



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

Cheryl A. Falvey  
General Counsel  
Office of the General Counsel

Tel: 301.504.7642  
Fax: 301.504.0403  
Email: cfalvey@cpsc.gov

December 23, 2008

*Via Email and Regular Mail*

Mr. Allan R. Adler  
Vice President for Legal & Government Affairs  
Association of American Publishers  
50 F Street, NW 4th Floor  
Washington, D.C. 20001-1530

Re: Books and the CPSIA

Dear Mr. Adler:

I write in response to your memorandum of November 24, 2008 regarding the applicability of the Consumer Product Safety Improvement Act ("CPSIA") to books. I hope that this letter will provide general guidance on our interpretation of the CPSIA that you can share with publishers as they work toward compliance with the new law.

**Section 101 (Lead)**

Section 101 of the CPSIA applies to all children's products and limits the amount of lead that can be found in those products. The term "children's product" is defined by the CPSIA as a "consumer product designed or intended primarily for children 12 years of age or younger." The CPSIA changes the limits for lead applicable to children's products in two ways. First, it lowers the limit on lead in paint in the existing ban on lead in paint from 600 ppm to 90 ppm in August of 2009. Second, it establishes new limits on the amount of lead content in a children's product. The first limit on lead content of 600 ppm goes into effect in February 2009 and is lowered to 300 ppm in August of 2009 and may be lowered further in 2011 to 100 ppm if technologically feasible.

Your letter inquires as to the applicability of these section 101 lead limits with respect to "ordinary books." By your use of the term "ordinary," we assume you do not mean a book that has inherent play value, e.g., a vinyl book intended for use in the bathtub. We view an ordinary book to be one published on cardboard or paper printed by conventional publishing methods and intended to be read.

You have asked me to clarify misinformation regarding the scope of applicability of the lead limits to ordinary books. First, the CPSIA lead limits of section 101 do not apply to ordinary books intended for readers of all ages, including children. By definition those books are not intended or designed *primarily* for children. Therefore, those books do not need a general conformity certification for lead content and do not require third-party testing of any kind.

Second, with regard to those books that are intended or designed primarily for children 12 years of age or younger, ordinary books are not subject to the ban on lead-in-paint. As has always been the case, printing ink is not considered a surface coating under the lead-in-paint ban (16 C.F.R. Part 1303) because ink by its nature soaks into paper or cardboard and becomes part of the substrate. However, a book intended or designed primarily for children would need to meet the new lead content limit of 600 ppm and subsequently 300 ppm established by the CPSIA. Printing ink becomes part of the substrate of the book for purposes of evaluating its lead content.

It appears that the levels of lead in the test data you provided are well below the lead limits established in section 101 of the CPSIA; however, some of the tests were not for total lead content as the CPSIA requires but rather for soluble lead, i.e., the test looked at the amount of lead that could be extracted from those products or materials. In order to provide blanket exemptions for paper, paperboard, linerboard, printing inks, laminates, adhesives and binding materials used in books, the Commission needs total lead test data to support the determination that those materials do not contain lead at levels that exceed the CPSIA lead content limits. While the Commission staff has been diligently searching for such data from publicly available sources, it does not at this time have sufficient data on the total lead content of those materials to issue an exemption. Moreover, the staff has raised concerns about issuing exemptions on a commodity or class of materials basis without some data that the test results are representative of such materials as a class based on technical specification or other defined, objective criteria.

The Commission intends to issue rules regarding the exemption of certain materials from the lead limits. Notice of proposed rules (“NPRs”) describing those exemptions and the process for obtaining additional exemptions in the future are expected to be issued shortly. While the NPRs will go into this process in more detail, generally speaking in order to determine that a product can never exceed the lead limits of the CPSIA the Commission must be presented with reliable and replicable test results establishing that the total lead content of the commodity or class of materials cannot exceed the lead limits established in section 101. The NPRs should provide you with sufficient guidance on the information required to be submitted and the process for obtaining exemptions.

The testing requirements for lead content apply to finished goods and not component materials. The comments in your memorandum of November 25, 2008 will be made part of the public docket to CPSIA section 102. The Commission has solicited comments on the

ways in which component testing may ease the burden of establishing compliance with the lead limits and expects to be issuing further guidance on component testing shortly.

### **Section 108 Phthalates and Section 106 (Toy Standard)**

Section 108 of the CPSIA permanently bans three specific types of phthalates and bans a different group of another three phthalates on an interim basis. The types of products covered by the permanent ban are different than the products covered by the interim ban. The permanent ban covers:

1. “Children’s Toys” which is defined as a “consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays;” and
2. “Child Care Articles” which is defined as a “consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.”

The interim ban covers a narrower group of products and includes child care articles but only children’s toys that can be “. . . placed in a child’s mouth.” The Act states what is considered capable of being placed in a child’s mouth:

“For purposes of this section a toy can be placed in a child’s mouth if any part of the toy can be brought to the mouth and kept in the mouth by a child so that it can be sucked or chewed. If the children’s product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or a part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.”

While those definitions are worded broadly by Congress, ordinary books intended or designed primarily for children 12 or younger are reading materials and not toys and, therefore, the phthalates provisions of the CPSIA do not apply to them. The phthalates provisions of the CPSIA would apply only to those books that have some inherent play value and constitute toys or have toy like features. For example, a book for use in the bath tub or a book that can be cut into paper dolls would have inherent play value and thus need to meet the phthalates limits of the permanent ban. An ordinary book sold with an accompanying toy might not need to be tested but the toy itself would need to meet the phthalates limits of the permanent ban. The interim ban would only apply to those books that are toys and can be placed in the mouth. Whether such a book is a toy would require input from our human factors division.

### **Application of analysis to other products**

The analysis above is equally applicable to educational magazines, posters, bookmarks and other such products that are printed on cardboard or paper and have no play value.

Mr. Allan R. Adler

Page 4

The views expressed in this letter are provided pursuant to my authority described in 16 C.F.R. 1000.7 and have not been reviewed or approved by the Commission. They are based on the best available information at the time they were written. They may be superseded at any time by the Commission, or by operation of law.

Sincerely,

/s/

Cheryl A. Falvey