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CPSA 6(b)(1) CLEARED for PUBLIC
NO MFRS/PRVTLBLRS OR PRODUCTS IDENTIFIED
EXCEPTED BY: PETITION RULEMAKING ADMIN. PRCDG
WITH PORTIONS REMOVED:

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

Cheryl A. Falvey
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January 15, 2009

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:

In light of questions raised by my January 9, 2009 letter to you, I have revised that letter below to clarify and add additional explanation and supplement my letter of December 23, 2008 regarding the interpretation of the Consumer Product Safety Improvement Act ("CPSIA").

There are two types of certifications required under CPSIA section 102: (1) a general conformity certification; and (2) a certification based on third party testing. A general conformity certification indicating that children's products meet the new lead content limits will be required for books designed or intended primarily for children 12 and younger (hereinafter "children's books") manufactured after that date.[1] The general conformity certificate requirement of the CPSIA became effective on November 12, 2008. However, because the lead content limits of section 101 of the CPSIA had not gone into effect, a general conformity certificate for lead content has not been required to date and will not be required until February 10, 2009.

[1] The letter sent on December 23, 2008 discussing the issues of the CPSIA standards and "ordinary books" for children explained that the ban on lead-in-paint would only apply to books that have paint or a surface coating other than printing ink. As that letter explained, 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. Thus, printing ink becomes part of the substrate of the book for purposes of evaluating its total lead content. The CPSIA lead content limits only apply to children's products and therefore books intended for adults and the general enjoyment of all ages do not require a general conformity certificate.

CPSIA section 102 provides that a general conformity certificate for lead content can be "based on a test of each product or upon a reasonable testing program." The Commission staff has previously indicated at several meetings that a "reasonable testing program" for lead content: (1) does not require third-party testing; (2) can be based on XRF technology if that technology is used in a reliable manner; and (3) if the manufacturer is confident in the results of lead tests done on components, does not necessarily require tests of the final product. For example, a finished piece of jewelry in which all of the parts (including the charms or beads, the chain or string and the clasp, etc.) have been tested for lead content would not necessarily need to be tested as a final product. A manufacturer could issue a general conformity certificate based on the tests of the component parts of that finished piece of jewelry so long as each part complies with the limit of "600 parts per million total lead content by weight for any part of the product," and no lead containing additions were made to the product during the assembly of the parts (for example, by the use of solder to join parts).

Not all manufacturers would be able to rely on component testing to issue a general conformity certificate but, as the jewelry example illustrates, many could. It would appear from the data you have provided to date that the publishing industry is a candidate for this type of approach to general conformity certification. The CPSIA provides penalties for issuing false or misleading certificates which should help ensure that publishers will not issue general conformity certificates without a sound basis for saying the product complies with the lead limits. Without question, any children's book must comply with the new lead limits regardless of what reasonable testing program a manufacturer chooses to use to issue the general conformity certificate.

I understand some confusion has arisen as to whether a general conformity certificate issued on February 10, 2009 for children's books needs to be based on third-party testing of the actual children's book. Congress did not require certification based on third-party testing for the lead content limits of children's products until August of 2009. As outlined above, a manufacturer need only issue a general conformity certification for lead content on February 10, 2009 based on a reasonable testing program. A general conformity certificate does not need to be based on a test of every title of every book printed. A general conformity certificate can be based on tests of the component parts of the books printed by that manufacturer, including not just the printing ink, but also the paper, glue, laminates and any other components that are used to make the book, so long as those tests are representative of the children's books covered by that general conformity certificate in all material respects.

A retailer or distributor of children's books can rely on general conformity certificates to sell or distribute those books. The law specifically provides that CPSA section 19(a)(1) and (2) of the acts prohibited by the statute (which includes sale and distribution) "shall not apply to any person (1) who holds a certificate issued in accordance with section 14(a), [15 U.S.C. § 2063(a)] to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform. . ." 15 U.S.C. §2069(a)(2). Because section 14(a) includes both general conformity certificates and certificates based on third-party testing, it is reasonable for a retailer or

distributor to rely on a general conformity certificate until the requirements for third-party testing for the lead content of children's products go into effect in August 2009.

