

# **MANUAL OF PROCEDURE FOR THE PENCIL CERTIFICATION PROGRAM**

## **I. PURPOSES:**

The purpose of the Pencil Certification Mark ("PMA" Mark) shall be, by all appropriate means, to encourage the acceptance and maintenance of standards for the cased pencils (except cosmetic pencils) manufactured by the licensees to the PMA mark program which will minimize or eliminate possible toxicity-related hazards to consumers from pencils. It is considered by the industry that pencils should be neither acutely nor chronically toxic to users and consumers, who include children.

## **II. ORGANIZATION:**

The work of the Pencil Certification Program shall be carried on from the office of the Writing Instrument Manufacturers Association (the Association) and from toxicology services provided by Duke University Toxicological Program (Association Toxicologist), with such clerical and technical assistance as the Board of Directors of the Association may from time to time authorize.

The Board of Directors of the association shall, in general, supervise the finances and program of the PMA Certification Program, subject to the qualifications hereinafter set forth.

## **III. PARTICIPATION:**

Eligible participants for the certification program are as follows:

- A. Manufacturers of pencils in the association in good standing;
- B. Manufacturers of cased pencils as agree to comply with the program, pay the \$15,000 fee provided for therein, and meet the requirements thereof for non-members;
- C. Suppliers or component manufacturers to manufacturers of pencils.

## **IV. FINANCES:**

- A. The expenses of operating the Pencil Certification Program shall be borne by the Association as provided in the budgeted funds of the Association, plus such funds as are received from non-member participants.
- B. A non-member Pencil Manufacturer participant is required to pay a one-time \$15,000 initiation fee and to pay an annual license fee in an amount as determined by the Board of Directors. An applicant may submit to the Executive Director, in confidence, the approximate volume of pencils to be certified. The Executive Director

shall make an appropriate recommendation to the Board concerning the license fee based upon such a submission without revealing to the Board any confidential information submitted by the applicant.

#### **V. ACTIVITIES:**

In conformity with this Manual of Procedure, the Association may pursue any lawful activities designed to carry out the certification program. Such activities may include, but are not limited to, the following:

- A. Establishing or adopting product standards for cased pencils to meet or to better any federal or state toxicity related law or regulation.
- B. Testing and evaluating pencils with reference to these laws and regulations, through the Association Toxicologist and designated laboratory.
- C. Certifying or refusing to certify in accordance with the results of such review and/or tests that cased pencils conform to established certification program standards and specifications.
- D. The ownership, use and /or licensing for use of marks, labels or other insignia.
- E. Activities including advertising and publicity to acquaint and interest consumers to case pencils in the standards assured by the PMA mark and to enhance the standing of the industry and the Association.
- F. None of the activities of the Association shall take the form of expressly or implicitly defaming or disparaging products of any person, firm, or corporation.

#### **VI. ASSOCIATION'S TOXICOLOGIST:**

- A. The Association shall appoint an independent Association Toxicologist, who shall have the responsibility to make evaluations and tests of pencils submitted by participants to assure that the pencils conform to the standards presented in this manual of Procedure.
- B. The Association Toxicologist may, with the consent of the Board, retain or consult chemists, physicians, or other experts.

#### **VII. TOXICOLOGICAL ADVISORY BOARD:**

- A. The Board of Directors shall approve a Toxicological Advisory Board which shall be composed of not fewer than three nor more than five recognized authorities in human toxicology.
- B. The Board shall be independent of the Association's Toxicologist.
- C. The Board shall review and make recommendations for improvement in the Pencil Certification Program's toxicological policies and procedures.
- D. The Board shall serve as an appeals board should the opinion of the Association Toxicologist be questioned.

## **VIII. STANDARDS OF TOXICOLOGICAL REVIEW ADOPTED AND USED IN THE PROGRAM:**

- A. The Federal Hazardous Substances Act, 15 USC §1261 et seq., and Regulations thereunder pertaining to acute toxicity or chronic toxicity and specifically including leaded lacquer standards.
- B. American Society for Testing and Materials D4236-83 or latest revision thereof relating to LABELING OF ART MATERIALS FOR CHRONIC HEALTH HAZARDS.
- C. CPSC-CH-E1003-09.1, Standard Test Methodology for Lead in Surface Coatings.
- D. Any applicable state school purchase laws.
- D. Additional standards or requirements adopted as a result of recommendations from the Association Toxicologist, or the Toxicological Advisory Board.

