

Public Submissions  
Application of Third Party Testing Requirements;  
Reducing Third Party Testing Burdens  
CPSC Docket No: CPSC-2011-0081  
Comments due by – January 23, 2012

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# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0002

Comment from Randall Hertzler

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## Submitter Information

**Name:** RANDALL HERTZLER

**Address:**

LANCASTER, PA,

**Organization:** HANDMADE TOY ALLIANCE

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## General Comment

See attached file(s)

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## Attachments

HTA Reducing Testing Burdens Issue 5



January 9<sup>th</sup>, 2012

Office of the Secretary  
United States Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

## **Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens**

### **Overview**

The Consumer Product Safety Improvement Act (CPSIA) drastically changed the landscape for retailing specialty toys and children's products in the United States. It has become an arduous journey through a morass of regulations and a fight to survive. Instead of plentiful options for filling store shelves, supplies of unique specialty products have withered away.

At the same time, there is a growing group of consumers who prefer durable toys that cater to a child's imagination and creative ability. Rather than entertain, handmade specialty toys encourage exploration, stimulate creativity and problem solving, promote playing together with others and allow growing confident at the child's own pace. But these toys are not readily available in the aisles of Wal-Mart, Target and Toys R Us. You must seek them out in independent specialty toy shops.

Specialty toys are sold at several hundred independently owned toy stores all across the US. Generally, the inventory for these stores comes from three sources:

1. toys from Europe and Canada produced in small batches,
2. domestically manufactured toys produced in small batches,
3. and to a much lesser extent – toys produced in larger quantities both in the US and abroad.

The CPSIA negatively affected two of three supply sources for specialty retailers, tilting the market for children's products in the US to favor mass-produced products. This market tilt caused many specialty toy stores to close or alter and rescale their businesses<sup>1</sup>. In turn, consumers are thwarted when choosing to encourage play, and children are more likely to be entertained by a toy that soon loses its value.

Independently owned specialty toy stores are economically viable only because they differentiate themselves from mass market retailers selling children's products mass-produced in the Far East. Providing unique and distinctive children's products affords specialty retail opportunity and a reason to exist.

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<sup>1</sup> See listings in Appendix



The Handmade Toy Alliance (HTA) represents these specialty retail stores and they comprise 25% of our membership. We also represent those who import and produce European and Canadian small batch items.

### **The European Union and Canadian Predicament**

Certainly there are small batch toy manufacturers all over the world, but by-and-large, those that supply specialty toy stores in the US are 2<sup>nd</sup> tier manufacturers concentrated in Canada, and the European Union (EU). Canada and the countries that make up the EU already have stringent toy regulations in place:

**Canada** – Hazardous Products Act (HPA) and the new Canada Consumer Product Safety Act (CCPSA).

**European Union** – EN-71 European Toy Safety Standard and the recent Directive 2009/48/EC.

Each of these toy safety standards shares some commonality with the US CPSIA and ASTM F963 standard. But because there is no harmonization and the standards are not identical, 2<sup>nd</sup> tier small batch manufacturers are forced to perform multiple additional tests. The economic burden of additional tests required by the CPSIA makes it extremely difficult to economically bring these products to market in the US. Many small batch toy suppliers from the EU have been forced to cease exports to the US or limit the number of products they export<sup>2</sup>. It is not that the products these companies produce are not safe, but that the economics of compliance with the CPSIA are unaffordable when added to the already existing compliance costs within the home jurisdiction.

Typical testing costs for compliance and certification to EN-71, the European Union toy safety standard, range from \$1,000 to \$3,000 per product. The additional costs for third party testing for certification to the CPSIA range from \$750 to \$2,500. When manufacturing batch quantities that are typically less than 500, the amortization of these costs results in price increases that cannot be borne by the manufacturer, the importer, nor the consumer.

Yet these small batch toys and these countries have not been the source of unsafe products in the past. The safety record of small batch toys produced in Europe and Canada is exemplary. CPSC's own recall data show no recall activity from these jurisdictions or from any small batch manufacturer in 2011. In the past four years, out of 155 recalls for toys, only 2 have been from the European Union or Canada and neither of those from a small batch manufacturer. We must go all the way back to 1999 to find a recall from a small batch manufacturer in the EU or Canada. A simple analysis indicates that the vast majority of recalls are of toys and children's products mass-produced in the Far East.

### **The H.R.2715 Solution**

For three years, the Handmade Toy Alliance worked on Capitol Hill for a legislative fix for these unintended consequences from the CPSIA. This culminated in the passing of H.R.2715 in August which has provisions that are a direct outgrowth of our work.

Specifically, attempts at legislative relief for the international small batch supply chain appear in two sections of the Consumer Product Safety Act (CPSA) as amended by H.R.2715:

- first, section 14(d)(3)(A)(v) under *REDUCING THIRD PARTY TESTING BURDENS*,
- and second, 14(d)(4)(A)(iii) under *SPECIAL RULES FOR SMALL BATCH MANUFACTURERS*.

The driving force behind this language was the lobbying effort of the HTA for the restoration of small batch supply from 2<sup>nd</sup> tier manufacturers within Europe and Canada.

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<sup>2</sup> See listings in Appendix



The CPSC excluded an opportunity for relief when they stated that the *RULES FOR SMALL BATCH MANUFACTURERS* apply to both the importer and the physical manufacturer who exports to the USA. The main difficulty is the revenue cap of one million dollars. Any company on another continent that has revenue of less than a million dollars will not even consider exporting because they are simply too small to be looking for markets on other continents. The 2<sup>nd</sup> tier small batch manufacturers that formerly supplied specialty retail in the USA operate between five and 50 million dollars of revenue. The CPSIA significantly reduced their ability to be economically viable by requiring redundant third party tests. To date, H.R.2715 and CPSC rulings continue to keep them from US markets by requiring them to be miniscule in size.

### Routes for Relief

It is possible for *RULES FOR SMALL BATCH MANUFACTURERS* to be useful for relief in this situation. The rule for definition of a small batch manufacturer should apply to either the US based importer (manufacturer of record) or to the foreign physical manufacturer, but not to both. This allows small importers or independent retailers to bring 2<sup>nd</sup> tier products to the US and goes a long way towards restoring access to safe, already tested toys and children's products.

Another route to restore access for 2<sup>nd</sup> tier international small batch manufacturers is CPSA section 14(d)(3)(A)(v) under *REDUCING THIRD PARTY TESTING BURDENS*. This is outside the small batch provisions of H.R.2715 and provides a route for relief in a broader context. Specifically, this section allows the CPSC to consider how "evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations."

The CPSC should recognize as sufficiently similar the toy safety standards of countries that have correspondingly rigorous safety standards in place in combination with exemplary safety records. Allow 2<sup>nd</sup> tier international small batch manufacturers to certify to CPSIA based on evidence of existing tests to these sufficiently similar safety standards. This in no way compromises safety of children's products, and in fact utilizes a route to relief that was specifically provided by congress for this very purpose.

These are two excellent opportunities to restore the diversity and vitality that once existed in the marketplace provided by specialty children's products.

### Conclusion

Independently owned specialty toy stores help to ensure diversity and enhance consumer choice in the children's product marketplace. Toys sold by these retailers have proven to be safe and encourage and stimulate a child's imagination and provide alternatives to mass produced toys that simply entertain. But supplies of these items from 2<sup>nd</sup> tier manufacturers within the EU and Canada have excluded from the US marketplace.

Requiring these 2<sup>nd</sup> tier manufacturers who already test to tight standards, to retest, and absorb the costs, just to enter the US causes economic hardship for retailers, importers, and manufacturers and does nothing to improve safety. The end result is fewer toy shops, less jobs, and limited choice for consumers in the US looking for specialty children's products. In effect, the CPSIA compels these consumers to choose mass produced products. Ironically, it is safety issues with these products that birthed the CPSIA.

Make an impact on the plight of many small businesses in children's products – providing opportunity rather than misfortune – by using provisions within H.R.2715 to:

- apply the rule for definition of a small batch manufacturer to either the US based importer (manufacturer of record) or to the foreign physical manufacturer, but not to both,

The Handmade Toy Alliance



- accept sufficiently similar international toy safety standards as an acceptable means for certification to the CPSIA,

and restore the former vitality of the specialty toy retailing market in the United States.

Respectfully,

Randy Hertzler,

Vice President of Handmade Toy Alliance Board of Directors – [www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)

President euroSource LLC – [www.eurosourceinc.com](http://www.eurosourceinc.com)

Dan Marshall – President, Board of Directors

Jolie Fay – Secretary, Board of Directors

Mary Newell – Treasurer, Board of Directors

Jill Chuckas – Board of Directors

Marianne Mullen – Board of Directors

Adam Frost – Board of Directors

Rob Wilson – Board of Directors

Lori Taylor – Board of Directors

CC:

Congressman Joe Pitts

Senator Robert Casey

Senator Pat Toomey



## Appendix

### Partial List of Retail Businesses Altered or Closed Due to CPSIA

A Cooler Planet – Chicago, IL	Mahar Dry Goods – Santa Monica, CA
A Kid’s Dream – Conway, AK	Moon Fly Kids – Las Vegas, NV
Attic Toys – Naples, FL	Nova Naturals – Williston, VT
Baby and Beyond – Albany, CA	Obabybaby – Berkley, CA
Baby and Kids Company – Danville, CA	OOP! – Providence, RI
Baby Sprout Naturals – Fair Oaks, CA	Oopsie Dazie – South Jordan, UT
Bellies N Babies – Oakland, CA	Phebe Phillips, Inc. – Dallas, TX
Black Bear Boutique – Portland, OR	Red Rock Toys – Sedona, AZ
Creative Hands – Eugene, OR	Storyblox – New Vienna, OH
Curly Q Cuties – Texas	Sullivan Toy Co. – Jenks, OK
Due Maternity – San Francisco, CA	The Green Goober – Mineapolis, MN
Eleven 11 Kids – Santa Rosa, CA	The Kids Closet - Rochester, IL
Essence of Nonsense – St. Paul, MN	The Learning Tree – Chicago, IL
euroSource LLC – Lancaster, PA	The Lucky Pebble – Kailua, HI
Fish River Crafts – Fort Kent, ME	The Perfect Circle – Bremerton, WA
Gem Valley Toys – Jenks, OK	The Wiggle Room – Slidel, LA
Hailina’s Closet – Ellensburg, WA	Toy Magic – Bethlehem, PA
Honeysuckle Dreams – Rockville, MD	Toys From The Heart – Royersford, PA
Kidbean – Asheville, NC	Urban Kids Play – Seattle, WA
Kungfubambini.com – Portland, OR	Waddle and Swaddle – Berkley, CA
LaLaNaturals.com – Bellingham, WA	Whimsical Walney, Inc. – Santa Clara, CA
Lora’s Closet – Berkley, CA	Wonderment – Minneapolis, MN
Magical Moon Toys – Logan, UT	Wooden You Know – Maplewood, NJ

### Partial List of 2<sup>nd</sup> Tier Small batch Manufacturers within EU Limiting or Ceasing Export to the USA due to the CPSIA

Bartl GmbH dba Wooden Ideas – German	Joal – Spain
Brio – Sweden	Kallisto Stoftiere – Germany
Castorland – Poland	Kathe Kruse – Germany
Dettoa – Czech Republic	Keptin-Jr – The Netherlands
Eichorn – Germany	Kinderkram – Germany
Erzi – Germany	Margarete Ostheimer – Germany
Finkbeiner – Germany	Nic, Bodo-Hennig – Germany
Glückskäfer Kinderwelt – Germany	Saling – Germany
Gollnest & Kiesel KG (GOKI) – Germany	Selecta Spielzeug – Germany
Grimm’s – Germany	Siku – Germany
HABA – Germany	Simba – Germany
Helga Kreft – Germany	Woodland Magic Imports – France
Hess – Germany	



**European Manufacturer Letters**

**Andrea-Kathrin Christenson**, Managing Director, **KK Produktions - und Vertriebs GmbH (Käthe Kruse)**, Donauwörth, Germany

**Matthias Menzel**, Managing Director, **Selecta Spielzeug AG**, Edling, Germany

**Manfred Käfer**, Managing Director, **Käfer & Partner GmbH - Glückskäfer Kinderwelt**, Reutlingen, Germany

**Detlef Schülingkamp**, Sales Manager, **Büngern-Technik - fagus Holzspielwaren**, Borken, Germany

**Sven Grimm**, Managing Owner, **Grimm's GmbH**, Hochdorf, Germany

# Käthe Kruse

KK Produktions - und Vertriebs GmbH  
Alte Augsburgerstr. 9  
86609 Donauwörth  
Deutschland

May 24<sup>th</sup>, 2011

Käthe Kruse - a company founded 100 years ago has been known for making handmade dolls and baby toys around the world. Our Vision is to offer handmade toys to babies and children that are made with the love and care to detail as every mother would love to make them. Tradition in the making means for us to carry safety, trust, lifestyle and values into the future.

Our toys are tested according to the current regulations from the EU - EN 71 respectively. The EU has stringent toy regulations in place and thus already means a significant economic burden for a small company. The additional testing required by the regulations in the USA makes it extremely difficult to economically bring these products produced in small quantities to the market in the USA. This has already resulted in limiting the export of toys to the USA even though the products are safe.

Käthe Kruse toys encourage children's imagination, fantasy and creativity. We put all our love and experience into the elaborate making of our dolls and toys. Käthe Kruse offers over 1000 SKUs, of which many are only produced in small batches as low as 200 pieces.

Käthe Kruse toys is one of the manufacturers providing these kind of toys necessary to the independent specialty retailer. Ever since August 2008 we have seen this group of retailers struggle to find the appropriate toys, as many of the foreign toy makers have been forced to cease exports due to the mentioned reasons.

We therefore suggest accepting the current regulations from the EU, and thus allow companies that make handmade toys in small quantities to export to the USA. It will result in diversity for both consumers and retailers.

In case of any further questions we are happy to support more details.

Sincerely yours,  
Andrea Christenson  
Owner and Managing Director



Selecta Spielzeug AG  
Römerstraße 1  
83533 Eding

Handmade Toy Alliance

Telefon (0 80 71) 10 06-0  
Telefax (0 80 71) 10 06-40

MenzelM@selecta.ag  
<http://www.selecta-spielzeug.de>

Ihre Zeichen/Ihre Nachricht vom	Unsere Zeichen/Unsere Nachricht vom	Durchwahl	Datum
	Vorstand Matthias Menzel	+ 49 (0) 80 71-10 06-79	25.05 2011

### CPSCIA and possible changes

Dear Members of the Handmade Toy Alliance,

We really appreciate your efforts to give us as a small manufacturer from Europe a voice in the discussion around CPSCIA

We were selling our toys, around 200 different items for babies and children between 0 and 5 year for more than 10 years into the US. Each individual item was sold with a total year quantity of around maximum 2.000 units per item (a lot of items with less than 500 units per year) in the US. Our total export volume with specialty toy stores was around 250 000 \$ - since the CPSCIA we stopped our export to the US market.

We are very sorry with the retail stores, who are losing that business, especially because there is no obvious safety issue with our decision involved.

Our toys fulfill the European safety standards, which are sufficient enough to ensure child's safety but they are different in several testing methods and therefore using different maximum allowed levels for example for lead.

As our toys are voluntarily tested from an European accredited laboratory in Germany (there is no law in Europe which forces third party testing) according to the European safety standards, we cannot also effort to spend testing cost for another third party, which is allowed to do CPSCIA.

Also due to our small batch production, which is done in our own plant here in Germany, we cannot track the production date for each single component produced to be used in our toys. So the necessary marking of products with the production date is impossible. We are not a mass market producer, who produces and exports within one container thousands of toys of one production batch.

The cost for testing for us is now around 50.000 Euro for testing according to the EN 71, and we would have to spend another 30.000 Euro for the US-regulation testing – and we cannot afford that.

So any change, which allows us to export our products with third party testing according to the European EN71, done by a test lab who is accredited within Europe, and we would be back on your market.

We wish you all the best and success for your way,

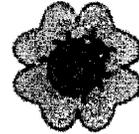
Best regards

Selecta Spielzeug AG

Matthias Menzel  
Vorstand  
Managing Director

Vorstand: Matthias Menzel, Aufsichtsrat: Prof. Dr. Wolfgang Buchholz (Vorsitzender)  
Registergericht: Traunstein HRB 13063

Glückskäfer  
SPIELEN



Glückskäfer

25 May 2011

To whom it may concern

The heirloom quality toys from Glückskäfer have been carefully designed and manufactured for use by children for generations since its founding over 60 years ago. The toys purchased from Glückskäfer will support a child as it grows through the developmental stages. They are found in classrooms and playrooms throughout the world, many have been awarded the coveted German "Spiel Gut" (Good Toy) award.

Our dedication to the highest quality goes beyond design and manufacturing to safety and the use of the finest materials sourced in Europe and other reliable sources. Our materials and production procedures meet or exceed the European safety and quality standard for baby and child products. All items are XRF tested and certified.

Because of the special high range character of our toys we produce SKU's in batches of 50 to 1,000 pieces. Such conditions of manufacturing will make any type of third party testing prohibitive and impossible.

Over the past years the demand in the US market for our products has greatly increased. There is a new understanding from the consumers that there are alternatives to mass produced disposable toys just designed to make extended and fast financial profits instead of focusing on giving children maximum value for their healthy holistic development.

If the CPSIA continues unamended the consequences for children will be that these specialized toys with high playing value will disappear from the US market, with all consequences for the individual growth and impacts on the further development of our civilization.

The European Union has also recently tightened their regulations in terms of banned toxins and production line oversight, traceability that easily meets or exceeds the CPSIA standards.

