

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230-0002. The closing period for receipt of comments is February 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 1, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482-1378.

Dated: December 3, 2009.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E9-29906 Filed 12-15-09; 8:45 am]

BILLING CODE 3510-DS-S

CONSUMER PRODUCT SAFETY COMMISSION

Identifying Labels for Drywall Under Section 14(c) of the Consumer Product Safety Act; Notice of Inquiry; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of inquiry.

SUMMARY: Section 14(c) of the Consumer Product Safety Act authorizes the Consumer Product Safety Commission ("Commission" or "CPSC") to require, through rulemaking, labels for a consumer product that would identify the date and place of manufacture of the product, cohort information (batch, run number, or other identifying characteristic), and the manufacturer of the product. 15 U.S.C. 2063(c). This notice requests comments and information about such a rulemaking with regard to drywall.

DATES: Written comments must be received by February 16, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2009-0105, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through www.regulations.gov.

Written Submissions

Submit written submissions in the following way:

Mail/Hand Delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Dean W. Woodard, Director, Defect Investigations Division, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7651; dwoodard@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Since December of 2008, the Commission has been receiving reports of various problems related to drywall primarily imported from the People's Republic of China. The first reports came primarily from Florida and were related to the building boom and post-hurricane construction. As reports continued to come in, it became apparent that the drywall issue was more widespread. Currently, CPSC has received over 2000 incident reports from 32 States, the District of Columbia

and Puerto Rico. The Commission has expanded its investigation to include both imported and domestically manufactured drywall.

Problems described in these reports include odor, health effects and corrosion effects on certain metal components in the home. The most frequently reported health symptoms are irritated and itchy eyes and skin, difficulty in breathing, persistent cough, bloody noses, recurrent headaches, sinus infection, and asthma attacks. Many reports indicate that the symptoms lessen when the consumer is away from home. As for corrosion-related effects, consumers have reported blackened and corroded metals and electrical wiring in their homes and failures of such equipment as evaporator coils of central air conditioners. There have also been reports of failures of appliances such as refrigerators and dishwashers, and of electronic devices such as televisions and video game systems.

CPSC is investigating the health effects and the potential electrical and fire safety issues stemming from the corrosion of metal equipment and components. CPSC is working with a number of state and federal partners in this investigation including the U.S. Environmental Protection Agency, U.S. Department of Housing and Urban Development, Centers for Disease Control, Agency for Toxic Substance and Disease Registry and several state departments of health and state attorneys general. In the course of this investigation, Commission staff has visited several U.S. and Chinese drywall manufacturing facilities and mines. CPSC staff is analyzing information received from consumers, builders, importers, manufacturers and suppliers of drywall to better determine the scope of the drywall problem. CPSC and its state and federal partners are conducting a number of technical studies to determine connections between the emissions from drywall and the reported health and corrosive effects.

CPSC's investigation indicates that it is often difficult to determine the manufacturer and origin of drywall in homes. As further discussed in the next section, the investigation also indicates that there can be a good deal of variability in drywall depending on its type and origin. Being able to identify the manufacturer and origin of drywall could aid in investigating complaints related to drywall and narrow the scope of any investigation or necessary remedial action in the future.

B. The Product

Drywall, sometimes also called gypsum board, plasterboard or wallboard, is a kraft paper liner wrapped around a plaster mix consisting primarily of gypsum. There are essentially two types of gypsum: Mined gypsum; and synthetic gypsum. These two types are sometimes combined.

Mined gypsum is found in sedimentary rock formations among limestone, shale, marl and clay. Characteristics of the mined gypsum can vary depending on the geology in the region where it is mined or quarried. Nearby sulfur deposits and marine conditions may affect the quality of the gypsum.

Synthetic gypsum is an alternative to natural mined gypsum. It is a byproduct generated from flue gas desulfurization ("FGD") in fossil-fueled power plants.