## **IX. PROCEDURE:**

- A. Each member or non-member pencil manufacturer can become a participant in the Pencil Certification Program by using only components or raw materials which are approved by the Association Toxicologist, by participating in the lacquer and heavy metals testing program as stated herein, and for non-members by also paying the fees for participation in the program.
- B. Program definitions
  - 1. Component – a product used to assemble a pencil; including ferrule, eraser, slat (or other casing), lacquer, adhesives, lead, foil.
  - 2. Raw materials – what is used in the manufacture of components.
  - 3. Pencil manufacturer – assembler of pencils, who may or may not also manufacture components for use by his own factory or for sale to others.
  - 4. Supplier – a manufacturer of components.
- C. Qualification procedure
  - 1. Components (list 1) which are approved for use in pencils would comprise the first of two lists to be compiled for the certification program. Components would be analyzed by the Association Toxicologist, who would be advised of all the materials used in manufacturing them, who may request additional information from the suppliers or other sources, and who would certify that the materials are approved for use in pencils. Formulations of components may be expressed in Percentages or phrases like "up to X percent": The list of approved components would be distributed to all pencil manufacturers and suppliers.
  - 2. Raw Materials (list 2) used in making pencils will be certified by the Association Toxicologist if used in any of the components listed above. The supplier will make a list of his raw materials to be reviewed by the Association Toxicologist. The list may be in two sections: a "public" list be circulated among all pencil suppliers, manufacturers and other interested persons, and a

"proprietary" list be kept confidential between the supplier and the Association Toxicologist, as it may include trade secret ingredients of a particular manufacturer. The "proprietary" list could include raw materials used in components which the supplier wants to keep confidential. Formulations of components may be expressed in percentages or phrases like "up to X percent". On the basis of medical or toxicological data or information, the Association Toxicologist may reject ingredients which he finds to be unsafe or toxic, whether or not subject to his prior approval.

3. If determined to be necessary by the Association Toxicologist, formulas for all products using approved raw materials will be submitted for review by the Association Toxicologist on a confidential basis.

4. A new supplier may have their company added to the list of approved components suppliers as outlined above, or by reviewing the Approved Raw Materials List. If the pencil company uses only materials on the Approved List and no others, the pencil company may so attest by signing the document supplied to the chief executive officer for each participating company, as described in Section VII. C. 5.

5. For each year of participation in the program, the chief executive officer of each pencil company participating in the program will certify that their company uses only listed and approved raw materials and/or approved components in all their certified pencils. That company is then entitled to use the PMA mark. The CEO of each component supplier will also certify that their company uses only approved raw materials in components supplied to participating pencil manufacturers use in certified pencils.

6. If a company does not wish to reveal the identity of a raw material supplier or a component manufacturer/supplier, that company thereby becomes a confidential supplier under the program; the member must support coordination by the Association Toxicologist obtaining the names and chemical descriptions of all raw materials and raw material formulations, as described in VII. C. 2., submit them to the Association Toxicologist for approval, and have them added to the "public" list or the "proprietary" list.

D. Lacquer Testing – all lacquers used on pencils which are included in the certification program shall be subject to testing by an independent laboratory to ASTM Standard D3335 "Standard test method for low concentration of lead, cadmium and cobalt in paint by atomic absorption spectroscopy", to ensure that no leaded lacquer, as defined in current regulations under the Federal Hazardous Substances Act., is used on pencils which are certified.

1. The following procedure is applicable to the domestic manufacturer lacquer or the pencil manufacturer submitting the lacquer shaving samples for the testing program:

(a) The supplier will send a "Dried Button" consisting of equal portions of up to 8 lots of individual lacquers for use on pencils to the designated laboratory along with a form supplied by the Association. These buttons

will be sent on a piece of clear plastic film. The lacquer container shall state "Do Not Use Before \_\_Date)\_\_\_." The date shall be determined by adding ten (10) days from the date of manufacturing. The laboratory will complete the results within 5-10 working days from the date received from the supplier. The laboratory will submit all results from testing to the Association on a monthly basis.

