelMurrayMeyer@sbcglobal.net
(415) 379-9161

To:	The Consumer Product Safety Commission
Cc:	Kris Hatlelid, Toxicologist, CPSC
Date:	October 31, 2008
From:	Rachel M. Meyer
Subject:	Request for Comments and Information Children's products containing lead; lead paint rule CPSIA Section 101

To the Commission:

I would suggest that testing protocols be viewed as ***verification to certify compliance*** (as opposed to failure analysis) with regard to the *The Consumer Product Safety Improvement Act of 2008.*

Accessibility

Section 101 Children's products containing lead; lead paint rule. For Section 101 (b) (2):

> "(2) EXCEPTION FOR INACCESSIBLE COMPONENT PARTS. —(A) IN GENERAL. — The limits established under subsection (a) 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. A component part is not accessible under this subparagraph if such component part 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. Reasonably foreseeable use and abuse shall include to (sic), swallowing, mouthing, breaking, or other children's activities, and the aging of the product."

The concept of being *"physically exposed"* needs to be further defined. Being "physically exposed" could be interpreted to include parts of products that pose no potential hazard. A component can be "physically exposed" by sight. Or a component can be "physically exposed" by touch although concealed within a flexible shell.

Consider evaluating components that are accessible to touching with finger or tongue by using accessibility probes found in 16 CFR1500.48 and 16 CFR 1500.49. (Consideration needs to be given if probes for children over 8 are needed.) These accessible parts need to be further evaluated as components that are capable of being chewed, sucked or swallowed. If not, it would seem that they do not pose a risk for lead exposure and poisoning. Therefore specific dimensions to determine if the component is mouthable should be used. The small parts gage should be used to define if a part could be ingested.

The *bioavailability* of the lead (probability that the lead will actually be absorbed into the body) should be considered, as it corresponds to the actual hazard. It is my understanding that lead absorption is through the stomach or gut, and decreases with a person's age. Solubility testing has been an effective form of the evaluation of bioavailability in Europe.

Efficient Testing

Testing protocols that are efficient will allow for effective use of resources to verify compliance and detect nonconforming product. The intention is to provide a safe product. Composite testing by combining paint colors or material types is an opportunity to conduct efficient testing; when done correctly by labs accredited to IEC 17025. Protocols can be developed to standardize the practice.

Some Approaches to efficient testing

- Certification programs
- Testing relevant components- i.e. testing for lead in accessible components
- Combining or Composite testing- e.g. testing a painted doll eye that has two layers of color overlapping

Composite testing

Take for example when the regulation limit is 90 ppm for total lead in paint. If **equal parts** of three different colors were tested, and the total lead in the combined sample is found to be less than 30 ppm, then this would verify that no one color exceeds 90ppm, and additional testing would not be needed. Consider that the overall intent of the new regulations is to prevent the hazard of lead exposure and lead poisoning and that testing is used to provide verification. If there is a failure at the composite test stage, **then** a failure analysis is done to determine which specific color exceeded the limit.

The benefits of efficient testing are widespread

- Less cost throughout the production cycle- less cost to consumers
- Shortens the test time - allows for quicker response times by manufactures
- Shortens warehousing time
- Reduces the wasteful destruction of product during testing
- Reduces environmental impact by the reduction in chemical use during testing
- Cost savings can be put into additional safety features
- Reduces waste of resources
- Puts more focus on prevention and up stream controls

European Testing

Also take into consideration economies of scale that come with having international test methods and methodologies harmonized. In Europe, EN 71 part 3 has looked at bioavailability exposures to lead in base materials for about 14 years. This is a wealth of available data. For EN 71 part 3, test parts shall be taken from **one** toy. If the sample coating weighs less than 10mg, then no test is required. For coatings that cannot be physically separated, they would be tested together. Metal electronic connectors would be tested per EN71 part 3 8.5.2 **only** when they fit entirely within the small parts cylinder (before and after any relevant physical tests per EN71 Part 1). The result is to look at the bioavailability per solubility.

It is recommended to have studies that can correlate total lead scenarios in paint and toy components with soluble lead.

Sincerely,

Rachel Murray Meyer
Principal
Toy Safety and Quality, Inc.

101 25

October 31, 2008

VIA EMAIL

Mr. Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814-4408

Dear Mr. Stevenson:

The undersigned companies are manufacturers of durable infant and toddler products, such as strollers and high chairs. For convenience in this letter, we will refer to ourselves as "the Manufacturers." We are writing to urge the Commission to adopt a reasonable, common sense interpretation of the Consumer Product Safety Improvement Act's provision banning certain children's product components containing more than 600 parts per million (ppm) of lead, effective February 10, 2009, and particularly of its exception for inaccessible component parts (Section 101 of Public Law 110-314.). If the Commission does not do so, and instead interprets the new statute to ban all physically exposed components containing more than 600 ppm of lead, the continued availability in the marketplace of the current range of durable infant and toddler products is at serious risk, particularly as the allowable limit for lead content drops to 300 ppm and 100 ppm over time.

There is an urgent need for early guidance on these issues. The General Counsel's Advisory Opinion of September 12, 2008 makes clear that retail and wholesale inventory will be subject to the lead standard, effective February 10, 2009. This means that testing for lead content is taking place now, and no one is certain about the scope of the standard's requirements.

Executive Summary. Lead poses a health hazard to humans ***only*** when it is ingested into the body's digestive system. It is not hazardous when it is used in components that are too large to be swallowed by a child, or that do not crumble or generate debris when they age. Indeed, lead is a useful element in many products. It is a stabilizer, and it improves the machinability of steel and copper when added to those materials as an alloying element, because it softens the steel and makes it more amenable to rolling and other machining. Moreover, it makes the resulting metal less brittle, and more durable in drop testing and other impact tests. While the lead in structural steel components is present in very small quantities, it may nevertheless exceed the lead content requirements imposed by the CPSIA, which drop to 100 ppm by August 2011.

As a practical matter in today's market, lead is most commonly introduced into steel products as a by-product of the recycling process that is typical for steel used in modern

industrial applications. The Manufacturers are unaware of substitute materials that could be used to replace recycled steel at a reasonable cost.

Total elimination of lead in children's products is not only unnecessary from a children's health perspective, it would also create serious problems for the Manufacturers, who are presently unaware of current substitutes for recycled steel that are available at a reasonable cost. For example, the Manufacturers could potentially consider substituting injection molded plastic materials for structural steel; however, the cost of such substitutions would be enormous, and the environmental costs of replacing recycled steel with plastics (which are petroleum-based) would be significant. With respect to laboratory testing, there is a significant shortage of laboratory capacity. The Manufacturers are already encountering difficulty locating independent laboratories with capability and capacity to test for lead content. This shortage is expected to be exacerbated as more children's product manufacturers seek qualified laboratories to assist them in evaluating lead content. Finally, the Commission should strive to avoid unnecessarily broad interpretations of the statute that will increase prices for consumer products, especially durable infant and toddler products that are necessities for many American families.