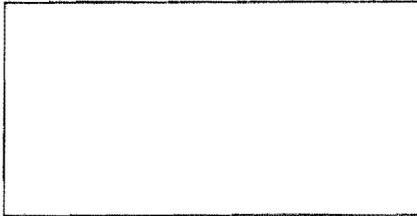
If you have any further questions we would be happy to answer them.

Sincerely yours

KÄFER & PARTNER GMBH

Manfred Käfer

Anerkennung Werkstoff für Menschen  
mit Behinderungen gemäß § 142 SGB IX



25.05.2011

**fagus**<sup>®</sup>

SPILLEUIG AUS HOLZ - WOODEN TOYS - JOUETS EN BOIS

fagus has produced the highest quality of wooden trucks and cars by hand for 30 years. The company is founded on basis that only the highest quality of materials, workmanship and quality control are to be used in making children's toys; we believe passionately that children should play with the best!

Our wood is certified German forested wood, all of our parts are independently certified and all vehicles for the past 20 years have been tested to EU EN71 by the independent Testing Company TÜV Nord. Since this is not a certified CPSC testing facility (of which they are only very few in Germany) we would have to undertake a retesting to CPSIA standards which would be completely impossible financially for us and would make it impossible to serve the US Market. We produce 57 SKU's in batches of less than 1000 per piece.

We have over the past years found a demand in the US market for our toys, as parents turn from mass produced to handmade and high quality. They have confidence in the high standards demanded by law in Europe and the natural materials used to build our trucks and cars.

We urge you to consider the EN71 as an alternate and complementary standard. This will ensure that consumers continue to have access to a wide variety of special toys and not just those of the mass produced variety.

Warmest regards

**Büngern Technik**

Mr. Detlef Schülingkamp  
Sales manager



Träger: Käseverband für das Gebiet Bochum e.V.  
Friedhof 34 - 46109 Bochum - Tel. 02871/25130  
Fax: 02871/251323 - info@kaese-bochum.de - www.kaese-bochum.de  
Verkehrsamt, D-46109 - Amtsgemeinschaft



To whom it may concern

2<sup>nd</sup> of May, 2011

### **CPSIA requirement for small batch manufacturer**

Dear Sirs,

Grimm's is a small wooden toy manufacturer based in Germany. All our products are manufactured in Germany in small batches. We have 500 different SKUs and each one of them does not exceed 5.000 pieces manufactured and sold per annum.

All products are tested to EN 71 and our quality is constantly controlled throughout production to make sure, we do fulfil those requirements not only during certification, but throughout whole product life cycle.

It takes an enormous amount of time and money to comply with the European EN 71 regulation.

The CPSIA standards are a lot like the EN 71 requirements, which we already do fulfil. All the components we use are tested and certified to EN 71 and CPSIA standards.

But even though they, we are asked to test all our products again to CPSIA standards.

For a small wooden toy manufacturer like us, it is very hard to spend time and money for this double effort.

I am afraid, that if the CPSIA requirements stay as they are right now and if there will be no relief or simplification for small batch manufacturers like us, we need to consider whether we can still afford to sell our products in the US.

This really would be a shame and I am convinced that hundred and thousand US fans of our products would be totally disappointed and they would loose a source for good, creative toys made from sustainable resources.

Actually the CPSIA requirements, as they are today, do exactly the opposite of what the original intend was. They drive the small businesses, which always were able to control quality, because everything was local, out of business. Where on the other hand, bigger companies, who started those quality issues by importing from poor quality manufacturers in Asia, they can afford to have all this expensive testing done and they stay in business.

I ask everyone involved in this, for the future of good and valuable toys for American children, to reconsider and change the CPSIA requirements for smaller businesses.

Sincerely,

# PUBLIC SUBMISSION

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Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0003

Comment from Darryl Sackmann

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## Submitter Information

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**Submitter's Representative:** Darryl Sackmann

**Organization:** Woodworkers Guild of Western Colorado

**Government Agency Type:** Local

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## General Comment

As president of a Woodworkers Guild of Western Colorado and representing the guild I find that Third party testing to be cost prohibitive. Every year starting in 2006 the guild makes about 300 seperate wood toys for distribution at Christmas time to local charities. Toys for Tots and others. If a approved or acceptable MSDS is applicable to the toys we as a group make including any glue or finish why is it necessary to continue with the expense of a third party testing function. This rule will put us out of the toy making process and will effect the local charity organization in a big way.

There has to be a better way.

How do I become a third party tester and or where do I find a third party tester to determine what the cost would be???

# PUBLIC SUBMISSION

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Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001  
Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0004  
Comment from Richard Woldenberg

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## Submitter Information

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**Organization:** Learning Resources, Inc.

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## General Comment

See attached file(s)

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## Attachments

Comment Letter on Testing Procedures (1-15-12)

January 15, 2012

Todd A. Stevenson  
Director, Office of the Secretary  
Room 502  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

Agency: Consumer Product Safety Commission (CPSC)

Re: Docket No. CPSC-2011-0081 Application of Third Party Testing Requirements;  
Reducing Third Party Testing Burdens

Dear Mr. Stevenson:

I am hereby submitting comments in response to the Solicitation of Comments on Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens (Docket No. CPSC-2011-0081) published in the Federal Register on November 8, 2011 (the "Proposed Rule").

**Background: Another Weekend Wasted . . . .**

The subject of how to reduce costs associated with testing Children's Products under the CPSIA has been on the table for four years now. Considerable effort has been devoted by the regulated community to communicate ideas to the CPSC and Congress on cost reduction and alternative ways to think about testing and its role in safety administration. The agency has held numerous hearings and seminars for this purpose and endlessly solicited public comment as required by law. I have personally submitted so many comment letters that I have lost count. I have also testified before Congress twice and as part of CPSC panels at least five times (each time at the invitation of the CPSC). To date, the parties controlling the CPSC have shown absolutely no sympathy for or interest in my views, although the agency aggressively sought my feedback during this entire process, even pleading with me to testify at the hearing on implementation of the 100 ppm lead standard - only to then ignore my testimony. After all, I disagree with them, so why pay attention?

After four years of this, I have come to understand that my role in this process is to legitimize preordained political decisions (regardless of the cost or consequence to our society) by lending credence to the CPSC's public relations-oriented "fact finding" effort. If the agency "considers" my contrary views and rejects them, it can claim to have performed its public function as finder of fact and administrator of justice. I am so pleased to have a role in the sham!

In submitting these comments, I realize that this is a hopeless effort, that the agency's interest in actual dialogue with the regulated community is nil. Still, the recent past has proven that there is great peril in opting out of even a sham process. Silence has been deemed "consent" by the same parties who will ignore

these comments. Heads you win, tails I lose. In any event, to preserve a public record of my objections, I have committed to wasting yet another weekend to prepare these comments for you.

### **Costs, What Costs?**

The financial perils of your new rules to companies like ours are obvious and well-known. Even you cannot deny what you have wrought. The cost to comply with your withering and pointless rules is obscene. It is not possible to recover these costs from consumers. Publicly-available data on inflation indicates that even as the federal government prints money with abandon around the clock, prices are not rising. It is not possible as a practical matter for us to raise prices by 10% or more simply to pay for your wasteful ideas on how to make the world "safe". These costs come out of our pocket.

At our company, we have budgeted an incremental \$900,000 for compliance cost increases in 2012. This comes on top of cost increases since 2007 of approximately \$1.1 million per annum. The projected cost increases to date take into account our successful effort to mitigate costs through operational efficiency, competition and supply chain management. As you know, since you know our company and its record well, we have had only one (minor) toy recall since our founding, and we recovered more than the 130 pieces recalled. This recall resulted from a lead-in-paint violation involving only one component in a kit, and was identified during routine testing of our inventory according to our then safety administration procedures. There have been no lead injuries associated with our products EVER.

The additional \$900,000 you are compelling us to spend in 2012 will not make anyone safer – because they were already safe. Our superb safety record was built on the basis of our understanding of our products, our customers and our market and was achieved without the CPSC's able assistance or supervision. The additional money will not add ANYTHING to our know-how. It's pure unproductive government waste. Thanks so much for your help.

We consider these cost increases permanent. Thus, we suffer these takings not just in 2012 but every year, over and over and over again. Your rules take away more than \$2 million from our business annually. *The present value of these expenses exceeds \$20 million.* That's a lot of destruction of value, to say the least. Now I understand what Ronald Reagan meant when he said "The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help.'"

I seriously wonder if government bureaucrats and politicians actually understand what this means to us. To people like you who have no responsibility (or risk) associated with earning \$2 million every year to pay for your scheme, the problem must seem so "abstract". Out here in the real world, however, this money means something. To fund your scheme, we have to terminate productive jobs, forego business opportunities, exit markets, reorganize our business units and abandon (in part or in whole) the children that are our mission. For what? We throw away this

money (along with the killed jobs, products discontinued, markets abandoned and opportunities foregone) simply to follow your bureaucratic rules as a good corporate citizen – the expense cannot be justified to bolster our sterling safety record or achievements. You have already wrecked this business and countless others through inattention to data, indifference to comments and by your raw political fanaticism.

Now you raise the question of cost reduction again, as though it just occurred to you. Since you have raised that question repeatedly for four years and done nothing to help despite screams of agony from the regulated community, it is hard to take this exercise seriously.

### **The CPSC's Obsession over "Ensuring" Compliance.**

In this request for comments, the CPSC asks for comments on several issues. I should note that I cannot shed much light on some of these issues for various reasons which I will share below. Fundamentally, however, it is hard to provide you with cost reduction ideas that you are likely to accept because you apparently equate the concept of "ensuring" compliance with "guaranteeing" compliance. The cost of a "guarantee" is very high. Has anyone at the CPSC given any thought to what you want us to pay for that "last mile"? I know this is antithetical to your thinking, heaven forbid, but have you ever attempted to tote up the actual BENEFITS that correspond to the costs associated with elevating safety from ensured to guaranteed? The notion of riskless products flies in the face of reality and economics, but heck, you're the government. We know you'll never get it – you print your own money.

If you require a guarantee of "safety", then every shortcut potentially opens up the possibility for "bad" outcomes. The CPSC's apparent strategy to compensate for perceived testing loopholes by making the rules longer and more complex leads to requests for comments like this one, requesting ideas that will inevitably make ornate rules more byzantine and difficult to understand or administer in order to rule out theoretical problems.

The agency's obsession over "ensuring" testing compliance presumably motivated its publication of the Small Batch Manufacturer registry, which discloses the identity of micro-businesses that registered as "non-testers" as permitted under ECADA (presumably to save their businesses from the expensive new regulatory scheme). [<http://www.saferproducts.gov/SmallBatchManufacturers/SBMPublicList.aspx#>] This list of micro-businesses never had to be made public under the terms of ECADA, but the agency misleadingly implies that it was compelled to do so (CPSC December 23, 2011 press release: "Today, CPSC is launching an easy-to-use registry for small batch manufacturers, which can be found at [www.SaferProducts.gov](http://www.SaferProducts.gov). Congress directed CPSC to establish this registry for small batch manufacturers in Public Law 112-28, which was signed into law by President Obama on August 12, 2011"). Think of this as the CPSC's version of the Sexual Predators Registry. Clearly the public must be warned about these tiny businesses lest anyone unknowingly choose to support them with trade. Shame on you for

taking this step. Notably, the CPSC website shows no registrations as of today. Either these companies are leaving the industry or hiding from you. Good for them.

Particularly puzzling is the agency's obsession over cheating. I could appreciate this concern more if there was a long tradition of corporations cheating on CPSC rules. In fact, the opposite has proven true. Corporations are not "bad" by nature, but they do sometimes excel at incompetence. The solution to this problem has been demonstrated, namely a publicity campaign and a renewed investment in education as took place in 2008-2009. Look at the results over the past four years – most improvements in recalls took place BEFORE the CPSIA's new requirements were implemented. Can we draw any conclusions from that data?

Much of the complexity built into your testing rules is designed to make cheating harder. Unfortunately, those few people intent on cheating don't care about your rules by definition. That's why we call them cheaters. So who bears the brunt on your ornate system of rules? The people who WANT to comply. You are punishing the many with complexity and cost for the (purported and imagined) crimes of the few. Ironically, these rules will likely have no impact on people who intend to cheat but will make it much harder to identify them. No one can understand the complex rules (even this simple request for comment requires multiple readings), so compliance is going to be poor. We will all look like "cheaters" particularly when you turn to the task of "enforcing" (persecuting).

By emphasizing the testing process over safety outcomes, paperwork has become the object of all "good" CPSC-approved safety programs. Interestingly, this blind faith in testing as a means of eliminating violations ("ensuring" compliance) is no guarantee of consistent safety results. At a recent ICPHSO panel discussion, the representative of a famous company making home appliances admitted that EACH of its recent recalls was for product that had been independently tested and which complied with law. Get it? Recalls can and do occur on products that fully comply with your rules. Nevertheless, under your rules we are forced to spend mountains of money testing product known to be safe – this will not reduce injuries or make anything safer (except the balance sheets of Chinese testing companies). The basic philosophy of the rules will not achieve the "assured" safety result desired but it is an effective political expedient. It looks good in newsprint.

Even though it is clear that we know our products, our customers and our markets far better than you, and have the record to prove it, you nevertheless insist on telling us precisely how to run our businesses and dictating how to spend our time and money. [For instance, I recall a CPSC staff member gratuitously instructing bicycle manufacturers on which steel alloy would be suitable for bicycle frames during the 100 ppm hearing. The staff member indicated that he had found the alloy referenced in a book . . . .] You do not have sufficient expertise in our businesses to even EVALUATE whether we know what we're doing – but you can look at our achievements and know that we have been highly effective. [How many bicycle injuries in the United States relate to lead over the past decade, as opposed to broken limbs or skinned knees? Do these companies really need your advice on how to make their frames?]

You have rejected the most obvious way to cut costs for regulated companies – let companies with solid safety records self-administer. Your rules can stand as a safe harbor. I know you will reject this comment as you have in the past.

By twisting “ensure” into “guarantee”, you have framed the cost savings question in such a way that no possible relief can be crafted. Having deemed that “ensure” means prove in a prophylactic way, we are not afforded the opportunity to craft a logical argument that manufacturers know what they’re doing UNDER ANY CIRCUMSTANCES. Our company’s multi-decade track record of being a good corporate citizen means NOTHING to you as you have framed the question. Your testing rules do not consider safety track record, demonstrated manufacturing know-how, good safety processes or supply chain management techniques as empirical “assurances” of compliance, thus ruling out any commercial advantage through innovation or operational excellence. We earn no more or less consideration under your rules than Children’s Product companies you have pursued with injunctions, heavy fines or even criminal actions. In the eyes of your rule, we regulated companies are one and the same, guilty until proven innocent. It hardly matters that it isn’t true.

No, you tell ME what to suggest for testing cost relief under these circumstances. This request for comments is a sick joke.

**Issue 1: Regulation by other federal agencies:**

We make educational materials and toys which are not regulated by other parts of the federal government. I have no comment on this issue.

**Issue 2: Redundancy of Testing By Two or More Importers of the Same Item.**

We do not typically import non-proprietary items, and in any event, take full responsibility for anything sold under our brand name. Thus, we would test typically it ourselves. I believe that importers should have the right to rely on the factory’s valid third party test report, in which case multiple importers of the same product from the same factory could rely on a test report provided by the factory. If the CPSC learns from market data that this system is not working (for reasons which I cannot anticipate), it can go back and revise the rules to address known issues.

The issue of determining what is and is not “substantially similar” should be left to the judgment of the manufacturers and importers. How does the CPSC know it is addressing a real issue here? What is the problem that it is trying to solve? I do not believe that making your rules more complex will produce better “safety” than relying on the business judgment of manufacturers in this case. The product liability and regulatory risk to manufacturers is so great that most companies would not want to risk cutting corners on testing without a strong justification. The CPSC has so much discretion to judge decisions and testing practice with 20/20 hindsight that it would be irrational for manufacturers to make decisions without exercising due

care (penny-wise and pound-foolish). The CPSC should not take the possibility of bad judgments seriously unless there is real empirical data to back up the assertion that such mistakes are common and need to be addressed.

If you cannot trust corporations about anything and must have a rule for everything dealing with every conceivable possibility (imagined or real), there is no hope for any of us.

### **Issue 3: Selection of a subset of components for third party testing.**

The component testing rule is a well-intentioned rule that will be quite difficult to use in practice. The fact is that the rules implementing the CPSIA are so draconian that the cost of missteps will far outweigh the benefits of component testing. Each use of component testing substantially increases the complexity and risk of our testing protocols and recordkeeping. If there ever was a problem and we had to prove compliance (including the very difficult and challenging requirement to accurately track lots at the component level), it seems likely that we would fail. If so, the choice to rely on the less expensive component tests could prove to be shortsighted. Recordkeeping is particularly byzantine given the low probability that the records would be helpful in the event of a safety problem (or that the cost of maintaining such voluminous records would be worth the cost if such a problem were to occur). The component testing rule was not thought-through with the real world in mind.

The component testing rules drive an interesting assessment by manufacturers – should you rely on this (purportedly) less costly rule and hope that everything goes well, that the products will never be affected by safety issues and that you will never need to prove clean compliance with every arcane nuance of this complex protocol . . . or pay higher costs now for better assurance of more orderly paperwork? Of course, it is human nature for losses to loom larger than gains. This is the dilemma presented by this rule. I see component testing as a big loser, personally. If only the people who wrote these rules had to live by them . . . . Fat chance.