(b) If distributing imported pencils, the manufacturer can provide the designated lab with lacquer shavings from each pencil lot tracking of the date received. This is required per lot received by the overseas supplier when testing is being done using shavings.

(c) If the lead content is above 11 ppm for buttons, or 90 ppm for shavings, the laboratory will telephone or email the Association office within 24 hours of obtaining the result (excluding weekends or holidays), which will immediately telephone the supplier and pencil manufacturer. The supplier will then submit separate buttons of each of the lots in the original button to the laboratory for testing. When testing pencil shavings, the same requirement would apply involving another lot of sample being sent to the lab for re-testing.

(d) If a single sample lot of lacquer or shaving is re-tested and is greater than 90 ppm, the laboratory will telephone or email the Association office within 24 hours of obtaining the result (excluding weekends or holidays). The Association will then immediately telephone the supplier and pencil manufacturer to notify them that the sample has an elevated lead value. This lacquer shall not be used on any pencil.

(e) Lists of those lacquers over 75 ppm will be calculated periodically and sent by the Association Toxicologist to all members and associate members.

2. The rate of testing of samples submitted to the designated laboratory will be determined by the Board of Directors in consultation with the Association Toxicologist from time to time.
3. All lacquers used on pencils shall be included in this program for testing purposes including gasket, dipping, stripping and ferrule lacquers.
4. Pencil manufacturers who make their own lacquers are classified as lacquer suppliers for the purposes of this program.
5. Pencil manufacturers shall notify the Association of the names and addresses of all lacquer suppliers they use on pencils under this program.
6. Forms for this program will be prepared by the Association. Such forms will be treated as confidential materials in the nature of a trade secret by the Association and the test laboratory.

E. Heavy Metals Testing – Upon the request of the Association Toxicologist, all participants shall furnish sample pencils of current production for inclusion in any heavy metals testing program as requested.

F. Grant of License – Upon completion of the procedures specified above and for non-members by also paying the required fees, the Association will grant a license for the use of the certification mark.

#### **X.PROCEDURE RELATING TO THE COMPONENTS AND RAW MATERIALS LISTS**

A. To be reviewed by the Association Toxicologist for listing on the Pencil components list, components suppliers, whether or not associate members, shall forward a listing of raw materials included in each component to the Association Toxicologist. The Association Toxicologist may require the submission of additional information from the manufacturer or the supplier or from other sources as many be necessary to his determination that the ingredient is acceptable. Upon such determination that the component is approved for use, he shall notify the Association that the component may be added to the list, and the Association shall expeditiously update its list as needed and advise all program participants.

B. To be reviewed by the Medial Advisor for listing on the "proprietary" components list, the same procedures as above shall be followed by component suppliers and the Association Toxicologist. However, the Association Toxicologist shall be informed, in writing, that the listing of raw materials is confidential in a trade secret manner. When he determines that the ingredient is approved for use, the Association Toxicologist shall place it on the "proprietary" list of ingredients permitted in certified pencils.

#### **XI. USE OF THE PMA MARK:**

A. The PMA mark is a registered certification mark, number 3,359,760, issued December 25, 2007, and shall be depicted as illustrated:



B. The PMA mark may be used by participants in the Pencil Certification Program in the following manner:

1. On cased pencils on which the name or code of their manufacturer is applied;
2. On packages of approved cased pencils;
3. In advertisements and catalogs for cased pencils so long as the PMA mark is used in connection with the advertisement of licensed cased pencils only.

C. When used in a catalog, each participant shall describe the conditions under which the PMA mark may be used substantially as follows:

"The ingredients of cased pencils bearing the PMA mark have been approved by a nationally recognized medical authority, associated with a leading university, and are certified to contain no known toxic materials in sufficient quantities to be injurious to the human body even if reasonable amounts are ingested."