Against this background, the manufacturers will turn to the reasons why a reasonable, common sense interpretation of the scope of coverage of the new requirement and of the exception for inaccessible component parts is critical.

Health Hazards to Humans Arise From Ingesting Lead. It is well documented that the health hazard to humans from lead in products occurs when the product (or a product component) is ingested. For this reason, the regulatory tests for lead typically simulate the dissolution of the lead product in the gastric fluids naturally occurring in the digestive tract.

For example, the National Institutes of Health (NIH) website contains the following information about lead poisoning:

> "Children get lead in their bodies ***when they put lead objects in their mouths, especially if they swallow the lead object. They can even get lead poison on their fingers from touching a dusty or peeling lead object, and then putting their fingers in their mouths or eating food afterward.*** Tiny amounts of lead can also be inhaled." http://www.nlm.nih.gov/MEDLINEPLUS/ency/article/002473.htm, last visited October 30, 2008. (Emphasis added.)

According to the NIH website, lead is found in:

- House paint before 1978. Even if the paint is not peeling, it can be a problem. Lead paint is very dangerous when it is being stripped or sanded. These actions release fine lead dust into the air. Infants and children living in pre-1960's housing (when paint often contained lead) have the highest risk of lead poisoning. Small children often swallow paint chips or dust from lead-based paint.
- Toys and furniture painted before 1976.
- Painted toys and decorations made outside the U.S.
- Lead bullets, fishing sinkers, curtain weights.

- Plumbing, pipes, faucets. Lead can be found in drinking water in homes whose pipes were connected with lead solder. While new building codes require lead-free solder, lead is still found in some modern faucets.
- Soil contaminated by decades of car exhaust or years of house paint scrapings. Thus, lead is more common in soil near highways and houses.
- Hobbies involving soldering, stained glass, jewelry making, pottery glazing, miniature lead figures (always look at labels).
- Children's paint sets and art supplies (always look at labels).
- Pewter pitchers and dinnerware.
- Storage batteries.

Notably, none of the NIH-cited sources of lead includes structural elements of durable infant and toddler products.

Because CPSC has traditionally considered the risk of lead poisoning to be related to ingestion of lead-containing objects, the CPSC's laboratory protocol for testing for the presence of lead in children's jewelry involves dissolving the jewelry in an acid solution intended to replicate human digestive fluids, and then measuring the lead in the resulting solution. This is also a common practice in other regions of the world, such as Europe, Australia, Brazil and written standards, such as ISO 8124.

To the Manufacturers' knowledge, there is no credible scientific basis to support a claim of health hazards from mere exposure to lead or lead-containing components in the ambient atmosphere, nor is there a health hazard from dermal exposure to lead or lead-containing components, except potentially from dermal exposure to lead-containing components that age in such a manner that they generate lead-containing degradation debris that might be transferred to a child's hand and, eventually, to his mouth. (An example of such a product is vinyl miniblinds that were found to generate lead-containing dust as the product aged. As children could handle these blinds, and subsequently put their hands into their mouths, the Commission requested the window covering industry to eliminate the use of lead as a stabilizer in the vinyl miniblinds in 1996.)

Components that Cannot Be Ingested Should Be Considered "Inaccessible." The CPSIA, by its terms, excludes "inaccessible" components, but does not define that term. The statute provides one example – namely, that components that are not physically exposed are inaccessible -- but that example is not a definition of the term "inaccessible," nor does it preclude a definition that encompasses certain exposed components, if there is no reasonably foreseeable risk of ingestion of those components, due to their size, frangibility or aging characteristics. Since the purpose of Section 101 was to protect children from lead poisoning, and lead poisoning can occur only upon ingestion of lead, a component that cannot be ingested is "inaccessible" within the meaning and intention of the provision.

The Manufacturers recognize that certain exposed components may be small enough to be ingested – for example, a rivet or bolt on a stroller wheel. Many of the products manufactured by the Manufacturers are already subject to the small parts ban in Part 1500, so these components are already required to be fastened securely enough to the product to preclude

removal (and thus, ingestion) by a child. The Manufacturers acknowledge that some of their durable infant and toddler products are marketed for children older than 3 years of age; however, these products are also subject to the CPSC's "use and abuse" tests contained in Part 1500 of the Commission's regulations. The Manufacturers propose that any component that can be separated during a "small parts" use and abuse test should be subject to the lead content standard; all others should be deemed "inaccessible" for purposes of the lead content standard, except as noted below.

The Manufacturers also recognize that the statute expressed concern for the possibility of lead exposure as a result of product aging. The Manufacturers understand this concern to relate to the possibility that a product will degrade as it ages (*e.g.*, crumble or disintegrate), leaving degradation debris on the surface that a child could handle, and then ingest from his hands. This concern does not relate to metallic or rigid plastic components, because they do not crumble or disintegrate as they age; rather, this concern relates to soft plastics such as vinyl. For this reason, the Manufacturers propose that the lead content standard should apply to any physically exposed component made of a material that crumbles or disintegrates with aging, including specifically vinyl.

Unintended Consequences of Applying the Ban to All Exposed Components. Total elimination of lead in children's products is not only unnecessary from a children's health standpoint for reasons discussed above, it would also create serious problems for consumers. The Manufacturers are unaware of any reasonably-priced metal substitutes for recycled steel for use in structural components of durable infant and toddler goods. While it is possible to consider the use of injection-molded plastics to replace some of the recycled steel, this substitution would be extremely costly, and would also raise social costs in terms of the expanded use of petroleum-based plastics.

There is A Significant Shortage of Qualified Laboratory Capacity To Test For Lead Content. With respect to laboratory testing, there is a significant shortage of qualified laboratory capacity. The Manufacturers are already encountering difficulty locating independent laboratories with capability and capacity to test for lead content. This shortage is expected to be exacerbated as more children's product manufacturers seek qualified laboratories to assist them in evaluating lead content. While the Manufacturers understand that they are permitted to self-certify to the lead content standard until September 2009, many manufacturers must rely on outside laboratories to conduct tests that are beyond the in-house capabilities. Moreover, the large retailers are generally requiring third-party testing now, which is taking up even more of the available independent laboratory capacity.

If the Manufacturers must test all physically exposed components of durable infant and toddler products for lead content, it is likely that the available laboratory capacity will not be able to handle the demand, and some durable infant and toddler products will not be able to be offered for sale on or after February 10, 2009.