Consequently, I have little to add to the debate over how third party testing companies should statistically select components for retesting or how to derive sound conclusions from such protocols. The CPSC has never presented data to justify this kind of ultra-detailed rulemaking – it has never demonstrated that it is solving a real problem (failed components) with these rules. I suppose one of the many fun things about the CPSIA is that your rules don't need to solve real problems anymore. Risk is an obsolete concept, as we all know. In any event, you already know the answer to your own question – you can't "ensure" compliance without checking everything. If you cared about costs, you would have never presented a rule of this complexity. I am already on record that the component testing rule doesn't work.

#### **Issue 4: Sampling Plans that Rely on “Reasonable” Assessments of Similarity.**

We would like the right to use test reports on one item to apply to others if we reasonably believe the test results would be the same for multiple items. This is an assessment we made successfully for years, and we want the right to continue to make it without your assistance. For instance, we often kit items with identical components but different piece counts. These items should be allowed to use the same test report based on our assessment using business judgment. Likewise, a kit that includes additional components but is otherwise identical to other items should be able to use the underlying report of the other item plus tests of the additional or different components. This should be our call.

Nevertheless, I feel your rules make this kind of choice/judgment very hazardous to the health of our company (not the health of consumers). We have many stakeholders to consider: consumers, retailers, suppliers, employees, shareholders, our community, schools and teachers, children all over the world. Even trivial missteps nowadays can mean instant corporate death. [Anyone remember Daiso?] The CPSC has so much discretion to play “gotcha” on paperwork and to use its astounding 20-20 hindsight to challenge corporate decision-making that the exercise of any judgment on our part seems pretty shortsighted. The rules are extremely lengthy, complex and convoluted – no one understands them (and that includes the CPSC). We don’t think the agency will ever craft a simple and intuitive rule that we can successfully teach to the many people in our organization who are affected by it. If I can’t be assured that our team understands and can flawlessly navigate the rules, I would feel that we are gambling with the future of the company by doing anything that exposes our internal procedures to scrutiny and critique.

Sad but true, but under these rules, nothing good can come from innovation in safety. We should just keep our heads down and do as we are told. The government knows best.

#### **Issue 5: Conformance with Other Governmental Bodies’ Safety Rules.**

It’s hard to take this request for comments seriously, given that the CPSC has been assaulted with requests for years to harmonize with EN71 rules and consistently rejected it. What do you want from me here? You will never conform to anyone else’s rules so I have no suggestion to offer you. Harmonization is not even worthy of fantasy in this space. Your question is best described as disingenuous.

#### **Issue 6: Alternative Technologies.**

No alternative technology is available that will substitute for third party testing in a way that provides sufficient assurance of compliance and reproducibility that we would adopt it. Certain technologies, which you know all about, are good for screening but not much else. XRF devices are too expensive and too fragile to

merit daily use in our facility, and in any event, XRF test results are not definitive and might expose our company to liability. XRF guns are portable x-ray machines which strikes me as posing another kind of risk that we don't want to expose our staff to. We're not going there.

### **Issue 7: Techniques to Lower the Cost of Testing.**

This issue has been long discussed, and you have repeatedly rejected any suggestions that relied on the good judgment, experience or safety track record of manufacturers. Having determined that the only rule that "works" is one that guarantees ("ensures") compliance, the CPSC has repeatedly indicated that nothing short of its Dickensian rules will do. Our standing in this debate has always been low and dubious, because we are a manufacturer. Our authority on the subject of safety is apparently not enhanced by our sterling track record or our demonstrated knowledge of CPSC rules and toy safety in general. Why do you continue to invite me to testify at the CPSC and then tell me I'm wrong? You already know all the answers so why go through the sham of pretending you care what we think? Oh yeah, it's the law . . . .

It's hardly worth suggesting here that we be given more discretion to spend our money as we see fit as long as we continue to produce good safety results. You have always rejected this approach, and will continue to do so as long as you interpret "ensure" as "guarantee". No one can "guarantee" safety and as a result, your rules will never quite feel complete. There will always be some loophole to obsess over. As long as compliance is deemed more important than safety, our ability to perform well and to use good judgment will never matter - it's all about the paperwork!

For what little it's worth, those are my comments.

Sincerely,

Richard Woldenberg  
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# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0005

Comment from China WTO/TBT National Notification & Enquiry Center

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## Submitter Information

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**Address:**

Beijing, China,

**Submitter's Representative:** Wang LiZhou, Deputy Director General

**Organization:** China WTO/TBT National Notification & Enquiry Center

**Government Agency Type:** Foreign

**Government Agency:** WTO/TBT

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## General Comment

See Attached

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## Attachments

Comment from WTO/TBT National Notification & Enquiry Center

# 中国 WTO/TBT 国家通报咨询中心

## China WTO/TBT National Notification & Enquiry Center

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### FAX

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<b>Date:</b> Jan.12, 2012	Number of pages: 2+3
<b>Copies:</b>	
Department for WTO Affairs, Ministry of Commerce of P.R.China	Fax: +86 10 65197726;65128304 E-mail: <a href="mailto:wtonoti@mofcom.gov.cn">wtonoti@mofcom.gov.cn</a> <a href="mailto:liuna@mofcom.gov.cn">liuna@mofcom.gov.cn</a>
Permanent Mission of P. R. of China to WTO	Fax: +41-22-9097699/9097688 E-mail: <a href="mailto:sunxinhuacn@gmail.com">sunxinhuacn@gmail.com</a>
WTO Affairs Office, General Administration for Quality Supervision, Inspection and Quarantine, P.R.C.	Fax: +86 10 82260553 E-mail: <a href="mailto:wto@aqsq.gov.cn">wto@aqsq.gov.cn</a>
Department for Supervision on Inspection, AQSIQ of P.R.China	Fax: +86 10 82260165 E-mail: <a href="mailto:jianyansi@aqsq.gov.cn">jianyansi@aqsq.gov.cn</a> <a href="mailto:songxs@aqsq.gov.cn">songxs@aqsq.gov.cn</a>
<b>From:</b>	
China WTO/TBT National Notification & Enquiry Center, Standard and Regulation Researching Center, AQSIQ, P.R.China.	Tel: 86-10-84603890 Fax:86-10-84603813 E-mail: <a href="mailto:tbt@aqsq.gov.cn">tbt@aqsq.gov.cn</a>
<b>Subject:</b> <b>Comments from the P.R. China on USA Notifications</b> <b>G/TBT/N/USA/658-660</b> G/TBT/N/USA/658: Testing and Labelling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products. G/TBT/N/USA/659: Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens. G/TBT/N/USA/659: Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements.	



## **Comments from the P. R. China on USA Notifications**

### **G/TBT/N/USA/658-660**

Dear Sir or Madam,

We appreciate the opportunity to submit comments on the following notified Regulations proposed by Consumer Product Safety Commission (CPSC):

G/TBT/N/USA/658: Testing and Labelling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products.

G/TBT/N/USA/659: Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens.

G/TBT/N/USA/659: Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements.

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of the comments by e-mail to [tbt@aqsiq.gov.cn](mailto:tbt@aqsiq.gov.cn).

Thank you very much in advance for Consumer Product Safety Commission (CPSC) taking into account comments from the P.R. China. Your formal reply will be appreciated.

Best regards,

WANG LiZhou

Deputy Director General  
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## COMMENTS FROM CHINA ON USA NOTIFICATIONS

### G/TBT/N/USA/658-660

Testing and Labelling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products.

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens. Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements.

The government of the P.R. China appreciates the USA government for fulfilling the transparency obligations under WTO and allowing other WTO Members to make comments on G/TBT/N/USA/658-660. According to Article 2.9.4 of the WTO/TBT Agreement "without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.", China requests the United States to consider and respond to the following comments:

#### I. G/TBT/N/USA/658

There is no definition of "*representative samples*" in 16 CFR Part 1107.21 and 16 CFR Part 11107.26 of the notified draft Regulation, so it would likely lead to a misunderstanding in the implementation of the regulation. It is suggested that a clear definition of "representative samples" should be given so that the representative samples can be selected in a convenient and applicable way. Only in this way can the implementation of the regulation be more effective.

#### II. G/TBT/N/USA/659

1. China highly appreciates the efforts that USA have made in reducing the third party testing burdens of the manufacturers and importers. As set forth in the section 14(a)(2) of the CPSIA, that "*children's products testing must be conducted by the third party testing bodies accepted by CPSC*" will probably lead to the duplication of test and increase the third party testing burdens of the manufacturers and importers. In accordance with the Article 2.2 of the WTO/TBT Agreement, which states "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." and article 6.1 of the WTO/TBT agreement which states "Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.", it is suggested that CPSC should take

the testing bodies accredited in accordance with ISO/IEC 17025 as the applicable third party testing bodies accepted by CPSC, aiming to further reduce children products testing burdens of the manufacturers and certifiers and lower their cost.

2. China highly appreciates the efforts the United States have made in approving the international standards and other countries' national standards so as to reduce the duplication of test. With regard to issue 5, because part of international standards, such as ISO 8124, IEC 62115, part of Chinese national standards, such as GB 6675-2003, GB 19865-2006 and part of USA's toy safety standards, such as ASTM F963-08 are identical, it is suggested that CPSC should approve the identical test items, such as the items prescribed in ISO 8124 part 3, EN 71 part 3, section 4.3 of GB 6675-2003 and section 4.3.5.2 of ASTM F963-08.

### III. G/TBT/N/USA/659

1. It is set forth in 16 CFR Part 1109.5(j) of the notified draft Regulation that *each certifier or testing party must maintain the documentation required in paragraph (g) of this section for five years*. China requires that the United States shorten the time.
2. 16 CFR Part 1109.5(j)(2) of the notified draft Regulation states "*Translated accurately into English by the certifier or testing party within 48 hours of a request by the CPSC or any longer period negotiated with CPSC staff*". But in fact, the requirement is very hard to be met. It requires a longer period to fulfil it, so China requires that "*Translated accurately into English by the certifier or testing party within 48 hours of a request by the CPSC or any longer period negotiated with CPSC staff*" as set forth in 16 CFR Part 1109.5(j)(2) should be revised to "*Translated accurately into English by the certifier or testing party within 7 days of a request by the CPSC or any longer period negotiated with CPSC staff*".

Comments in Chinese are as the following:

中国赞赏美国政府履行 WTO 有关透明度义务，同时感谢美国给予 WTO 其他成员评议 G/TBT/N/USA/658-660 号通报的机会。根据《TBT 协定》第 2.9.4 条“无歧视地给以其他成员合理的时间以提出书面意见，应请求讨论这些意见，并对这些书面意见和讨论的结果予以考虑”的规定，请美方对中方的评议意见予以考虑并作出答复，具体内容如下：

#### 一、G/TBT/N/USA/658 号通报

本通报法规草案第 16 CFR Part 1107.21 和 1107.26 新增条款均无“代表性

样品”( representative samples ) 的定义，容易造成具体实施上的误解，为便于合适的选取代表性样品，增强法规的可操作性，建议美方对“代表性样品”作出明确定义。

## 二、G/TBT/N/USA/659 号通报

1. 中方对美方在减轻儿童用品制造商、进口商在第三方检测负担方面所作的努力表示赞赏。CPSIA 14(a)(2)规定“*儿童用品必须经 CPSC 认可的第三方检测机构进行检测*”，该规定可能导致多次检测，增加企业负担。根据《TBT 协定》第 2.2 条“各成员应保证技术法规的制定、采用或实施在目的或效果上均不对国际贸易造成不必要的障碍”和第 6.1 条“在不损害第 3 款和第 4 款的情况下，各成员应保证，只要可能，即接受其它成员合格评定程序的结果，即使这些程序不同于它们自己的程序，只要它们确信这些程序与自己的程序相比同样可以保证产品符合有关技术法规和标准”的规定，为进一步减轻儿童用品企业测试的负担，降低企业成本，中方建议 CPSC 接受按 ISO/IEC 17025 认可的检测实验室作为合适的第三方检测机构。

2. 中方对美方在认同国际标准或其它国家标准，以减少重复测试方面所作的努力表示赞赏。针对本通报问题 5，基于国际标准（如 ISO 8124、IEC 62115）和中国国家玩具标准（如 GB 6675-2003、GB 19865-2006）与美国玩具安全标准部分等同，建议等同的检测项目（如 ISO 8124-3、EN 71-3、GB 6675-2003 条款 4.3 与 ASTM F963-08 条款 4.3.5.2 等同）予以承认。

## 三、G/TBT/N/USA/660 号通报

1.本通报法规草案第 16 CFR Part 1109.5(j)条“记录保存要求”规定：每个制造商 ( certifier ) 和测试方应将本节第 ( g ) 段规定的记录保存 5 年，中方建议缩短记录的保存时间。

2.本通报法规草案第 16 CFR Part 1109.5(j)(2)条规定“如果 CPSC 有要求，则制造商 ( certifier ) 或测试方应在 48 小时内提供技术资料的英文翻译版本”，鉴于在 48 小时内将 16 CFR Part 1109.5(g)条规定的技术资料全部翻译成英文难度较大，可能需要更长的时间，建议将此规定修改为“制造商或测试方应在 7 天内提供技术资料的英文翻译版本”。

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0006

Comment from Sally Kay

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## Submitter Information

**Name:** Sally Kay

**Organization:** The Hosiery Association

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## General Comment

See attached file(s)

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## Attachments

THA comments cpsc-2011-0081



January 19, 2012

Chairman Inez Tenenbaum  
c/o Office of the Secretary,  
Consumer Product Safety Commission, Room 502, 4330 East West Highway,  
Bethesda, MD 20814

Re: Docket No. CPSC-2011-0081

Dear Chairman Tenenbaum:

The Hosiery Association, representing 30,000 American workers, is writing to you with an idea on how to reduce the burden of costs associated with compliance with the Consumer Product Safety Improvement Act (CPSIA) for all U.S. apparel manufacturers and importers. We believe that the occasion of the issuance of your proposed rule regarding “Reducing Third Party Testing Burdens” seemed like an appropriate opportunity to raise the issue.

Simply put, we recommend that textile and apparel products which are exempt from CPSC flammability testing requirements should also be exempt from the requirement to issue a General Conformity Certificate (GCC) related to flammability compliance. Products that are exempt from flammability testing have demonstrated over years of CPSC-approved testing that they pose no flammability risk. We believe that the additional requirement of the GCC for flammability for products that are exempt from flammability testing adds an additional burden of paperwork with no additional benefit of safety.

For many of our members, they are currently required to issue GCCs only because they comply with flammability regulations. But for flammability, our companies would not be required to issue GCCs at all. Not having to issue a GCC would be a huge relief in terms of the time and

money that is required to generate the certificate. Excluding products from the GCC requirement which are already exempt from flammability testing would save companies money and create no additional risk to consumers.

In your proposed rule you list as issue 5 the following:

*The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under [the CPSA].*

*Please identify national or international governmental standards that provide assurance of conformity to consumer product safety rules, bans, standards, or regulations under the CPSA. How should the CPSC evaluate the equivalency of such national or international standards?*

Conveniently, as referenced above, the national standard which provides evidence of conformity is the CPSC standard for the flammability of clothing textiles - 16 CFR 1610. Specifically, paragraph 1610.37 provides for reasonable and representative tests to support [flammability] guaranties, and creates exemptions to the standard, based on empirical evidence:

*(d) Exemptions. Experience gained from years of testing in accordance with the Standard demonstrates that certain fabrics consistently yield acceptable results when tested in accordance with the Standard. Therefore, persons and firms issuing an initial guaranty of any of the following types of fabrics, or of products made entirely from one or more of these fabrics, are exempt from any requirement for testing to support guaranties of those fabrics:*

*(1) Plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more; and*

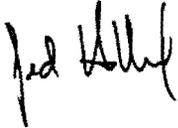
*(2) All fabrics, both plain surface and raised-fiber surface, regardless of weight, made entirely from any of the following fibers or entirely from combination of the following fibers: acrylic, modacrylic, nylon, olefin, polyester, wool.*

The exemption from testing means that these products “demonstrate” their compliance based on their specifications. There is no additional test to prove compliance. Consequently, it does not even make sense to require a certificate of conformity for products that are exempt from flammability testing. According to the CPSIA, the certificate of conformity is to be based either on a “test of each product or upon a reasonable testing program.” Compliance for products that are exempt from flammability testing is based on neither. Strictly speaking there is no test - at least since 16 CFR 1610 exemptions were promulgated – on which to base a certificate. Rather, there is the experience of thirty years, which is much more definitive than any single certificate.

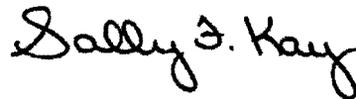
Skeptics might ask: what guarantee is there if producers or importers say they are importing exempt products when, in fact, the products are not exempt? To that we would respond that sanctions already exist for companies who misidentify, misbrand or otherwise adulterate their product. The additional requirement of the certificate provides no additional protection, particularly since the GCC is not a customs document.

We think you will agree that this is a reasonable proposal, one that could be executed administratively, without the requirement of additional legislation. We thank you in advance for your consideration and look forward to responding to any questions you may have for additional information.

Sincerely,



Jed Holland  
Chairman, THA and  
Executive Vice President of Sales,  
Holt Hosiery Mills



Sally F. Kay  
President and CEO,  
THA

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0007

Comment from Winnie Yip

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**Organization:** Hong Kong Toys Council

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## General Comment

Please find the attached comment

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## Attachments

HKTC response to CPSC Docket No. CPSC-2011-0081



香港玩具協會  
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19 January, 2012

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 820  
4330 East West Highway  
Bethesda, MD 20814

**Re: Comments on Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens, CPSC Docket No. CPSC-2011-0081**

The Hong Kong Toys Council (HKTC) welcomes the passage of H R 2715. We support the new law on eliminating phthalate testing on inaccessible parts, and we appreciate CPSC's efforts in seeking public comment on application of third party testing requirements and reducing third party testing burdens. HKTC believes the toy industry could benefit from reducing redundant testing on identical and substantial similar material and substantially similar products.

