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*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.<sup>1</sup> 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.

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<sup>1</sup> 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 23<sup>rd</sup> 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