Consumer Costs. Finally, the Commission should always strive to avoid unnecessarily broad interpretations of the new statute requirements that will increase prices on consumer products, especially on durable infant and toddler products that are considered necessities by

many American families. In the current economic climate, it is especially important to avoid imposing unnecessary costs on American families. While it is not possible to quantify the effect of imposing the new lead standard on all physically exposed components of durable infant and toddler products, the Manufacturers conservatively estimate that it will increase the price of these products by at least 10%.

Conclusion and Recommendation. For all of the above reasons, the Manufacturers respectfully submit that Section 101 of the Consumer Product Safety Improvement Act should be interpreted to apply only to "accessible" components, and to exclude "inaccessible" components, with the term "inaccessible" defined to mean any component that is not likely to be ingested by a child under conditions of reasonably foreseeable use and abuse, including aging. A component that can separate from the finished good under the conditions specified in 16 C.F.R. Parts 1500 and 1501 (use and abuse testing) and that fits entirely within the "small parts cylinder" specified in those regulations would be considered "accessible," and must be tested for lead content. In addition, the Manufacturers propose that the lead content standard should apply to any physically exposed component made of a material that crumbles or disintegrates with aging, specifically vinyl.

We look forward to working with the Commission staff as the CPSIA requirements begin to take effect, and we appreciate this opportunity to provide our thoughts on how to interpret the new statute in a manner that is practicable and feasible for the Manufacturers.

Sincerely,

Kenneth Wittenauer

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Cheryl Falvey, Esq.

Stevenson, Todd

From: Weigand, Mary F. [MWeigand@mayerbrown.com]
Sent: Friday, October 31, 2008 2:57 PM
To: CPSC-OS
Subject: CPSIA Lead Provision
Attachments: Manufacturers Lead Letter.pdf

Please find attached a letter from four manufacturers of durable infant and toddler products regarding the above-mentioned subject. Please let us know if there is anything else you need.

Thank you.

<<Manufacturers Lead Letter.pdf>>

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Assistant to Erika Z. Jones
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FDRA

FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

November 3, 2008

Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission (CPSC)
4330 East West Highway, Room 502
Bethesda, MD 20814

Re: Clarification Request: Applicability of CPSIA Lead Limits to Certain Footwear

Dear Mr. Stevenson:

The following comments are submitted on behalf of the Footwear Distributors and Retailers of America (FDRA). 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.

The U.S. footwear sector, which marketed approximately 2.4 billion pairs of shoes to U.S. consumers in 2007, is proud of its record of offering safe and reliable footwear. Given the billions of pairs of footwear sold each year, there have been remarkably few footwear safety recalls for any reason. Moreover, we are not aware of any recall of footwear because of failure to comply with the lead paint limit.

According to U.S. Department of Commerce data, the U.S. imported 329,435,000 pairs of children's shoes in 2007. Also, tens of millions more pairs of children's shoes were imported under headings that do not classify juvenile products separately, such as slippers, protective items (such as rubber boots), etc.

There is, of course, considerable cost and burden of testing and certification that follows from being included within the scope of the term "children's product," as defined in the Consumer Product Safety Improvement Act (CPSIA), as well as the burdensome labeling requirements. We, therefore, urge the CPSC to balance the extent of potential hazards, if any, in certain footwear against the regulatory and cost burdens associated with inclusion of footwear in the universe of covered children's products.

We believe that if the risk of hazard is low or non-existent, it is highly appropriate for the CPSC to exercise its discretion. We urge the CPSC to limit to the maximum extent possible, the applicability of the lead paint and lead level limits only to that footwear where there is the potential for hazard to children.

Footwear for Infants and Toddlers. FDRA urges the CPSC to take the necessary steps to exclude children's footwear larger than that for infants and toddlers from the lead limits of the CPSIA. Section 101 (b)(1) of the CPSIA authorizes the CPSC to exclude a specific product from the lead limit requirements.

FDRA submits that the CPSC define footwear for infants and toddlers as that labeled as such including up to children's size 9.5. Such footwear is for persons up to and including age three.

We note that such items are routinely labeled, packaged and/or marketed as shoes for infants or toddlers, making it clear to consumers that these are special items, where particular care is taken to ensure their safety. Such labeling, and the consumer expectations associated with it, is consistent with the language in the CPSIA that provides that such representations are a key element in determining what products are subject to the act (Section 235(a)).

The potential hazard from lead, of course, is absorption of lead into a child's body. This only occurs by mouthing, swallowing or breaking. Only infants and toddlers are at any significant risk of mouthing footwear in normal and reasonably foreseeable use and abuse. The likelihood that older children will mouth footwear is remote and outside the scope of normal and reasonably foreseeable use and abuse.

The cost and burden of extensive testing for lead paint and lead substrate in hundreds of millions of children's shoes annually is enormous. Testing just one style can cost $3,000 or more, and there are literally tens of thousands of styles.

These costs and burdens compared to the remote possibility that shoes other than those intended for infants and toddlers would be mouthed by the persons for whom they are intended, creates a compelling need for the CPSC to exercise its discretion.

We urge the CPSC to confine the lead limit requirements to footwear for infants and toddlers, the only group of child footwear consumers with any likelihood of lead exposure through mouthing in normal and reasonably foreseeable use and abuse. Confining the lead limit requirements only to shoes for infants and toddlers will have no adverse impact on public health or safety.

Marking Differentiations and Footwear Size. While we strongly believe that the lead limits of the CPSIA should be restricted to footwear designed, labeled, marketed and sized for infants and toddlers, we urge the CPSC, if that principle is not accepted, to adopt the children's footwear "safe harbors" outlined below.

The CPSIA defines "children's product" as "a consumer product designed or intended primarily for children twelve years of age or younger." The CPSIA goes further and lists various marketing factors that are to be considered in making the determination of whether an article is intended for a child twelve years of age or younger.

Footwear is designed and typically labeled based on size, gender and the group of consumers for which it is intended, not by age as such.

Given the different approaches in the statute and in the footwear trade for differentiating between children's and adult's products, there is a compelling need for the CPSC to create one or more "safe harbors", which would allow the footwear trade to know with reasonable certainty whether a particular item is or is not a "children's product" covered by the lead limits, certification, labeling, etc., requirements of the CPSIA.

Shoe labels that characterize the universe of intended users may be the most reliable factor in categorizing the shoe as being for adults or for younger persons.

Typically, in many cases preceding the stated size, the label on a shoe or on the shoe box (if any) will indicate whether the shoe is of a size for men, women, children, misses, youths, boys, girls, toddlers or infants. In many cases, there are separate size runs for categories. It is crystal clear is that those labeled men's or women's are not principally designed for children.

