



ACMIart.org

# Membership Introduction Manual

March 2019

V2019.1

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# ACMI Overview

The Art and Creative Materials Institute, Inc. has, since 1940, successfully sponsored a certification program for children's art materials, certifying that these products are non-toxic and meet voluntary standards of quality and performance. This certification program has received the endorsement of experts in the field of toxicology and is one of the finest industry programs in existence. It has been a responsive program, evolving to meet new challenges and to include more products over the years. In 1982, the program was expanded to include certification of a broad spectrum of art and craft materials, ensuring that health warning labels are affixed where appropriate on art and craft materials.

Products in our certification program which have earned the AP (Approved Product) Seal include crayons, water colors, tempera colors, finger paints, chinks, modeling materials, block printing inks and media, screen printing inks and media, school pastes and adhesives, acrylic and oil paints and media, marking crayons, and other art materials. Products bearing the AP Seal are non-toxic, even if ingested, inhaled or absorbed. Products added to the expanded certification program include acrylic and oil colors, pigments, ceramic clays, glazes and colors, screen printing, drawing and other inks, oils, varnishes, solvents, and media. A CL (Cautionary Labeling) Seal was added to the program to signify that products bearing this seal are certified to be properly labeled in a program of toxicological evaluation by a medical expert. Products requiring cautions bear the CL (Cautionary Labeling) Seal with appropriate cautionary labeling and safe use instructions.

ACMI has a toxicological team that operates out of Duke University's Division of Occupational Health Services that reviews the formulas of all products included in the certification program. In addition, ACMI has a Toxicological Advisory Board composed of three eminent toxicologists to act as a review board on matters of toxicity, to review the criteria used by ACMI's toxicological team, and to make recommendations to ACMI. Current members of this Board include: Elaina Kenyon, M.D., Toxicologist, U.S. Environmental Protection Agency; Adriana Oller, Ph.D., Nickel Producers Environmental Research Association (NiPERA); and Thomas B. Starr, Ph.D., Principal, TBS Associates.

Product formulas for every product in the certification program are submitted by manufacturers to ACMI's toxicological team at Duke University for evaluation to determine whether the product is non-toxic or whether health warning labels are needed. These formulas undergo an extensive toxicological review by the Duke team and additional testing as deemed necessary. For example, all children's products are required to undergo lead testing. ACMI also has a formula conformity surveillance program in place to ensure that formulas of products bearing its certification marks have not changed and continue to be as represented to ACMI. Products bearing the ACMI Seals comprise 85-99% of the market for these products.

For over 70 years, ACMI has successfully assured consumers that products in the program, labeled as non-toxic, are in fact non-toxic. Over the years, the AP Seal has become to school supply distributors almost a pre-requisite for sales. Many schools specify "AP or equal" for art materials in their contract bid specifications. ACMI justifiably believes that the record of many years demonstrates that this manufacturer-funded certification program serves the public interest. We also know that the expansion of ACMI has brought additional non-toxic art and craft materials into the certification program of ACMI and thus offers assurance of non-toxicity and quality to more users. Additionally, the CL (Cautionary Labeling) Seal certifies that many more art materials are properly labeled as to their health risks and will provide even more valuable and needed information to users of art materials. ACMI is engaged in an intensive program to bring more manufacturers and products into this certification program. To this end, the minimum maintenance cost is \$1000 annually to allow even the smallest manufacturer to participate in the program.

# Membership Categories

There are three categories of membership in The Art and Creative Materials Institute, Inc. as follows:

## Active Membership/Subscriber:

Any person, partnership, firm or corporation who subscribes to the Institute's certification program and who actively and regularly manufactures and sells one or more products that qualify for the certification program is eligible for Active Membership. Each Active Member must maintain subscription to the certification program and comply with the Subscription Agreement and the Manual of Procedure.

Active Members are entitled to participation in all Institute matters and to any and all benefits accruing from Institute membership. Subscribers to the Institute's certification program may elect not to become Active Members and take part only in the certification program.

Annual fees for Active Members and Subscribers are based on sales of products eligible for the certification program according to the formula found on page 7.

If a company wishes to become an Active Member, the company should apply for membership online. Please visit [ACMIart.org/applymember](http://ACMIart.org/applymember) to begin the application process. See page 8 for additional details on the application process.

Toxicologist's approval and written authorization from ACMI are required for products to bear the AP or CL Seals. For a product to bear the CL (Cautionary Labeling) Seal, the manufacturer must also confirm in writing that the toxicologist's labeling requirements will be met.

## Licensee:

Subscribers who manufacture private-label products for others may enter these products in the program as well. The distributors of these private-label products must become licensees of ACMI, and they must abide by the ACMI procedures for Licensees in order to use the ACMI Seals on their products.

If a company wishes to become a Licensee of ACMI, the manufacturer of the private-label product(s) must enter such product(s) in the certification program after the Licensee's membership has been approved.

Visit [ACMIart.org/applylicensee](http://ACMIart.org/applylicensee) to apply.

## Associate Membership :

Any person, partnership, firm or corporation who manufactures art and craft products not eligible for ACMI's certification program or who sells supplies and/or services to the Active Members is eligible for Associate Membership. Associate Members are entitled to receive valuable information on ACMI programs but cannot vote or hold elective office. Annual dues for Associate Members are \$500.

# Non-Manufacture Membership

Important points to remember if applying for membership and you are not the actual manufacturer of the product(s):

1. In as many cases as possible, we like to have the actual manufacturer become the ACMI member. Sometimes a foreign company is unwilling to do this, so we do allow the sole U.S. importer of that company's product(s) to become the ACMI member. If you are considering applying for membership in ACMI and you are not the actual manufacturer of the art material(s), please keep in mind that you must be the sole U.S. importer of the product(s) to be eligible for ACMI membership.

2. If the membership is handled by the sole U.S. importer, please keep the following points in mind:

a. The foreign manufacturer must be willing to disclose complete formula information to ACMI's toxicologist in order for him to evaluate the product. This should be made clear to the manufacturer before beginning the membership process.

b. The foreign manufacturer must obey all the rules in the Manual of Procedure relating to third party products, especially formula changes. Please make it clear to the manufacturer that the toxicologist and his staff are the only people who will see any formula information. It is kept strictly confidential between the manufacturer and toxicologist. If necessary, ACMI's toxicologist and his staff will sign a confidentiality agreement with the manufacturer to put its mind at ease.

c. Turn around time for such situations may be longer than the average evaluation. Working with a foreign manufacturer generally takes longer because of distance and language barrier. Also, the toxicologist frequently requires additional testing on the product and/or ingredients being evaluated which delays the approval process. If additional information is needed to complete the evaluation, the manufacturer will be notified.

d. The ACMI member will be required annually to submit U.S. sales figures for the previous year to the accountant so that dues for the current year can be computed and adjusted if necessary.

3. If the importer situation changes at a future point, ACMI must be notified immediately. At that point, one of the following arrangements must be followed:\*

a. If the manufacturer switches to another importer who will be the sole U.S. importer of its products, the manufacturer may either have the membership under its company or the sole importer's name.

b. If the manufacturer changes the situation to involve multiple (or more than one) U.S. importer, then the manufacturer must become the ACMI member. We only allow the U.S. importer to be the ACMI member when they are the sole importer.

c. If the manufacturer does not become an ACMI member, then any products that have been certified up to that point will be de-certified.

\* Please note: The manufacturer should be made aware of this before beginning the membership process.

# Benefits of ACMI Membership

Under the Federal Labeling of Hazardous Art Materials Act, Public Law 100-695 (LHAMA), all art material manufacturers who sell products in the U.S. must have their products evaluated by a qualified toxicologist and labeled, if necessary, for chronic toxicity according to the chronic hazard labeling standard, ASTM D-4236. LHAMA, which went into effect in November 1990, amends the Federal Hazardous Substances Act (FHSA) to require art and craft material manufacturers to evaluate their products for their ability to cause chronic illness and to place labels on those products that provide health and cautionary information and safe use instructions. FHSA already required manufacturers to evaluate and label for acute toxicity. Membership in The Art & Creative Materials Institute ensures compliance to the Federal law, as well as the other state art material labeling laws. Listed below are the benefits of becoming a member of ACMI.

- Independent toxicological certification of your products to comply with Federal and state art material labeling laws, as well as ongoing toxicological review of art material ingredients, to provide warning of any problems and review of all formulations to ensure that formulation records are current.
- Superior Toxicologist with over 30 years of experience evaluating art materials, plus two additional toxicologists on staff and a certification program that's been in existence for more than 70 years.
- Review of and advice on proposed formula changes and the availability of new ingredients
- A computer program that allows pre-screening of formula changes using lists of ingredients evaluated by the toxicologist in an extensive toxicological database.
- Use of recognized certification seals on products.
- Public relations, liaison with the trade and consumer press, articles and press releases.
- Legal assistance on certification matters.
- Promotion of ACMI Seals and approved products on its website and by distribution of brochures and ACMI-approved products lists to artists, art educators, and other users.
- Attempts to defeat, amend or pass suitable state or Federal legislation regarding labeling of art materials, sales to schools, and many other issues affecting ACMI members and their products.
- Representation with Federal government agencies and state departments who are responsible for administering regulations affecting ACMI members and their products.
- The ACMI newsletter, which keeps members up-to-date on important issues that affect the art and craft materials industry and keeps members informed about upcoming meetings and events.
- Liaison with other industry organizations.
- A certification program that has been reviewed by regulators and found to more than meet their requirements.

# Membership Annual Dues

As of January 1st, 2017

Each ACMI member pays annual dues, which are based on the U.S. sales figures of all products eligible for the certification program, whether or not they are actually entered in the program. Members are required to submit the final amount of sales into commerce, regardless of whether they sell into commerce themselves.

Annual dues are figured according to the following formula:

50/100 of 1% for the first two million of U.S. sales of eligible products; then

25.8/100 of 1% for the next three million of such sales; then

13.4/100 of 1% for the next three million; and

10/100 of 1% for the excess,

with a minimum dues amount of \$1,000 and

a maximum dues amount of \$50,000

(Sales to Generate Minimum Dues of \$1,000 = \$200,000 or less)

(Sales to Generate Maximum Dues of \$50,000 = \$36.25 Million or more)

**NOTE:** Results of all Dues calculations are rounded to the nearest whole dollar.

# Membership Application Process

## Step 1 - Preparing membership information:

- Before you apply for membership, you will need to determine who your main ACMI point of contact will be. ACMI will request signatures, sales reports and other documents from this contact.
- You will need a full list of products that your company sells in the US. This list must include all Private Label situations. You must report all products which are sold in the U.S. regardless of whether you plan to have them certified through ACMI. This file should be set up in Microsoft Excel with all product names, product categories and names of licensees in separate columns. A template will be provided at the applicants request.
- You will need to submit a Membership Application fee of \$500 during the membership application process. This payment can be made by a Wire Transfer, an Electronic Funds Transfer, PayPal or by check.

## Step 2 - Finding the Application:

- Visit [ACMIart.org](http://ACMIart.org). Find the "Join ACMI" button in the top right corner of the website.
- On the "Join ACMI" page, click on "Apply for Membership" under "Active Membership/Subscriber".

## Step 3 - Fill Out Application:

- Application Introduction: The first step of the application process requests for you to read over the Membership Introduction Manual as well as the Manual of Procedure. Once you have read and understood both documents, check off the boxes at the bottom of the page and click "Next".
- Contact Information: On the second screen, you will need to enter the contact information for the Primary Contact that you chose back in Step 1 of this process. Please check your spelling very carefully. If we do not have an accurate email address, we cannot contact you. Here you will also need to enter company details as well as contact information for the company CEO in case of an emergency. Click "Next" after you have reviewed this information.
- Subscription Agreement: The Subscription Agreement portion of this application requires you to read the agreement, accept the terms and digitally sign before continuing. Click "Save" to proceed.
- Product Catalog: To upload your "Product Catalog", please use the Microsoft Excel file explained in Step 1. The document name will appear next to the "Upload" button when it is uploaded. Click "Next" to proceed.
- Application Fee: The invoice screen of this process will provide information to pay your Membership Application Fee. Choose to pay immediately with PayPal or download the invoice to pay by Wire transfer or use a check. Please note - your application will not be reviewed until your \$500 application fee has been received.