Our comments to the specific issues raised in docket CPSC-2011-0018 are as follow:

**Issue 1 - The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.**

While there are different regulations, standards and test methods between countries and regions, HKTC believes toys qualified for major countries and regions' safety mark such as CE (European), ST (Japan) and CCC (China) that are supported by test reports from third party conformity assessment body, are safe. We recommend CPSC to continue to work with other countries / regions to harmonize regulations, standards and test methods and to look for opportunities for mutual recognition.

**Issue 2 - The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.**

We support CPSC's intent to modify certification requirements to reduce redundant testing on products and components that are substantially similar or identical in all material respects.

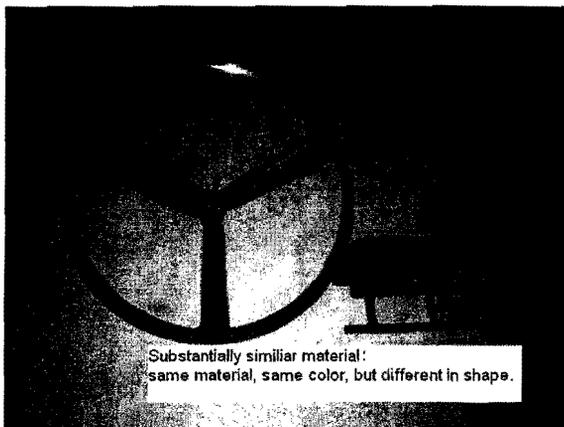
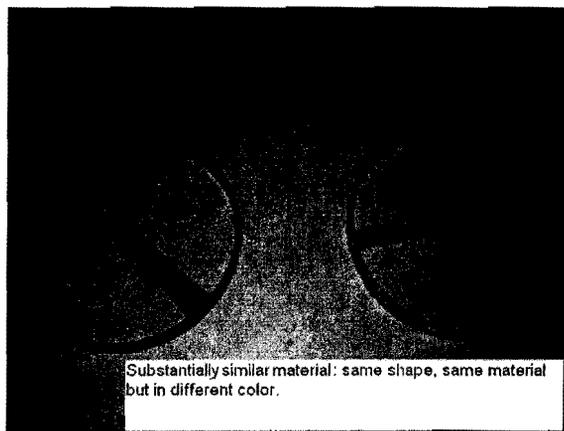
Products and components should be considered substantially similar in all material respects if:



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- a. They are manufactured by the same factory and are made of the same material from the same supplier, same size and same construction but are in different color. In this case, the products and components should share the same third party physical and mechanical test report from third party conformity assessment body.
- b. They are manufactured by the same factory and are made of the same material and same color from the same supplier but are different in construction and size. In this case, the products and components can share the same chemical test reports from third party conformity assessment body.



Products and components should be considered identical in all material respects if the products and components are manufactured by the same factory and are identical in material, size, construction, color and supplier. In this case, the products and components can share the same mechanical, physical and chemical report from third party conformity assessment body.



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The factory concerned should provide a declaration letter confirming the products and components which are substantially similar or identical in all material respects. The manufacturer is responsible for verifying the declaration.

Test reports of substantially similar or identical in all material respects products and component from an accredited third party conformity assessment body should be recognized and shared by all importers.

**Issue 3 - The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.**

Manufacturer working together with the factory should determine representative sampling of products with a substantial number of different components based on knowledge of the products, the applicable product safety standard and the manufacturing processes that go into making the products.

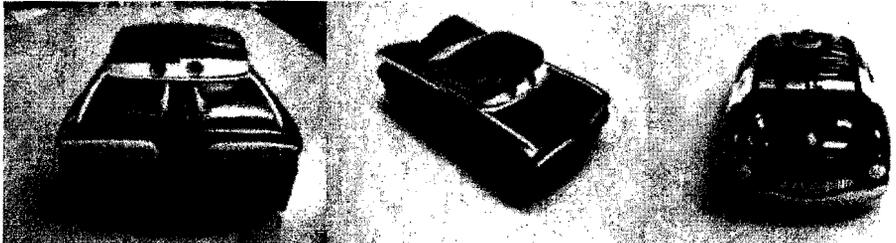
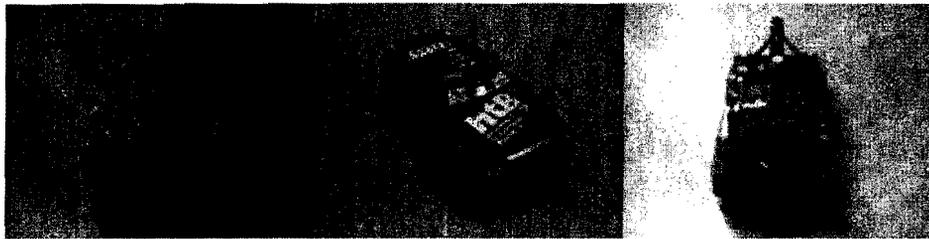
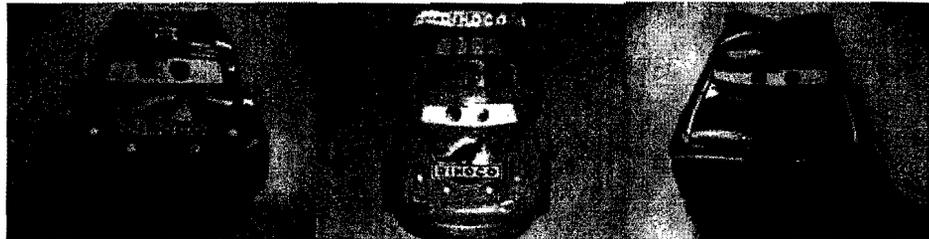
**Issue 4 - The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.**

Manufacturer working together with the factory should determine substantially similar products based on same user age, similar playing features, same material from the same supplier, similar construction, same size and other considerations. Manufacturer working together with the factory should also determine representative sampling of a substantial number of substantially similar products based on knowledge of the products, the applicable product safety standard and the manufacturing processes that go into making the products. Knowledge from first party testing and / or second party testing can be used to develop sampling plan for third party testing that reduces the overall test burden while still allowing the compliance of untested products to be inferred from the products tested by the third party conformity assessment body.



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**Issue 5 - The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under [the CPSA].**

We believe toys qualified for major countries' and regions' safety mark such as CE (European), ST (Japan) and CCC (China) that are supported by test reports from third party conformity assessment body are safe. We recommend CPSC to continue to work with other countries / regions to harmonize regulations, standards and test methods and to look for opportunities for mutual recognition.



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**Issue 6 - The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.**

We have no comment on this issue at this time.

**Issue 7 - Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.**

We believe CPSC accreditation system of third party conformity assessment body imposes a barrier to accept third party report. We recommend CPSC to consider accepting appropriate test report from any third party conformity assessment body which is accredited to ISO/IEC 17025:2005 general requirements for the competence of testing and calibration laboratories by an accreditation body which has concluded mutual recognition arrangement (MRA) with the International Laboratory Accreditation Cooperation (ILAC). We agree CPSC should continue to accredit “firewalled” third party conformity assessment body.

Thank you for your attention. Should you have any enquiries, please contact the Secretariat by email: [hktc@fhki.org.hk](mailto:hktc@fhki.org.hk).

Yours sincerely,

Bernie Ting  
Chairman

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0008

Comment from Takahiro Shirai

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## Redacted Comment

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens  
(Document ID CPSC-2011-0081-0001)

We propose the following:

- a) The test(s) by third party are carried out only at the time of the first customs clearance.
- b) If the components of products are not changed (from the first submittal), the test(s) by Third Party for every (succeeding) customs clearance does not need to be retested.
- c) About the lead test, the EN71-3 test data can substitute for its data (if the EN71-3 tests are up-to-date)

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0009

Comment from Polly Law

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**Organization:** Consumer Testing Laboratory

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## General Comment

See attached file(s)

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## Attachments

CPSIA 69596 comment

This proposal is submitted to response the opportunities in reducing the third party testing burdens for children product. The proposal gives recommendations on deal with hazards that are common to child use and care products; it intends to give guidance and to lead to consistency with the existing testing method, harmonize the existing approach of hazard and risk assessment of the child product, and extends the responsibility of the upstream producer.

This proposal applied Quality Management principle, based on its concept and terminology to devise this application plan. Children product safety has been a growing concern among US citizens over the last decades. The proposal also to help business organizations develop a sustainable approach that will continue to evolve and adapt to meet new requirement and challenges from society. The proposed framework uses a systematic approach for identifying and addressing child product safety issues, it helps business organization to manage the potential failures of their product, thereby provides guidance on managing product development process, and provides product verification framework that assists business organizations to enhance performance and effectiveness.

The product conformity assessment and testing is a way of responding to identify failure safety conformance failure that can arise by the children product, third party testing can be view as the safeguard for isolating the non-conformity product, it helps to ensure that all children products in the United States are safe for their consumption or usage. Since conformance testing requires the use of the finished product and sometimes its destruction, the type of test and the amount of testing charge is usually an economic decision.

This proposal would rather apply control mechanism on upstream manufacturing process; we assumed that compliance of product safety can be achieved by understanding and managing the manufacturing process, systematically identifying and addressing non-conformity material and its production method. The proposal uses a holistic approach, offer board global viewpoint, perspective and context of product manufacture supply chain. Its intention is to provide unambiguous guidelines to any personnel involved in the handling of certification process.

In the previous comment, concerns raised how to enable the test sample to show confidence as the representative of the whole product population. Another concern is the method for differentiate between the similarity and difference of product component. These issues caused uncertainties of the previous proposed rules. Quality management emphasis factual approach, the process performance or product performance data should be collected for Statistical Process Control (SPC) analysis; the result can be use for address opportunity for improvement. However, to enable the SPC can be effective applied, there is a predetermined condition; any causes of variation must be removed. According to quality control concept, single lot should be homogeneous, which means that all products in the lot are produced by the same machine, same operator, same input material, and so on. When product from different sources is mixed, the sampling plan does not function properly. Also, it is difficult to eliminate the source of non-conformity finished product.

In the current practice, test required for child product conformity certificate is determined by the testing laboratory personnel. The sampling plan is less than 0.1% of product lot volume, randomly selected. The laboratory technicians base on regulatory guidelines, conduct simple analysis on the submitted sample, determine which portion might cause

hazardous to the children and select appropriate test method to validate the product conformance. The sampling plan is too small to present the confidence of the whole population of product lot. The material of the product was sourced by multiple suppliers; test is required on individual material to proof the product conformance..

In this proposal, we suggested that before conducting to conformity product assessment, it's probably appropriate to develop some perspective regarding manufacturing process. The value creation chain provided a clearer understanding of product manufacturing as an interconnected system of processes and how those values can be add by each process. Value chain analysis make a direct connection between the material and assembly process through its value creation flow, explaining that the product manufacturing are guided by the principle in adding value on the product.

The proposal recommended that value chain analysis is use for documenting the relationships between the manufacturing processes. The value chain will be expressed as a collection of value –added activities that are required to product a product that use the same resources through main flows, from raw material to the hands of customers. This process flow chart summaries them visually, the process output can be determine by observing the flows of material and operation as it has been occur.

The analysis of product value creation chain often involves many steps, from the material checking or production process of a product to its package. At every stage, the value chain has clearly defined roles and responsibilities across supply chain and their need to respond appropriately when failure is identified.

Figure out the manufacturing process or the product value chain required a high level of deliberation, and should be decided by experts. The proposal recommended that a

product engineer is the person in handling value chain analysis. Product engineer is required to determine the product value chain based on the finished product, the bottom up approach to be use to determine the product value chain and the stage of material feed, able to record the judgment decision and to assign the responsibility in each part of the supply chain. This appoints representatives who are capable of making these decisions, and is an independent group, so they perform unbiased or having freedom of action and decision. In the current practice, finished product should be submitted to a third party conformity assessment body. We would suggest that this product engineer should be worked in third party testing laboratory to enhance the credibility of the child product conformity certificate.

Verifying product compliance with CPSIA requirements, the process requires to measure the characteristics of the product and to verify that specific requirements have been met. Activities that measure product are often referred to as inspection, test or verification activities. The verification activities could be conducted at the stage a specified feature has been produced. When semi- finished product or material passes from the responsibility of one person to another, there should be stage verification at the interface. The specification of the finished product has clearly identified its functional capacity and customer respective needs. Material can be defined as an object which is use for formation of finished product, based on the functions and value of the final product, the product engineer can estimate what activities or manufacturing process are required to create those value and function. The causality builds the explanatory principle on the interrelationship between material, product value and assembly activities.

Bill of Material (BOM) is a document provides a list of material to organize every piece of material information that goes into making a particular product. Materials are usually

provided by different location and suppliers. BOM information also enables the product engineer who determines testing need more effectively. It provided the reference of determination of homogenous, in conjunction with material product specification, it helps engineer to identify material similarity, provided foundation to support their justification in the test needs on each material.

When the importers submit sample to third party testing lab for obtaining child product safety conformity certificate. Those information help to reveal capacity of the finished product should be provided; it included specification of finished product, BOM and sufficient sample. The BOM should provide the material color, the contact of the material suppliers, and the information of the material purchase order for particular product lot.

In following section, an implement plan for third party testing laboratory was established for undertake child product evaluation, including determination of applicable methods to identify product failure to met CPSIA requirement. A general plan of action would include the following actions:

Develop a value creation chain

Identify the characteristics & features of the finished product might be cause failure to meet CPSA requirement, and to be measured

Locate where the product characteristics & features in the process they are achieved from the value creation chain

Collect material certification from the specified supplier to obtaining relevant evidence

Analyses the collected certification against the measurement needs. Determine performance test required on finished product.

Upon completion of performance test and analysis of certification evidence, justify whether child safety conformity certification should be grant.

The product engineer conducts conformity assessment after the value chain established.

When undertakes conformity assessment, the product engineer should review of all aspects of product performance relating to child product safety, particularly flammability, chemical and mechanical, following regulation and standard should be take into account, 16 CFR 1200.2- Definition of Children product.

16 CFR Chapter II, consumer product safety act regulation.

ASTM established a series of child product safety specification, which covers performance requirements, test methods, and marking requirements to promote safe use of product.

The required measures are based upon safety requirements in existing standards. The engineer should establish the ability/age range of the child using the product. Then investigates the nature of the nonconformity by each hazard categories to identify and select any relevant requirements and test methodologies. In general, the hazards and risks associated with child use and care articles can be categorized into 3 groups, and the details have been illustrated in the 16 CFR Chapter II,

Subchapter B—Consumer Product Safety Act Regulations (Part 1101 to 1450) regarding mechanical hazards.

Subchapter C—Federal Hazardous Substances Act Regulations (Part 1500 to 1513) & Subchapter E—Poison Preventive Packaging Act Regulations (Part 1700 to 1702) regarding chemical hazards.

Subchapter D—Flammable Fabrics Act Regulations (Part 1602 to 1633) regarding flammable hazards.

The product relates to possible hazards that may not be recognized readily by the public

and that may be encountered in the normal use for which the product is intended or after reasonably foreseeable abuse. The engineer presents their concerns and observations of the product. The findings shows area of conformance and needs to test will be summarized and prepared for test request.

On detection of product nonconformity, details of the product and the nonconformity should be recorded so as to address appropriate measurement should be taken. A useful approach is to develop for each product a Verification Matrix that identifies test needs to be conducted on each material and component, the test method at which the requirement is achieved and the method to be employed. Verification Matrix set out to develop a data collection and analysis system that serves certifier to determine the sources from which information is to be gathered from all levels in the supply chain. Verification Matrix produce meaningful information on determine potential failure, identify the key characteristic and feature to be measured. Verification activities should been carried out result in Verification Matrix that conforms in full with the specified requirements.

Example, a material with the product specification of 10mm width dimension snap button in red color. It was attached on the jeans. The snap alone would be caused choking, but it never commence in the consumer market, its failure was depending on the attach method, which is carry out in the garment manufacturers. The abuse test should be applied to test the level of confidence of the attach method. Conversely, if the snap button marketed to the consumer directly (example: spare buttons of the jeans), the risk of reaching by children would be aroused, and its elimination from the risk is depending on warning on the packaging.

The stainless steel snap would not release hazard chemical, the red colorant & coating

provided an aesthetic value on the snap, and it might contained lead or phthalate. Since this aesthetic value was applied on the snap by the snap button manufacturer, the product conformance was depending on the confidence of the snap supplier.

When there is a collection of denim garment use single size of snap button which is purchased from particular snap supplier. The product engineer should evaluate on the similarity & difference on the attaching method which is controlled by the manufacturers, the dependent factors such as the thickness of fabric and the size of button should be consider, and for justifying whether abuse test is required to apply on the whole collection or selected style.

When undertake product compliance analysis, BOM data serves for identifying material difference, it present the source of each material and component, it also helps to product engineer to address potential failures that will affect product conformity. Evidence of material conformity is the information recorded during product verification that shows the product to have exhibited the characteristics required. The objective evidence that purports to demonstrate that the particular finished product meets the requirement. This type of evidence requires effective data collection, transmission and analysis points so that information is routed to analysts to determine performance and for results to be routed to decision-makers for action.