Accordingly, we urge the CPSC to recognize as a "safe harbor," the intended use label that appears on the shoe that precedes the size. If the label states that item is a men's size _____ or a women's size _____, it would be outside the universe of "children's product" under the CPSIA, provided, of course, that such labeling was reasonable and consistent with other representations associated with the item. The U.S. Customs and Border Protection (CBP) utilizes this method in differentiating between male items and those for other persons for duty classification purposes (see 71 FR 41822, July 24, 2006).

We also recommend that the CPSC endorse another "safe harbor" based on the precedent in the U.S. Harmonized Tariff System (HTS), which differentiates between children's and adult footwear products by shoe size.

The United States HTS (2000) defines footwear for women as footwear of American size four and larger, and footwear for men as American men size six and larger (See Attachment 1). (Because of the administrative burden of implementing the statistical differentiations of various types of children's shoes, and because they had no impact on the application of duties, the U.S.HTS was amended recently to exclude the definitions of men's and women's, and substituted a definition of footwear for men, youths and boys, which definition is sufficient for duty assignment purposes.)

In addition to the size standard, the criteria of section 235 of the CPSIA, which take into account the manufacturer's representations accompanying the footwear offering and the consumer's common recognition of the product, would, of course, be used in determining whether the particular footwear qualified for the "safe harbor" and was not subject to the lead limits, certification, etc.

Accordingly, FDRA proposes that the CPSC adopt as an alternative "safe harbor" to the labeling one, the following: footwear is considered to be a "children's product" when it is sized below American women's size four or American men's six, provided that the shoes are not marketed, displayed, advertised, labeled, packaged or sold in departments that indicate they are specifically offered for children or that they are commonly recognized by consumers as being intended for use by children twelve years of age or younger.

This "safe harbor" would be particularly useful for companies that, in their consumer offerings, do not regularly use children's size designations or do not use any prefix when labeling the size (as, for example, a company that only sells adult women's shoes).

We believe that both proposed "safe harbors" will ensure that footwear primarily intended for children will be subject to the lead limits in the CPSIA.

Also, as noted, these will give clear guidance to the trade and allow it to implement its obligations under the CPSIA with confidence, knowing that it is testing the correct children's universe. This would also give the CPSC reasonably objective standards for discharging its administrative and enforcement obligations.

We greatly appreciate the attention of the CPSC and of the CPSC Staff to this request and would be happy to answer any questions or provide additional information.

Sincerely,

Peter T. Mangione

ATTACHMENT 1

Harmonized Tariff Schedule of the United States (2000)

Annotated for Statistical Reporting Purposes

il
64-2,

3. For the purposes of heading 6401 "waterproof footwear" means footwear specified in the heading, designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

4. Provisions of subheading 6406.10 for "formed uppers" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

Statistical Note

1. For the purposes of this chapter:

   (a) The expression "work footwear" encompasses, in addition to footwear having a metal toe-cap, specialized footwear for men or for women that:

   - has outer soles of rubber or plastics, and
   - is of a kind designed for use by persons employed in occupations, such as those related to the agricultural, construction, industrial, public safety and transportation sectors, that are not conducive to the use of casual, dress, or similar lightweight footwear, and
   - has special features to protect against hazards in the workplace (e.g., resistance to chemicals, compression, grease, oil, penetration, slippage, or static-buildup).

   Work footwear does not cover:

   - sports footwear, tennis shoes, basketball shoes, gym shoes, training shoes and the like;
   - footwear designed to be worn over other footwear;
   - footwear with open toes or open heels; or
   - footwear, except footwear of heading 6401, of the slip-on type or other footwear that is held to the foot without the use of laces or a combination of laces and hooks or other fasteners.

   (b) The term "footwear for men" covers footwear of American men's size 6 and larger for males, and does not include footwear commonly worn by both sexes;

   (c) The term "footwear for youths and boys" covers footwear of American youths' size 11-1/2 and larger but not as large as American men's size 6, and does not include footwear commonly worn by both sexes;

   (d) The term "footwear for women" covers footwear of American women's size 4 and larger, whether for females or of types commonly worn by both sexes;

   (e) The term "footwear for misses" covers footwear of American misses' size 12-1/2 and larger but not as large as American women's size 4, whether for females or of types commonly worn by both sexes;

   (f) The term "footwear for children" covers footwear of American children's size 8-1/2 and larger but not as large as the footwear described in statistical notes 1(d) and 1(e);

   (g) The term "footwear for infants" covers footwear of sizes not included in statistical notes 1(b), 1(c), 1(d), 1(e) or 1(f).

   (h) The term "house slippers" covers:

   (i) Footwear with outer soles not over 3.5 mm in thickness, consisting of cellular rubber, non-grain leather, or textile material; or

   (ii) Footwear with outer soles not over 2 mm in thickness consisting of polyvinyl chloride, whether or not backed; or

   (iii) Footwear which when measured at the ball of the foot has sole components (including any inner and mid-soles) with a combined thickness not over 8 mm as measured from the outer surface of the uppermost sole component to the bottom surface of the outer sole and which when measured in the same manner at the area of the heel has a thickness equal to or less than that at the ball of the foot.

Stevenson, Todd

From: Peter Mangione [ptmangione@fdra.org]
Sent: Monday, November 03, 2008 4:16 PM
To: CPSC-OS
Subject: Clarification Request: Applicability of the CPSIA to Certain Footwear
Attachments: CPSC Size Draft Oct 21.doc

Dear Mr. Secretary --- Enclosed pls find a request by the footwear industry for guidance on the applicability of the CPSIA to certain footwear.

We understand that the staff has not requested comment on this matter, but ask that the staff address it, as it is most important to the sector.

Pls let me know if you have any questions.

Best regards.

Peter T. Mangione
President
FDRA
202 737 5660

SA 101
27

November 5, 2008

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

Via Email: cpsc-os@cpsc.gov

To Whom It May Concern:

I am writing on behalf of the American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industries and their suppliers – with regard to the lead and lead in paint standards as mandated by the Consumer Product Safety Improvement Act (CPSIA).

At the outset, let me emphasize that our members have been working to manufacture and sell children's apparel and footwear products that are either lead-free or have the lowest amount of lead possible. In fact, many of our member companies are already manufacturing and selling products that comply with the more stringent lead limits (300 parts per million (ppm) for substrates and 90 ppm for lead in paint) that will be in effect on August 14th 2009. Notwithstanding that point, there are a number of concerns we still have with the expected implementation of the lead and lead in paint standards. We will address each of these in turn.

As a general point, we note that while it is important to ensure compliance under the CPSIA, at the same time, the Consumer Product Safety Commission (CPSC) must also ensure that implementation of consumer product safety standards does not involve burdensome requirements or extraordinary costs. This is particularly important as companies are working to transition to and incorporate new regulatory requirements during a period of severe economic uncertainty. The key to this is timely issuance of clear guidance materials that appropriately address safety risks and provide businesses information they need to have in order to fully comply with applicable regulations.