## Step 4 - Providing Sales Information:

- When the above items are received and your payment has been approved, the ACMI Membership Director will provide your company's Member Product Listings (MPL) to you by email. Respond to this email with any changes to the MPL. If there are no changes, please respond to verify that no changes need to be made.
- Fill out each MPL with requested year's sales figures on these products to ACMI's accountant. All sales information received by our accountant is kept strictly confidential. Sales figures should be reported on all products that appear on the list of eligible products sold in the US, regardless of whether you wish to have them certified.
- Send MPL with sales figures to ACMI Accountant
- Sign and return the Sales are Accurate Letter, which will be sent by email with your MPL, to the Membership Director

## Step 5 - Getting Your Membership Approved:

- Your membership will be reviewed by ACMI's Membership Director. ACMI will notify applicants of membership acceptance by email. Once approved, you will receive an email with your Online ACMI login information.

## Step 5 - Getting Your Products Evaluated by the Toxicologist and Authorized for use of the Seal by ACMI:

- Once your sales information has been received by the accountant and your membership had been approved, we will send you the Certification Process Manual, which contains all the information necessary to have your products evaluated by the Toxicologist, **and then authorized for use of the Seal by ACMI**. Be sure to read this manual carefully (particularly Sections 1-5) and contact ACMI and/or Duke with any questions.

## Contact Information:

If at any time you need assistance with the membership application process, please contact the ACMI office:

[info@ACMIart.org](mailto:info@ACMIart.org)  
781-556-1044



# Questions to Ask When Choosing a Toxicologist

To help manufacturers make a better-informed decision when choosing a toxicologist to evaluate their art and craft material products, ACMI suggests the following questions be considered:

**Q.** What are the Toxicologists' actual capabilities? What is their reputation with CPSC and other organizations? Are they knowledgeable about art materials, as well as toxicology? How long have they been evaluating art materials?

**A.** The ACMI Certification Program has been in existence for over 70 years. ACMI's toxicological team operates out of Duke University's Occupational Health Services department and has over 30 years experience evaluating more than 60,000 art material formulas for art material manufacturers.

**Q.** Does the evaluation cover both acute and chronic toxicity concerns? When evaluating art material products, all acute and chronic hazards are considered, including sensitization.

**A.** Three routes of exposure are considered: ingestion, inhalation, and skin absorption. Each ingredient and its quantity is analyzed, as well as how the ingredients will interact with each other. Common uses and misuses of products are also considered in the evaluation process. When searching for toxicological services, be careful you are sure what toxicity concerns are covered. Some evaluations will cover chronic toxicity concerns only. U.S. law requires both acute and chronic concerns be addressed.

**Q.** Have the individual's toxicological criteria been submitted to CPSC as required under the Labeling for Hazardous Art Materials Act (LHAMA)? Have their toxicological criteria been reviewed or challenged?

**A.** Dr. Stopford's toxicological criteria were submitted to CPSC prior to the LHAMA requirement. Dr. Stopford's toxicological criteria have been reviewed by CPSC and other regulators on numerous occasions and found to be more than acceptable. Issues such as lead in children's art materials have prompted review of ACMI's Certification Program by CPSC and state regulators, and in each instance the toxicological criteria were found to be acceptable or more stringent than the regulating agency.

**Q.** Does the Toxicologist's evaluation address art material labeling regulations in other states, or just ASTM D-4236 and LHAMA?

**A.** A product evaluation through the ACMI Certification Program ensures that your product(s) comply with ASTM D4236 and LHAMA, as well as individual state art material labeling laws.

**Q.** Does the Toxicologist have the necessary procedures to perform the five-year review required under LHAMA? Do they provide review for formula changes and on-going toxicological review, not just the initial evaluation and/or five-year review?

**A.** A product evaluation through the ACMI Certification Program provides continual formula review, which exceeds the LHAMA five-year requirement and provides continual product improvement. In addition, formulations are routinely checked to make sure that the information on file is accurate. Manufacturers are notified as new information is learned so they can be certain their products are properly labeled.

Q. Does the Toxicologist have a supporting staff to ensure that products are evaluated as quickly and efficiently as possible?

A. Dr. Thomas Brock is the Principal Toxicologist for the ACMI Certification Program and has two Assistant Toxicologists on his staff, Dr. Larry Cook and Dr. Paul James. Dr. Stopford is a consulting toxicologist for the ACMI program. Caroline Rourk handles all incoming product submissions and customer service relations. This toxicological staff at Duke University Medical Center ensures uniformity of product labeling and quality control. In addition to ACMI's toxicological team, there is a Toxicological Advisory Board (TAB) in place to assist ACMI and the toxicological team with decisions about proposed changes to toxicological procedures, changes in toxicological levels, etc. Current TAB members are: Dr. Elaina Kenyon, Toxicologist, U.S. EPA; Adriana Oller, Ph.D., Nickel Producers Environmental Research Association (NiPERA); and Dr. Thomas B. Starr, Principal, TBS Associates.

Q. Is the Toxicologist computerized to handle a large volume of product evaluations?

A. The ACMI Certification Program is computerized and currently handles a large volume of product evaluations. The computer program has an extensive ingredient database that contains thousands of raw materials. This software program maintains detailed databases on products, formulas, certifications, toxicology and other relevant information. In addition, there is software available to the manufacturers to make the product submission process easier, saving both time and data-entry costs. Manufacturers are able to submit their formula information on disk to Duke, and the information can be easily transferred into the main system by the Duke toxicological staff. The product submission software also has a pre-screening capability that allows the manufacturer the ability to analyze a proposed formula for labeling requirements before submitting it for evaluation. The product submission software is constantly being improved and manufacturers who have the software are provided with one upgrade each year.

Q. Do you as the manufacturer have the opportunity to work with the Duke toxicological team if you disagree with their findings or to improve the product formulation?

A. Participating in the ACMI Certification Program enables the manufacturer to work closely with the toxicological team throughout the product evaluation process. They will suggest alternative ingredients or new ingredients to manufacturers in order to improve the product formulation. Manufacturers also have the opportunity to interact with Dr. Brock and Caroline Rourk at meetings.

Q. What does the Toxicologist charge to evaluate a product? Make sure you analyze and compare costs carefully. For example, a "price-per-product line" evaluation may look like a good deal, but consider this carefully. Would it cost the same amount to evaluate a single product with just a few ingredients as it would to evaluate a product line that has 100 colors? Is there a cost just to submit the information?

A. Costs for product evaluations in the ACMI Certification Program are priced per service, not a flat rate. Maximum professional charges for an evaluation are estimated at the initiation of the evaluation. This estimate does not include charges for additional testing necessary or evaluation of complex ingredients, but the toxicological team works with the manufacturer to try to find alternate ingredients and inexpensive testing labs to perform additional testing.

Q. Does the Toxicological Program offer additional services, or just the product evaluation?

A. Participation in ACMI also provides the manufacturer with many other valuable services in addition to the toxicological evaluation of their products. A full list of membership services can be found on page #?

# Regulatory Standards

## What Regulatory Standards are included in the ACMI certification process?

The ACMI Certification Program has been in existence for over 70 years, certifying that art materials are safe for their intended use. Today, it certifies art and creative materials to the following legal and regulatory standards:

- The Labeling of Hazardous Art Materials Act of 1988 ("LHAMA") which incorporates ASTM D-4236, Standard Practice for Labeling Art Materials for Chronic Health Hazards.
- The Federal Hazardous Substances Act of 1966 ("FHSA") which includes the LHAMA amendment above pertaining to chronic hazards and also includes acute hazards.
- 16 CFR Part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint (reducing the lead in surface coating level to 0.009 percent or 90 ppm effective August 14, 2009).

Although the ACMI Certification Program does not certify compliance for "Children's Products" as defined in the Consumer Product Safety Improvement Act (CPSIA), California Proposition 65, or the Canadian product safety regulations, upon member request, ACMI's toxicology team can provide Toxicological Risk Assessments (TRA) for each of these regulatory regimes.

ACMI certifies children's art materials as non-toxic and adult products as non-toxic or properly labeled for safe use. Products bearing ACMI's AP Seal signify that the product has been approved for sale without any warnings, e.g., the product is non-toxic. Products bearing ACMI's CL Seal signify that the product has been approved for sale with warnings.

The determination as to whether a product requires acute or chronic hazard warnings is made by toxicologists in the Division of Occupational and Environmental Medicine at Duke University. The decisions rendered by Duke can be appealed to ACMI's Toxicological Advisory Board. These toxicologists review toxicity issues and the criteria used by ACMI's toxicology team.

The ACMI Certification Program is recognized by the U.S Consumer Product Safety Commission and all state educational departments as complying with the product safety requirements for art materials. ACMI and its members are proud of their outstanding record of producing high quality art materials that are safe for retailers to sell and consumers to use.

# ACMI Bylaws

BYLAWS  
OF  
THE ART AND CREATIVE MATERIALS INSTITUTE, INC.  
(Last amended November 8, 2016)

ARTICLE I  
Name

Section 1. The name of the association is The Art and Creative Materials Institute, Inc. (hereafter "Institute").

Section 2. The Institute is a New York State not-for-profit corporation, organized on May 14, 1936 and granted recognition as a tax exempt organization by the Internal Revenue Service under Section 501(c)(6) of the Internal Revenue Code of the United States.

ARTICLE II  
Scope of the Institute

Section 1. The Institute is a trade association of manufacturers and distributors of art, craft and other creative materials.

Section 2. Products within the scope of the Institute programs include children and adult art, craft and other creative materials that are consumer products regulated by the Consumer Product Safety Commission.

ARTICLE III  
Purposes

- Section 1. The purpose of the Institute shall be:
- a. To promote safety in art, craft and other creative materials.
  - b. To develop voluntary standards for products included in the scope of the Institute and to work with recognized standards organizations.
  - c. To sponsor voluntary product and labeling certification programs for products included in the scope of the Institute.
  - d. To cooperate with other professional, governmental, consumer or business organizations on issues affecting art, craft and other creative materials.
  - e. To stimulate public recognition of the contribution of art to our society and to encourage greater participation in art-related activities by all members of society.
  - f. To promote the common interests of members by all lawful means.
  - g. To enhance the status of art education as an essential educational program.
  - h. To do any other lawful act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the profit or financial gain of its directors, officers or members.

ARTICLE IV  
Association Antitrust Guidelines

Section 1. The Institute "Guidelines for Association Activities" is incorporated in these Bylaws as Addendum A. All activities of the Institute shall be in conformity with these Guidelines.

ARTICLE V  
Membership and Voting Rights

Section 1. Active Members. Any person, partnership, firm or corporation who is a Subscriber to the Certified Products and Certified Labeling Bureau of the Institute and who actively and regularly manufactures and sells one or more products which meet the requirements of the Certified Products and Certified Labeling Bureau is eligible for Active Membership in the Institute. Each Active Member shall maintain a subscription to the Certified Products and Certified Labeling Bureau, Subscription Agreement and Manual of Procedure. Active Members shall be entitled to participation in all Institute matters and to any and all benefits accruing from Institute membership.

Active members shall designate one official voting representative, privileged to attend general and division meetings and other representatives privileged to attend regular meetings and serve as alternate voting representatives. Each member shall have one vote. Only voting representatives of Active members shall hold elective office.

Section 2. Associate Members. Any person, partnership, firm or corporation who is not otherwise eligible for Active Membership and who is a third party supplier of art, craft or other creative products or components is eligible for Associate Membership.

Associate members shall designate representatives to be authorized to attend meetings. Associate members shall not be eligible to vote or to hold elective office. Associate Members shall not be entitled to use the ACMI certification marks.

Section 3. Affiliate Members. Representatives of user, consumer and education organizations whose members are concerned with the use, safety, quality and promotion of art, craft and other creative materials will be invited to participate on committees to present the views of the consumer.

Section 4. Voting. Each Active member shall appoint and certify to the President or the Executive Director, a person to be its official representative at Institute meetings and appoint other duly designated representatives privileged to attend meetings. All Active Members of the Institute by their duly designated representatives shall be privileged to attend all meetings of the Institute with the right of each member to one vote on any question presented.

All Associate Members of the Institute by their duly designated representatives shall be privileged to attend all meetings of the Institute, but without the right to vote.

Section 5. Election of Members. Any person, partnership, firm or corporation eligible for membership (Active or Associate) under these Bylaws, on making written application therefore, may be approved for membership. For such approval, a determination of the eligibility of the applicant by the Executive Director or, in certain cases, a majority of votes of the Board of Directors is required. Under either procedure, approval shall not be unreasonably withheld. Determination of eligibility or approval depends upon the Institute's list of eligible products and other factors.