The third-party testing requirement for children's products is written differently. Congress expressly requires that products subject to children's product safety rules (as that term is defined in the statute) be tested by a third-party laboratory accredited for lead content testing. The lead content limits in CPSIA section 101 are children's product safety rules that will require certification based on third-party testing. The Commission will be publishing its procedure for accrediting labs for third-party testing no later than May of 2009 and third-party testing for lead content in children's products will be required to begin in August of 2009. Given that the lead content limits goes down to 300ppm in August of 2009, the third-party certifications for lead content will be for that lower 300ppm level.

In contrast to our approach to general conformity certification in which we have allowed the use of component testing, for certification of children's products based on third-party testing the statute requires testing of the final children's products for lead content and not just the components of those products. My December 23rd letter to you which states "testing requirements for lead content apply to finished goods and not component materials" was specifically referring to the third-party testing requirement in the statute for lead content which does not go into effect until August 2009. The specific statutory language states that third party testing of children's products be based on "sufficient samples of the children's product, or samples that are identical in all material respects to the product." The Commission staff has been considering the issue of whether and when component testing will be sufficient for the certification of products based on third-party testing. We anticipate addressing the use of component testing for third-party certification by rule or guidance before the third-party testing requirements go into effect for lead content in August. Moreover, the CPSIA requires us to issue a rule 15 months after the date of enactment that will, among other things, "establish protocols and standards for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts." Thus, you can expect additional guidance and rulemaking on third-party certification and component testing in the coming months and opportunities to comment on the work of the Commission staff on these issues.

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

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December 23, 2008

Via Email and Regular Mail

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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.

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

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aap

Memo

TO: U.S. Consumer Product Safety Commission
FROM: Allan Adler and Ed McCoyd
DATE: November 24, 2008
RE: Need to exempt ordinary books from the CPSIA

1. **We applaud the intentions of the Act, but urgently need to address its application to ordinary books.**

Publishers share the desire of our customers, business partners, and the end users of our products – especially parents of young children – to know with confidence that each and every product we sell for use by children is safe for its intended use. We therefore applaud the intentions of this new legislation to regulate potentially hazardous children's products and grant increased authority and, we trust eventually, funding to the Consumer Product Safety Commission, and we hope it leads to increased safety for children's consumer products in the United States. Steps by the Commission are urgently needed, however, to avoid unintended negative consequences for consumers and the marketplace. The Act's passage appears to be having the unfortunate and unintended consequence of generating misplaced attention on ordinary books, which not only will prevent children from having access to their learning materials, but also may be drawing attention away from the real hazards against which children were intended to be protected under the Act.

2. **Misinformation regarding the scope of the Act currently exists in the marketplace, necessitating clarifications from the Commission.**

Based on communications received from the supply chain, publishers have learned that many retailers are unaware that:

a) Books intended for readers of all ages, including children – as opposed to books primarily intended for children 12 years of age or younger – do not constitute children's products within the meaning of the Act and therefore are not regulated by it;

b) The phthalate ban has no application to books; and

c) ASTM Standard F963-07 (made mandatory by the Act) does not apply to books.

Written public statements from the Commission are needed to make clear that books intended for readers of all ages are not subject to the Act, that the phthalate ban has no application to books, and that ASTM Standard F963-07 does not apply to books.

3. **Recent FAQs from the CPSC indicate that books are subject to the new lead requirements.**

While CPSC staff members have commented verbally to publishers' representatives that the CPSIA does not change the existing lead-in-paint ban (except for the gradual reduction in the permissible levels), an FAQ response issued by CPSC staff suggests that the express exclusion of printing ink – and the underlying rationale that lead-paint limits should not apply to product substrate and that books do not present any hazard to children – has been nullified.[1] If so, in effect this action makes a substantive change without adequate due process or compliance with the Administrative Procedure Act (5 U.S.C. 553). It also makes no sense to apply a new lead standard to books. While we appreciate the staff's effort at providing clarification and note that statements from them are conditioned as "Opinion only" and subject to determinations by the Commission to the contrary, when taken as a whole the statements are having a real and major negative impact on the marketplace.