A. APPLICATION OF THE LEAD AND LEAD IN PAINT STANDARDS TO TEXTILE, APPAREL, AND FOOTWEAR PRODUCTS

It is important for the CPSC to recognize that the majority of the materials used to manufacture apparel and footwear products are inherently lead-free. In fact, in apparel and footwear products, only certain types of paint, ink, metals (snaps, zippers etc), plastics, PVC, rubber (and rubberized screen prints), and leather are materials that may have lead content. Textiles (both synthetic and natural) and thread are inherently lead-free. While trace elements may be

found in some dyes, those amounts are well below the regulatory limits and the consensus in the industry is that lead is not found in or used in textile dyes.

Subjecting these inherently lead-free products and components to a whole battery of lead testing will add huge costs to the industry, and ultimately to the consumer, without any improvement in consumer or product safety. From our perspective, it makes little sense to order expensive tests to determine that fabrics or wood, which do not contain lead, in fact do not contain lead. The oft-cited example of a children's plain white 100% cotton t-shirt perhaps best illustrates this point. None of the materials in that shirt (cotton) have lead and none of the manufacturing processes it is subjected to introduce lead to the final product. Requiring the manufacturer of that t-shirt to unnecessarily test for lead would only add financial burdens to companies who are already suffering from the current economic climate while providing no additional safety benefits to consumers.

Moreover, such testing would only burden a laboratory system that is already facing a huge increase in testing. The CPSIA creates a much larger role for independent (and in-house) labs through third party testing requirements and more compliance certification. If the requirements for third party testing are too expansive, there will not be enough laboratory capacity to perform all the new testing mandated by the CPSIA. ***Clarifying that the lead regulation does not apply to textile, apparel, and footwear products and components that are inherently lead-free would help alleviate this capacity issue.***

The CPSC has the authority to exclude components and classes of products from the lead ban. Accordingly, ***we urge the CPSC to issue guidance that makes clear that textiles, apparel, and footwear are only subject to the lead and lead in paint requirements to the extent that a component presents a risk that it contains lead.***

B. LEAD INVENTORY ISSUES

Members remain very concerned over the unintended adverse consequences of a September 12 memorandum in which CPSC general counsel advised that "products that contain lead above the limit set in the CPSIA cannot be sold from inventory or on store shelves on or after February 10, 2009." While we appreciate the considerations that led to this decision, we believe it will be extremely difficult to ensure compliance with this requirement for several reasons.

The practical implication of requiring goods in inventory to meet the new lead requirements is to retroactively apply the standards, even to goods (and their components) that were made before the new standards were approved.

It will be virtually impossible to determine if goods in inventory are compliant. The variety and sheer number of articles in commerce on that date, which will not have been made with the new lead standards in mind, will be enormous. This is not saying that there will be a large number of non-compliant products in the marketplace. To the contrary, the overwhelming majority of textile, apparel, and footwear products will be compliant and lead-free. But we also

believe that it will be impossible to know if many of those and other children's products meet the new lead standards, especially considering some of the preliminary guidance given with respect to the applications of those standards.

There is an added dimension that makes the retroactive nature of this rule especially problematic for our industries. For most textile, apparel, and footwear articles (as we noted above), numerous components and the vast majority of finished product are inherently lead-free or only present trace levels of lead, well below unsafe or regulatory limits. Subjecting the apparel and footwear industry to these new standards needs to be done selectively, prospectively, and in a way that properly targets safety risks. Doing so retroactively and without regard to the level of risk (if there is in fact a risk at all) is hugely problematic.

Furthermore, the retroactive application of a standard that begins on February 10, 2009 is hard to reconcile with certification and testing dates that take effect at different times. We note that:

- Certification of safety standards does not apply to goods made before November 12, 2008.
- Third party testing for the lead in paint standard does not start until mid-December.
- Third party testing for lead substrate standards at the 300ppm standard does not take effect until much later in 2009.
- A requirement for third party testing for the 600ppm lead standard (except for children's jewelry) never even takes effect.

In all those cases, third party testing and certification applies for goods made ***after*** the effective date (i.e. the requirement is prospective). While companies are having difficulties reconciling the various timetables for certification and testing, the task becomes nearly impossible when the CPSC interprets some of the lead standards to be retroactively applied, including dates before the testing and certification requirements take effect.

The retroactive application of the lead standard is inconsistent with the phase-in approach and timetable of the CPSIA regulations and testing. The law articulates a two-step (and possibly three-step) phase-in of increasingly tightened lead standards for substrates. Manufacturers and retailers will make and sell products meeting progressively more restrictive standards. In this manner, lead will be increasingly phased out of consumer products. A decision to retroactively apply the 600ppm standard for all goods in the supply chain as of February 10, 2009 suddenly eliminates the transitional nature of this phased-in approach. While many companies are already working to meet the 300ppm standard now, they were not necessarily working with that goal in mind a few months ago. As a result, companies who are at the forefront of compliance will be penalized because the phase-in approach and timetable they thought they were working toward is suddenly discarded.

This uncertainty is complicated by the fact that the new lead requirements apparently must be satisfied at the component level as well as the entire article. While this approach may appear straightforward as the good is being manufactured, it is much more difficult and costly to assess and to test for compliance when the good is already produced. Multiply that cost by the many articles that are already in commerce and one gets a small sense of the expense

companies could face. Of course, that does not account for costs associated with logistical disruptions (of identifying, removing, and testing product in inventory) legal and compliance expenses, and all other non-monetary costs like negative publicity.

The cost to reconcile the supply chain with this retroactive application will be huge. If the lead ban is to be retroactively applied, retailers will have to not only test all products already on their shelves, but also have to destroy potentially broad categories of products (products that were made in good faith according to product safety standards that were in effect when those goods were manufactured or products for which testing may be too prohibitive). One concern expressed by many of our members, including our small and medium sized members, is that their retail customers will pass these new and unforeseen costs back up their supply chain.

These extraordinary cost concerns are coming at a very difficult time.

We are preparing for what is expected to be a bleak holiday season. Consumer spending during the third quarter of 2008 dropped significantly. Moreover, the market research company NPD Group recently released a study showing that 26 percent of consumers say they will spend less this holiday season in comparison to 2007.[1] Retailers are already shrinking inventories to accommodate the decrease in demand. In the end, businesses (especially small and medium sized businesses) lose and consumers don't win.

We strongly recommend the CPSC reconsider the application of the lead content standard to all goods that are "in interstate commerce" as defined by the Federal Hazardous Substances Act (16 CFR 1500.3(b)(2)). This would relieve retailers who are already in a precarious economic situation. Furthermore, as is intended by the legislation, non-compliant products (or products for which compliance with the tighter standards is not yet validated by a third party test) would eventually phase-out of commerce, thereby ensuring consumer safety.