Section 6. Duration of Membership and Resignation. Membership in this Institute may terminate by death, dissolution or voluntary withdrawal as herein provided. All rights and interest of a member in or to the Institute, its rights, privileges, duties and property shall cease on the termination of membership.

Any member may, by giving written notice of such intention, withdraw from membership. Such notice shall be presented to the Board of Directors, effective for the succeeding fiscal year so long as the notice is presented to the Board of Directors two months prior to the annual meeting at which the budget for the succeeding fiscal year is determined.

Notices of intent to withdraw presented after that time shall not be effective except as determined by the Board of Directors. Withdrawals shall be effective upon fulfillment of all financial obligations for the fiscal year.

Section 7. Suspension and Expulsion. For just cause, including the failure to pay dues, the misuse of any certification mark of the Institute, or infringement of the certification marks of the Institute, any member may be suspended or terminated.

Such suspension or expulsion shall be by two-thirds (2/3) vote of the entire membership of the Board of Directors, provided that a statement of the reasons for suspension or expulsion shall have been mailed or emailed to the last recorded address of the member at least fifteen (15) days before final action is taken thereon. This statement shall be accompanied by a notice of the time and place of the meeting of the Board of Directors at which the suspension or expulsion shall be considered, and the member shall have an opportunity to appear and present any information relevant to reasons why such suspension or expulsion should not occur before action is taken thereon.

## ARTICLE VI Dues

Section 1. The Board of Directors shall, from time to time, and at such times as it deems necessary, fix the rate of dues, fees, and assessments of all members and subscribers. The Board shall declare the date when said dues and fees are payable.

Section 2. Members who fail to pay their dues or annual fees within thirty (30) days from the time the same become due, shall be notified by the President or Executive Director, and if payment is not made within the next succeeding thirty (30) days, shall be reported to the Board of Directors as in arrears, and, if so ordered by the Board of Directors, it or they shall be dropped from the rolls and thereupon forfeit all rights and privileges of membership. Such member may be readmitted as provided in these Bylaws.

Section 3. The fiscal year shall be fixed by action of the Board of Directors.

## ARTICLE VII Meetings

Section 1. Annual Meetings. There shall be an Annual Meeting of the Institute in the Spring or Second Quarter of each year unless otherwise ordered by the Board of Directors, and at such place as determined by the Board of Directors. At each Annual Meeting members of the Board of Directors shall be elected as hereinafter provided in Article VIII; at such Annual Meetings annual reports shall be received and any other business transacted which is properly presented to such meeting.

Notice of such meeting, signed by the President or Executive Director, or other officer designated by the Board of Directors, shall be mailed to the last recorded address of each member or emailed to the last recorded email address of each member at least twenty (20) days before the time appointed for the meeting.

Section 2. Special Meetings. Special meetings of the Institute may be called by the Board of Directors at its discretion. Upon the written request of three (3) members of the Institute, or of the President or of the Executive Director, the Board of Directors shall call a special meeting to consider a specific subject. Written notices of any special meeting shall be given no less than ten (10) days in advance thereof. Such notices shall set forth the place, date, time and purposes of the meeting.

Section 3. Quorum. The presence in person or by proxy of one-tenth of the total number of members of the Institute entitled to vote shall be necessary to constitute a quorum for the transaction of business.

Section 4. Order of Business. The order of business for annual or special meetings shall be determined by the Board of Directors. The order of business may be altered or suspended at any meeting by a majority vote of members present. Unless these Bylaws or the laws of the State of New York otherwise govern, Robert's "Rules of Order" shall prevail at all annual and special meetings.

## ARTICLE VIII Nominations and Elections

Section 1. Ninety (90) days prior to the Annual Meeting, the President shall appoint a nominating committee to nominate directors as required by Article IX. The slate of Directors as proposed by the Nominating Committee shall be forwarded to all members at least forty-five (45) days before the date of the Annual Meeting. Additional nominations of directors must be submitted in writing to the Institute Office not later than thirty (30) days prior to the date of the Annual Meeting. Each nominee shall agree to serve if elected and to attend all meetings.

Section 2. At each Annual Meeting, a number of directors equal to that of those whose terms have expired shall be elected for a term of three years. Any director shall be eligible for re-election, providing his or her company is an Active member of the Institute.

Section 3. The Board of Directors, as hereinafter provided, shall elect a President, a Vice President, Secretary and Treasurer from its membership, and may elect an Executive Director from within or without its membership. All such officers shall serve to the end of the next Annual Meeting, or until such time as their successors are duly elected and shall take office, except that any officer who is not a member of the Institute shall hold office at the pleasure of the Board of Directors.



ARTICLE IX  
Board of Directors

Section 1. The management of the property, affairs, business and concerns of the Institute shall be vested in a Board of Directors, consisting of not less than four (4) and no more than twenty-one (21) voting representatives of Active Members. The members of the said Board shall, upon election, immediately enter upon the performance of their duties and shall continue in office until their successors shall be duly elected and qualified.

Section 2. Duties. The Board of Directors shall, in addition to having control and management of the affairs of the Institute, fix the date and rate of assessment of dues for members at meetings only, shall have authority to engage employees and fix their salaries, or retain an association management firm at a fee to be agreed upon, admit, suspend or expel members in the manner provided by these Bylaws; and to do everything necessary and desirable in the conduct of the business of the Institute and in accordance with the Certificate of Incorporation and these By-Laws.

The Board shall retain a Certified Public Accountant who shall prepare and submit an annual financial statement to it.

Section 3. Meetings. A regular meeting of the Board of Directors for the election of officers shall be held at the time of the Annual Meeting. The President or Executive Director, when he or she deems necessary, may issue a call for a special meeting of the Board on ten (10) days' notice.

Section 4. Quorum. A majority of the Board shall constitute a quorum for the election of officers and all other purposes not otherwise provided herein. In the absence of the President, the Vice President may preside; otherwise, the members present may choose a Chairman for the meeting.

Section 5. Vacancies. Any vacancies that may occur on the Board by reason of death, resignation, or otherwise, may be filled by the Board of Directors for the unexpired term.

Section 6. Robert's "Rules of Order" As Applies to Board Meetings. Unless these Bylaws or the laws of the State of New York otherwise govern, Robert's "Rules of Order," Eleventh Edition (2011) shall apply to the conduct of meetings of the Board of Directors.



ARTICLE X  
Officers

Section 1. President. The President shall be the executive officer of the Institute and shall preside at meetings of the Institute and of the Board of Directors, and shall be a member ex-officio of all committees. He or she shall also, at the Annual Meeting of the Institute and at such other times as he or she shall deem proper, communicate to the Institute or to the Board of Directors such matters and make such suggestions as may in his or her opinion tend to promote the welfare and increase the usefulness of the Institute, and shall perform such other duties as are necessarily incident to the office of President of the Institute, or as may be prescribed by the Board of Directors.

Section 2. Executive Director. There may be an Executive Director appointed by the Board of Directors to serve at the pleasure of the Board. The Executive Director shall perform such duties as determined by the Board of Directors from time to time. Section 3. Vice President. In case of death or absence of the President, or his or her inability from any cause to act, the Vice President shall perform for the time being the duties of the President's office.

Section 4. Treasurer. The Treasurer shall keep an account of all monies received and expended by the Institute, and shall make disbursements authorized by the Board of Directors and approved by the President or Executive Director. All money of the Institute shall be deposited in the bank or banks approved by the Board of Directors. The Treasurer shall make a report at the Annual Meeting of the Institute or at such other time when called upon by the President.

The duties of the Treasurer, when determined by the Board of Directors, may be assigned in whole or in part to the President or Executive Director, in which case such person shall act as Assistant Treasurer. At the expiration of his or her term of office, the Treasurer shall deliver over to his or her successor all books, monies, and other Institute property, or in absence of the Treasurer-elect, to the President.

Section 5. Secretary. The Secretary shall have responsibility for maintenance of the records and documents of this Institute and is authorized to sign documents required by law or necessary to the conduct of association business.

Section 6. Bond. The Treasurer, the President, the Executive Director, or any other person entrusted with the handling of the Institute's funds or property, shall, at the discretion of the Board, furnish at the Institute's expense, a fidelity bond, approved by the Board in such sum as the Board shall prescribe.

Section 7. Vacancies. In the event that a vacancy occurs in the office of the President or the Vice President, the President, Vice President, or Executive Director, when he or she deems necessary, may issue a call for a special meeting of the Board on ten (10) days' notice to elect a new President or Vice President.

## ARTICLE XI Committees

Section 1. There may be such committees as from time to time may be deemed necessary by the Active Members at any meeting, or by the Board of Directors. Membership in such committees shall be determined by the President, subject to the approval of the members if at a members' meeting, or by the Board of Directors if at a Board of Directors' meeting. The President shall be a member ex officio of all committees.

Section 2. There shall be a standing Committee known as the Executive Committee comprised of the President, the Vice President, the Treasurer, the Secretary, the Immediate Past President, if a member of the Board of Directors, and up to two members of the Board of Directors, all of whom must be elected by a majority vote of the Board of Directors. The Executive Committee shall have authority to act for the Board of Directors on all matters; except, however, that the Executive Committee may not act for the Board of Directors on the following matters: (1) the submission to members of the Board of Directors of any action requiring such members' approval; (2) the filling of vacancies on the Board of Directors or on any committee; (3) the fixing of compensation of the directors for serving on the Board of Directors or any committee; (4) the amendment or repeal of the by-laws or the adoption of new by-laws; and (5) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.

Section 3. There shall be a standing Committee known as the Audit Committee, comprised solely of independent directors (e.g. directors not serving on the Executive Committee), who shall be appointed by a majority of the Board of Directors and shall include one Member of the Board of Directors with a background in accounting. In addition, the Treasurer shall be a member ex officio of the Audit Committee. The Audit Committee will be responsible for, inter alia, the following tasks: (1) oversee the accounting and financial reporting processes of the Institute; (2) plan and review any and all audits with an independent before, during, and after such audit; (3) review the performance of the independent auditor annually; (4) upon request, report to the Board of Directors the activities and findings of the Audit Committee; (5) oversee the adoption, implementation, and compliance with, the Conflict of Interest and Whistleblower policies; and (6) any other activity as is deemed appropriate and necessary in the discretion of the Audit Committee and/or the Board of Directors.

## ARTICLE XII Vote by Mail or Email Ballot

Section 1. Unless the laws of the State of New York or these Bylaws otherwise provide, whenever the President or the Executive Director desire to put a matter to vote of the Board of Directors or of the membership without calling a meeting therefore, a vote may be taken on such matter by mail or email ballot. Any such question thus presented shall be determined by a majority of the entire Active membership of the Institute or by a majority of the Board of Directors. Whenever a mail or email ballot is sought on the enactment or modification of any budget, a written vote of two-thirds (2/3) of the Board of Directors shall be required.

ARTICLE XIII  
Telephone Conference Meetings of the Board or Committees

Unless otherwise restricted by the Certificate of Incorporation or the Bylaws, any one or more members of the Board, or any Committee thereof, may participate in a meeting of such Board or Committee by means of a telephone conference or similar communications equipment allowing persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE XIV  
Seal

Section 1. The seal of the Institute shall contain the legend "The Art and Creative Materials Institute, Inc." in the shape of a circle, together with the words "New York", "1936".

ARTICLE XV  
Indemnification of Directors and Officers

Section 1. The Institute shall provide for the indemnification of any and all its Directors and Officers, or former Directors and Officers, against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them are made parties, or a party, by reason of having been Directors or Officers of the Institute, as permitted under Sections 722, 723, 724 and 725 of the New York Not-for-Profit Corporation Law.

Section 2. Nothing in this Article shall prevent an individual from petitioning A court for indemnification pursuant to Section 723 of the New York Not-for-Profit Corporation Law.

Section 3. Pursuant to Section 726 of the New York Not-for-Profit Corporation Law, the Institute may purchase and maintain insurance to indemnify the Institute for any obligation which it incurs as a result of the indemnification of directors and officers under the provisions of this Article, and to indemnify directors and officers in instances in which they may be indemnified by the Institute.

ARTICLE XVI  
Non-Profit Corporation and Rights on Dissolution

Section 1. This Institute is a non-profit corporation and no part of its accumulated funds shall insure to the benefit of any member, employees or officers of any member.