Therefore, evidence should be available which shows that the received product is equal to the specification, and allow the product engineer referred back to the specification authors for judgment. A mechanism required for enabling such records to be collected from source. The proposal required to collect the material certification data from the material supplier directly and transmit it to the analysis stations. The material

certification should reveal the material specification, and the BOM contains the color information which is making to order for this specific product lot. The material supplier should provide material certificate, and the color information of the specified purchased order. The color information should be presented as qtx or jb5 file format, it containing spectral reflectance data of the colored material. The certifier could use this information to verify the received sample against the information provided by the material manufacturer. When the provided information from the supplier is not equal to the received sample, false claim would be indentified.

The rationale in setting value creation value for child use and care articles is that it listed as a known supply chain. Process flow diagrams shows all main supply chain with value creation flow streams including process output to enhance the understanding of the process, as well as material on all feed in production lines within all major semi-finished (Work -in -process), input & output of each supply chain and point of verification control. Also, materials for assembly activities and value creation are shown when necessary for clarity. The material and component can be referred as the process output, and it provided a clear basis for output verification, product specification is use to present the state of the output at the ex-factory point, as consequence, validation can be apply on the product of each individual supply chain and support to the initiative of material compliance certification.

This proposed evaluation entails the co-ordination of multi-level supply chain. The proposal set out with a staged valued creation chain, the individuals to be involved and where responsibility is assigned for different aspects of the work. The objective is to ensure conformity with standards and identify potential incidents of non-observance of rules on product safety so that appropriate measures can be taken in line or finished

product with the procedures in force. The proposals not only try to reduce the amount of unnecessary testing, rather it helps to foster accountability attitude of the material supplier. Testing cost is associated with every material purchase order, and this unnecessary testing could be reduced by the supplier certificate. Factoring in testing cost to every purchase order could change the way people select suppliers and product development. This proposal is trying to translate ambiguity from difference parties into clear basis and enhance their accountabilities throughout the whole product supply chain.

The product conformity is concluded by verifying that process outputs emerging from the value creation process meets the specified requirements and therefore determines whether the controls in place are effective. The product engineer investigates and evaluates the appropriateness of test required for those consumer products.

It is the responsibility of the importer and private labeler to provide BOM which is applicability of this practice for their consumer product. Material traceability allows the product engineer obtained accurate information from the product manufacturer, helps to identify similarity and difference between each component part, thereby minimizing unnecessary test required. The discipline of supplier information disclosure is essential in this proposal. The importer provided incorrect BOM with wrong supplier information. The material supplier might refuse to provide certificate of their product, and cause delay in certificate processing, extra testing charge should be paid on the non-certified material. If non conformance product was found in market, the importer will be prosecuted while they had provided wrong BOM to the certifier. The cert should be provided by each material supplier, they are responsible for their claim of compliance to the CPSA requirement. An independent body (A third party testing facility) is responsible to collect,

evaluate, verify the material certificate of the submitted sample. Since the certificate should be submitted by the material supplier directly, it reduces the uncertainty caused by the manufacturer or sourcing agent. Since the material supplier is required to take responsibility on the finished product, they would not provide cert while they never obtained any order from particular company,

Many material suppliers concerns about their product may be contaminated by the downstream process. This proposal brings out the importance of process output validation, a material specification has been defined clearly with color information, and it helps to avoid responsibility issue. As long as everyone's responsibility identified clearly based on the value chain analysis, the certification process can be managed properly during implementation.

CPSIA requires evidence of conformity and it require Interpretation and verification of test results with the acceptance criteria. The test results of verification to be recorded, and these need to be presented in a form that each product function or value are meet the specified requirements, until objective evidence has been produced to demonstrate that the finished product meets the CPSA requirements, the child safety conformity certificate to be granted.

As discussed earlier, the component homogenous is subjected to the lot is produced by the same input material. Since the sample units selected for testing should be representative of the entire lot, all sampling plans are based on the premise that each unit in the lots has an equal likelihood of being selected. If the material homogenous can be assured, the sampling plan for testing would be reduced to minimal.

For enabling material homogenous, the process may involve a range of parameters that are defined as being critical for the process to consistently deliver the expected characteristic. The mechanism for detecting variance of the characteristic the material or component should be established for measurement and monitoring. In the example discussed earlier, we understand that it is not necessary to monitor all the material characteristics & features for it to fulfill material certification purpose. Each material should contain few characteristics that needs to be verified, the arrangements for verifying material in terms of what is to be verified, and what criteria are to be used to judge conformity. The acceptance criteria are to be address on those characteristics as specified by the CPSA, verification is carried out in order to verify those features and characteristics only, and identify the organization (material supplier) that is capable to perform the production consistency.

ISO/IEC 17050 Conformity assessment – Supplier's declaration of conformity part 1 & part 2 specified the general requirements & supporting documentation needs. This proposal discussed the determination activities should be undertaken to develop complete information regarding fulfillments of the specified requirements by the object of conformity assessment or its sample. Supplier declaration is not sufficient to claim that their product have had no problems unless CPSA are confident that the processes contain monitoring mechanism in place. The evaluation of system effectiveness serves to explore better ways of doing things, whereas an evaluation of effective implementation serves to explore whether the processes are being run as intended and delivering the required outputs. Parameters such as the variability between product characteristics, the resources used by the process and the effect of the process on its environment are parameters that require process measurement. The material dispatch from supplier should be presented as the product for delivery to the next stage of the process, and its release conditions should include conformity to specification.

All materials have to be assessed individually to address the potential risk and hazards, the material certification should only gather that those performance data required determining whether the product meets the requirements. For each identified materials, consideration in product conformity should first be given to relevant product evaluation(s) based on three hazard categories flammability, chemical and mechanical. The material features can be use to determine effects of failure that might occur. The material conformity certificate would be issued in particular aspect of the hazard categories.

Chemical Hazard category received widely concern in the society, and its variety causes huge amount of test request in third party testing laboratory. Coating contain a film-forming material, it may be clear (unpigmented) or filled with a variety of different pigments, depending on its function, and it make up of a combination of solvent, binder, and pigment. This proposal discusses the certification activity on this category only.

Chemical is the raw material of surface coating. The concentration of chemical, color and the proportion of Volatile Organic compound (VOC) within coating layer is difficult to control, and caused high variance in the content of nonconforming chemical.

Nonconforming raw material (banned chemical) needs to be prevented from use or feed into production, and it is necessary to have controls in place that prevent use of nonconforming raw material, or use segregation as a means of identifying nonconforming raw material. When carried out these verification activities, the supplier (who applying coating on surface) should be able to declare that the product has been verified and objective evidence produced that will demonstrate that it meets the specified requirements, and that objective evidence are to be recorded in a manner that is traceable. In this context the monitoring processes are those that keep operations and operating conditions under periodic or continual observation.

Audits are one means of verifying that the production management system conforms in both its design and implementation. It requires that the manufacturers whose applying coating should implement special traceability systems. They must be able to identify where their products have come from and applied on which batch on product, where they are going and to rapidly provide this information to the auditing authorities. This is particular importance for raw material is being able to identify and isolate unsafe chemical, in order to prevent them from reaching the consumer or feed into the product line.

Coating process manufacturer are required to develop a special accounting system for managing chemical inventory. Inventory management systems track inventory based on transactions; typically, inventory gets tagged with identifiable data such as a stock keeping unit number. The manufacturers use the inventory management system to track the movement of each chemical lot throughout the internal process chain. Inventory management can look in the system and see every movement associated with a chemical lot identity. In a manufacturing business, buy components and raw materials and convert these items into a finished product, planners create work orders for the production department to build products to fulfill customer orders. When production control transacts or releases the work order to the production floor, the materials needed to build the product automatically are deducted from the inventory record. This proposal initiated the tracing of the chemical coating through the product value chain. This revealed that the source of contamination used in coating processing to separate banned chemical from lower quality chemical suppliers. The certification program also enforces the pigment manufactured to achieve greater standards of purity.

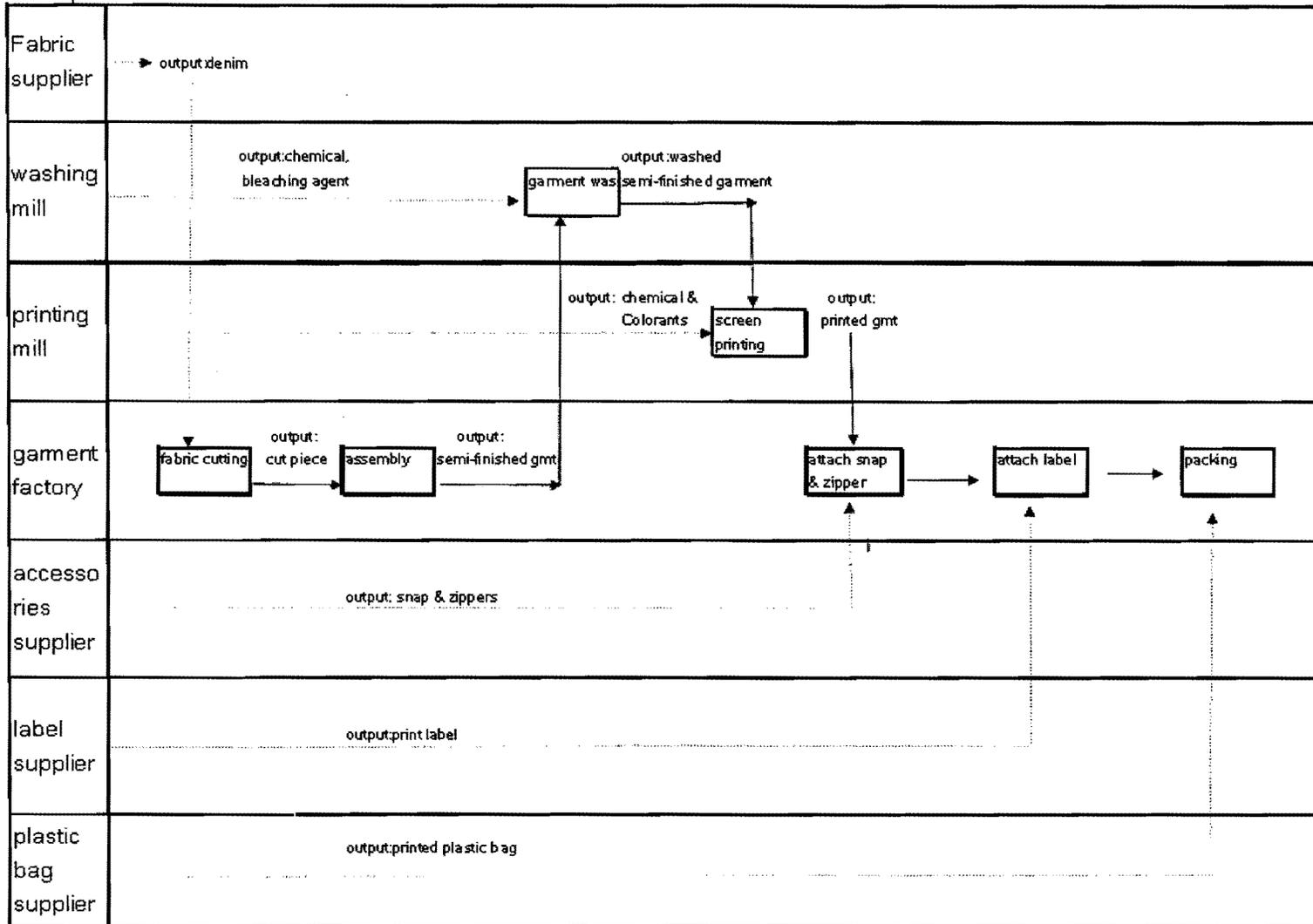
Finished material verification and test checks should be conducted to identify whether the material conforms to the requirement. The simplest monitoring method is visual observation by a person trained to detect variations that signal something is not quite right with a process. Spectrophotometer for color measurement has proved the most popular for widespread analytical evaluation of the color evaluation and control for dyed textile and pigment coated material. This is typically measured as the amount of light reflected off a surface of colored substrate. If the colored pigment can not achieve a good standard of purity, a large amount of contaminant or change of color pigment could be detected by the reflectance spectral measurement, it would show in the shape change of the reflectance curve and shift of the  $\lambda$  max.

Another method for output screening is XRF, this is the preferred method because it is not destructive of the product and a reading is usually obtained in about 4–8 seconds with a 95% accuracy at the 2-sigma level. Lead evaluations of paint are usually performed by a field testing method known as X-Ray fluorescence (XRF) using equipment such as the Olympus Innov-X LBP4000, RMD LPA-1, or the Thermo Scientific's Niton.

The certified material (product) required verification activities to be performed in accordance with planned arrangement to ensure the certified material meets the regulatory requirement. The conformity certificate can be viewed as performance confirmation, through objective evidence that specified requirements have been fulfilled. The verification activities involve a range of parameters that are defined as being critical for the process to consistently deliver the conformity product. When the material homogenous can be assured by verified material features, the compliance cert will be granted for the tested material.

The proposed approach certification program have to modeling the pathway to quality improvement, and support to collecting information that will aid in justification about compliance of the finished product. It also to support the supplier claims that specified requirements are fulfilled, and it giving users greater confidence in such claims

Example of value added chain



# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0010

Comment from Andre Leroy

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## Submitter Information

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**Submitter's Representative:** Andre Leroy; Rob Sinclair

**Organization:** Global Apparel, Footwear & Textile Initiative

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## General Comment

See attached files.

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## Attachments

GAFTI - Phthalates SOP

GAFTI - Pb in metal and metal alloy

GAFTI - Pb in surface coating

GAFTI Comments Docket #CPSC-2011-0081



## Global Apparel, Footwear & Textile Initiative

January 20, 2012

**VIA FEDEX & ONLINE**

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

Subject: Docket No. CPSC-2011-0081  
Submission of Comments

Dear Commission:

As we have discussed with some of you, a group of leading brands, retailers, manufacturers and laboratories have launched the Global Apparel Footwear Textile Initiative (GAFTI) based on a discussion with the CPSC Chairman at the American Chamber of Commerce in Hong Kong two years ago. Our members would benefit from global standards as it would allow them to export / sell their products globally in an easier way. So we started this discussion with the CPSC Chairman. She suggested we could lead this work on harmonization and make proposals. This is how we created GAFTI.

On top of test method harmonization, another very important element for our members is to minimize lab variations. This represents a major risk for the supply chain if testing in different part of the world provides different results. We know some variations are unavoidable but we are keen to minimize them as much as we can.

We started our work on lead and phthalates. Working with major global laboratories, we have found some reasons for variations between labs that could be reduced without changing the existing CPSIA test methods. For lead, we found the laboratories use different calibration points. For phthalates, we found that the sample preparation was done differently in different labs.

We have worked with major brands, retailers, manufacturers and labs to harmonize the above points and you will find attached our proposals. We hope you will find our work of interest and we thank you for your attention in this matter.



## Global Apparel, Footwear & Textile Initiative

We would like to take this opportunity to thank you for reaching out to us in the supply chain in Asia through various events organized by the American Chamber of Commerce in Hong Kong. Additionally, we appreciate the excellent work of Jeffrey and Jenny of your team in Beijing.

Sincerely,  
Andre Leroy & Rob Sinclair  
GAFTI Product Safety Leaders

Kitty Man  
GAFTI Leader for Phthalates

Chris Tang  
GAFTI Leader for Lead

Attachments:

- 1) Detection and Determination of Total Lead in Metal and Metal Alloy by ICP-AES, ICP-MS and AAS
- 2) Detection and Determination of Total Lead in Surface Coating by ICP-AES, ICP-MS and AAS
- 3) GAFTI Analytical method for CPSC – Detection and Determination of Phthalates in Prints by GC/LC-MS

# **GAFTI Analytical method for CPSC – Detection and Determination of Phthalates in Prints by GC/LC-MS**

## **Executive Summary**

Why new phthalates SOP:

The current phthalates SOP published by CPSC do not address prints on textile specifically. The industry experiences test result discrepancy due to different sample preparation methods in laboratories.

What the GAFTI phthalates group is working on:

With reference to the CPSC phthalates SOP, a new section on sample preparation for prints on textile/leather is drafted. Also a section for LC-MS (liquid chromatography- mass spectrometry) instrumental information is added for labs which would like to use LC-MS for analysis.

# **GAFTI Analytical method for CPSC – Detection and Determination of Phthalates in Prints by GC/LC-MS**

## **1. Scope**

- 1.1. This method is for the detection and quantification phthalates in prints on textile or leather. The print can be made with Polyvinyl Chloride (PVC), Polyurethane (PU) or rubber.

## **2. Definitions** (copy from CPSC-CH-C1001-09.3)

- 2.1. Sample – An individual consumer product or a group of identical consumer products from a batch to be tested.
- 2.2. Component Part – Individual sub-unit within a product.
- 2.3. Laboratory Reagent Blank (LRB) – An aliquot of solvents that is treated exactly as a sample including exposure to glassware, apparatus and conditions used for a particular test, but with no added sample. LRB data are used to assess contamination from the laboratory environment.
- 2.4. Stock Standard – Phthalate(s) purchased from reputable commercial source at the highest available purity, used to prepare calibration standards. Replace before expiration date.
- 2.5. Calibration Standard – Solutions containing the phthalate(s) of interest in solvent match with sample matrix. Each standard should contain 20 µg/ml of internal standard when running a 20:1 split injection, or 1 µg/ml for splitless injection. A minimum of four calibration standards are used. Calibration standards should be prepared as needed from the stock solution and may be stored at room temperature. Record weight of solutions before and after use to monitor for solvent evaporation. Standards should be replaced when experimental data demonstrates a decrease in quality or significant loss in solvent weight.
- 2.6. Quality Control Sample (QCS) – Solutions containing known amounts of phthalates that are used to evaluate the performance of the analytical instrument system. QCSs are obtained from a source external to the laboratory and are not made from the Stock Standard solutions. For example, certified reference materials (CRMs) are available from the National Institute of Standards and Technology (NIST), such as those listed in the Equipment and Supplies section below.