Each licensee may include the following in its catalogs:

"In addition, the PMA mark certifies that cased pencils so labeled do not require acute toxicity labeling under the Federal Hazardous Substances Act, 15 U.S.C. §1261 et seq., (or latest revision) to minimize hazards to consumers from residual surface coatings materials and do not require chronic toxicity labeling under the criteria of American Society for Testing and Materials Standard D 4236-83 for chronic hazard labeling."

D. Permission to use the PMA mark is neither assignable nor transferable except by written authorization from the Executive Director of the Association upon his being assured that pencils so labeled comply with all standards of the pencil certification program.

E. The authority to use the PMA mark automatically terminates in the event that any condition precedent to the granting thereof shall change.

F. The willful unauthorized use of the PMA mark will result in the loss of the privilege to use the PMA mark on any product manufactured by the participant. In order to regain the use of the PMA mark, all products must then be resubmitted for certification.

G. The placement of the PMA mark in an advertisement or catalog must clearly indicate that the said mark applies only to cased pencils which have been certified in accordance with the provisions of this Manual of Procedure.

H. The licensee shall agree to accompany the PMA mark with the symbol R or "reg. U.S. Pat. Off.", or "Registered United States Patent Office."

I. From time to time, a participant will furnish catalogs and /or packages bearing the PMA mark for review.

## **XII. TERM OF LICENSE AND CONDITION OF RENEWAL**

A. PMA Licenses for members are issued every five years in accordance with the WIMA Bylaws, and remain effective so long as the pencil manufacturer continues to use only approved components and/or raw materials.

B. PMA Licenses for non-member participants are issued for a one year term and the use of the PMA mark is limited to the non-member participant.

### **XIII. INCIDENTAL TESTING OF PRODUCTS BY THE ASSOCIATION**

- A. The Association, or the Association Toxicologist, may at any time test and evaluate any cased pencil sold under the PMA mark. In such case, the Association, or Association Toxicologist shall:
1. Notify the manufacturer of said pencils that tests are to be made, and;
  2. Provide an opportunity to the manufacturer to submit within ten days of receipt of notification, any facts or information which the manufacturer believes should be considered in connection with such test.
- B. If an analysis of any product sold under the PMA mark shows a failure to comply with the specifications of the PMA mark program, the manufacturer of such product or products shall be notified, and shall be given an opportunity to furnish to the Association and its Association Toxicologist satisfactory evidence that current deliveries of all its products bearing the PMA mark do comply with specifications of the Pencil certification program.
- C. In the event that said manufacturer fails or neglects, within thirty (30) days from receipt of such notice to furnish such satisfactory evidence, its license to use the PMA mark with reference to the cased pencils in question shall be cancelled by written notice duly mailed by the Executive Director of the Association to said manufacturer.
- D. In the event the Association is required to release a transcript of the laboratory report on said pencils to any governmental authority, or any other person, the Association shall forward a copy of such report to the manufacturer ten working days prior to such release.
- E. The Association's Toxicologist, with the assistance of the Executive Director, shall cause random tests and evaluations to be made of any pencils licensed under the program.

### **XIV. EMERGENCY PROCEDURES FOR REVOCATION OR LIMITATION OF CERTIFICATION RELATING TO TOXICITY:**

- A. Situation Presenting Perceived Risk of Public Injury:
1. If, in the opinion of the Association Toxicologist, new medical/toxicological evidence indicates that the Association certification mark or certified label is inappropriate and presents a measurable risk of public injury (and particularly injury to children) as a result of reliance upon the continued use of any Association certification mark or certified label, the Association Toxicologist shall promptly:
    - (a) Notify all members whose products bear the mark or certified label.
    - (b) Schedule a meeting to consist of members of the Certification Committee, other representatives of affected companies, and such other entities as may be deemed interested to consider what actions are appropriate or necessary which may include:



- (1) Notification to the Consumer Product Safety Commission.
- (2) Notice to the public through the most expedient channels of communication.
- (3) Immediate license revocation.
- (4) Other appropriate action

2. Any member or other interested person may pursue an expedited appeal to the Toxicological Advisory Board from any such determination or pursue other appropriate legal remedies at its option.