Section 2. Upon dissolution of the Institute, its then existing net assets shall be distributed among the then existing members ratably in proportion to their respective contributions paid by them for the fiscal year preceding the year of dissolution.

ARTICLE XVII  
Amendments

Section 1. These Bylaws may be amended in whole or in part by a majority of the Board of Directors at its meeting.

Section 2. Notwithstanding the above Section 1, to include, remove, or modify a provision in these Bylaws which will serve to increase above a simple majority the proportion of members of the Board of Directors that constitutes a quorum, shall require a vote of two-thirds (2/3) of the members entitled to vote.

# Subscription Agreement

**SUBSCRIPTION AGREEMENT  
TO THE CERTIFICATION PROGRAM OF  
THE ART AND CREATIVE MATERIALS INSTITUTE, INC.**

AGREEMENT between THE ART AND CREATIVE MATERIALS INSTITUTE, INC., a membership corporation organized under the laws of the State of New York, with its principal office at 99 Derby Street, Hingham, Massachusetts (hereinafter called "ACMI"), and the undersigned (hereinafter called "Subscriber").

WITNESSETH:

WHEREAS, ACMI conducts a service available to both its members and non-members for the promulgation and certification of health and quality standards of products listed on Schedule A attached, and is the owner of and has registered certification trademarks known as the "AP" Approved Product Seal, and the "CL" Cautionary Labeling Seal; and

WHEREAS, the Subscriber manufactures some or all of such products and desires to avail itself of the services conducted by the Certification Program of ACMI;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, it is agreed as follows:

1. The expense of operation of the services hereinafter provided shall be an obligation of ACMI for which the Subscriber agrees to reimburse ACMI as follows: (a) for Active Members of ACMI, by an assessment at a rate fixed from time to time by its Board of Directors under the provisions of the Constitution and Bylaws of ACMI; (b) for any manufacturer, other than an Active Member of ACMI, by an assessment at a rate fixed from time to time by its Board of Directors under the provisions of the Constitution and Bylaws of ACMI.
2. Each new Subscriber will pay all expenses to determine initially the eligibility of its products to qualify for the AP or CL Seal according to the Procedures outlined in the latest revision of the Manual of Procedure of ACMI.
3. The products shall comply with the standards set forth in Schedule B hereto attached, or as such Schedule B may be hereafter modified by two-thirds (2/3rds) vote of the members of ACMI.
4. Each Subscriber agrees to comply with the Manual of Procedure or latest revision thereof used in implementing the program provided for herein.
5. The parties hereto agree that evaluations made by ACMI's Toxicologist and reported to the Subscriber shall be conclusive and binding on the parties subject to the appeal process provided in the Manual of Procedure, as to whether such products or the ingredients thereof are non-toxic or require toxicity labeling (as defined in Schedule B).
6. It is further agreed that, if any time the Subscriber changes the formula of any of its products bearing either the AP or CL Seal or desires an AP or CL Seal for additional colors or products, it will comply with the latest revision of the ACMI Manual of Procedure.
7. ACMI agrees that, as soon as the Subscriber's products have been found by the evaluations and tests provided in the Manual of Procedure to be eligible, authorization will be given by ACMI to use the AP or CL Seal as indicated. The Subscriber thereupon acquires a non-exclusive, non-assignable license or licenses to print or use the registered trademark AP Approved Product Seal, or the registered trademark CL Cautionary Labeling Seal on or in connection with the distribution of such products.

The said license or licenses shall be suspended if and when the evaluation of such products as provided in the Manual of Procedure shows that they no longer qualify for such certification marks, and such suspension shall remain in effect until such products have again qualified.

*(continued)*

8. In the event that an issue may arise concerning the certification status of a product or products between ACMI and a Subscriber or Licensee, it is the responsibility of the Subscriber or Licensee to cooperate with any ACMI inquiry or audit request by permitting ACMI staff, counsel or accountant prompt access to its offices, plant, inventory and documentary or computer records on reasonable notice from ACMI, along with such other assistance as ACMI may in its discretion require in connection with the issue for the purpose of ACMI certification program administration, audit and compliance. ACMI Staff members have signed a Confidentiality Agreement that they will not release any information of a confidential nature, such as formula information, sales information, product information, should they be required to have access to such information.
9. It is agreed that reproductions of the AP Approved Product Seal or CL Cautionary Labeling Seal, in the possession of the Subscriber, have no intrinsic value; that the same are subject to use only in accordance with the license or licenses as herein provided; and that any unauthorized use of the same shall constitute an infringement of ACMI's property rights therein as protected by trademark laws and by this Agreement.

In the event of a dispute relating to the certification program status of particular products and/or the misuse and/or infringement of the ACMI Certification Marks, it is agreed that the dispute shall be governed by the laws of the Commonwealth of Massachusetts. The Member Company, by entering into this Agreement, hereby waives any objection to personal jurisdiction in the United States Federal or State Court where ACMI chooses to initiate litigation. The Member Company consents to service of process of any and all subpoenas and/or summonses by U.S. Mail, Federal Express, or other courier service.

10. The Subscriber agrees that the display of the ACMI Certification Marks, any reference to the ACMI Certification Program or website link to the ACMI in any advertising, promotional or other media, including websites, will be in a context that will not bring disrepute to the Certification Marks, the Certification Program or the ACMI website or associate the Certification Marks, Certification Program or the ACMI website with any pornographic materials or pornographic website links. ACMI shall have complete discretion in its determination of the issue and the Subscriber agrees to expeditiously take action to remove or delete all reference to the ACMI Certification marks, or Certification Program or link to the ACMI website at the request of ACMI.
11. No amendment, alteration or addition of or to this Agreement, or any part thereof, or Schedule annexed thereto, shall be effective except it be in writing and duly executed by ACMI.
12. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.
13. This Agreement shall be effective for the year in which it is executed by the parties hereto and thereafter from year to year until it is cancelled and terminated by the respective parties hereto, upon three (3) months notice in writing duly mailed by either party to the other.

*(see signature block at end of this document)*

**SUBSCRIPTION AGREEMENT TO THE CERTIFICATION PROGRAM OF  
THE ART & CREATIVE MATERIALS INSTITUTE. INC.**

**SCHEDULE A**

<b>Adhesives</b> Glue Polymer School Paste	<b>Drawing &amp; Writing Instruments &amp; Accessories</b> Accessories (Erasers, Rulers, Sharpeners, Etc.)* Colored Pencils Gel Pens Pencils Pens Professional Drawing Pencils Watercolor Pencils	<b>Paints</b> Acrylic, Artist Acrylic, Washable Alkyd Casein Designer Color/Gouache Dye Enamel Fabric/Textile Finger Paint (Dry) Finger Paint (Liquid) Metallic Paste Miscellaneous Paints Oil Pigment (Dry Ground) Spray Tempera (Cake) Tempera (Egg) Tempera (Liquid) Tempera (Powder) Vinyl Water Color (Dry Pan) Water Color (Liquid) Water Color (Powder) Water Color (Semi-Moist) Water Color (Tube)
<b>Airbrush Colors, Mediums &amp; Accessories</b>	<b>Gessos &amp; Painting Grounds</b>	<b>Paper*</b>
<b>Brush Care Products</b>	<b>Glitter*</b>	<b>Pastels</b> Hard Pastels Oil Pastels Soft Pastels
<b>Brushes*</b>	<b>Graphic Masking Liquids</b>	<b>Photographic Materials*</b> Accessories* Chemicals Emulsions* Film*
<b>Canvas (Coated)</b>	<b>Hobby Model Kits &amp; Miniatures*</b>	<b>Plastic Art &amp; Craft Materials*</b>
<b>Ceramics</b> Casting Slip Clay Glaze Glazes (Overglazes) Glazes (Underglazes) Specialty Products Stain (Solvent Base) Stain (Water Base)	<b>Labels, Stickers &amp; Transfers*</b>	<b>Printing Inks &amp; Supplies</b> Block Printing Inks & Mediums, Oil Base Block Printing Inks & Mediums, Water Soluble Etching Grounds Etching Inks, Oil Base Etching Inks, Water Base Etching Mediums Litho Inks Litho Mediums Screen Printing Inks & Mediums, Accessories (Water Base) Screen Printing Inks & Mediums, Acrylic Screen Printing Inks & Mediums, Solvent Base Screen Printing Inks & Mediums, Textile Screen Printing Inks & Mediums, Water Soluble
<b>Chalks</b> Extruded Colored (for Chalkboard) Extruded Colored (for Paper & Crafts) Extruded Sight-Saving (for Chalkboard) Extruded White (for Chalkboard) Molded Colored (for Chalkboard) Molded Colored (for Paper & Crafts) Molded White (for Chalkboard)	<b>Markers</b> Audio Visual Brush Tip Calligraphy Marker Coloring/Drawing Dry Erase/Whiteboard Dual Tip Fabric Fluorescent Graphic Art Highlighter Memo Board Metallic Permanent Scented Washable (Non-Permanent) Writing	<b>Product Combinations (Kits)</b>
<b>Charcoal</b>	<b>Mediums, Varnishes, Sealers &amp; Fixatives for Acrylics/Polymers</b> Fixatives Mediums Sealers Varnishes	<b>Restoration/Conservation Products*</b>
<b>Clays &amp; Modeling Compounds</b> Modeling (Oven-Hardening) Modeling (Permanently Plastic, Non-Hardening) Modeling (Self-Hardening) Modeling Dough Paper Mache Powdered Sculpting & Modeling Mediums Thermo Plastic	<b>Mediums, Varnishes, Sealers &amp; Fixatives for Alkyds/Oils</b> Driers Fixatives Oils Painting Mediums (Gel) Painting Mediums (Liquid) Sealers Varnishes	<b>Sculpture Materials</b>
<b>Cleaners</b>	<b>Mediums, Varnishes, Sealers &amp; Fixatives for Charcoals &amp; Pastels</b>	<b>Solvent</b>
<b>Cloth*</b>	<b>Mediums, Varnishes, Sealers &amp; Fixatives for Watercolors</b>	
<b>Colored Sand*</b>	<b>Mediums, Varnishes, Sealers &amp; Fixatives, Multi-Purpose</b>	
<b>Craft Materials, Misc.*</b> Floral Supplies* Foil* Miscellaneous* Plaster Figurines*	<b>Molds &amp; Tools*</b>	
<b>Crayons</b> Hard Molded Molded Pressed Water Color		
<b>Drawing &amp; Lettering Inks &amp; Mediums</b> Mediums Non-Waterproof Drawing Ink Stamp Pad Technical Drawing Ink Waterproof Drawing Ink		

\* = Optional product categories. Please note that all categories except optional categories generate dues whether certified or not. In optional categories, only certified products generate dues. An ACMI optional category does not necessarily mean that the category is not enforced under LHAMA by CPSC. ACMI optional categories may include general use products not enforceable under LHAMA, unless they are marketed as art materials. Writing Instruments are mandatory unless they comply to LHAMA in other certification programs.

**SUBSCRIPTION AGREEMENT**  
**TO THE CERTIFICATION PROGRAM OF**  
**THE ART AND CREATIVE MATERIALS INSTITUTE, INC.**

**SCHEDULE B**

**“AP” APPROVED PRODUCT SEAL**

**Qualifications for Use:**

Products listed on Schedule A that qualify for the AP Seal shall contain no materials in sufficient quantities to be toxic or injurious to humans or to cause acute or chronic health problems. In the interpretation and application of this requirement, the opinion of the ACMI Toxicologist shall be final.

**“CL” CAUTIONARY LABELING SEAL**

**Qualifications for Use:**

Products listed on Schedule A that qualify for the CL Cautionary Labeling Seal shall be, after a toxicological evaluation, properly labeled as required by law, by an appropriate industry standard, or in the opinion of the ACMI Toxicologist, whose opinion in the interpretation and application of this requirement shall be final.

IN WITNESS WHEREOF, ACMI and the Subscriber have duly executed this Agreement on this date:

The Art and Creative Materials Institute, Inc. (ACMI)

By: David H. Baker, Executive Director

Signature:

Subscriber (*Company*):

By (*Name and Title*):

Signature:



## Standard Practice for Labeling Art Materials for Chronic Health Hazards<sup>1</sup>

This standard is issued under the fixed designation D4236; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon ( $\epsilon$ ) indicates an editorial change since the last revision or reapproval.