C. CLARITY NECESSARY

We understand the CPSC has fielded thousands of questions regarding lead substrate and lead in paint standards. Inasmuch as our members continue to raise questions, we urge that the CPSC issue guidance on these issues as soon as possible.

Several issues our members have questions on include:

1. Sampling/Test Frequency

Several members have asked for better clarification on testing frequency and what the size of sampling should look like. Current testing guidelines are extremely vague. The CPSIA requires a manufacturer "submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body." Without definitions of "sufficient sample" or "material respects," different companies

[1] [1] "NPD Holiday 2008 Survey Results: All Signs Point to Flat to Declining Sales." October 14, 2008, http://www.npd.com/press/releases/press_081014.html.

can reach different conclusions. While we encourage such flexibility, we are equally concerned that a company, believing it to be fully compliant, not be penalized because its sample size or testing frequency is subsequently deemed insufficient.

2. Components vs. Articles

Another concern is raised by the apparent requirement to test the component – both as a stand alone component and also as an element of the entire garment. Under the existing regime, components are tested to ensure they meet lead safety standards. The new regime envisions testing those same components individually, and then as part of a finished garment.

This redundancy greatly multiplies the cost associated with testing.

For example, the cost of digestive testing for lead is in the range of $130 to $180 per test. A garment with 2 metal component parts -- snaps and a zipper – could result in costs ranging from $650 to $900. Each part would be tested separately for the applicable lead standards. Even if those snaps and zippers were used in a variety (say 40) of different garments, there would only be one test associated with each component. Under the new regime, each component would be tested after it is removed from the sample garment. Instead of two tests for those 40 garments, the company will now have to conduct 80 tests (one for each component after it is removed from a different garment).

The problem multiplies exponentially if companies are now required to test fabrics and threads for lead, or if different dyes also trigger their own lead tests. Going back to the previous example, if each garment contains six components – body fabric, collar, cuff, thread, snap, and zipper, as well as 5 possible dye options - the number of tests increases to more than 1000. Multiply that further by the number of seasons, the number of styles, and an increasingly complicated number of fabrications, which is the case for many shoes or complex garments, the number of tests explodes further still.

While part of this problem is addressed by our comments exempting lead testing for those components and articles that are inherently lead-free, the problem is not fully addressed until the CPSC permits testing of components alone to suffice.

3. Use of Continuing Guarantees

We also encourage the CPSC to create a system, like the continuing guarantees (CG) under the Flammable Fabrics Act (FFA), to be available to form the basis of testing programs. As you know, a CG under the FFA is a good faith declaration that a product, fabric, or related material conforms with applicable flammability standards. The issuance of a guarantee must be based on reasonable and representative tests conducted in accordance with applicable flammability standards issued under the Flammable Fabrics Act (FFA) or based upon a guarantee received and relied upon in good faith by the guarantor. (See Section 8 of the Flammable Fabrics Act (15 U.S.C.1191) and 16 CFR 1608 General Rules and Regulations under the Flammable Fabrics Act.). A person receiving a proper guarantee in good faith is not subject to criminal prosecution though that person is still responsible to manufacture and sell products that

comply with the lead and lead in paint standards. Such guarantees will ensure greater compliance and reduce burdens thereby reducing costs of production.

4. Inaccessibility

We look forward to clear guidance from the CPSC on how a component can be considered inaccessible, and thus be deemed exempt from testing. While this issue is not as prevalent in our industry as it is other cases – such as toys – members do report parts that are inaccessible that may contain lead. Several examples include metal or plastic parts that provide support or stability and electronic lights in shoes. Our belief is that CPSC should quickly confirm that such components meet inaccessibility requirements and are thus exempt.

D. CONCLUSION

AAFA and its member companies share the goal of the CPSC – ensuring that only safe products are permitted to reach the consumer. We believe this is best achieved by implementing and enforcing the CPSIA (specifically the lead and lead in paint standards) in a manner that focuses on risks.

While we believe there are some components in textile, apparel, and footwear products that may fall under the lead standards, we believe the vast majority of products and components are inherently lead-free and should thus be excluded from the standards. Moreover, some components are inaccessible and should likewise be excluded.

For those remaining components where lead standards still apply, we encourage the CPSC to publish guidance that reduces the recordkeeping requirements and eliminate excessive or redundant testing thereby reducing financial burdens on companies while still ensuring product safety.

Thank you for your consideration of these comments, which represents the best available information as this point. As we continue consultations with our members, we may supplement these comments with additional views.

We look forward to continuing to work closely with the CPSC to ensure a smooth and effective implementation of the new requirements established by the CPSIA.

Sincerely,

Kevin M. Burke

Kevin M. Burke
President and CEO

Staff 101 Lead Paint 28

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November 11, 2008

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

Dear Mr. Stevenson:

I appreciate having had opportunity to present my opinions last week at the Lead Meeting, held at the CPSC.

As I mentioned during my presentation, I am a human factors psychologist specializing in the field of product safety. I work for both industry (manufacturers and industry groups) and consumer representatives (consumer advocacy groups and attorneys in litigation) equally. Regardless of who my client is, I use the same criteria for making any hazard determinations or determinations of intended user.

As follow-up to yesterday's meeting, I would like to offer some human factors opinions as they pertain to identification of a "children's product." Please understand that the comments I made during the Lead meeting, as well as the opinions presented in this letter, are not on behalf of any client. Rather, I offer them as an independent safety professional.

First, I distinguish between products that are "primarily intended for children ages 12 and younger" and products for which children ages 12 and younger will be among the "primary" users. The example I used yesterday, of a household computer, shows this distinction. Just because children ages 12 and younger are foreseeable and likely users of the product that does not mean that the product is "primarily" intended for them.

The determination of who a product is "primarily" intended for requires consideration of a number of factors. CPSC has identified four such factors. In addition to these, I consider the following:

1. Location where the product is sold – Consider who the clientele is for the retail establishment. If the store primarily sells to "tweens" (i.e., children ages 8-12 years), then products sold in that store are obviously intended for this age group. A store like Best Buy, on the other hand, sells products for a wide range of ages; in such a case, the location where the product is sold may not be a relevant factor.

2. Theme – Certain themes are very popular with children ages 12 and younger. Some of these themes are aimed at very young children (e.g., Dora the Explorer, Blues Clues), while others appeal to a wider range of elementary & middle-school-aged children, such as Hannah Montana and High School Musical.

3. Price – Sometimes, pricing can be a clue as to the intended user. This is relevant for all classes of products, but particularly for jewelry and collectibles. This information should be considered in the context of other aspects of the product, such as materials and the pricing of available alternatives.