**B. Other Circumstances:**

1. If, in the opinion of the Association toxicologists, new medical/toxicological evidence indicates that any Association certification mark or certified label is no longer appropriate, but does not present a measurable risk of public injury as a result of reliance upon the continued use of any Association certification mark or certified label, the Association Toxicologist shall promptly:

(a) Notify all members whose products bear the mark or certified label.

(b) Schedule a meeting if it appears necessary or communicate by other appropriate means with members of the Certification Committee, other representatives of affected members, and such other entities as may be deemed interested to consider what actions are appropriate or necessary which may include:

- (1) Notification to the Consumer Product Safety Commission
- (2) Notice to the public through the most expedient channels of communication.
- (3) Immediate license revocation.
- (4) Phased withdrawal of the mark or certified label.
- (5) Additional labeling as appropriate.
- (6) Other appropriate action.

2. Any member or other interested person, may pursue an expedited appeal to the Toxicological Advisory Board from any such determination or pursue other appropriate legal remedies at its option.

**XV. STANDARDS POLICIES:**

It is the policy of the Association to employ the procedures of nationally recognized voluntary standards developing bodies for the development of standards for pencil products rather than to rely solely upon the resources of this industry. The Association may adopt nationally recognized

voluntary standards insofar as they may relate to pencil products, may draft voluntary standards to be submitted to such nationally recognized standards developing bodies to achieve a broad consensus of their acceptability. In addition, the Association may adopt as standards of its certification program recommendations received from the Association Toxicologist, or the Toxicological Review Board, which may not be suitable for adoption as a national voluntary standard by virtue of their applicability solely to this industry.

#### **XVI. APPEAL PROCEDURES:**

A letter in writing shall be sent to the Executive Director of the Association and shall state the basis of the appeal.

A. If the appeal relates to matters of toxicity, it shall be referred to the Association Toxicological Advisory Board (TAB) of its determination of the matter based upon its special expertise. The record of proceeding relating to the appeal shall be furnished to the TAB for its review.

The TAB, through the Association's Executive Director, shall set a date and place for a hearing if requested by the appellant. The hearing shall be open to all interested persons or participants in the proceeding for their attendance.

Prior to the hearing or at the hearing, TAB may request comments from any source it considers to be advisable to assist in the resolution of this dispute, including advice from any governmental agency.

Following the hearing or if no request for a hearing has been made, the TAB shall rule upon the matter and its written determination shall state its basis.

B. Any appellant who appeals under the provisions of Section 1 or 2 above may, if it so chooses, be represented by counsel employed by it for that purpose in the proceeding.

C. Nature of the Appeal – The appeal proceeding shall be completed within a reasonable length of time and so far as practicable will be of an informal nature. The rules of evidence applied in judicial proceedings shall not be applicable.

D. Time for Appeal Proceeding – Any aggrieved person may, within a reasonable time following action in connection with a certification determination, notice an appeal. Upon receipt of the letter communication relating to an appeal, the Association shall have two months in which to establish a date for a hearing if one has been requested. If no hearing has been requested, the appeal proceedings shall be completed to include a determination by either the TAB or appeals board within 90 days. From the date of a hearing, a determination will be made within 60 additional days from the date of hearing.

#### **XVII. CANCELLATION:**

A. Any license agreement issued under this program may be cancelled and terminated by either party without case upon three (3) months' notice in writing to the other by certified or registered mail, or by mutual consent.

B. In the event that a notice of cancellation is sent to a participant, such cancellation shall be effective with respect to all pencils manufactured by that licensee.

C. The license agreement shall provide that upon cancellation of the license, pencils and packages bearing the PMA mark shall not be distributed, and thereafter the mark shall not be used on any additional production or material.

D. The license agreement may be cancelled by the Association if the participant is in default in payment, or fails to comply with any other substantial provision of the Manual of Procedure.

#### **XVIII. AMENDMENTS:**

This Manual of Procedure may be repealed, amended or suspended at any time upon 80% vote of the Board of Directors of the Association.

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