### INTRODUCTION

Uninformed or careless use of some art material products can give rise to health hazards, either acute or chronic, or both. Specific and readily available warnings are needed to help protect users of any age. One way to disseminate such information is to provide appropriate precautionary labeling on art material products.

Labeling for acute health hazards, including those associated with art materials, is being addressed by such requirements as the U.S. Consumer Product Safety Act (CPSC)<sup>2</sup>, the Federal Hazardous Substances Act, and the like. There are presently no specific national standards for labeling art materials with respect to chronic health hazards.

This practice is intended to provide a standard for developing precautionary labels concerning chronic health hazards related to the use of art materials. It is further intended to have the adaptability necessary to keep labels current with existing scientific and medical knowledge, as well as in conformity with other precautionary labeling requirements, both acute and chronic, thereby avoiding unnecessary confusion by users with respect to other precautionary labeling.

### 1. Scope

1.1 This practice describes a procedure for developing precautionary labels for art materials and provides hazard and precautionary statements based upon knowledge that exists in the scientific and medical communities. This practice concerns those chronic health hazards known to be associated with a product or product component(s), when the component(s) is present in a physical form, volume, or concentration that in the opinion of a toxicologist (see 2.1.11) has the potential to produce a chronic adverse health effect(s).

1.2 This practice applies exclusively to art materials packaged in sizes intended for individual users of any age or those participating in a small group.

1.3 Labeling determinations shall consider reasonable foreseeable use or misuse. The responsibility for precautionary

labeling rests with the producer or repackager who markets the materials for art or craft use.

1.4 This practice does not specify test methods for determining whether a substance or product presents chronic health hazards.

1.5 This practice does not apply to products appropriately labeled for known chronic health hazards in accordance with chemical substance labeling standards and practices, such as another national consensus standard, existing labeling statutes, regulations, or guidelines.

1.6 Since knowledge about chronic health hazards is incomplete and warnings cannot cover all uses of any product, it is not possible for precautionary labeling to ensure completely safe use of an art product.

1.7 Manufacturers or repackagers may wish to determine individually or collectively precautionary labeling for art materials in accordance with this practice. Compliance may be certified by a certifying organization. Guidelines for a certifying organization are given in Appendix X1.

1.8 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

<sup>1</sup> This practice is under the jurisdiction of ASTM Committee D01 on Paint and Related Coatings, Materials, and Applications and is the direct responsibility of Subcommittee D01.57 on Artist Paints and Related Materials.

Current edition approved Dec. 1, 2010. Published December 2010. Originally approved in 1983. Last previous edition approved in 2005 as D4236 – 94 (2005). DOI: 10.1520/D4236-94R10.

<sup>2</sup> ASTM Practice D4236 has been codified into U.S. law as part of the Federal Hazardous Substances Act, 15 USC S1277. Users of this standard should be familiar with the law and its regulations. Under this law and its regulations (16 CFR 1500), manufacturers must submit to the CPSC (Washington DC 20207) written criteria used by the toxicologist to recommend labeling.

Full standard does not appear here because it is a copyrighted document. Full standard can be purchased from ASTM at [www.astm.org](http://www.astm.org).



# Federal Art Materials Labeling Law

## Overview

On November 18, 1990, the Federal Labeling of Hazardous Art Materials Acts (LHAMA), Public Law 100-695, went into effect. This law requires the mandatory labeling of art materials for chronic health hazards. The Art & Creative Materials Institute, Inc. (ACMI), which sponsors a certifications program to ensure that art materials are properly labeled and is also responsible for the administration and financial sponsorship of the national Youth Art Month program, was in the forefront in the push to get this law passed. A coalition of consumer and art materials industry groups worked together for more than seven years to ensure that the regulation of art materials was accomplished in a manner that was beneficial to all concerned.

Formed in 1981, the Art Supplies Labeling Coalition is composed of ACMI, National Artists Equity Association, Hobby Industries of America, National Art Materials Trade Association, and Writing Instruments Manufacturers Association. After its formation, the Coalition supported the development of ASTM Standard D-4236, a chronic hazard labeling standard for art materials, believed to be the first standard to provide for chronic hazard labeling of any consumer product. First approved as an official ASTM standard in 1983, the standard provides a mechanism by which art materials manufacturers can have their products evaluated by a qualified toxicologist for any chronic hazard and uniformly label such hazards, if any, on the product. During the standard's development and after its acceptance, art material manufacturers began to have their products evaluated, and labeled in the few instances that proved necessary, under the auspices of ACMI, which has been certifying children's art materials as non-toxic since 1940. ACMI-certified products undergo extensive toxicological review and testing as deemed necessary by ACMI's toxicological team that operates out of Duke University's Occupational Health Services department. Currently there are approximately 200 members of ACMI and more than 60,000 product formulations have been certified by ACMI, and the process is continuing. Toxicological evaluation under the ACMI program shows that only approximately 15% of all art materials require hazard labeling.

All art materials had been regulated under the Federal Hazardous Substances Act (FHSA) and monitored by the Consumer Product Safety Commission (CPSC) for acute hazards that produce immediate illness or death and are so labeled when necessary. Of the 15% of products that require hazard labeling under the ACMI program, the majority were already labeled for acute hazards.

Most of the benefits of LHAMA were already being provided by manufacturers, such as those who are members of ACMI, before the Federal Law went into effect because they were complying voluntarily with ASTM D-4236. National uniform labeling is required by LHAMA on the 15% of adult art materials that require hazard labeling; however, the majority of all art materials manufacturers had already been using this uniform labeling in complying with the voluntary standard.

National uniform criteria for evaluating chronic hazards was developed by CPSC so that 100% of manufacturers are using the same rules as those who had been voluntarily certifying their products under ASTM D-4236. Consumers can continue to look for the AP and CL Seals of ACMI or other indication that the product has been evaluated under D-4236 and be assured of purchasing non-toxic or properly-labeled art materials. In addition to the ACMI Seals, consumers may also be assured of D-4236 compliance by a company's statement of conformance or by marks of another certifying organization, such as the Writing Instrument Manufacturers Association.

Two new benefits are provided by LHAMA. CPSC is directed to develop and distribute to interested persons informational and educational materials, and CPSC can enjoin the purchase of any art materials labeled under LHAMA for use by children in pre-kindergarten through grade 6.

# Federal Art Materials Labeling Law

## Does the Art Materials Labeling Law affect you?

Under the Federal Labeling of Hazardous Art Materials Act (LHAMA) every manufacturer, distributor, retailer and some purchasers (schools and teachers) of art materials in the U.S. have a legal responsibility to comply with LHAMA's requirements. And, it affects every user of art materials in that it helps the art materials industry deliver safer products to their customers.....adult artists, hobbyists, and children alike.

## What does this law require of manufacturers of art materials?

The law amends the Federal Hazardous Substances Act (FHSA) to require art and craft materials manufacturers to evaluate their products for their ability to cause chronic illness and to place labels on those that do. FHSA already required manufacturers to evaluate and label for acute hazards. The law enacts ASTM D-4236, a standard for evaluating chronic hazards already in use by 85-90% of the art and craft materials manufacturers before the law went into effect, and provides for enacting any future revisions to the standard. The law requires the Consumer Product Safety Commission (CPSC) to develop guidelines for evaluation criteria for toxicologists to use under ASTM D-4236 and to develop and distribute educational information about art materials. The law requires a statement on the label of a product with a chronic hazard potential that the product is inappropriate for use by children and permits CPSC to enjoin the purchase of such an art material for use in grades pre-K through 6. Additionally, CPSC has required that an appropriate telephone number (in most cases, that of the manufacturer) be printed on all products that have a chronic hazard warning and a conformance statement to ASTM D-4236 on all products - non-toxic or toxic. CPSC also requires that products with a chronic hazard meet the same typeface size and placement requirements under FHSA as those required for acute hazard warnings.

## What are my liabilities as a distributor or retailer?

Aside from the existing potential liability under the "common law," LHAMA adds specific responsibilities and liabilities under FHSA. If an art or craft material is one that could cause chronic health effects and is not labeled in accordance with LHAMA, the product is a misbranded hazardous substance and, technically, could be seized. In addition, any person, including a retailer, may be charged with a criminal violation, fines and imprisonment for distributing a mislabeled product. Bills have been introduced in Congress to increase these existing penalties and to provide for civil penalties as well as fines. A retailer can be held liable if that retailer sells a product that is not labeled properly by the manufacturer, although the most likely scenario would be enforcement against a non-complying manufacturer first. Every distributor or retailer should buy and sell only product evaluated and labeled as conforming to ASTM D-4236.

## What are my responsibilities as a teacher or a purchaser for schools?

LHAMA permits CPSC to enjoin the purchase of any art or craft material with a chronic hazard warning label for use in grades pre-K through 6. These products can be purchased for use in grades 7-12. It may amount to professional malpractice for a teacher or school to ignore these requirements, aside from any civil or other liability concerns. Although the law does not specifically address this point, if an elementary grade teacher purchases such a product for his or her own use on student artwork, the teacher should use the product only after classes are over, should follow the safe use instructions on the label for his or her own safety, and should store the product outside of the classroom.

# Federal Art Materials Labeling Law

## When did LHAMA take effect?

As of November 18, 1990, all art materials that were entered into commerce were required to be evaluated and labeled according to the law. CPSC then developed toxicological criteria by which products should be evaluated. Currently, all manufacturers are required to have their products evaluated according to these criteria or other criteria, such as those used by ACMI's toxicologist, that have been accepted by CPSC.

## What is required to meet the law?

All art and craft materials must be evaluated by a qualified toxicologist under the provisions of ASTM D-4236. If a product is determined to present no acute or chronic health hazard, there need only be a conformance statement to ASTM D 4236 on the package. If a product is determined to have a hazard associated with its misuse, the package must bear a health warning and safe use instructions and a statement that the product is not appropriate for use by children. The product must also have a conformance statement to D-4236 and an appropriate U.S. telephone number. (This number does not have to be a 24-hour toll-free number and can be the number of the manufacturer or U.S. importer.) The label must also conform to the same typeface size and placement requirements under FHSA as those for acute hazards. CPSC is enforcing LHAMA and is contacting manufacturers, checking product labels in stores and at industry trade shows, and is checking labels of products imported to the U.S.

## How can I tell if a product has been evaluated?

Look for the conformance statement to ASTM D-4236, as well as the ACMI Seals. Products in the ACMI certification program bear the AP or CL certification marks as indicated below. All of these Seals indicate that the product has been evaluated in compliance to ASTM D-4236 and LHAMA.

## What is the ACMI Certification Program?

The Art and Creative Materials Institute, Inc. (ACMI) conducts a broad-based certification program to evaluate art and craft materials to determine whether they can be certified as non-toxic or must bear appropriate cautionary health and safe use labeling. To learn more about the program visit [ACMIart.org/info](http://ACMIart.org/info).

The AP Seal identifies art materials that are certified in a program of toxicological evaluation by a medical expert to contain no materials in sufficient quantities to be toxic or injurious to humans or to cause acute or chronic health hazards. All children's art materials in the ACMI program and 85% of the adult art materials evaluated by ACMI bear these non-toxic Seals.

The CL Seal identifies products that are certified to be properly labeled in a program of toxicological evaluation by a medical expert for any known health risks and with information on the safe and proper use of these materials. This Seal appears on only 15% of the adult art materials in the ACMI program and on none of the children's materials.

More than 60,000 art material formulations have currently been evaluated in the ACMI program, and approximately 200 manufacturers of art and craft materials participate in ACMI's program.

A list of ACMI-certified products can be found at [ACMIart.org/ProductList](http://ACMIart.org/ProductList).

Public Law 100-695  
100th Congress

An Act

Nov. 18, 1988  
[H.R. 4847]

To amend the Federal Hazardous Substances Act to require the labeling of chronically hazardous art materials, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Federal Hazardous Substances Act is amended by adding at the end the following:

Public health  
and safety.  
15 USC 1277.

"LABELING OF ART MATERIALS

"SEC. 23. (a) On and after the last day of the 2-year period beginning on the date of the enactment of this section, the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials designated D-4236 that is in effect on the date of the enactment of this section and as modified by subsection (b) shall be deemed to be a regulation issued by the Commission under section 3(b).

Business and  
industry.

"(b) The following shall apply with respect to the standard of the American Society for Testing and Materials referred to in subsection (a):

"(1) The term 'art material or art material product' shall mean any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act.

"(2) The standard referred to in subsection (a) as modified by this subsection applies to art materials intended for users of any age.