## **3. Reagents**

- 3.1. Tetrahydrofuran (C<sub>4</sub>H<sub>8</sub>O, THF), GC grade or higher.
- 3.2. Hexane (C<sub>6</sub>H<sub>12</sub>), GC grade or higher.
- 3.3. Acetonitrile (C<sub>2</sub>H<sub>3</sub>N), GC grade or higher.
- 3.4. CRMs containing phthalates (such as NIST SRM 3074).
- 3.5. Benzyl Benzoate (C<sub>14</sub>H<sub>12</sub>O<sub>2</sub>, BB), analytical grade or higher.
- 3.6. Dibutyl Phthalate (C<sub>16</sub>H<sub>22</sub>O<sub>4</sub>, DBP), CAS No. 84-74-2, analytical grade or higher.
- 3.7. Di-(2-ethylhexyl) phthalate (C<sub>24</sub>H<sub>38</sub>O<sub>4</sub>, DEHP), CAS No. 117-81-7, analytical grade or higher.
- 3.8. Benzyl Butyl Phthalate (C<sub>19</sub>H<sub>20</sub>O<sub>4</sub>, BBP), CAS No. 85-68-7, analytical grade or higher.
- 3.9. Di-n-octyl phthalate (C<sub>24</sub>H<sub>38</sub>O<sub>4</sub>, DnOP), CAS No. 117-84-0, analytical grade or higher.
- 3.10. Diisononyl phthalate (C<sub>26</sub>H<sub>42</sub>O<sub>4</sub>, DINP), CAS No. 28553-12-0/68515-48-0, analytical grade or higher.
- 3.11. Diisodecyl phthalate (C<sub>28</sub>H<sub>46</sub>O<sub>4</sub>, DIDP), CAS No. 26761-40-0/68515-49-1, analytical grade or higher.

#### **4. Apparatus**

- 4.1. Gas Chromatograph – Mass Spectrometer (GC-MS)
- 4.2. Liquid Chromatograph – Mass Spectrometer (LC-MS) (as alternative)
- 4.3. Sonicator
- 4.4. Disposable razor blade or scalpel
- 4.5. Sealable glass vials with PTFE or silicone liner
- 4.6. Filtering system
- 4.7. Beaker
- 4.8. Volumetric flask

#### **5. Sample preparation**

##### **5.1. Preparation Method 1 - Print which can be removed from the base material by mechanical method**

- 5.1.1. Scrape the print from the textile or leather by disposable razor blade or scalpel.

- 5.1.2. Weigh 0.05 g collected print into sealable glass vials.
- 5.1.3. Add 5 ml THF to the sample.
- 5.1.4. Place the vial in the sonicator and extract for 30 minutes.
- 5.1.5. If the sample is not completely dissolved after 30 minutes, continue the sonic extraction for extra 2 hours.
- 5.1.6. Precipitate the extracted solution with 10 ml hexane or acetonitrile.
- 5.1.7. Combine 1.3 ml of the sample solution with 0.2 ml of internal standard (BB, 150 µg/ml) in a GC vial.

**5.2. Preparation Method 2 - Print which cannot be removed from the base material by mechanical method**

- 5.2.1. By maintaining the same sample area, take two samples: (1) print with base material, (2) base material.
- 5.2.2. Weight 0.05 gram print sample: Measure and calculate the weight difference between (1) and (2), record the difference as the print sample weight.
- 5.2.3. For the sample which the print is too light or with heavy fabric weight: Take 1 gram sample (print with base material)
- 5.2.4. Cut the sample into 5 mm x 5 mm pieces, extract it with 20 ml THF for 30 mins.
- 5.2.5. If the print on sample is not completely dissolved after 30 minutes, continue the sonic extraction for extra 2 hours.
- 5.2.6. Filter and collect the solution, then precipitate with 40 ml hexane or acetonitrile.
- 5.2.7. Filter the solution, reduce and make up to 25 ml with volumetric flask. Use hexane or acetonitrile to make up.
- 5.2.8. Combine 1.3 ml of the sample solution with 0.2 ml of internal standard (BB, 150 µg/ml) in a GC vial.

**6. GC-MS Operating Procedures and Quality Control Measure (copy from CPSC-CH-C1001-09.3)**

**6.1. Instrumental details**

6.1.1.A GC-MS system with an auto-sampler is suggested for the sample analysis. The following GC conditions are used (Table 1):

**Table 1. GC Conditions**

Column	DB-5MS; 30 m x 0.25 mm ID x 0.25 $\mu$ m
Flow Mode	1 ml/min, constant flow (He gas)
Inlet Mode	20:1 Split or Splitless
Injection Amount	1 $\mu$ l
Inlet Temperature	290 °C
Solvent Delay	5 min
Initial Oven Temp, Hold Time	50 °C, 1 min
Ramp 1	30 °C/min, 280 °C
Ramp 2	15 °C/min, 310 °C
Final Hold Time	4 min or longer

The 20:1 split mode injection should be used when the phthalate concentration is expected to be  $\geq 5\%$ . All other samples are run in splitless mode.

Samples are analyzed using both full scan mode and the Selective Ion Monitoring (SIM) program listed in Table 2.

**Table 2. SIM Settings**

	<i>Estimated Retention Time (min)</i>	<b>Corresponding Ions (<i>m/z</i>)</b>	<b>Published Relative Abundance of ID Ion to 149 <i>m/z</i></b>
<i>SIM Group 1:</i>	<i>5 - 9.5 Minutes</i>		
BB (Internal Standard)	7.9	91.1, <b>105</b> , 194, 212	
DBP	8.5	149, 167, 205, <b>223</b>	<b>223: 4</b>
<i>SIM Group 2:</i>	<i>9.5 - 10.8 Minutes</i>		
BBP	9.8	91.1, 149, <b>206</b>	<b>206: 27</b>
DEHP	10.4	149, 167, <b>279</b>	<b>279: 10</b>
<i>SIM Group 3:</i>	<i>10.8 - End</i>		
DnOP	11.2	149, 167, 261, <b>279</b>	<b>279: 12</b>
DINP	11.6	149, 167, <b>293</b>	<b>293: 26</b>
DIDP	12.1	149, 167, <b>307</b>	<b>307: 27</b>

Monitor for corresponding ions of each compound listed in a time segment (e.g., set Group 3 to monitor for 149, 167, 261, 279, 293, and 307 *m/z*). The retention times listed are based on CPSC data, and must be confirmed by analyzing stock standards. The last column indicates the identification (ID) ion, and the relative abundance of this ion to 149 *m/z*.

If the instrument to be used has limited SIM abilities, monitor for only those ions in **bold**.

LCMS setting:

Solid phase	Zorbax Eclipse XDB C18 (5.0 micrometer) 2.1 x 150 mm												
Column flow	0.3ml/min												
Stop time	30 min												
Post time	9 min												
Solvent A	10mM Ammonium acetate												
Solvent B	Acetonitrile												
Max pressure	400 bar												
Injection volume	5 $\mu$ L												
Column temperature	30°C												
Time table	<table border="1"> <thead> <tr> <th>Time</th> <th>Solvent A (%)</th> <th>Solvent B (%)</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>40</td> <td>60</td> </tr> <tr> <td>7</td> <td>40</td> <td>60</td> </tr> <tr> <td>10</td> <td>1</td> <td>99</td> </tr> </tbody> </table>	Time	Solvent A (%)	Solvent B (%)	0	40	60	7	40	60	10	1	99
Time	Solvent A (%)	Solvent B (%)											
0	40	60											
7	40	60											
10	1	99											
DAD signal	Signal, Bw (nm) 240, 4												
A	Reference, Bw (nm) 350, 20												
MS signal	Polarity Positive, API-ES												
Time (min)	Mass range Fragmentor EMV and threshold												
0-15	100 – 500 100 100												
15 – 24	100 – 500 160 100												
Dry gas temperature	300°C												
Nebulizer pressure	30 psig												
Gas flow	10 l/min												

	RT [~min]	Target mass
DINP	19.9 - 20.9	419
DEHP	18.3 - 19.3	391
DNOP	19.0 - 20.1	391
DIDP	22.7 - 23.78	447
BBP	9.9 - 12.0	313
DBP	11.1 - 13.1	279

## 7. Standard Preparation and Analysis

7.1. Prepare at least four calibration standards for each of the six phthalates of interest along with one calibration blank (match to sample matrix). Each calibration standard should have an internal standard concentration of 20  $\mu$ g/ml (for 20:1 split mode samples) or 1  $\mu$ g/ml (for splitless mode samples).

- 7.2. Analyze standards and blank with the GC-MS in both full-scan mode and SIM. Qualitatively analyze the results to ensure proper retention times and no contamination.
- 7.3. Integrate the peak area from valley to valley (approximate retention times are listed in Table 2) for each standard. Compounds monitored in SIM Groups 1 and 2 can be quantified by extracted ion chromatograph (EIC) or the ion chromatograph (suggested quantitative ions are in **bold**). The phthalates monitored in SIM Group 3 overlap and **must** be quantified using their quantitative ions (again, in **bold**).
- 7.4. Construct a calibration curve using normalized phthalate responses. The normalized phthalate response ( $Pht_n$ ) is calculated by:

$$Pht_n = Pht / ISTD$$

Where  $Pht$  is the phthalate response and  $ISTD$  is the internal standard response.

- 7.5. Analyze a CRM to ensure a proper calibration. The analyzed value should be within  $\pm 15\%$  of the expected value. If not, prepare new standards and re-run calibration.
- 7.6. Analyze the LRB and all samples.
- 7.7. Qualitatively evaluate full-scan results. Phthalates of interest should be identified by matching with retention times and mass spectra of standards. Potential non-regulated chemicals which may have mass ions of interest and/or similar retention times and chromatograms include, but are not limited to, linear C9 and C10 phthalates, and terephthalates.
- 7.8. Quantitate SIM results. If the results are out of the calibration range, return to step 6.2.5 of the phthalate extraction method (perform another dilution to get results in calibration range). If signal is near or below the limit of detection, change the inlet mode to splitless injection (when using splitless injection, samples and calibration curves should contain an internal standard concentration of 1  $\mu\text{g/ml}$ ). If signal is still below quantitation limits when using a splitless injection, the injection amount can be doubled from 1  $\mu\text{l}$  to 2  $\mu\text{l}$  (calculations must be adjusted accordingly).

## 8. Calculations and Results (copy from CPSC-CH-C1001-09.3)

Results can be reported as follows:

$$\text{Percentage [Phthalate]} = \frac{\% \text{ Phthalate (w/w)} = [(C \times FV \times D) / (W \times 1000)] \times 100}{100}$$

Where

C = Concentration of phthalate in GC-MS / LC-MS sample (in µg/ml)

FV = Final volume 15 or 25 ml from steps 5.1.6 and 5.2.7 of phthalate extraction methods

D = Dilution factor from steps 5.1.7 and 5.2.8 of phthalate extraction methods

W = Weight of sample collected (in mg) (weight without fabric in step 5.2.2)

Repeat calculation for each phthalate present in sample

## 9. Test report

The test report shall contain at least the following information:

- a) all information necessary for the identification of the sample
- b) data and type of sampling (if known)
- c) date of receipt of the laboratory sample
- d) date of test
- e) the results and the units in which the results have been expressed
- f) any particular points observed in the course of the test
- g) any operations not specified in the method or regarded as optional which might have affected the results

## 10. Reference

CPSC-CH-C1001-01.3

<http://www.cpsc.gov/about/cpsia/CPSC-CH-C1001-09.3.pdf>

**Analytical method:**

**Detection and Determination of  
Total Lead in Metal and Metal Alloy  
by ICP-AES, ICP-MS and AAS**

# Analytical method – Detection and Determination of Total Lead in Metal and Metal Alloy by ICP-AES, ICP- MS and AAS

## 1. Scope

This method is for the detection and quantification of Lead in metal and metal alloy samples.

## 2. Principle

Total of metal and metal alloy samples is digested and dissolved completely by inorganic acid. Then the solution is marked up in volumetric flask and analyzed ICP-AES, ICP-MS and AAS.

## 3. Reagents

During the analysis, unless otherwise stated, use only reagents of recognized analytical grade and only distilled water or water of grade 1 accordance with ISO 3696: 1987. Solvent shall be of quality for HPLC analysis.

**3.1** Concentrated nitric acid (for silver containing metal/metal alloy)

**3.2** Concentrated hydrochloric acid.

**3.3** Aqua regia (for general metal/metal alloy)

Mix HNO<sub>3</sub> and HCl in a ratio of 1:3.

## 4. Apparatus

4.1 Inductively Coupled Plasma-Atomic Emission Spectrometer

4.2 Inductively Coupled Plasma-Mass Spectrometer (as alternative)

4.3 Atomic Absorption Spectrometer (as alternative)

4.4 Microwave digester

4.5 Beaker

4.6 Hot plate

4.7 Volumetric flask

## 5. Sample preparation

5.1 Standard preparation

5.1.1 Prepare calibrators with acid matrix matching with sample preparation in Section 6.

5.1.2 Calibrator concentration

	ICP-AES (ppm)	AAS (ppm)	ICP-MS (ppb)
--	---------------	-----------	--------------

Calibrator Pt1	0.08	0.1	1
Calibrator Pt2	0.5	0.25	5
Calibrator Pt3	1	0.5	10
Calibrator Pt4	2	1	20
Calibrator Pt5	5	2	50

Results for each standard should be within 5% of the true value. If the values do not fall within this range, recalibration is necessary.

## 5.2 Sample preparation

5.2.1 Cut the metallic sample into pieces and mix homogeneously.

5.2.2 Weigh 0.1-0.2 g into beaker or microwave vessel.

5.2.3 Add appropriate amount of aqua regia or nitric acid to the container for digestion. Normally, less than 10mL acid is used.

5.2.4 Place the beaker onto hot plate with gentle boiling for not less than 30 minutes. Or digest the sample by microwave digester.

5.2.5 Ensure the sample is COMPLETELY digested, otherwise, repeat step 5.2.4 with more acid and repeat digestion.

5.2.6 Cool the acid to room temperature. Mark up the acid with DI water in volumetric flask. (i.e. 25mL volumetric flask)

5.2.7 Analyze the solution with ICP-AEA/ICP-MS/AAS.

5.2.8 Wavelength for ICP-AES: 217.00nm & 220.353nm (Greater response wavelength without interference should be selected in high priority)

5.2.9 Wavelength for AAS: 283.3nm or 217.0nm TBD

5.2.10 Mass ions for ICP-MS: Sum of 206,207 and 208 m/z TBD

## 6 Calculation of results

### 6.1 Calibration curve

6.1.1 Prepare calibration curves by plotting the concentration of Lead.

6.1.2 For quantification, the calibration curve shall have a correlation coefficient better than or equal to 0.995. (i.e.  $R^2 = 0.99$ )

6.1.3 Middle point of calibration curve QC and self check of calibrators should within 10% of theoretical concentration.

### 6.2 Calculation of concentration of APEO result

The Lead level is calculated in sample according to the following equation:

$$\text{Lead in sample, mg/kg} = \frac{[C] \times V}{W} \times D.F.$$

Where,

[C] = Concentration of Lead (ug/mL or ng/mL)

- V = Mark up volume (mL)
- W = Weight of the textile specimen in g

Reporting limit of this method is 10 mg/kg\*.

\*Reporting limit is subject to change upon the need of each laboratory.

## **7 Test report**

The test report shall contain at least the following information:

- a) all information necessary for the identification of the sample
- b) data and type of sampling (if known)
- c) date of receipt of the laboratory sample
- d) date of test
- e) the results and the units in which the results have been expressed
- f) any particular points observed in the course of the test
- g) any operations not specified in the method or regarded as optional which might have affected the results

## **8 Reference**

- (a) CPSC-CH-E1002-8.1 Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children's Products (including Children's Metal Jewelry)

**Analytical method:**

**Detection and Determination of  
Total Lead in Surface Coating  
by ICP-AES, ICP-MS and AAS**

# Analytical method – Detection and Determination of Total Lead in Surface Coating by ICP-AES, ICP-MS and AAS

## 1. Scope

This method is for the detection and quantification of Lead in surface coating or paint.

## 2. Principle

Surface coating samples is digested and dissolved completely by inorganic acid. Then the solution is marked up in volumetric flask and analyzed ICP-AES, ICP-MS and AAS.

## 3. Reagents

During the analysis, unless otherwise stated, use only reagents of recognized analytical grade and only distilled water or water of grade 1 accordance with ISO 3696: 1987. Solvent shall be of quality for HPLC analysis.

### 3.1 Concentrated nitric acid

## 4. Apparatus

4.1 Inductively Coupled Plasma-Atomic Emission Spectrometer

4.2 Inductively Coupled Plasma-Mass Spectrometer (as alternative)

4.3 Atomic Absorption Spectrometer (as alternative)

4.4 Microwave digester

4.5 Beaker

4.6 Hot plate

4.7 Volumetric flask

## 5. Sample preparation

5.1 Standard preparation

5.1.1 Prepare calibrators with acid matrix matching with sample preparation in Section 6.

5.1.2 Calibrator concentration

	ICP-AES (ppm)	AAS (ppm)	ICP-MS (ppb)
Calibrator Pt1	0.08	0.1	1
Calibrator Pt2	0.5	0.25	5
Calibrator Pt3	1	0.5	10

<b>Calibrator Pt4</b>	<b>2</b>	<b>1</b>	<b>20</b>
<b>Calibrator Pt5</b>	<b>5</b>	<b>2</b>	<b>50</b>

Results for each standard should be within 5% of the true value. If the values do not fall within this range, recalibration is necessary.