There can be variability in gypsum depending on where it is mined and the manufacturing process employed. Gypsum mined in some areas may have higher levels of sulfur, strontium, carbonate, or pyrite; some of these chemicals could affect drywall's behavior in homes. Similarly, some flue gas sources may have higher or lower concentrations of these and other compounds.

There are eight domestic drywall manufacturers in the United States, with plants spread throughout the country and North America. Two domestic manufacturers are ranked among the top five drywall producers in the global market. In 2008, the United States drywall production totaled an estimated 26.4 billion square feet. In 2006, the total domestic production of 35.0 billion square feet was not enough to meet demand that year. As a result, parties found themselves importing drywall from China and other countries to meet construction needs. In 2006, approximately 218,100 metric tons of drywall was imported from China.

The drywall manufacturing process is rather standard throughout the industry. To make drywall, the raw gypsum (whether mined, FGD or a combination) is dehydrated (sometimes called "calcined"), typically with natural gas. A slurry is made consisting of gypsum and additives such as fiber (typically paper and/or fiberglass), plasticizer, foaming agent, potash as an accelerator, water, ethylenediaminetetra acetic acid or other chelate as a retarder. The additives are based on whether the drywall is to be standard, fire resistant, or mildew or water resistant. The slurry is fed between continuous layers of paper on a board machine. As the board

moves down a conveyer line, the mixture hardens. The paper becomes bonded to the solid slurry mix. The board is then cut to requested lengths and conveyed through dryers to remove any free moisture. The lengths and thickness of the board vary depending on the typical building code or usage requirements.

At a certain point along the conveyer line, most domestic manufacturers mark the board with a stamp which may include the company name, logo, brand name, plant location, production date, and time. However, this practice is not standard for every drywall manufacturer in the global marketplace.

C. Need for Better Identification of Drywall

CPSC's investigation has shown that building supply companies often stock drywall based on purpose, type, length and thickness, rather than brand name. Therefore, various drywall brands could be sold to fill a single construction project order. Since construction customers generally do not inventory drywall based on brand or country of origin it makes identifying the source/manufacturer of the drywall difficult once the product is installed.

In the course of its investigation, CPSC staff has found that drywall often lacks any marks on its face or backing identifying the manufacturer or the production batch or lot. Identifying markings on the drywall could help consumers and investigators to isolate the source of drywall problems in the future. Being able to identify the brand and lot or batch could further narrow the focus of an investigation to discrete sets of drywall. The majority of imported drywall has little or no markings at all on its face. Most domestic drywall has markings that identify the manufacturer. Any markings that are present on domestic or imported drywall whether on the board or tape are inconsistent as to both content and placement. Most drywall is sealed on the ends with tape that displays a brand name or manufacturer's name. During the installation process, however, that tape is often removed.

D. Statutory Authority

Section 14(c) of the CPSA authorizes the Commission to issue a rule requiring labels (and prescribing their form and content) containing source information, such as date and place of manufacture of a consumer product, cohort information (including batch, run number or other identifying characteristic), and identification of the

manufacturer or private labeler. 15 U.S.C. 2063(c).

Section 14(c) allows the Commission, where practicable, to require that the identifying labels be permanently marked or affixed to the product. *Id.* Such an identifying permanent mark would be consistent with section 103 of the Consumer Product Safety Improvement Act, entitled "Tracking Labels for Children's Products," which requires "permanent distinguishing marks" stating certain identifying information on children's products and their packaging. Section 14(c) of the CPSA also authorizes the Commission to permit information about the date and place of manufacture and cohort information to be coded. 15 U.S.C. 2063(c).

The Commission is considering a rulemaking that would require manufacturers of drywall to label/mark their products to identify (1) The name of the manufacturer; (2) the plant name and location; (3) the source material (*i.e.*, natural gypsum, synthetic gypsum or a mixture); (4) a code to identify the mine or power plant that supplied the gypsum; (5) the date of manufacture of the drywall; and (6) the batch or lot number.

The Commission requests comments on such a requirement and on the specific issues mentioned in the following section. If the Commission were to initiate such a rulemaking, it would do so with the issuance of a notice of proposed rulemaking.

