



Pentel of America, LTD  
2715 Columbia Street  
Torrance California 90503

January 29, 2009

**Regarding CPSIA, The Consumer Product Safety Improvement Act of 2008**

Mmes and Messer's,

The requirements of CPSIA indicate that Certificates of Compliance be issued with product from November 12<sup>th</sup> 2008 every manufacturer of a consumer product that is regulated by a rule, standard, ban or act enforced by CPSC must issue a general certificate of compliance to all such regulations with each product shipment. The General Certificate must be based on testing of each product or a reasonable testing program which Pentel has in place. In the case of Children's Product Certification the testing must be based on third party testing.

The items that you have inquired about, the S360 and the PHN-12 are tested in our labs in Japan and in our testing program and both are third party tested and are ACMI AP approved items for Children  $\leq 12$  years of age. As ACMI items we are of the opinion that they fall in the Special Exemption noted in CPSIA allowing for those in compliance with FHSA and LHAMA as Art Materials indicated in the certification programs referenced in Annex A to §1500.14(b) (8). ACMI may in fact act as the third party certification body. Numerous attempts to meet with CPSC to confirm this have been made and a letter was sent to Cheryl Falvey, ESQ. on January 26<sup>th</sup> 2009 on behalf of ACMI Members. See accompanying letter to CPSC General Counsel.

Further as part of the ACMI program these products have undergone Third Party Certification and have been tested by our independent Lab Kirby Memorial Health Center. While Kirby is not yet ILAC accredited to ISO 17025 and is yet to be listed on the CPSC website as an approved Lab the process is underway and they will be before the full requirement for Third Party Certificates for Children's products is mandated in August of 2009.

The S360 meets requirements for Lead in Surface Coatings and the PHN-12 does not have surface coatings so 16 CFR1303 is not an issue with the PHN.

We certify that these products have been third party tested; S360 and PHN-12 and the Lead levels in the products are  $\leq 100$  ppm. These products are not Toys subject to Phthalates testing or small part legislation. These products are evaluated for conformance with LHAMA and ASTM D 4236 and labeled according to the guidelines that they require for conformance. The test date is indicated as April 2008 in conjunction with re-evaluation of ACMI items annually. The date of shipment is the manufacturing date and products are date coded for Lot control.

The contact person for these items is Michael Storie. The certificates with the required criteria are on the packing slip with product shipped. We will continue to monitor the specifics of CPSIA as interpreted by CPSC from our sources of ACMI, WIMA and with the online information provided from CPSC website meetings and CPSC FAQ's.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Storie", is written over a circular stamp or seal.

Michael Storie, Manager, FQCC, Safety and Administration, Pentel of America, LTD

Phone: 310.803.8777

Fax: 310.533.1401

Email: [mstorie@pentel.com](mailto:mstorie@pentel.com)



## THE ART & CREATIVE MATERIALS INSTITUTE, INC.

1280 Main St., 2nd Fl., P.O. Box 479

Hanson, MA 02341 USA

Tel. (781) 293-4100 Fax (781) 294-0808

Web Address: [www.acminet.org](http://www.acminet.org)

Deborah M. Fanning, CAE  
Executive Vice President

January 26, 2009

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

Dear Ms. Falvey:

We have written you on several occasions requesting a meeting to discuss the ramifications of the exemption that the Art and Creative Materials Institute ("ACMI") obtained in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). To date, we have not been afforded the opportunity to discuss this matter with you or the General Counsel staff. December 22, 2008 was the deadline for testing by an accredited third party testing laboratory and certification by the manufacturer for lead in paint on children's products. February 10, 2009 is the deadline for 600 ppm total lead content in children's products. With one deadline past and the other looming, it is necessary for ACMI to issue our own interpretation of this exemption to our members so that they understand what actions they have to take to be in full compliance with the CPSIA, the Labeling of Hazardous Art Materials Act ("LHAMA"), and the Federal Hazardous Substances Act ("FHSA").

We agree with the agency's FAQ stating that art materials designed or intended primarily for children 12 years of age or younger are subject to the lead limits under the CPSIA. We would only have gone a bit further by pointing out that first they must comply with FHSA for acute toxicity and LHAMA for chronic toxicity. The certification programs referenced in Annex A to §1500.14(b) (8), such as the one that ACMI runs, have historically been much stricter about lead limits and other contaminant metal levels than even the CPSIA. Rather than accepting a 600 ppm total lead content as the CPSIA imposes, ACMI has required children's art material products to be below 100 ppm total lead content for years now. All of ACMI's decisions on toxicity are monitored by CPSC because LHAMA requires toxicologists to file their toxicological procedures with CPSC. In addition, ACMI's toxicologist shares his risk assessments on various substances on a regular basis with the agency.

**LOOK FOR THESE SEALS.....**



ACMI also has been more progressive in other areas of children's health as well. ACMI banned the use of methylene chloride years before CPSC did. The conservative nature of ACMI's toxicological risk assessments no doubt is responsible for the lack of any recalls of ACMI certified children's art materials. The excellent track record of the ACMI certification program has been recognized by many governments. Over the years, numerous states have promulgated regulations that require the purchase and use of ACMI certified art materials in their schools. Even a foreign government such as Canada reviewed the ACMI program and found it to be so outstanding that it has considered it to be compliance with their regulations, except for a few minor ingredients.