## 5.2 Sample preparation

- 5.2.1 Scrap the surface coating or paint into pieces and mix homogeneously.
- 5.2.2 Weigh 0.01-0.2 g into beaker or microwave vessel.
- 5.2.3 Add appropriate amount of nitric acid to the container for digestion. Normally, less than 10mL acid is used.
- 5.2.4 Place the beaker onto hot plate with gentle boiling for not less than 30 minutes. Or digest the sample by microwave digester.
- 5.2.5 Ensure the sample is COMPLETELY digested, otherwise, repeat step 5.2.4 with more acid and repeat digestion.
- 5.2.6 Cool the acid to room temperature. Mark up the acid with DI water in volumetric flask. (i.e. 25mL volumetric flask)
- 5.2.7 Analyze the solution with ICP-AEA/ICP-MS/AAS.
- 5.2.8 Wavelength for ICP-AES: 217.00nm & 220.353nm (Greater response wavelength without interference should be selected in high priority)
- 5.2.9 Wavelength for AAS: 283.3nm or 217.0nm TBD
- 5.2.10 Mass ions for ICP-MS: Sum of 206,207 and 208 m/z TBD

## 6 Calculation of results

### 6.1 Calibration curve

6.1.1 Prepare calibration curves by plotting the concentration of Lead.

6.1.2 For quantification, the calibration curve shall have a correlation coefficient better than or equal to 0,995. (i.e.  $R^2 = 0.99$ )

6.1.3 Middle point of calibration curve QC and self check of calibrators should within 10% of theoretical concentration.

### 6.2 Calculation of concentration of APEO result

The Lead level is calculated in sample according to the following equation:

$$\text{Lead in sample, mg/kg} = \frac{[C] \times V}{W} \times \text{D.F.}$$

Where,

[C] = Concentration of Lead (ug/mL or ng/mL)

V = Mark up volume (mL)

W = Weight of the textile specimen in g

Reporting limit of this method is 10 mg/kg\*.

\*Reporting limit is subject to change upon the need of each laboratory.

## **7 Test report**

The test report shall contain at least the following information:

- a) all information necessary for the identification of the sample
- b) data and type of sampling (if known)
- c) date of receipt of the laboratory sample
- d) date of test
- e) the results and the units in which the results have been expressed
- f) any particular points observed in the course of the test
- g) any operations not specified in the method or regarded as optional which might have affected the results

## **8 Reference**

- (a) CPSC-CH-E1003-09.1, Standard Operating Procedure for Determining Lead (Pb) in Paint and other Similar Surface Coatings

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0011

Comment from Christopher Hudgins

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## Submitter Information

**Name:** Christopher Hudgins

**Organization:** International Sleep Products Association

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## General Comment

See attached file(s)

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## Attachments

ISPA Comments on Reducing Third Party Testing Burdens



INTERNATIONAL  
SLEEP  
PRODUCTS  
ASSOCIATION

January 23, 2012

Consumer Product Safety Commission  
Office of the Secretary  
4330 East West Highway  
Bethesda, MD 20814

Re: Docket No. CPSC–2011–0081, Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

The International Sleep Products Association (ISPA) submits the following comments to the Consumer Product Safety Commission (CPSC) on behalf of the mattress manufacturing industry regarding the above-referenced rulemaking. ISPA also invites the CPSC to review its previous comments on third party testing, and testing and certification, for further details on reducing testing costs.

#### Third Party Testing Requirements for Children's Mattresses

As a result of the Consumer Product Safety Improvement Act (CPSIA) and the CPSC's new requirements for third party testing, manufacturers of mattresses designed or intended primarily for children 12 and younger must now conduct 16 CFR Part 1632 and 1633 flammability testing using an accredited third party lab (which also will soon be required to be conducted at periodic intervals). This change has resulted in significant new costs for mattress manufacturers, nearly 97% of which are small businesses according to the CPSC's data.

As detailed in previous comments to the Commission,<sup>1</sup> 16 CFR Parts 1632 and 1633 are complex and expensive tests that can cost \$850 to \$1650 each to conduct, including the value of the product destroyed during the test. By adding additional testing requirements and increasing the frequency of these tests, the CPSC has further increased the cost to manufacture children's mattresses. If the new rules require a manufacturer to conduct even 20 tests annually, that could add over \$30,000 in additional testing costs.

These added costs occur at a time when many mattress manufacturers are struggling to recover from the recent economic recession, which has significantly reduced sales and forcing many employers to lay off workers. Our market, measured in terms of wholesale dollars and units, shrank from 2007 to 2009 by nearly 20% and the industry lost more than \$1.2 billion in sales. Although the industry began to recover in 2010, the uncertain economic and regulatory outlook has made employers in the industry cautious about expanding too fast. In the last few years, mattress producers and suppliers of every size have either closed their doors, undergone bankruptcy, or restructured and downsized. Many still struggle to remain in business.

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<sup>1</sup> ISPA Testing and Certification Comments, August 3, 2010

Additional testing of mattresses is also unnecessary. Periodic third party testing requirements for children's mattresses have been implemented in the absence of any evidence that there is a need for such redundant testing. Although the Commission has been actively enforcing Part 1632 and 1633 for a number of years, we are aware of no significant compliance issues that the Commission has identified that would be addressed by requiring the industry to test and retest all of its children's products using accredited third party labs.

In response to CPSC's request for comments, ISPA submits the following options that would help the industry reduce the impact of incurring superfluous and redundant testing expenses and instead devote more scarce resources to recovering from the recent recession and adding jobs, without compromising safety.

#### Options for Reducing Third Party Testing Burdens

##### 1. Recognize that 16 CFR Part 1632 and 1633 are not "Children's Product Safety Rules"

The Commission interprets Section 14(a)(2) of the Consumer Product Safety Act (CPSA), as amended by the CPSIA, to require that all children's mattresses be tested for compliance with 16 CFR Parts 1632 and 1633 by an accredited third party conformity assessment body. ISPA urges the CPSC to reconsider this interpretation.

In enacting the CPSIA, Congress stated that the third party testing requirements contained in Section 102(a)(2) only apply to a "children's product safety rule." Section 102 further directs the CPSC to "publish notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with other children's product safety rules."

Unlike those safety standards that focus exclusively on products intended for use by children 12 years of age or younger, the mattress flammability standards codified at 16 CFR Part 1632 and 1633 apply to all new mattresses, regardless of the age of their intended user. Thus, these standards are not "other children's product safety rule[s]" because they are not specific to children's products, and as such, they are not subject to the third party testing requirements referenced above. Had Congress intended to extend the third party testing requirements to general product safety rules like Parts 1632 and 1633, the language of Section 102 would instead have simply stated that it applies to "product safety rules."

For these reasons, we urge the CPSC to conclude that 16 CFR Parts 1632 and 1633 are not considered children's product safety rules. Based on that interpretation, periodic third party testing of children's mattresses would no longer be required. Doing so would greatly reduce unnecessary compliance costs for children's mattress manufacturers and would not compromise the safety of these products.

##### 2. Remove Periodic Testing Requirements for Mattresses

16 CFR Part 1632 and Part 1633 are robust standards that include a number of requirements that promote continued compliance and traceability. As previously stated in comments to the

Commission,<sup>2</sup> all mattresses sold in the United States must meet rigorous testing, record keeping, quality assurance, and labeling and certification requirements. To date this testing has been conducted on prototypes, and manufacturers must maintain quality assurance controls both with respect to incoming materials and finished products to confirm that actual production units meet the exacting requirements set for the qualified mattress prototypes. There is absolutely no evidence to suggest that the current quality requirements are insufficient in protecting consumers.

Nevertheless, with new periodic third party testing requirements for children's mattresses coming into effect, and expected periodic testing requirements for all mattresses, the mattress industry will be forced to incur additional costs in exchange for no discernible safety benefit. As stated above, each test may cost up to \$1650. Depending on a given company's product mix, it may make mattresses that are based on several or even dozens of different product prototypes. As a result, the periodic testing requirements can impose significant new and unnecessary costs on a mattress manufacturer. For example, as noted above, the new rules could add over \$30,000 in additional accredited third party lab costs for a single manufacturer. Given the current economic environment, these are costs that can threaten a manufacturer's long-term survival and jeopardize jobs.

To reduce the cost of unneeded testing that threatens jobs, ISPA urges the CPSC to conclude that periodic flammability testing for both children's and other mattresses is not necessary, given the robust and rigorous nature of the existing flammability standards that mattresses must already meet.

### 3. Approve the Industry's Request to Revoke Part 1632

The most effective way to help reduce the third party testing costs and burdens created by the new requirements is to approve the mattress industry's request to revoke 16 CFR Part 1632. Part 1632 requires mattresses to resist ignition from smoldering heat sources, such as a lit cigarette. As detailed in ISPA's comments to the Commission in January 2011,<sup>3</sup> the requirements in 16 CFR Part 1633 make Part 1632 redundant. In the course of testing hundreds of different mattress prototypes under Part 1633, the industry quickly realized that all prototypes that passed the open-flame criteria set in Part 1633 also passed the cigarette-ignition standard embodied in Part 1632. Based on these results, ISPA requested that the CPSC revoke the old Part 1632 standard because the new open-flame standard embodied in Part 1633 made the cigarette-ignition standard redundant and therefore unnecessary. In 2005, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) requesting public comment on ISPA's request.<sup>4</sup>

Since the CPSC published that ANPR, all 50 states have enacted laws requiring that cigarettes sold within their jurisdictions meet so-called "Reduced Ignition Propensity" (RIP) requirements.<sup>5</sup> The National Fire Protection Association (NFPA) examined the impact of RIP cigarettes on public safety in a 2010 report.<sup>6</sup> Its analysis demonstrates that the RIP cigarette will be a major "game changer" in terms of improving public safety by significantly reducing the number of fires and related deaths

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<sup>2</sup> Id.

<sup>3</sup> ISPA Comments on Proposed Rule to Amend 16-CFR Part 1632, January 18, 2011

<sup>4</sup> 70 FR 36357 (June 23, 2005).

<sup>5</sup> Coalition for Fire-Safe Cigarettes, State-by-state efforts,

<http://www.firesafecigarettes.org/itemDetail.asp?categoryID=93&itemID=1295&URL=Legislative%20updates/State-by-state%20efforts#wyoming>.

<sup>6</sup> Hall, John R., The Smoking-Material Fire Problem, NFPA Fire Analysis and Research Division (Sept. 2010),

<http://www.nfpa.org/assets/files/PDF/OS.Smoking.pdf>.

caused by smoldering cigarettes. The NFPA compared the incidence of residential fires ignited by smoking materials both before and after enactment of state RIP cigarette mandates. In New York (the first state to require RIP cigarettes), NFPA compared “smoking material fire deaths” for the periods 2000-02 (before the RIP cigarette requirement in New York) and 2006-08 (following enactment in New York in 2003 and 2004, respectively). NFPA concluded that those data “impl[y] a 41% reduction in those fire deaths.”<sup>7</sup>

NFPA also examined fire statistics for 18 more states that had mandated the use of RIP cigarettes by 2008. Depending on how the data are analyzed, NFPA concluded that in 2008, tobacco related fire deaths in those additional states fell by between 21-29%.<sup>8</sup>

Overall, NFPA concluded:

A simple projection linking the percentage decline in fires or fire deaths to the percentage of smokers covered would suggest that when the [RIP cigarette] law is fully effective across the entire country (in late 2012) [that is, after the laws in all states become effective and remaining supplies of non-RIP cigarettes are depleted], ***the reduction in fires should reach 50-70% and the reduction in fire deaths should reach 56-77%***, both relative to levels in 2003, the last year before the fire-safe cigarette law was effective in any state.<sup>9</sup>

(Emphasis added.)

For these reasons, ISPA urges the CPSC to grant this request and revoke 16 CFR Part 1632. Doing so would alleviate part of the added costs that manufacturers of children’s mattresses must incur by requiring additional periodic Part 1632 and 1633 testing by accredited third party labs.

\* \* \*

Thank you for the opportunity to share our remarks. You may contact me at (703) 683-8371 should you have any questions.

Sincerely,



Christopher Hudgins  
Vice President, Government Relations & Policy

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<sup>7</sup> Id. at ii.

<sup>8</sup> Id.

<sup>9</sup> Id. at i.

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0012

Comment from Satbir Nayar

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## Submitter Information

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**Submitter's Representative:** Quin D. Dodd, Esq. (Law Offices of Quin D. Dodd, LLC)

**Organization:** XOS, Inc.

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## General Comment

See attached file(s)

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## Attachments

XOS Comments Regarding CPSC Docket No. 2011-0081



January 23, 2012

Mr. Todd Stevenson  
Secretary,  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**XOS Comments regarding: CPSC Docket No. 2011-0081, “Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens.”**

Dear Mr. Stevenson:

XOS appreciates the opportunity to submit comments on the above referenced request for comments.

In brief, XOS believes that the high-definition x-ray fluorescence (HDXRF) technology and instruments it has developed and that are now in wide use by the CPSC, and among third party testing labs, manufacturers and other makers and sellers of consumer products, presents an ideal opportunity for the CPSC to expand the recognized use of this technology (including of the ASTM F2853-10 standard that covers it) for lead in substrate and, ultimately, for all heavy metals in surface coating and substrate materials of consumer products to CPSC product safety standards. Labs and companies around the world are today saving money, time and the loss of product samples through the use of HDXRF technology and instruments. Expansion of agency recognition of this breakthrough technology will undoubtedly even further reduce the cost of CPSC testing. HDXRF, in fact, represents an ideal and immediate opportunity for the CPSC to “reduce the cost of third party testing requirements consistent with assuring compliance with applicable consumer product safety [standards],” as called for by Congress through enactment of H.R. 2715 last year.

**I. Background**

XOS, headquartered near Albany, NY, is a leading global provider of mission-critical materials analysis equipment for industries and regulators for material quality control and performance in a range of applications, from consumer products and electronics to the petroleum industries. XOS pioneered the use of advanced X-ray optics, including HDXRF, in application-specific analyzers that measure environmental and product contaminants such as lead, cadmium, chlorine, and sulfur. Advanced X-ray optics like those in HDXRF can often increase the sensitivity of the measurements by more than a factor of 100, while decreasing the measurement time, increasing spatial resolution, and decreasing the size and cost of the equipment. Manufacturers, laboratories and other end users implement XOS analyzers to drive yield and throughput improvements, meet strict regulatory requirements, and enhance product quality. These application-specific analyzers incorporate peak detection performance, low maintenance, and user-friendly operation in laboratory, at-line, on-line, and in-situ environments.



In the wake of the enactment of the CPSIA, XOS worked to develop analyzers designed specifically to detect lead and other elements in consumer products. The result was an advanced optics system that effectively removes the background “noise” that typically obscures signals and readings from traditional XRF handheld and other instruments. Today, XOS’ HDXRF instruments are considered state-of-the-art for the detection of lead and other heavy metals in both surface coatings (paint) and substrates of virtually all consumer products.

HDXRF has all the advantages of traditional XRF, including non-destruction of product samples and speed and ease of use, but with far superior precision and reliability. In April 2011, the CPSC formally recognized ASTM F2853-10 for approved third party testing to support certification to the CPSC lead paint standard, 16 C.F.R. 1301. XOS instruments are now being used by both the CPSC and by a wide array of testing labs, manufacturers and others in the supply chain to test and certify children’s products to that standard.

In addition, many third party labs and other companies are using XOS instruments to detect and measure lead and other heavy metals of concern in both the surface coatings and substrate materials of toys and other children’s products. In October 2011, XOS testified before the Commission regarding the need to expand CPSC recognition of ASTM F2853-10 for the third party testing and certification of children’s products to the CPSIA lead substrate standard, which now limits accessible parts of such products to 100 parts per million of lead. It is our understanding that the CPSC staff is now actively considering doing so.

## **II. CPSC Recognition of HDXRF for Lead Substrate Testing and Certification**

In contrast with the stark limits the CPSC has repeatedly found with the use of traditional (including handheld) XRF technology, XOS has provided the CPSC with extensive data demonstrating that HDXRF is sufficiently precise and reliable for the detection of lead at levels well below 100 ppm, and in all major substrate materials of children’s products, including metals.

The efficacy of ASTM F2853 for the quantification of lead has been well-established, most recently through an extensive inter-laboratory study involving preeminent third party testing companies, government labs, and major toy manufacturers. The study incorporated over 1000 individual measurements on nearly three dozen samples. The repeatability and reproducibility of the new HDXRF method was comparable to the bellwether wet chemistry (ICP) method, but with the relative advantages of XRF over the more costly, destructive, time-consuming and user-interactive aspects of ICP.

Through enactment of both the CPSIA and H.R. 2715, Congress has continued to express its intent and desire for the CPSC to explore and approve lower cost third party testing alternatives to demonstrate compliance with CPSC standards, notably including the lead in paint and lead in substrate standards. In all respects, ASTM F2853-10 and HDXRF fit this bill perfectly. The standard and the technology are cheaper, faster and easier to use than ICP but are comparable in terms of precision and reliability. ASTM F2853 should therefore be appropriately and expeditiously recognized by the CPSC for use in the testing and certification of consumer products to the lead in substrate standard, just as it has for the lead in paint standard.