4. **The book industry was neither consulted nor warned about any applicability of the Act to books.**

Nothing in the legislative history reflects any intention to regulate the book publishing industry in this manner. If any such intent had existed, representatives of our industry – well known to Congress because of our prominent role in creating valuable intellectual property vital to our domestic economy and global interests – would have been afforded the opportunity to comment. The likely application of the CPSIA to book publishing after the failure to include us in the legislative and regulatory process has frankly taken our industry by surprise, making it more difficult for us to comply on short notice with the new requirements, particularly in a landscape that seems to be changing daily based on the opinions and FAQs that have been provided by the CPSC.

5. **Since there is no demonstrable hazard from books, the Commission has the authority to now expressly exclude books, and the publishing community requests that this step immediately be taken.**

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1 The FAQ reads as follows:

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

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

We submit that it is appropriate, necessary, and within the authority of the Commission – pursuant to Section 101(b) of the Act – to exclude books from the total lead ban and testing/certification requirements. Just as it is appropriate for the Commission to exercise heightened care with respect to products that may pose a hazard, the Commission should use its authority to exclude products that have raised no demonstrable hazard. As the Commission is no doubt aware, earlier this week, the European Parliament made moves to explicitly remove cardboard and paper children's books from the EU toys directive. We believe similar relief is appropriate with respect to the CPSIA. We respectfully ask the Commission to immediately commence a rulemaking to provide a clear rule stating that ordinary books and their components are excepted from regulation. We also join with the request of other industries for reversal of the ruling to apply the total lead ban retroactively to inventory created long before the effective date of the ban. Until then, we request that implementation of the new law be postponed with respect to ordinary books. Our request for the exemption for ordinary books does not relate to other products that may be distributed by publishers that constitute toys or have toy-like features of the type that warrant oversight. Extending the Act to ordinary books, however, would be an unintended consequence that would unnecessarily and severely reduce children's access to their reading materials.

6. **In support of publishers' request that the Commission take the crucial step of expressly exempting books from the new lead requirements, we submit the following:**

a) **Applying the total lead limits and testing requirements in the Act to ordinary children's books will not address any legitimate safety concern.** – We are aware of no studies or cases indicating that children use or even abuse children's books (e.g., mouthing of books by very young children) in any manner or quantity that would be hazardous to their health. Domestic and international printers have long been migrating to inks that either do not contain any lead at all, or contain only trace amounts well below the forthcoming limits. Similarly, both foreign and domestic book manufacturers and printers report to AAP and its member publishers that the raw materials used to make books (paper and board stock, cloth, glues, laminates, and coatings) contain no lead or phthalates. Further information regarding the lack of more than de minimus amounts of lead in books is provided by the Book Manufacturers' Institute in its November 19 e-mail to the Commission via the CPSC website.

b) **Information currently provided to publishers by their manufacturers in China further demonstrates that books are free of lead or dangerous lead levels, as well as any other hazards.** – Chinese printers used by publishers in AAP's membership adhere to ISO (International Organization for Standardization) standard 14001 standards for environmental management systems, which include lead auditing. A large number of the Chinese printers used by U.S. publishers are also compliant with product safety standards required by the Walt Disney Company, which these printers also implement on jobs done for the other publishers.

c) **Prior regulation clearly indicates the recognition by Congress and the Commission that ordinary books do not present a hazard to the public.** – In 16 CFR 1303.2(b)(1), the Commission expressly excluded printing ink from the lead-in-paint ban, stating that the term "paint" and other similar surface-coating materials "does not include printing inks or those materials which actually become a part of the substrate. . ." That determination was obviously based on the considered view that the bonding of the printer's ink in the substrate effectively

eliminates the hazard of any lead-containing paint and that books do not present any hazard to children.