When we explained to Congress how the ACMI certification program works in conjunction with LHAMA and FHSA, the House and Senate subcommittees quickly indicated that they did not want to do anything that would impact it, since it far exceeded the goals of even the ambitious levels for lead outlined in the CPSIA. ACMI requested an exemption from Section 102 because it did not want to see even one of our members leave ACMI's program or non-members not join ACMI to seek a toxicologist that instead would use CPSIA higher levels for lead in children's art materials, i.e., 600 ppm lead rather than what our program already requires ( $\leq 100$  ppm).

Congress responded by writing a special provision in Section 102, Mandatory Third Party Testing for Certain Children's Products by a Third Party Conformity Assessment Body. This special provision for art material products is as follows:

(C) Testing and Certification of Art Materials and Products – A certifying organization (as defined in Appendix A to section 1500.14(b) (8) of title 16, Code of Federal Regulations (or any successor regulations or ruling)) meets the requirements of subparagraph (A) with respect to the certification of art materials and art products required under this section or by regulation prescribed under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.)

ACMI is a certifying organization as defined in Appendix A to section 1500.14(b) (8). Thus it interprets the above provision (C) as allowing the ACMI certification program to continue to function as a Third Party Conformity Assessment Body for art material products subject to the testing and certification requirements of Section 102 of the CPSIA. In other words, the ACMI certification program fulfills all the conformity certification and testing requirements of the CPSIA for both third party accredited testing and certification for children's art materials, as well as general conformity certification for adult artists materials. It further interprets this provision as permitting ACMI to continue to place the requirements of LHAMA and FHSA ahead of those of CPSIA as long as the former are stricter than or equal to those of the CPSIA. Finally, it deems this provision to permit the use of the ACMI seal and statement of conformance to satisfy the requirement for a Third Party Conformity Certification and General Conformity Certification under Section 102 of the CPSIA.

Consumers, retailers and distributors of art materials already rely on the presence of the conformance statement to ASTM D 4236 and the ACMI Seals to mean that the art material complies with FHSA/LHAMA. They know that the ACMI Seals mean that the subject products comply with the acute hazards and labeling requirements of FHSA as well as the chronic hazard guidelines and labeling requirements of LHAMA. ACMI would be willing to work with CPSC to educate them that ACMI's certification program also signifies compliance to CPSIA. Therefore, we urge CPSC to agree with our interpretations of the special provision for art materials included in CPSIA by Congress to accept current certification programs such as ACMI's to be compliance to CPSIA, rather than burden manufacturers with the provision of redundant certificates to retailers and distributors who already understand by virtue of our certification program and seals that products in our program comply to CPSC regulations.

We have so advised our members of our interpretations. If you disagree with any of the above interpretations, please advise us immediately, as members are taking action now based on our interpretations. Thank you for your kind attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Deborah M. Fanning".

Deborah M. Fanning, CAE  
Executive Vice President

cc: John G. Mullan  
Mary Toro



## THE ART & CREATIVE MATERIALS INSTITUTE, INC.

Street Address: 1280 Main Street, 2nd Floor

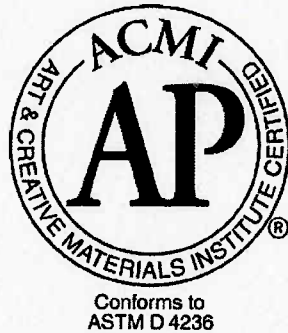
Mailing Address: P. O. Box 479

Hanson, MA 02341 U.S.A.

Tel. (781) 293-4100 Fax (781) 294-0808

Web Address: [www.acminet.org](http://www.acminet.org)

## *The ACMI Seals – Important Things to Remember*



Please remember that the ASTM D4236 conformance statement is required by LHAMA and must appear whenever practical on the product and remain legible despite the size of the Seal. However, ASTM D4236 allows for several other options where this is impractical, including: 1) a display or sign at the point of purchase, 2) separate explanatory literature available on request at the point of purchase, and 3) a response to a formal request for bid or proposal. CPSC has advised ACMI, however, that they consider very few instances impractical. ACMI and Duke file information on all ACMI-certified art and craft materials with a poison control network, namely POISINDEX. This is required under ASTM D4236 and the federal labeling law for art material products and is fulfilled by ACMI (for non-toxic products) and Duke (for those products requiring labeling) on behalf of member companies as a benefit of ACMI membership.

2. **The "®" symbol must always appear beside the AP and CL Seals.** The registration process for the AP and CL Seals has been completed. Therefore, members will need to replace the "TM" symbol with the "®" symbol as soon as possible wherever the Seals appear. We ask that members implement the new Seals with the registered symbol on their next packaging/labeling run. If you are still using the old AP Seal, you must change to the new registered AP Seal no later than January 1, 2009.
3. **Permission to use any ACMI Seal is neither assignable nor transferable.** The authority to use a Seal on a product automatically terminates whenever that product fails to conform to the ACMI Certification Program specifications. The unauthorized use of a Seal can result in the loss of the privilege to use the Seals on any product. Members are not authorized to use an ACMI Seal simply by receiving the toxicologist's approval. They must submit a "Request for Authorization" form to the ACMI Office with a copy of the Toxicologist's Approval Form and other required information and receive written authorization from ACMI before they can use the ACMI Seals.
4. **Only those products whose performance is certified by ACMI after testing by an accredited laboratory (Case Labs or DL Labs) can bear wording beneath the Seal that the product meets a particular ANSI or ASTM performance standard.** Such wording should go beneath the ASTM D4236 conformance statement. Manufacturers claiming compliance to performance standards but not seeking certification of this compliance by ACMI may not indicate such compliance beneath or next to the Seal.