"(3) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall be responsible for submitting to the Commission these criteria and a list of art materials that require hazard warning labels under this section.

"(4) Upon the request of the Commission, a producer or repackager of art materials shall submit to the Commission product formulations and the criteria used to determine whether the art material or its ingredients have the potential for producing chronic adverse health effects.

Children and  
youth.

"(5) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and address of the producer or repackager of the art materials and an appropriate telephone number and a statement signifying that such art materials are inappropriate for use by children.

"(6) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new



information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard referred to in subsection (a) as modified by this subsection.

"(7) If the Commission determines that an art material in a container equal to or smaller than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) has the potential for producing chronic adverse health effects with customary or reasonably foreseeable use despite its small size, the Commission may require the art material to carry a label which conveys all the information required under the standard referred to in subsection (a) as modified by this subsection for art materials in a container greater than one fluid ounce or one ounce net weight. If the information cannot fit on the package label, the Commission shall require the art material to have a package insert which conveys all this information. If the art material has a package insert, the label on the product shall include a signal word in conformance with paragraph 5 of the standard referred to in subsection (a), a list of potentially harmful or sensitizing components, and the statement 'see package insert before use'. For purposes of this subsection, the term 'package insert' means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art material. This requirement is in addition to, and is not meant to supersede, the requirement of paragraph 5.3 of the standard designated D-4236.

"(8) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, a toxicologist shall take into account opinions of various regulatory agencies and scientific bodies.

"(c) If the Commission determines that a revision proposed by the American Society for Testing and Materials is in the public interest, it shall incorporate the revision into the standard referred to in subsection (a) as modified by subsection (b) after providing notice and an opportunity for comment. If at any time the Commission finds that the standard referred to in subsection (a) as modified by subsection (b) is inadequate for the protection of the public interest, it shall promulgate an amendment to the standard which will adequately protect the public interest. Such final standard shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

Records.

"(d)(1) Within 1 year of the date of the enactment of this section, the Commission shall issue guidelines which specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. In developing such guidelines the Commission shall conduct a public hearing and provide reasonable opportunity for the submission of comments.

"(2) The guidelines established under paragraph (1) shall include—

Children and youth.

"(A) criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults,

"(B) criteria for determining which substances contained in art materials have the potential for producing chronic adverse health effects and what those effects are,

"(C) criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and

"(D) criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials.

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

"(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

"(e) The Commission shall develop informational and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

"(f) The Commission may bring an action under section 8 to enjoin the purchase of any art material required to be labeled under this Act which is for use by children in pre-kindergarten, kindergarten, or grades 1 through 6."

Children and  
youth.

Approved November 18, 1988.

LEGISLATIVE HISTORY—H.R. 4847:

CONGRESSIONAL RECORD, Vol. 134 (1988):

Oct. 12, considered and passed House.

Oct. 19, considered and passed Senate.

○

20-170 0 - 22 (405)

(2) *Tier 1 capital limitations.* (i) The maximum allowable amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, will be limited to the lesser of:

(A) The amount of deferred tax assets that are dependent upon future taxable income that is expected to be realized within one year of the calendar quarter-end date, based on projected future taxable income for that year; or

(B) Ten percent of the amount of Tier 1 capital that exists before the deduction of any disallowed purchased mortgage servicing rights, any disallowed purchased credit card relationships, and any disallowed deferred tax assets.

(ii) For purposes of this limitation, all existing temporary differences should be assumed to fully reverse at the calendar quarter-end date. The recorded amount of deferred tax assets that are dependent upon future taxable income, net of any valuation allowance for deferred tax assets, in excess of this limitation will be deducted from assets and from equity capital for purposes of determining Tier 1 capital under this part. The amount of deferred tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences generally would not be deducted from assets and from equity capital. However, notwithstanding the above, the amount of carryback potential that may be considered in calculating the amount of deferred tax assets that a member of a consolidated group (for tax purposes) may include in Tier 1 capital may not exceed the amount which the member could reasonably expect to have refunded by its parent.

(3) *Projected future taxable income.* Projected future taxable income should not include net operating loss carryforwards to be used within one year of the most recent calendar quarter-end date or the amount of existing temporary differences expected to reverse within that year. Projected future taxable income should include the estimated effect of tax planning strategies that are expected to be implemented to realize tax carryforwards that will otherwise expire during that year. Future taxable income projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim calendar quarter-end date rather than preparing a new projection each quarter.

(4) *Unrealized holding gains and losses on available-for-sale debt securities.* The deferred tax effects of

any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred tax effects are excluded, this treatment must be followed consistently over time.

(5) *Intangible assets acquired in nontaxable purchase business combinations.* A deferred tax liability that is specifically related to an intangible asset (other than purchased mortgage servicing rights and purchased credit card relationships) acquired in a nontaxable purchase business combination may be netted against this intangible asset. Only the net amount of the intangible asset must be deducted from Tier 1 capital. When a deferred tax liability is netted in this manner, the taxable temporary difference that gives rise to this deferred tax liability must be excluded from existing taxable temporary differences when determining the amount of deferred tax assets that are dependent upon future taxable income and calculating the maximum allowable amount of such assets.

4. Section I.A.1. of appendix A to part 325 is amended by revising the first paragraph following the definitions of Core capital elements to read as follows:

**Appendix A to Part 325—Statement of Policy on Risk-Based Capital**

- \* \* \* \* \*
- I. \* \* \*
- A. \* \* \*
- 1. \* \* \*

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. *Core (Tier 1) capital* is defined as the sum of core capital elements<sup>3</sup> minus all intangible assets other than mortgage servicing rights and purchased credit card relationships<sup>4</sup> and minus any disallowed deferred tax assets.

- \* \* \* \* \*

5. Section I.B. of Appendix A to part 325 is amended by adding a new paragraph (5) immediately after paragraph (4) and preceding the final undesignated paragraph of Section I.B. to read as follows:

- \* \* \* \* \*
- I. \* \* \*

<sup>3</sup> In addition to the core capital elements, Tier 1 may also include certain supplementary capital elements during the transition period subject to certain limitations set forth in section III of this statement of policy.

<sup>4</sup> An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

B. \* \* \*

(5) *Deferred tax assets* in excess of the limit set forth in § 325.5(g). These disallowed deferred tax assets are deducted from the core capital (Tier 1) elements.

\* \* \* \* \*

*Appendix A to Part 325 [Amended]*

6. Table I in Appendix A to part 325 is amended by redesignating footnote 3 as footnote 4, by adding a new entry at the end under "Core Capital (Tier 1)" and by adding a new footnote 3 to read as follows:

TABLE I.—DEFINITION OF QUALIFYING CAPITAL  
[Note: See footnotes at end of table]

Components	Minimum requirements and limitations after transition period
Core Capital (Tier 1) * * *	* * * * *
Less: Certain deferred tax assets. <sup>3</sup>	* * * * *

<sup>3</sup> Deferred tax assets are subject to the capital limitations set forth in § 325.5(g).

\* \* \* \* \*

By order of the Board of Directors.

Dated at Washington, D.C., this 31st day of January 1995.  
Federal Deposit Insurance Corporation.

**Robert E. Feldman,**  
*Acting Executive Secretary.*

[FR Doc. 95-3179 Filed 2-10-95; 8:45 am]

BILLING CODE 6714-01-P

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1500**

**Statement of Policy or Interpretation; Enforcement Policy for Art Materials**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule; statement of enforcement policy.

**SUMMARY:** In 1988, Congress enacted the Labeling of Hazardous Art Materials Act which mandated a labeling standard and certain other requirements for art materials. Based on its experience enforcing these requirements, the Commission is issuing a statement of enforcement policy to more clearly apprise the public of its intended enforcement focus.



**DATES:** Effective Date; February 13, 1995.

**Applicability Dates:** For items for which this policy relieves a restriction, this policy is applicable for products introduced into interstate commerce on or after February 13, 1995. For items against which the Commission previously stated it would not enforce under LHAMA, the policy becomes applicable for products introduced into interstate commerce on or after August 14, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mary Toro, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In 1988, Congress enacted the Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277. Through LHAMA, Congress expressed its desire that art materials should be labeled to warn consumers of potential chronic hazards. LHAMA mandated a voluntary standard, ASTM D 4236, with certain modifications, as a mandatory Commission rule under section 3(b) of the Federal Hazardous Substances Act ("FHSA").

On October 9, 1992, the Commission issued a notice in the **Federal Register** that codified the standard as mandated by Congress. 57 FR 46626. (At that time, the Commission also issued guidelines for determining when a product presents a chronic hazard, and a supplemental regulatory definition of the term "toxic" that explicitly includes chronic toxicity.) The standard is codified at 16 CFR 1500.14(b)(8).

LHAMA and the standard it mandated provide certain requirements for art materials. Under these requirements, the producer or repackager of an art material must submit the product's formulation to a toxicologist to determine whether the art material has potential to produce chronic adverse health effects through customary or reasonably foreseeable use. If the toxicologist determines that the art material has this potential, the producer or repackager must use suitable labeling on the product. The producer or manufacturer of the art material must submit to the Commission (1) the criteria the toxicologist uses to determine whether the producer/repackager's product presents a chronic hazard and (2) a list of art materials that require chronic hazard labeling. The standard also requires that the product bear or be displayed with a conformance

statement indicating that it has been reviewed in accordance with the standard. The standard, which is set forth at 16 CFR 1500.14(b)(8), and section 2(p) of the FHSA, 15 U.S.C. 1261(p), provide additional information on the required content of labels and the conformance statement.

**B. The Scope of "Art Materials"**

*1. The Statute and Previous Commission Interpretation*

The requirements described above apply to "art materials" as broadly defined in LHAMA. The term art material is defined in the statute as "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The definition applies to art materials intended for users of any age, but excludes pesticides, drugs, devices, and cosmetics subject to other federal statutes, *Id.* 1277(b)(1) and (2).

When the Commission issued the final rule implementing the LHAMA provisions on October 9, 1992, it recognized that the statutory definition of art material could be interpreted to reach far beyond the common perception of the meaning of that term. Accordingly, the Commission identified three categories of products that it would not enforce the LHAMA requirements against, although they arguably fall within the statutory definition of art materials. Specifically, the Commission stated that it would not enforce the LHAMA requirements against tools, implements, and furniture that were used in the process of creating a work of art but do not become part of the work of art (called "category 3 products" in the October 9, 1992 notice). Examples provided of items that might fall into this category were drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

The Commission also delineated two general categories of products which could fall within the statutory definition and against which the Commission would enforce the LHAMA requirements. The October 9, 1992 notice identified these items as products which actually become a component of the work of art (e.g., paint, canvas, inks) (previously "category 1 products") and products closely and intimately associated with the creation of an art work (e.g., brush cleaners, solvents, photo developing chemicals) (previously "category 2 products").

*2. The Statement of Enforcement Policy*

The distinctions made in the October 9, 1992 notice have proved unsatisfactory in the practical enforcement of the LHAMA requirements. The staff has found that these categories, and enforcement policies based on the categories, may lead to inconsistent determinations. Thus, the Commission began to reconsider its enforcement of the LHAMA requirements against certain products. On March 8, 1994, the Commission published a proposed Enforcement Policy for Art Materials. 59 FR 10761. Today, the Commission is finalizing its enforcement policy essentially as it was proposed. This notice restates the enforcement policy, clarifies several issues, and responds to public comments received on the proposal. This interpretation will supersede the enforcement policy stated in the October 9, 1992 notice and other related interpretations.

The Commission will focus its enforcement efforts on items that have traditionally been considered art materials, such as paints, inks, solvents, pastes, ceramic glazes, and crayons, and on other items that may present a risk of chronic injury. This enforcement policy will not compromise public safety because there is virtually no risk of chronic health effects with the types of products and materials—such as paper or hard plastic—that the Commission will not enforce against. Also, even if such products presented such a risk, the Federal Hazardous Substances Act, 15 U.S.C. 1261(p), requires cautionary labeling for any article intended or packaged for household use if it contains a hazardous substance. This includes, but is not limited to, art materials that, under reasonably foreseeable conditions of purchase, storage, or use, may be used in or around the household. Unless expressly exempted, children's articles are banned under the FHSA if they are or contain a hazardous substance. The Commission believes that the public interest will be better served by this exercise of enforcement discretion because the staff can use its limited resources more efficiently to pursue enforcement actions against those art materials that present the greatest risk of chronic health effects.