E. Request for Comments

The Commission requests comments on the possibility of initiating a rulemaking proceeding to require identifying labels on drywall. Specifically, the Commission requests comments and information on the following specific issues:

1. What labeling or markings are companies currently providing on drywall?
2. What would be the cost impact if the Commission were to require identifying labels/markings of the type discussed in this notice on drywall?
3. What, if any, other identifying information should be required?
4. Should there be a uniform format for the labels/markings, and if so, what should it be?
5. How can CPSC assure that the identifying label/markings is accessible after the drywall is installed?
6. What would the impact be on industry of requiring identifying information to be printed on both faces of the drywall in two horizontal ribbons parallel to the longitudinal axis with a

frequency that is a non-integer of 16 inches?

7. If the Commission were to define 'drywall' for tracking labels, or other purposes, what should such a definition include?

8. With what specificity should drywall manufacturers identify the 'date of manufacture,' and why?

Dated: December 9, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9-29946 Filed 12-15-09; 8:45 am]

BILLING CODE 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 10-C0001]

Excelligence Learning Corporation, d/b/a Discount School Supply, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Excelligence Learning Corporation, d/b/a/Discount School Supply, containing a civil penalty of \$25,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 31, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 10-C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 10, 2009.

Todd A. Stevenson,
Secretary.

United States of America Consumer Product Safety Commission

CPSC Docket No. 10-C0001

In the Matter of: Excelligence Learning Corporation d/b/a Discount School Supply

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Excelligence Learning Corporation, d/b/a Discount School Supply ("Excelligence") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051-2089 ("CPSA").

3. Excelligence is a corporation organized and existing under the laws of Delaware, with its principal offices located in Monterey, California. At all times relevant hereto, Excelligence imported and/or sold educational toys and school products.

Staff Allegations

4. Between May 2004 and May 2007, Excelligence imported into the United States about 20,000 units of certain "shaving-style" paint brushes, each about 4-inches long, with handles that are painted blue, purple, orange, yellow, lime green, or pink, and the item number #SHVBRSH printed on the product's packaging ("Brush(es)"). The Brushes were sold as a set of six consisting of a variety of the aforementioned colors, and also sold as part of the "BioColor® Foam Paint Starter Kit" and "Colorations® Foam Paint Starter Kit." The Brushes were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, via Discount School Supply catalogs and the company's Web site, as follows: Sets were sold from May 2004 through August 2007 for about \$5 per unit; the BioColor® kits were sold from May 2004 through June 2006 for about \$60 per kit; and the Colorations® kits were sold from July 2006 through August 2007 for about \$60 per kit.

5. Between August 2000 and August 2007, Excelligence imported into the United States about 13,000 units of "Giant Grow" measuring charts, each consisting of a giant yellow ruler-shaped plastic chart for measuring a child's growth with a picture of a bean stalk painted on it from top to bottom ("Chart(s)"). The Charts were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, from August 2000 through August 2007 for about \$10 per unit, via Discount School Supply catalogs and the company's Web site.

6. During June 2007, Excelligence imported into the United States about 60 units of "Tic Tac Turtle Toss" play mats, each consisting of a 50-inch vinyl/polyester play mat that is double-sided, with a number design on one side and a turtle design on the other, the "Discount School Supply" name and logo printed in the corner on both sides, and numbers and designs painted in red, blue, green and black over a yellow background ("Mat(s)"). The Mats were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, from June 2007 through September 2007 for about \$40 per unit, via Discount School Supply catalogs and the company's Web site.

7. The Brushes, Charts and Mats are "consumer product(s)," and, at all times relevant hereto, Excelligence was a "manufacturer" and/or a "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

8. The Brushes, Charts and Mats are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Ban"). Under the Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

9. On August 20, 2007, Excelligence reportedly received "preliminary" test results from an independent laboratory indicating the presence of excessive lead levels in surface coatings of tested Brush handles. Ten days later, on August 30, 2007, Excelligence reported to CPSC that it had commissioned an independent laboratory to conduct