4. Materials – This is relevant to a number of product categories including sporting goods, jewelry, and collectibles. Does the product use materials similar to those that would be appreciated by an adult or children 12 and younger? Characteristics such as fragility, sturdiness, and weight can influence the intended age. The use of plastic to simulate jewels, crystal, or glass indicates that a product may be intended for children, rather than adults. With regard to sporting goods, the substitution of metal components with plastic indicates that the product may be for children.

5. Method of Use – This is particularly relevant for electronics and sporting goods. Is the product used in a way that is similar to how a teen or adult would use the product or is the product a modified version that is easier to use or used in a way that appeals primarily to children. For example, there are digital cameras on the market that have software that allows users to interpose Disney characters into their photographs. This camera, which also has a Disney theme on its exterior, sells for the same price and in the same locations as digital cameras that do not have this software (including a large toy retailer). This software feature (as well as the design on the product) make it, in my opinion, primarily intended for children ages 12 and younger. Note that older children and even some adults my wish to use this product as well.

6. Sizing of Materials – This is relevant to all categories of products, but easy examples are drawn from sporting goods and jewelry. Sporting goods intended *primarily* for ages 12 and younger will be sized smaller and with lighter weight than sporting goods that are not primarily intended for children. For example, sports structures (e.g., basketball poles, volleyball poles, etc) that are primarily intended for children tend to be smaller sized than adult equipment or may be adjustable, but only to sizes suitable for use by children. Jewelry, including bracelets, necklaces and earrings, are also sized smaller when primarily intended for children ages 12 and younger. Their bodies are smaller and require smaller pieces.

7. Collectability – Children begin showing an interest in *fine* collectibles at around 8 years of age. At this age, they typically begin collecting fragile or costly items such as porcelain dolls, crystal animals, etc. In my opinion, these types of collectibles are not *primarily* intended for children ages 12 and younger due to both the materials and the cost. Furthermore, these articles are not intended for handling. They are often "precious" and delicate and are used from a distance – by viewing them in a case or on a shelf.

Children younger than 8 also collect things, however, the items they tend to collect are toys and they do interact quite a bit with these items. For example, matchbox cars, Pokémon and similar-type playing cards or figures, Barbie dolls, etc.

Second, as children age, we see a difference in how they handle products. Children younger than three years of age are in a mouthing phase. They explore their world orally, as well as tactilely. At this age, they handle everything and place objects in their mouths, indiscriminately. As children grow out of this phase, their play becomes more purposive, cooperative, and interactive. They use their toys as they are intended to be used and spend less time with the toys in their mouths and simply being carried around.

The ways in which children handle their toys is an important consideration and relates to accessibility of lead-containing components. An electronic stuffed animal like a talking Elmo plush figure is clearly designed and intended primarily for young children. However, the battery compartment is not designed or intended for them. This product is actually two products in one – the figure is designed and intended for the young child; the battery compartment designed and intended for adult use.

This product is distinguished from electronics that have a theme and/or are clearly marketed to "tweens" (children aged 8-12 years). Beginning at around 8-9 years of age, children can start to use hand tools such as screw drivers. Therefore, both the product itself and also the battery compartment are designed intended primarily for children 12 and younger. It is very important to note, however, that most electronics used by 'tweens are not *primarily* intended for children 12; rather these are adult products and 'tweens are among the primary users.

In considering the issue of accessibility, I strongly believe that it is also important to consider how and whether the product will actually be handled when used in the intended or reasonably foreseeable manner. Notably, there are some products that are primarily designed and intended for children ages 12 and younger for which there is little or no handling or where handling is limited to using an on/off switch. Lamps, fans, and nightlights are examples of such products. For ceiling fans, for instance, use of the product involves turning it on and then sitting under the fan. There is no reason for a child aged 12 or younger to ever touch the fan blades. Theme decorations on the fan blade are intended for visual use; not for handling. Note that fan pulls that are themed primarily for children ages 12 and younger (e.g., ballerina figure, basketball) *are* likely to be handled by older children (e.g., the tween age group).

The same can be said for children's lamps. Lamps, such as those I showed in my slide presentation last week, have a theme or décor that is clearly designed to appeal primarily to children ages 12 and younger. These lamps are intended for them to use in their room or playroom. However, physical interaction with the lamp is largely limited to turning the on/off switch. While a very young child may touch intriguing elements (e.g., a figure) from time to time, particularly when the product is newly received, a lamp is not an object that is handled extensively (as a toy would be). The benefit of the lamp is that it provides light; use is indirect. Even for lamps with moving features, it is my opinion that a child will be told that he/she should not touch the moving parts to prevent breakage. Again, it is likely that the child will attempt to handle the decorative feature initially. But this product is not likely to be handled substantially nor would it be mouthed. Note that this opinion would change if the lamp had a component part that was removable, such as a stuffed animal that could be removed from the base.

Other electronic products also have components that receive very little handling. DVDs used for gaming systems, for instance, are not handled beyond insertion into a DVD player. The DVD itself is a means to an end; it is not the object of play itself. In contrast, gaming components such as head phones, a microphone, joystick, and other hand-held accessories are handled when using the product in a foreseeable and/or intended manner. Note that components such as the DVD player may not be primarily intended for children 12 and younger, although they will certainly be among the primary users of the DVD player.

I believe that it is important for the CPSC to consider both how a product is likely to be handled as well as the age of the likely user in determining if a risk of lead poisoning exists. Mouthing behaviors are most predominant in children younger than three years of age. Some mouthing continues in some 3-5 year-olds. By the time children enter first grade, mouthing is much less common. Over time, we see that children put certain objects in their mouths (e.g., jewelry pendants, key fobs, writing implements) just as adults would. Otherwise, mouthing behaviors are not common in children ages 6 and older.

I greatly appreciate your consideration of my comments on this subject. If I am able to provide you with further clarification, please do not hesitate to contact me.

Most sincerely,

Carol Pollack-Nelson

Stevenson, Todd

From: Carol Pollack-Nelson [pollacknel@comcast.net]
Sent: Tuesday, November 11, 2008 11:42 AM
To: Stevenson, Todd
Cc: Falvey, Cheryl; Hatlelid, Kristina; Toro, Mary; Saltzman, Lori
Subject: RE: November 6 Lead Meeting
Attachments: November 7.doc

Dear Todd,

Can you please substitute the attachment to this email for the one I just sent moments ago? I neglected to insert my letterhead in the first email.