d) **Reversing the long-established exclusion of printer's ink from lead-in-paint rules threatens to create chaos in the supply chain.** – Total lead content and testing requirements in the CPSIA if applied to books will conflict with the long-established exclusion of printer's ink from the lead-in-paint ban of 16 CFR 1303, thus subjecting existing inventories of millions of books – whether in retail and wholesale outlets, book depositories, or publishers' warehouses – to regulatory requirements that did not exist at the time of production.

e) **Not providing the exemption would have extremely adverse consequences for the affordability and availability of books.** – AAP's members include large and small publishers of children's books intended for consumers, as well publishers of instructional and educational assessment materials for students from pre-kindergarten through college. Application of the CPSIA to ordinary books threatens children's learning and libraries, as well as the children's book publishing industry – a significant segment of the American economy – all without a record that such regulation is necessary to protect child safety. Absent assurances that ordinary books comply with yet-to-be-implemented total lead standards, distributors and retailers are stating that ordinary books – even those manufactured long before the limits go into effect – will be pulled from store shelves and returned at the publisher's expense, or that pending orders for such titles will be cancelled. Severe damage to the industry and to children's access to books will occur from the removal or return of existing stock, a prolonged freeze on the distribution of these books, insufficient supply for demand, and consequent loss of positive brand recognition and client confidence in publishers' products; as well as the addition of expensive testing and administrative burdens, and the creation of unwarranted panic among members of the public about the safety of books as more and more consumers learn about the Act.

f) **Insufficient capacity among testing labs to meet the demand that would result from imposing the lead testing requirements on ordinary books would further impede consumer's needs.** – The already-limited number of labs that perform consumer product safety tests would be overwhelmed by the huge increases in demand that would result from suddenly imposing lead testing requirements on ordinary books, adding thousands of products to this overburdened system. It already takes several weeks to get products tested, and as of late, publishers report having to wait twice as long for tests of certain of their specialty products (i.e., certain products other than ordinary books that are appropriate for testing) due to increases in testing generally as a result of the Act. The shortage of capacity, and consequent delay or prevention of providing books to children, will be particularly acute in light of the limited number of testing services that are accredited as required by the statute. Alternatively, left without guidance from the Commission, the market could be left to create an ad hoc prioritization system, wherein testing labs might have economic or other incentive to give priority to products with real potential to pose safety hazards while ordinary books – which shouldn't even be subject to testing – get pushed back in the testing queue.

The expense and delay that testing will add to the publishing process will severely hamper our ability to provide valuable reading and educational material to our nation's children. We will

not be able to publish books on an acceptable timetable, and the publication of some books will simply be cancelled due to capacity restraints and uncertainty (and not simply new books, but even reprints of classics and school texts). Surely, the removal of ordinary children's books from the marketplace could not have been intended by Congress and is not justified by any known hazard to children resulting from books. In addition, overburdening the testing labs with books will hamper the labs' availability to perform testing on the products that may pose the hazards that the regulations are actually intended to address, such as toys and childcare articles.

7. **If the Commission concludes that it does not have the authority to exclude books, steps to mitigate confusion in the retail and consumer communities should be taken.**

If the Commission concludes that exclusion is not within its authority or supported by the current record, we urge the Commission to revisit the implementation schedule for the lead limits and testing; lift any requirements on existing inventory; develop a specific timeline with respect to books that gives publishers, as well as book manufacturers and their suppliers, a reasonable time frame within which to comply; and outline feasible testing methods that can actually be achieved in practice.

8. **If testing is ultimately required for books, reasonable testing programs on which to base certification of product safety will be necessary.**

Publishers will be in an impossible position both fiscally and practically if they are required to have tested every individual children's book they publish. Annual test reports from upstream suppliers of raw materials (ink, paper, spine glue, cloth, etc.) provided to publishers would be much more viable. To avoid emptying retail and library shelves of new children's books, the Commission would need to accept clear and reasonable requirements as to which materials had to be tested, how often, in what quantities (e.g., samples versus entire inventory), and pursuant to what processes. If books in their final manufactured form are, despite AAP's position, required to be tested, the requirement should be limited to some samples (such as a few titles from each printer hired by the publisher).

