

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