Thanks,
Carol

Carol Pollack-Nelson, Ph.D.
Independent Safety Consulting
13713 Valley Drive
Rockville, Maryland 20850
301-340-2912 w
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pollacknel@comcast.net

From: Carol Pollack-Nelson [mailto:pollacknel@comcast.net]
Sent: Tuesday, November 11, 2008 11:39 AM
To: 'tstevenson@cpsc.gov'
Cc: 'cfalvey@cpsc.gov'; 'Hatlelid, Kristina'; 'Toro, Mary'; 'Saltzman, Lori'
Subject: November 6 Lead Meeting

Dear Mr. Stevenson:

Attached please find my written comments pertaining to the issue of lead in children's products. I greatly appreciate the Commission's consideration of my opinions. I will send a hard copy of this letter out today.

Best regards,

Carol Pollack-Nelson, Ph.D.
Independent Safety Consulting
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Rockville, Maryland 20850
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Sent 101

Consumer Electronics Retailers Coalition

www.ceretailers.org

November 14, 2008

Ms. Cheryl A. Falvey
General Counsel
Office of General Counsel
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814

RE: Comments and Information: List to identify electronics devices for which lead is currently used.

Dear Ms. Falvey:

During the Consumer Product Safety Commission's public meeting on November 6, 2008, you indicated the need for further information and suggestions regarding the availability or creation of a list that would identify electronics devices for which lead is currently used in any concentration in any part of component of the product. The Consumer Electronics Retailers Coalition (CERC) would like to take this opportunity to respond to your request for further information.

By way of background, CERC is a public policy issue organization consisting of the major specialty retailers of consumer electronics products and retail associations. CERC members include Amazon.com, Best Buy, Circuit City, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading retail industry trade associations – NRF, NARDA, and RILA.

As CERC indicated in its Comments filed on October 31, 2008, Congress clearly intended an exemption for electronic devices. However, CERC does not believe the creation of a comprehensive list of products as described in the CPSC's Request for Comments and Information can or should be created. It would be an impossible exercise to create a reliable list of products that could be considered complete in nature for any useful period of time, given the constantly changing design features of many electronics devices.

Rather, CERC believes the CPSC should recognize that it currently is not technically feasible to meet the new lead limits for certain components of electronics devices. We suggest that CPSC recognize the necessity of specific uses of lead and when

applying the exemption for electronic devices, utilize three general categories of accessible component parts in which these uses of lead or lead alloys might be found.

In that regard, CERC outlines that the following three categories of component parts that contain lead at levels above those imposed by the Consumer Product Safety Improvement Act (CPSIA or Act) and for which there is currently no technically feasible method for reducing or removing the lead.[1] These component parts, to the extent that they are accessible to children if contained in electronics devices should be exempt from the requirements of Act, as provided by Section 101(b)(4) of the Act.[2]

1) Glass - Many types of glass contain lead that cannot be removed. The European Union recognized the feasibility issues with glass when it provided an exemption for glass under the RoHS exemptions. CERC, therefore, proposes that glass included in electronics devices should be exempt from the CPSIA lead requirements.[3] One example of such a product would be a television set marketed primarily to children. The lead in glass is added either for a functional use or for safety purposes. In the case of a cathode ray tube, the lead is added to prevent x-ray exposure of the viewer.

2) Machined parts – As previously discussed in CERC's Comments, various alloys use lead to achieve certain properties necessary to form or make the part. A copper alloy (brass) is a commonly-used metal to make many electronic parts. In one specific application it is used in antennas both for function and to protect users from harm. The tip of the antenna is commonly brass as a machined part. The tip serves the purpose of providing an eye protector. In addition brass is used in the base for the machine threaded portion of the antenna that allows both a good mechanical fit and an electrical connection so the antenna can properly function. CERC, therefore, proposes that antennas and other machined parts included on an electronic device be exempt from CPSIA lead requirements, as per the RoHS limits. Examples of such products range from remote control cars to radios and televisions.

3) Electrical contacts and connectors – Lead is commonly used in certain alloys to make the parts easy to shape and machine to create the complex contact surfaces necessary to make electronic products work when interconnected. Common applications include contacts in battery compartments, audio and video connectors, battery charges and AC

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[1] CERC also notes that for the most part, component parts inside of an electronic device, like lead solder, are inaccessible. There is not a need to identify uses of lead in any concentration in any inaccessible component part of the product as the CPSIA provides for an exception for these parts under Section 101(b)(2)(A).

[2] CERC reiterates that the CPSIA's lead restrictions only apply to those electronics devices that would be considered a children's product, as defined by the Consumer Product Safety Act and its regulations.

[3] CERC notes that the CPSC could also exempt glass from the required lead limits in other products under the exclusion presented in Section 101(b) (1) of the CPSIA as well.

adapters. CERC, therefore, reiterates that these parts, to the extent that they would be considered accessible component parts included in an electronic device should be exempt from the CPSIA lead requirements, as per the RoHS limits.

CERC hopes that the CPSC will find this additional guidance helpful in its implementation of the CPSIA's electronics devices provision. CERC supports the Consumer Electronics Association and The Information Technology Industry's position that the CPSC should adopt the RoHS exemptions in which significant industry effort has already been expended over the past decade to meet. In light of the retroactive nature of the February 10, 2009 date for compliance with the lead limits imposed by CPSIA, CERC respectfully requests that the CPSC make a determination regarding the exemption for component parts including the types of materials – glass and alloys as described above – as soon as possible.

CERC strongly believes in protecting the safety of our customers and children. Any delay places retailers in the unreasonable position of not knowing how to purchase and not having sufficient time to review the compliance of products already in the supply chain. CERC appreciates the opportunity to provide additional comments and would be available for further consultation.

Respectfully,

Christopher A. McLean
Executive Director
Consumer Electronics Retailers Coalition
317 Massachusetts Avenue, NE
Suite 200
Washington, DC 20002
(Tel.) 202.292.4600

Stevenson, Todd

From: Falvey, Cheryl
Sent: Friday, November 14, 2008 8:02 PM
To: Stevenson, Todd; Mullan, John; Kim, Hyun
Subject: FW: CERC comments: Recommendations on List to identify electronics devices for which lead is currently used.
Attachments: CERC.CPSC.Additional.Comments.11.13.08(final).DOC

Todd -- Can you make sure this is in the 101 docket. thanks.

From: Glen Cooney [mailto:glen.cooney@e-copernicus.com]
Sent: Friday, November 14, 2008 6:27 PM
To: Falvey, Cheryl
Subject: CERC comments: Recommendations on List to identify electronics devices for which lead is currently used.

Ms. Falvey:

Pease accept the attached document on behalf of the Consumer Electronics Retailers Coalition (CERC).

The attached letter offers comments and information regarding - the availability or creation of a list that would identify electronics devices for which lead is currently used in any concentration in any part of component of the product.

Thank you,

Glen Cooney
e-Copernicus
317 Massachusetts Ave., NE, Suite 200
Washington, DC 20002
Office: 202.292.4600
Fax: 202.292.4605