9. **All of the foregoing requests regarding ordinary children's books are also applicable to certain other products sold by book publishers.**

Publishers also produce educational magazines for children, posters, paper bookmarks, and other paper-based products which similarly do not pose legitimate child safety concerns and thus have not been subject to regulation in the past. Furthermore, we note that recent FAQs from the CPSC also state that children's audiobooks (cassettes, CDs) are subject to the total lead limits for children's products containing lead. Although we do not address those products at length herein, it seems similarly misplaced to subject children's audiobooks to such regulation without a legitimate basis for a safety concern that would be addressed by such regulation, and it is important to note that many instructional materials for children are distributed in audiobook format.

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December 4, 2008

Cheryl Falvey
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U.S. Consumer Product Safety Commission
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4330 East West Highway
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By Email & First-Class Mail

RE: CPSIA Applicability to Books and Other Paper-Based Printed Materials

Dear General Counsel Falvey:

On behalf of the members of the Association of American Publishers, as well as various companies, associations and organizations in the book manufacturing, paper, printing, binding, laminate, ink, and adhesives industries, I write to follow-up on our meeting last week with you and CPSC Director of Compliance John G. Mullan to formally request the Office of General Counsel to immediately issue an advisory opinion letter to confirm the limited coverage of books and other non-book, paper-based printed materials under the lead, phthalate and applicable ASTM standards requirements referenced in the Consumer Product Safety Improvement Act of 2008 ("CPSIA").

As the principal national trade association for the U.S. book industry, AAP represents some 300 member companies and organizations that include most major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members include large and small publishers of children's books in the consumer marketplace, as well as publishers of instructional and assessment materials for students at all levels of education.

For purposes of requesting this advisory opinion letter, AAP has consulted with a broad coalition of companies, associations and organizations in the book manufacturing, paper, printing, binding, laminate, ink, and adhesives industries to draw upon their expertise and experience regarding their respective roles in the production of books and other non-book, paper-based materials, including the safety testing of the various components that, upon assembly, comprise the finished products. Accordingly, the request for an advisory opinion letter is supported by the American Forest & Paper Association; the Book Manufacturers Institute, Inc.; the National Association of Printing Ink Manufacturers; the

Printing Industries of America; and, The Adhesive and Sealant Council, Inc., which together represent thousands of American companies in the industries noted above.

Our consultation with these allied industries has resulted in the compilation of critical information, including a broad sampling of actual safety testing results, that we believe provides strong evidentiary support for recognizing that books and other non-book, paper-based printed materials – both in terms of their individual components and the assembly process that integrates those components into finished products – should not be subject to the lead, phthalate and applicable ASTM standards requirements referenced in the CPSIA because they do not present any of the health or safety risks to children that those requirements are intended to address.

Accordingly, we request the Office of General Counsel to immediately issue an advisory opinion letter to confirm the limited coverage of books and other non-book, paper-based printed materials under the lead, phthalate and applicable ASTM standards requirements referenced in the CPSIA based upon the following fact-based principles:

1. Books designed or intended primarily for adults are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as their content generally would preclude them from being considered "children's products" or "toys" or "child care articles" as defined for purposes of the CPSIA.

2. Books designed or intended primarily for non-adults over the age of 12 are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, even though they may be read by some children 12 or younger, as their content and intended use, including grade-level appropriateness for educational purposes, generally would preclude them from being considered "children's products" or "toys" or "child care articles" as defined for purposes of the CPSIA.

3. Books designed or intended primarily for children 12 or younger are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, except with respect to any non-paper-based elements that provide play value and are part of such books. These play elements may be comprised of plush, fabric, plastic, metal or wood components, and they may be subject to all relevant requirements of the CPSIA. However, there is no evidence of any Congressional intent to regulate ordinary books and other paper-based reading materials under the CPSIA, and they do not present any of the health or safety risks to children that those requirements are intended to address.