The Commission will not enforce against the following types of products under LHAMA.

(1) General use products. The Commission will not take enforcement action under LHAMA against general use products which might incidentally be used to create art, unless a particular



product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Examples of such general use products are common wood pencils, pens, markers, and chalk. For enforcement purposes, the Commission presumes that these types of items are not art materials. The presumption can be overcome, however, by evidence that such an item is intended for specific use in creating art. Factors the Commission will consider to determine the status of such items include how the items are packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art material uses are likely to be art materials), how they are marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where they are sold (e.g., products sold in an art supply store are likely to be art materials).

(2) Tools, implements, and furniture. The Commission will not take enforcement action under LHAMA against tools, implements, and furniture used in the creation of a work of art, such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, and air pumps for air brushes. In this policy statement the Commission expands the scope of what were referred to as "category 3" art materials in the October 9, 1992 notice. Based on the Commission's enforcement experience, the Commission will consider some items that it previously categorized as closely and intimately associated with creation of a work of art (previously "category 2" products) to be tools, implements and furniture. The Commission believes that these items (brushes, kilns, and molds) are better characterized as tools and implements against which the Commission will not enforce the LHAMA requirements. The Commission believes this revised interpretation is more consistent with the purposes of LHAMA. They are not like the more traditional art materials mentioned in LHAMA floor debates, and they are unlikely to pose a chronic hazard to the user.

(3) Surface materials. The Commission will not take enforcement action under LHAMA against the surface materials to which an art material is applied. Examples are coloring books and canvas. In many instances, an art material is applied to a surface such as paper, plastic, wood, or cloth. These surfaces continue to be components of the work of art and thus art materials, but are now characterized as products against which the

Commission will not enforce the LHAMA requirements.

(4) Specific Materials. The Commission will also not take enforcement action under LHAMA against the following specifically enumerated materials: paper, cloth, plastic, film, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal. Several of these materials are often used as a surface for art work while others are used to create the work of art itself. Regardless of whether such items are used as a surface or not, the Commission will not enforce the LHAMA requirements against them.

The guidance given in (3) and (4) above does not apply if the processing or handling of a material exposes users to chemicals in or on the material in a manner which makes those chemicals susceptible to being ingested, absorbed through the skin, or inhaled. The Commission believes that in most cases, the surfaces and specific materials listed do not present a chronic risk. These types of materials are unlikely to allow exposure. However, if it is likely that reasonably foreseeable handling or use of the material would expose the consumer to chemicals, the Commission will enforce all LHAMA requirements with respect to that product. This is a question of potential exposure, not the manufacturer's assessment of hazard. Thus, even if the chemical to which the consumer might be exposed is potentially non-hazardous, the Commission would enforce the LHAMA requirements, including review by a toxicologist. This is consistent with Congress's intention that a toxicologist, not the manufacturer, should assess the potential chronic hazard.

For example, paper stickers marketed or promoted as art materials often have an adhesive backing that users lick. The act of licking the backing can result in the ingestion of chemicals, and the LHAMA requirements will therefore be enforced. For self-adhesive stickers, on the other hand, which present little risk of exposure, the staff will generally refrain from enforcement unless there is reason to believe that the nature of a particular sticker and its intended use presents a genuine risk of exposure to a potential chemical hazard either by ingestion or absorption.

Another example involves plastic. If the artistic use for which the plastic is intended requires heating or melting it in a manner that results in the emission of chemical vapors, the LHAMA requirements will be enforced.

## C. Craft and Hobby Kits and Supplies

### 1. Kits

#### a. Previous Interpretation

In enforcing LHAMA, the Commission has encountered the question of the applicability of LHAMA requirements to certain craft or hobby kits. The basic issue centers on the meaning of the term "work of art." In previous letters to industry, the staff has advised that the determination depends on whether the end product produced from the kit would be primarily functional or aesthetic. If the former were true, the staff has said that the end product would not be a work of art and none of the components would be art materials. If the latter were true, the end product would be a work of art and all of the components of the kit would be art materials. This distinction proved difficult for practical enforcement, and has raised the possibility of inconsistent enforcement results. For example, if the same paints that were included in a kit to make a working model airplane were also included in a paint-by-number set, under the staff's previous interpretation, the Commission would enforce the LHAMA requirements against the paints in the second kit, but not in the first.

#### b. Statement of Enforcement Policy

After considering the above, as well as the purpose of LHAMA to alert consumers to the potential dangers associated with products used in the creation of art, the Commission published its proposed policy to clarify its enforcement of LHAMA concerning craft and hobby kits. The Commission is finalizing that aspect of the policy as proposed. As explained below, the Commission believes that its LHAMA enforcement should include both (1) kits to make items for display and (2) kits which involve decorating an item, regardless of the end use of the item created. Models and similar kits to make hobby or art/craft items can have dual purposes, both functional and for display. In addition, when a consumer creatively decorates a functional object, it arguably becomes a work of art just as decorated canvas or paper would. Therefore, the Commission believes that materials for decorating and assembling models and art/craft items come within the reach of LHAMA. The Commission believes that the following interpretation is more workable than the previous one and is consistent with the intent of Congress.

For kits that include materials to decorate products whether the products are functional, for display, or both, the Commission will enforce the LHAMA

requirements against materials in the kit that are intended to decorate or assemble an item in the kit—i.e., traditional art materials, such as, paints, crayons, colored pencils, adhesives, and putties—even if the finished product is a toy or other item whose primary use may be functional. Thus, for a kit that contains a plastic toy or a paint-by-number board, along with paints or adhesives to decorate or assemble the item, the Commission will expect the paints and adhesives in each case to meet all the LHAMA requirements. However, as explained in section B.2.(3) & (4) above pertaining to surfaces and specific materials, the Commission would not enforce the requirements against the plastic toy or the board.

For kits that package an item that would be subject to enforcement under this policy together with an item that would not, any necessary chronic hazard statements or labeling, including any required conformance statement, must appear on the outer container or wrapping of the kit, or must be visible through it, and must specify the item to which the statement or labeling refers. Any conformance statement must be visible at the point of sale. In addition to being visible at the point of sale, any required chronic hazard warning label must be on the immediate package of the item that is subject to LHAMA as well as on accompanying literature where there are instructions for use. See 16 CFR 1500.125.

## 2. Enforcement Policy for Separate Supplies

As stated in the March 8, 1994 proposal, the Commission will enforce LHAMA requirements against materials intended to decorate art and craft, model and hobby items, such as paints, even if they are sold separately and not part of a kit. Similarly, paints or markers intended for decorating clothes will be considered art materials for enforcement purposes since they are intended for decorating clothing, even though the resulting item, the garment, has a functional purpose. Note that as explained in section B above, the Commission would not enforce the requirements against the surface upon which the art material is applied, regardless of the primary use of the finished product.

The status of glues, adhesives, and putties will depend on their intended use. Some illustrative examples follow. Glues which are marketed for general repair use only would not be art materials, and the Commission will not enforce the LHAMA requirements against them. Glue sticks for glue guns which are for art or craft use would be

considered art materials. Spray adhesives and rubber cements will normally be considered art materials unless they are marketed for some specialty non-art use. School pastes and glues will also be considered art materials.

## D. Conformance Statement

Section 1500.14(b)(8)(i)(C)(7) of the LHAMA rule requires that a conformance statement appear with an art material. In the preamble to the original LHAMA rule, the Commission stated that every art material must display either a conformance statement or a hazard warning, but not both. See 57 FR 46629, October 9, 1992.

The Commission has reviewed this matter in light of one comment it received opposing the Commission's policy on this issue and its experience enforcing the LHAMA requirements. The Commission agrees with the commenter and is now modifying its policy concerning the conformance statement.

The language of the standard that was mandated by LHAMA is not entirely clear on this question. 16 CFR 1500.14(b)(8)(i)(C). However, based on its experience enforcing LHAMA, the Commission agrees with the commenter that there is the potential for confusion if some products that have been reviewed according to the standard display a conformance statement but others do not. Thus, the Commission's policy is that a conformance statement must appear with all toxicologist-reviewed art materials subject to LHAMA regardless of whether they also have a hazard warning statement. A subsection has been added to the enforcement policy, § 1500.14(b)(8)(iv)(C), stating this policy. Since the conformance statement constitutes "other cautionary labeling" as defined in 16 CFR 1500.121(a)(2)(viii), it must comply with the conspicuousness requirements of 16 CFR 1500.121(c) and (d), including the type-size requirement laid out in Table 1 of 1500.121(c)(2).

## E. Response to Comments

### 1. General

The Commission heard from six commenters on its proposed enforcement policy. For the most part, commenters supported the Commission's effort to clarify its enforcement intentions in this area. For example, one commenter stated that the proposed enforcement policy alleviates practical problems, follows common sense, is consistent with Congressional intent, and appropriately focuses on

intended use. However, commenters did raise several specific criticisms of certain aspects of the proposed policy. These comments and the Commission's responses are discussed below.

### 2. Scope of "Art Materials"

One commenter suggested changing 16 CFR 1500.14(b)(8)(iv)(A)(1) to state that markers sold in art supply stores are art materials, rather than *likely* to be art materials.

The Commission declines to make this change. For general use products, the Commission will look at a variety of factors, including packaging, marketing, and where the item is sold. Often a single factor will not be determinative. For example, along with other markers, an art supply store might sell highlighters which are clearly promoted for use by students in marking textbooks. These are probably general use products, and the enforcement policy should be flexible enough to allow this determination.

The Writing Instrument Manufacturer's Association ("WIMA"), a trade association for the writing instrument industry, commented that it generally supported the proposed enforcement policy but suggested that cased pencils (referred to as common wood pencils in the proposed policy) should generally be considered art materials. WIMA asserted that these pencils are generally considered in the industry to be art materials and are used for drawing and sketching. Another commenter argued that if the enforcement policy considers these general use pencils not to be art materials, products from China and other countries without consumer protection laws will flood the market.

The Commission declines to make this change in the enforcement policy. The Commission believes that common pencils, much like pens or markers, are generally used as writing materials. Under the policy, specific pencils that are intended primarily for drawing or sketching (such as colored pencils) will be considered art materials for enforcement purposes. Of course, pencil makers who wish to submit their formulations to a toxicologist for evaluation and label them accordingly may do so. However, the Commission will not enforce the LHAMA requirements against common pencils unless they are specifically intended or marketed as art materials. Whether products are produced domestically or imported, they are all subject to the consumer protection laws and regulations of this country if they are sold here. With respect to the comment concerning imports from countries

without consumer protection laws, CPSC reminds the commenter that imports are subject to the same requirements as products made in this country.

One commenter stated support for the proposed enforcement policy's treatment of brushes, kilns, and molds, finding it to be consistent with other CPSC policy interpretations. CPSC agrees.

### 3. Actual Toxicity Hazards

One commenter argued that the proposed enforcement policy would allow products which present chronic toxicity hazards to consumers to evade the review required by LHAMA. The commenter stated that items "such as pencils, paper, fabric, paint brushes, and sand have all been found to present chronic toxicity hazards in the past \* \* \*."

The Commission's scientific staff examined this comment, and does not agree. Neither the Commission nor the staff have concluded that any of the listed items typically present chronic toxicity hazards. The staff has in the past examined some uses of some of these materials outside of the context of art materials. For example, children's playsand was evaluated to see if the sand posed a hazard through tremolite asbestos or non-asbestos tremolite. No such hazard was established. Paper has been found to contain extremely small amounts of dioxin, but the amount is so small that the risk is negligible. Through its enforcement policy, the Commission is attempting to focus enforcement efforts on items that may actually harm consumers. The Commission believes this policy furthers that goal. It is worth noting that in the unlikely event that any of these items were found to be dangerous, the labeling and banning provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261 (f), (p), and (q)(1), and 15 U.S.C. 1263) still apply.

Another commenter agreed with the Commission's focus on potential for genuine risk of exposure but suggested that the language of the proposed policy be changed in 16 CFR 1500.14(b)(8)(iv)(A) (3) and (4) to state that the user's exposure must be to a *hazardous* chemical before the Commission will enforce LHAMA against the materials listed in those subsections. In the sections referred to, the enforcement policy provides that the Commission will not enforce the LHAMA requirements against surface materials and certain specifically enumerated materials unless it is likely that handling or processing the material

may expose the user to chemicals in or on the material.

