

February 17, 2009

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

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

- REF: A. Section 101 Determinations of Certain Materials or Products NPR (74 FR 2433)**
- B. Section 101(b) Exclusions (74 FR 2428)**
- C. Section 101 Inaccessible Component Parts (74 FR 2439)**

Dear Mr. Stevenson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your attention to this matter.

Sincerely,

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

ATTACHMENT

January 30, 2009

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

REF: Follow Up to January 22 Textiles Meeting

Dear Mr. Stevenson:

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

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

- The XRF and wet chemistry testing correlation was very high in data sets where both tests were used on the same components.
- XRF and wet chemistry test results of more than 3000 garments representing a wide range of natural, manufactured/man-made fiber and blended fabrics, fabric constructions, and processes failed to reveal any samples where lead was detected in the textile components at a level greater than 300 ppm. In fact, in all but four cases, test results confirmed a non-detect level.
- In a few cases, XRF testing, followed up with wet chemistry, did detect lead in amounts exceeding 100ppm, 300ppm, or 600ppm in certain metal and plastic accessories, such as buttons, zippers, snaps, and rhinestones. The incidence of these failures was extraordinarily low – representing less than 5 percent of all samples. Moreover, in many cases, it was only *part* of the component that triggered a positive lead result. For example, in one case, a garment that otherwise passed was deemed to fail because a single sub component of the zipper component – the zipper stop – failed. The relatively rare occurrence of lead in accessories does not account for the fact that new production is showing near 100 percent compliance, even in the accessories.

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your attention to this matter.

Sincerely,

American Apparel & Footwear Association (AAFA)
American Fiber Manufacturers Association (AFMA)
American Manufacturing Trade Action Coalition (AMTAC)
California Fashion Association (CFA)
Coalition for Safe and Affordable Childrenswear, Inc.
Craft Yarn Council of America
ETAD – The Ecological and Toxicological Association of Dyes and Organic
Pigments Manufacturers
INDA, Association of the Nonwoven Fabrics Industry
International Sleep Products Association
National Cotton Council (NCC)
National Council of Textile Organizations (NCTO)
National Retail Federation (NRF)
National Textile Association (NTA)
Outdoor Industries Association (OIA)
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