4. Similarly, other non-book, paper-based printed materials, such as flash cards, posters, bookmarks, and worksheets, are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as they do not present any of the health or safety risks to children that those requirements are intended to address.

5. Audio books, and educational media embodied in CDs or DVDs that supplement or accompany books, are not subject to the lead, phthalate or applicable ASTM standards requirements referenced in the CPSIA, as they do not present any of the health or safety risks to children that those requirements are intended to address.

While the fact-based principles numbered 1 and 2 above are self-evident, based upon the nature of the books they embrace, as well as the definitions used to define the scope of the CPSIA, we have provided evidentiary support for the fact-based principles numbered 3, 4 and 5 above in terms of information and data regarding the manufacture of the books and other materials they address. Because of the sheer volume of this information and data, the evidentiary support for those fact-based principles does not accompany this letter but can be accessed at a portal website established by RR Donnelley, a leading full-service provider of print and related services, at www.rrd.com/cpsia.

At the website, you will find a clear and concise overview of the assembly process that produces books and most other paper-based printed materials, as well as individual files containing recent testing results provided by a variety of leading vendors for the various components that are assembled in this process to produce finished books and other paper-based printed materials. You will also find test results for some finished books that are popular in the children's market, and tests results for CDs and DVDs that supplement or accompany books. In order to comply with contractual confidentiality obligations, the identities of many of the vendors and the specific products to which the tests relate have been redacted in these files. If the Commission should determine that it needs any of the redacted information, we will contact each vendor to request their approval to provide it. However, if making such requests becomes necessary, we would strongly urge that you allow us to take those actions after issuance of the requested advisory opinion letter, rather than delay issuing that letter.

As we explained in our meeting with you last week, your immediate issuance of the requested advisory opinion letter is a matter of great urgency. The absence of clear and accurate information about the limited coverage of books and other paper-based, printed materials under the CPSIA has created undue alarm within the retail and distribution elements of the marketplace, as major players in these arenas have warned publishers that their books will be summarily taken off the market and returned to them at their own substantial expense unless the publishers can immediately certify that their products meet the CPSIA requirements, regardless of the statutory-based timeframes and testing requirements that make such certification a practical impossibility. Unfortunately, this problem has been exacerbated by the Office of General Counsel's determination that the requirements of the CPSIA apply retroactively to products in inventory, even if they were produced and delivered before the CPSIA was enacted. It is not an exaggeration to state that, unless the misinformed fears that are driving these warnings are allayed by an official statement from the Commission, the potential commercial and other economic harm to the book publishing industry and its allied industries from these threatened actions could be catastrophic.

Similarly, given the essential role that books and other paper-based, printed materials in the form of "ancillaries" and other supplemental educational materials play in the process of educating our children – at schools and libraries, as well as through bookstores – the delay in making needed instructional materials available in this sector will undoubtedly have a severe adverse impact on students and teachers.

Finally, Congress, the Commission and the American people do not want to see the real and necessary product safety benefits to be obtained under the CPSIA derailed or delayed by overloading the testing queues with products that both historically and currently have not been determined to present the health or safety risks that the CPSIA is intended to expose and eliminate. The test results provided on the website should make clear that, in terms of those risks, consumers have nothing to fear from "*How the Grinch Stole Christmas*," "*The Little Mermaid: Ariel's Beginning*," and "*Tinker Bell: A Fairy Tale*" (all published by Random House), "*The Wrath of Mulgarath*" (published by Simon & Schuster), or other books that have been manufactured as explained in the website overview. Your immediate issuance of the requested advisory opinion letter explaining the limited coverage of books and other paper-based printed materials under the requirements of the CPSIA, according to the fact-based principles articulated above, will at least help to ensure that these products do not needlessly contribute to the overloading of available testing and certification capacity.

Please contact me at your earliest convenience if you have any questions about this request or any of the supporting information and data being provided to the Commission through the aforementioned website.

Sincerely,

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