The Commission declines to make the commenter's suggested change. As explained in section B.2 above, although the Commission believes that generally there will not be a chronic hazard with use of these materials, the Commission is concerned that a situation could arise in which a unique manner of handling or using these materials could pose a risk of exposure. An example is paper stickers with adhesive that is licked. The commenter's suggestion would put the manufacturer in the position of deciding whether a particular chemical is hazardous. However, Congress intended that this determination be made by the toxicologist reviewing a product's formulation. The enforcement policy concerns the initial question of whether exposure is likely, not whether a chemical is hazardous. Thus, under the Commission's enforcement policy, if there is the potential for exposure to a chemical from a surface or specifically enumerated material, the LHAMA requirements will be enforced.

### 4. Enforcing LHAMA Against Non-Hazardous Products

Comments suggested that all art materials should have to comply with LHAMA regardless of actual risk, and that the items listed in the proposed enforcement policy should not be excluded from enforcement efforts. They noted that the conformance statement on a non-hazardous product tells the consumer that the product has been cleared by a toxicologist. An unlabeled product, on the other hand, could either have been evaluated as non-toxic, or not evaluated at all. Thus the commenters argue that the Commission should enforce against all art materials, whether hazardous or not.

In response, the Commission notes that focusing its enforcement efforts is important to ensure that the enforcement program is as effective as possible through the effective use of the Commission's limited resources. The Commission believes that the categories of products against which it will no longer enforce present virtually no risk of exposing consumers to chronic toxicity hazards. No evidence of consumer confusion was presented with the comments, and we think any such confusion should be minimal.

### 5. Conformance Statement and Warnings

As explained above, one commenter argued that the conformance statement should accompany all art materials, including those that also require a hazard warning. The preamble to the

original LHAMA rule stated that every art material must display either a conformance statement or a hazard warning, but not both. See 57 FR 46629, October 9, 1992.

The Commission has reviewed this issue in light of this comment and its experience. For reasons explained in greater detail above, the Commission agrees with the commenter and has added a subsection to the enforcement policy making this change.

### 6. Other Labeling Issues

One commenter noted that some labels bear adequate safe handling instructions, but do not list the chronic hazards that necessitate these precautions. LHAMA and the ASTM standard clearly require that both the chronic hazard and the safety instructions be on the label.

Another commenter noted that facially adequate labels should be examined for accuracy. The Commission considers this a very important issue. If labels are inaccurate, the labels and the standard itself become meaningless to the consumer. It is clearly unacceptable for labels to indicate that they have been reviewed by a toxicologist (by display of the conformance statement) if they in fact have not.

### 7. Kits and Supplies

One commenter stated specific support for the proposed enforcement policy concerning kits and separate supplies.

### 8. Status of Enforcement Policy

One commenter argued that the Commission is actually exempting certain products from the FHSA, and it is therefore improper to issue an enforcement policy rather than a regulation under section 3(c) of the FHSA (15 U.S.C. 1262(c)). The commenter argued that the enforcement policy would create confusion.

The Commission disagrees with this comment. This policy does not exempt any items from the FHSA. First, the policy does not grant exemptions from the LHAMA provisions, but rather clarifies the Commission's interpretation of the statutory term "art material" and informs the public that the Commission's enforcement efforts under LHAMA will be directed against those products that present the greatest risk. Through this policy, the Commission is explaining what that means in practice. The policy explains how the Commission will interpret the statutory definition of "art material" for purposes of enforcement and that it does not intend to enforce LHAMA



requirements against certain items or materials which are unlikely to present a chronic hazard. The Commission believes that the policy, with its general guidance and specific examples, will help to clarify existing confusion. The enforcement policy will be published in the CFR with the LHAMA regulations so that all will be aware of Commission policy. In addition, the policy has no impact on the enforcement of other provisions of the FHSA, such as recall or notice actions under section 15 of the FHSA, as to art materials.

Focusing enforcement efforts to make them maximally effective is an appropriate use of an enforcement policy. The commenter stated that enforcement policies should clarify where an agency will take action, rather than where it will not. No authority was cited for this proposition, and the Commission is not aware of any such authority.

However, the Commission is modifying the language of section 1500.14(b)(8)(iv)(A)(1) slightly to clarify its interpretation with respect to that one category of products. The Commission does not consider the products described in that subsection (products intended for general use) to be art materials under the statutory definition. This is now stated explicitly in that subsection.

**9. Effective Date**

One commenter requested that manufacturers have one year to comply with this enforcement policy, rather than six months. No data were submitted as to why compliance in six months would be unduly burdensome. The Commission believes that six months is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. The Commission will, however, apply the policy to those products initially introduced into interstate commerce after six months, rather than those manufactured or imported after that date.

**10. Prohibition of Lead in Children's Products**

One commenter suggested that the Commission should prohibit the use of lead in products intended or marketed for the use of children. This comment is beyond the scope of this enforcement policy. However, we remind the commenter that the hazard of lead in consumer products intended for children is dealt with by regulations under the CPSA, 16 CFR 1303.4, and provisions of the FHSA, 15 U.S.C. 1261 (f)(1)(A) & (q)(1)(A).

**F. Environmental Considerations**

The Commission has considered whether issuance of this enforcement statement will produce any environmental effects and has determined that it will not. The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules and safety standards ordinarily have little or no potential to affect the human environment, and therefore, do not require an environmental impact statement or environmental assessment. The Commission believes that, as with such standards, this enforcement policy would have no adverse impact on the environment.

**G. Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act generally requires agencies to prepare proposed and final regulatory analyses describing the impact of a rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that this enforcement statement will have little effect on businesses in general or on small businesses in particular. Accordingly, the Commission concludes that its enforcement statement concerning the labeling of hazardous art materials would not have any significant economic effect on a substantial number of small entities.

**H. Authority**

Section 10 of the FHSA gives the Commission authority to issue regulations for the efficient enforcement of the FHSA. 15 U.S.C. 1269(a). This provision authorizes the Commission to issue statements of enforcement policy in which the Commission explains how it intends to enforce a Commission requirement.

**I. Applicability Date**

Since this notice issues an interpretative rule/statement of policy, no particular applicability date is required by the Administrative Procedure Act. 5 U.S.C. 553(d)(2). The Commission recognizes, however, that as to items against which the Commission previously stated that it would not enforce LHAMA, manufacturers will need time to bring their products into compliance. Thus, this policy regarding such items applies to products introduced into interstate commerce on or after 6 months from the date this policy is published in the

**Federal Register.** The Commission believes that this is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. As to those items where this policy relieves a restriction, the policy becomes applicable for such products introduced into interstate commerce on or after the date of publication of this notice.

**List of Subjects in 16 CFR Part 1500**

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons given above, the Commission amends 16 CFR 1500.14 as follows:

**PART 1500—[AMENDED]**

1. The authority citation for part 1500 continues to read as follows:

**Authority:** 15 U.S.C. 1261–1277.

2. Section 1500.14 is amended by adding a new paragraph (b)(8)(iv) to read as follows:

**§ 1500.14 Products requiring special labeling under section 3(b) of the Act.**

\* \* \* \* \*  
(b) \* \* \*  
(8) \* \* \*

(iv) *Policies and interpretations.*

(A) For purposes of enforcement policy, the Commission will not consider as sufficient grounds for bringing an enforcement action under the Labeling of Hazardous Art Materials Act ("LHAMA") the failure of the following types of products to meet the requirements of § 1500.14(b)(8) (i) through (iii).

(1) Products whose intended general use is not to create art (e.g., common wood pencils, and single colored pens, markers, and chalk), unless the particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Factors the Commission would consider in making this determination are how an item is packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art materials uses are likely to be art materials), how it is marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where it is sold (e.g., products sold in an art supply store are likely to be art materials). The products described in this paragraph do not meet the statutory definition of "art material."

(2) Tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, air pumps for air brushes, kilns, and molds.

(3) Surface materials upon which an art material is applied, such as coloring books and canvas, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled.

(4) The following materials whether used as a surface or applied to one, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled: paper, cloth, plastics, films, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal.

(B) For purposes of LHAMA enforcement policy, the Commission will enforce against materials including, but not limited to, paints, crayons, colored pencils, glues, adhesives, and putties, if such materials are sold as part of an art, craft, model, or hobby kit. The Commission will enforce the LHAMA requirements against paints or other materials sold separately which are intended to decorate art, craft, model, and hobby items. Adhesives, glues, and putties intended for general repair or construction uses are not subject to LHAMA. However, the Commission will enforce the LHAMA requirements against adhesives, glues, and putties sold separately (not part of a kit) if they are intended for art and craft and model construction uses. This paragraph (b)(8)(iv)(B) applies to products introduced into interstate commerce on or after August 14, 1995.

(C) Commission regulations at § 1500.14(b)(8)(i)(C)(7) require that a statement of conformance appear with art materials that have been reviewed in accordance with the Commission standard. The Commission interprets this provision to require a conformance statement regardless of the presence of any chronic hazard warnings.

(D) Nothing in this enforcement statement should be deemed to alter any of the requirements of the Federal Hazardous Substances Act ("FHSA"), such as, but not limited to, the requirement that any hazardous substance intended or packaged in a form suitable for household use must be labeled in accordance with section 2(p) of the FHSA.

Dated: February 6, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 95-3450 Filed 2-10-95; 8:45 am]

BILLING CODE 6355-01-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 140

#### Delegation of Authority to the Director of the Division of Trading and Markets

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is delegating to the Director of the Division of Trading and Markets, and to such members of the Commission staff acting under the Director's direction as the Director may designate from time to time, the authority to perform all functions reserved to the Commission under the recently adopted risk assessment requirements for holding company systems in §§ 1.14 and 1.15 of the Commission's regulations. The delegation should result in more expeditious treatment of exemption requests, which will benefit futures commission merchants ("FCMs") and the Commission.

**EFFECTIVE DATE:** February 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street N.W., Washington D.C. 20581. Telephone (202) 254-8955.

#### SUPPLEMENTARY INFORMATION:

##### I. Delegation

On December 21, 1994, the Commission adopted Rules 1.14 and 1.15 to implement the risk assessment authority set forth in Section 4f(c) of the Commodity Exchange Act.<sup>1</sup> These rules generally require FCMs that are subject to the rules to maintain and file with the Commission certain information concerning their financial activities and the activities of their material affiliates.

In promulgating the risk assessment rules, and at the suggestion of commenters on the proposed rules, the Commission reserved, in Rules 1.14(d)(3) and 1.15(c)(3), the authority to exempt any FCM from any of the provisions of either Rule 1.14 or Rule 1.15 if the Commission finds that the

exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. Additionally, the rules permit the Commission to exempt an FCM affiliated with a "Reporting Futures Commission Merchant" from the recordkeeping and reporting requirements of the rules, and permit the Commission to request information to supplement an FCM's filings with the Commission if the Commission determines that additional information is necessary for a complete understanding of a particular affiliate's financial impact on the FCM's organizational structure.<sup>2</sup>

The Commission has determined to codify in Part 140 the delegation of its authority under the risk assessment rules to the Director of the Division of Trading and Markets.<sup>3</sup> Accordingly, the Commission is hereby amending its delegation of authority to the Director of the Division of Trading and Markets set forth in Rule 140.91, which currently governs authority to perform functions on behalf of the Commission with respect to the minimum financial and related reporting requirements for FCMs and introducing brokers under Rules 1.10, 1.12, 1.16 and 1.17, by adding to it the authority to act on behalf of the Commission with respect to all functions reserved to the Commission under Rules 1.14 and 1.15. The Commission further notes that paragraph (b) of Rule 140.91 will continue to provide that the Director may submit any matter delegated under the rule to the Commission for its consideration.

## II. Related Matters

### A. Administrative Procedure Act

The Commission has determined that this delegation of authority relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rule making and which provide other opportunities for public participation, are not applicable. The Commission further finds that, because the rule has no adverse effect upon a member of the public, there is good cause to make it effective immediately upon publication in the **Federal Register**.

<sup>2</sup> Rules 1.14(d)(2), 1.15(c)(2) and 1.15(a)(2)(iii). For a complete discussion of the recently adopted risk assessment rules, see 59 FR 66674.

<sup>3</sup> See 59 FR 66674, at 66682, n.35 (Director of Division of Trading and Markets is generally delegated the authority to act on behalf of the Commission with respect to the risk assessment rules).

<sup>1</sup> 59 FR 66674 (December 28, 1994).