### III. Other Use of HDXRF to Reduce Third Party Testing Burdens

As the CPSC staff or anyone who has used or seen a demonstration of XOS HDXRF instruments knows, the technology requires far less preparation and operation time and expertise than does wet chemistry testing. In fact, it is as easy to operate as traditional XRF instruments, and essentially involves the action of placing a sample under the analyzer, focusing it on the spot of the product sample being tested, and clicking an icon to begin the analysis. In minutes, a measurement result for lead and other heavy metals is provided on an easy-to-read screen, which is stored electronically and can then be downloaded into a variety of other documents/systems, including into Children's Product Certificates, as required by the CPSIA.

Many of our clients are therefore manufacturers and other makers and sellers of children's products who use XOS instruments in-house, i.e., for first party screening and verification testing, to augment their third party testing programs, which is perfectly appropriate given the fact that our instruments can be used in-situ (in factories, etc.) as effectively as they can in laboratory conditions. Again, with relatively brief staff orientation and training on how to properly use HDXRF instruments, it has been our experience that these first party testing companies have little difficulty in obtaining consistent and reliable measurements for lead and other heavy metals--measurements that are repeatedly verified through CPSC approved third party testing, using both HDXRF and wet chemistry recognized test methods.

Therefore, if the CPSC believes it appropriate to explicitly allow first party (manufacturer/importer) lead testing using ASTM F2853-10 (presumably for both paint and substrate testing) in the context of "production testing plans" under the new CPSC Testing and Certification Rule, as an augmentation to third party certification and periodic testing, it is XOS' belief that doing so would not create an increased risk of non-compliance of children's products to those safety standards. Indeed, doing so will likely increase the level of compliance, since testing may become more frequent and thorough.

We again appreciate the opportunity to supply the CPSC with these comments and look forward to continuing to contribute to the important effort to reduce the burdens and costs of third party testing, while ensuring the compliance and safety of children's and other consumer products.

Sincerely,

A handwritten signature in black ink, appearing to read 'Satbir Nayar'.

Satbir Nayar  
Product Manager,  
XOS

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0013

Comment from Deborah Fanning

---

## Submitter Information

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**Organization:** The Art & Creative Materials Institute, Inc. (ACMI)

---

## General Comment

Please accept these comments submitted on behalf of The Art & Creative Materials Institute, Inc. (ACMI) on Reducing Third Party Testing Burdens - Docket # CPSC-2011-0081.

Sincerely,

Deborah M. Fanning, CAE

Executive Vice President

The Art & Creative Materials Institute, Inc.

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## Attachments

ACMI Comments on Reducing CPSIA 3rd Pty Testing Costs\_final



## THE ART & CREATIVE MATERIALS INSTITUTE, INC.

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January 23, 2012

Office of the Secretary  
Consumer Product Safety Commission  
Room 502, 4330 East West Highway  
Bethesda, MD 20814

### Re: Reducing Third Party Testing Burdens [CPSC Docket No. CPSC-2011-0081]

Dear Sir:

These comments are being submitted by The Art and Creative Materials Institute, Inc. (ACMI) on behalf of its 230 manufacturing member companies in the United States and internationally. We carefully considered the request for comments by the Consumer Product Safety Commission (CPSC) on Ways of Reducing Third Party Testing Burdens as mandated by HR 2715. ACMI welcomes the opportunity to submit our two suggestions on how the CPSC might reduce the burden third party testing places on manufacturers of children's art material products.

#### 1. RECOGNIZE THE INTENT AND VALUE OF OTHER STATUTES ADMINISTERED BY CPSC

Manufacturers of children's art material products are subject to four tiers of federal regulation: FHSA, LHAMA, ASTM D4236, and CPSIA. Those manufacturers who are members of ACMI voluntarily submit to a fifth layer of regulation that, in many instances, is more severe than the federal rules. This creates many redundant testing requirements for the industry and raises costs for them. The third party testing requirement does not increase the safety of the children's art material products of ACMI members in any way because their children's products complied with the provisions of the Consumer Product Safety Improvement Act for many years prior to its passage in 2008. Both the House of Representatives and the Senate acknowledged this fact when both houses supported an exemption for ACMI certified products in the CPSIA. The CPSC refuses to acknowledge the success of these statutes. Instead the Commission continually disrespects these statutes and the Congresses that enacted them by insisting in its public announcements that none of these prior existing statutes require testing. This is patently ludicrous. It is true that these older statutes are written in a style different than the CPSIA and do not shout "you shall do testing" at every turn. However, any review of them with a little critical thinking illustrates that testing is the very foundation of all of these statutes. The Commission should seek to build on its pre-existing statutory authority to harmonize the latest congressional mandates in a way that imposes the least burden on the affected industry.

LOOK FOR THESE SEALS.....



## FHSA REQUIREMENTS

While it is true that no testing is explicitly required under FHSA, it is certainly presumed. Without testing, it would be impossible for a manufacturer or a toxicologist to know whether a household product contains a hazardous substance that triggers cautionary labeling. Because most managers of manufacturing facilities are business people, they frequently have to rely upon the expertise of scientists to advise them if their products contain any ingredients that may cause substantial injury or substantial illness during or as a proximate result of any customary or reasonable foreseeable handling or use, including reasonable foreseeable ingestion by children. Scientists frequently require testing of the products to answer these questions. In apparent recognition of this fact, the CPSC has developed various test methods by which manufacturers and their testing laboratories can determine the toxicity, irritation, and flammability of various substances. It presupposes that manufacturers have tested their products so that they know what substances are contained in the products and in what quantity.

## LHAMA REQUIREMENTS

LHAMA builds on the testing and labeling scheme detailed by the FHSA. It mandated that ASTM D 4236 be deemed to be a federal regulation issued by the agency under Section 3(b) of the FHSA by November 1990<sup>1</sup>. While not explicitly stated, LHAMA, like the FHSA, presupposes a significant amount of testing of art material products by the manufacturers in order to satisfy the requirements for labeling imposed by the statute.

## ASTM D4236 REQUIREMENTS

Unlike the FHSA and LHAMA laws, the ASTM D 4236 regulation explicitly requires a qualified toxicologist to consider “current chemical composition of the art material, supplied by an analytical laboratory or by an industrial chemist on behalf of a manufacturer or re-packer” and “the specific physical and chemical form of the art material product, bioavailability, concentration, and the amount of each potentially chronic toxic component found in the formulation.” Perhaps CPSC staff knows of another way, but manufacturers of art material products have long understood this provision to mandate that their products be tested and that they must provide the results to the qualified toxicologist for review in order to comply with ASTM D4236 regulation. Because the art material industry consists of small businesses who cannot afford the luxury of their own testing laboratories, the manufacturers have long relied upon testing by third party testing laboratories, many of whom are now recognized by CPSC to be accredited.

## ACMI CERTIFICATION PROGRAM REQUIREMENTS

The ACMI Certification Program melds the requirements of both LHAMA/ASTM D 4236 and FHSA and takes them a step further. The program specifically requires manufacturers to test and submit formulation information to ACMI’s toxicologists every time the company develops a new product, changes the specifications for a product that has already been approved, or changes the supplier of a material (or any component thereof) that has already been approved by the toxicologist. Long before the passage of the CPSIA, children’s products in ACMI’s program could not contain more than 100 ppm lead in order to be approved non-toxic and authorized to bear the AP Seal. In fact, most AP-labeled products are well below this 100 ppm level and had been for numerous years prior to 2008. ACMI members have always had to use the third party testing facilities designated by ACMI’s toxicologists. Many of those “ACMI approved” third party testing facilities are now ILAC-accredited CPSC approved laboratories. All products in the ACMI Certification Program are evaluated to comply with the Labeling of Hazardous Art Materials Act (LHAMA), the Federal Hazardous Substances Act (FHSA), and the ASTM D 4236 Standard for Art Materials as encoded into law by LHAMA.

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<sup>1</sup> See 16 C.F.R. Section 1500.14 (b) (8).

ACMI contracts with an independent team of board-certified toxicologists from the Duke University Medical Center Occupational Health Service. Headed by Woodhall Stopford, M.D., the team reviews the complete formulas of the products in the Certification Program and specifies the types of tests that it requires in order to complete its review. To facilitate this testing, the Duke Toxicologists have compiled a list of test methods, some of which they have developed, that ACMI distributes to its members so there is no confusion as to which test method is required.

## CPSIA REQUIREMENTS

ACMI has advised its members of the CPSIA provisions that could apply to their products and provided that information to the Commission. We have not received any communication that CPSC disagrees with this advice to our members. So, our member companies have an accredited third party testing laboratory test for lead and issue a certificate of conformance that the product complies with the 100 ppm total lead limit and the 90 ppm lead in paint limit. They affix tracking labels to their children's products. If the art material product might have play value, then they test for compliance with ASTM F963 and the phthalates limits. Other than the tracking label and the COC, the member companies are not doing anything new here because the LHAMA/ASTM D4236 testing and toxicological evaluation have already insured that the products comply. Nevertheless, the manufacturers must pay for redundant third party testing in order to satisfy the requirements of CPSIA because the CPSC refuses to adhere to the congressional provision in CPSIA that recognizes the value of the ACMI Certification Program that includes third party testing.

### 2. ELIMINATE DUPLICATIVE RETAILER REQUIREMENTS

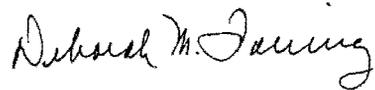
We appreciate CPSC's efforts to clarify, in the Final Testing Rule, that foreign manufacturers are responsible for testing and certifying that their children's products meet CPSIA requirements and that the importer, in many cases the retailer themselves, can rely on these test reports to issue their own COC. We believe this is one area that has generated many of the duplicate test requests. However, our members are continuing to receive duplicate test requests. If testing has already been performed by an ILAC-accredited laboratory, this testing should not have to be repeated simply because it was not done by a specific laboratory preferred by the retailer. Administration of the law and compliance to the law should follow the law. Retailers should not be creating their own CPSIA testing programs based on their own definitions of a "children's product" or "toy" and only accepting testing that is done by their "preferred" laboratory. We feel that this exclusive relationship that certain retailers have with specific testing labs goes against the "undue influence" provision in the Final Testing Rule.

A number of retailers, in their quest to ensure that the products they sell comply with all applicable regulations, are unfortunately applying a "one size fits all" approach to the testing that they require of product manufacturers, whether or not the testing applies to a particular product. We have heard many times from our members that they are being asked to do CPSIA testing that does not apply to art material products. This could be due to how retailers are interpreting the definition of a "children's product" or a "toy," which in some cases does not follow the statutory definition.

Retailers justify their retail testing programs by advising our members that CPSC and CPSIA require them. We have not been able to find any basis for this whatsoever. If there was an internal or verbal discussion between the agency and the retail community that lead the retailers to conclude that they needed these duplicative programs for their own protection, please dissuade them of this notion by public announcements to the contrary. We strongly recommend that the Commission make it clear, perhaps by a single notice in the Federal Register, that a single test of a product by an ILAC-accredited laboratory is acceptable legally and that additional duplicative tests are not required by law.

ACMI and its members are proud of their outstanding record of producing art materials that are of high quality and that are safe for retailers to sell and consumers to use. We appreciate the difficult task in front of CPSC to administer the CPSIA because of the wide range of products covered by this regulation. While we agree that steps must be taken to keep products that are unsafe from the marketplace, CPSC must be careful not to make it prohibitively expensive for responsible manufacturers to comply with the regulations.

Respectfully submitted,

A handwritten signature in black ink, reading "Deborah M. Fanning". The signature is written in a cursive style with a large, looping initial "D".

Deborah M. Fanning, CAE  
Executive Vice President

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0014

Comment from Gene Rider

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## Submitter Information

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**Organization:** Intertek Consumer Goods, NA

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## General Comment

See attached file(s)

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## Attachments

Intertek Consumer Goods, NA Comments re Reducing Third Party Testing Costs, CPSC-2011-0081



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January 23, 2012

Via [www.regulations.gov](http://www.regulations.gov)

Mr. Todd Stevenson  
Office of the Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Intertek Consumer Goods, NA Comments Regarding CPSC Docket No. CPSC-2011-0081,  
“Application of Third Party Testing Requirements; Reducing Third Party Testing  
Burdens”**

In response to the above referenced request for comments, Intertek Consumer Goods, NA respectfully submits the following:

**I. Summary of Comments.**

Intertek appreciates this opportunity to provide our comments on this valuable and necessary agency review of the third party testing mandates enacted under the Consumer Product Safety Improvement Act of 2008 (CPSIA) and how those mandates have been and will be implemented by the Consumer Product Safety Commission (CPSC).

Specifically, Intertek urges the CPSC to:

- Review and recognize IT tools with regard to compliance with the new Testing and Certification and Component Part Testing Rules;
- Specify which screening and testing methods are minimally acceptable for which products/standards as part of a “production testing plan” under the Testing and Certification Rule;
- Establish a more robust system for review and approval of new and emerging test methods and technologies, including approval of ASTM F2853 for lead substrate testing;
- Explicitly recognize the validity of “compound” test reports to support certification to CPSC standards; and
- Otherwise explore the use of more efficient and affordable testing, sampling, and reciprocal testing methods where compliance with standards can continue to be assured.

## **II. Overview of Intertek.**

Founded over 100 years ago by Thomas Edison as Electrical Testing Laboratories (ETL) to test the safety and performance of incandescent bulbs and lamps, Intertek is today a world leader in providing testing, inspection and certification services for a wide range of products and processes, including consumer products under the jurisdiction of the CPSC. Intertek maintains over 1,000 labs and offices in over 110 countries and manages over 150 certification programs, including many for consumer products. The company also currently owns and operates over 40 CPSC recognized labs for the third party testing of children's products to various mandatory CPSC standards.

With respect to CPSC activities, including the complex and years-long implementation of the Consumer Product Safety Improvement Act (CPSIA), Intertek has routinely contributed its experiences and ideas to the agency and its stakeholders. Along with the CPSC, Intertek representatives routinely participate in and contribute to many voluntary standards activities, notably including the recent revisions to the toy and crib standards, and with regard to the development of the new voluntary cadmium standard for children's metal jewelry. We also participate in virtually every significant hearing, workshop, roundtable, etc., where we believe our experience and expertise can enhance both the ability of the agency to carry-out its mission and to enable our customers and others to fully and efficiently meet their obligations under the law and otherwise improve their compliance and quality assurance systems and outcomes, at the lowest possible cost and disruption to their business operations.

As the CPSC undertakes this important and difficult review of third party testing as required by H.R. 2715, and as it otherwise continues to seek optimal solutions to testing and certification requirements, we look forward to a continued and beneficial dialogue with the Commission, agency staff, and the agency's many stakeholders. Intertek lab and other personnel are literally at the cutting edge of existing and emerging compliance and quality assurance issues in an ever more complex and rapidly evolving global supply chain environment. In our view, it is not just desirable but, indeed, essential for the CPSC to work with responsible testing labs like Intertek to find real-world and low-cost solutions to the growing complexity of U.S. and international product safety laws and requirements. Otherwise, the "compliance gap" between those with and those without the resources to fully internalize and comply with CPSC laws will continue to grow, benefiting neither consumers, the agency, nor the regulated marketplace.

## **III. Comments**

### **A. A Simple, Free Solution to the Complex New CPSC Testing Regulations.**

Intertek has proffered to the CPSC that it will make available, free of charge, the use of its iComply™ IT tool for "small" manufacturers/importers (however the agency may wish to define that term) to enable such companies to readily and fully comply with the new Testing and Certification and Component Part Testing rules recently finalized by the agency.

These new rules, while in part mandated by the CPSIA, are nevertheless quite complex and require detailed actions and documentation of those actions by importers of record and domestic manufacturers, well beyond the third party testing and certification requirements that have heretofore been required. We anticipate that firms will find particularly vexing the notion of how, under the Component Part Testing Rule, they are to ensure that overseas factories and others with whom they do business are in fact in compliance with the requirements of that rule and the Testing and Certification Rule as well, once that goes into effect next year.

iComply™ enables users to enter and upload information and documentation into the system, asks a series of questions about the product/component being tested/certified and then makes recommendations about testing protocols for that component or finished product, based on a proprietary algorithm, which is based in turn on decades of data, information and experience that Intertek has accumulated about what testing and other activities can, in fact, provide a “high degree of assurance” that products meet all applicable CPSC (and other U.S. and international) safety standards.

Offering iComply™ free to small importers/manufacturers of children’s products, as we have suggested, could be modeled on the U.S. Internal Revenue Service’s Free File Program, wherein providers of electronic tax preparation services provide access to those systems for free to moderate income filers, in coordination and cooperation with the IRS. Such a public/private partnership at the CPSC, we strongly believe, is legal, appropriate and necessary to maximize compliance with these complex new testing and certification requirements, particularly for those companies that otherwise simply do not and will not have the resources to fully understand and comply with these and other CPSC regulations and requirements. Indeed, such a solution represents an ideal means of “reducing the cost of third party testing requirements consistent with assuring compliance with applicable [CPSC requirements]” and we urge the Commission examine this opportunity closely.

C. Other Ways to Reduce Testing Costs Consistent with Assuring Compliance with Mandatory CPSC Standards.

1. Recognize Specific “Production Testing Plan” Test Methods.

Section 1107.21(c)(2) of the Testing and Certification Rule allows for the use of “production testing plans” in order to reduce the frequency of required third party periodic testing during ongoing production of products/product components. Such production testing plans may include in-house or third party testing (“measurement”) that would not necessarily be sufficient to satisfy the requirements of either certification or periodic testing by a CPSC recognized lab. However, the rule does not specify which production test methods may be acceptable, except to state that such methods “must be effective in determining compliance” and must, in conjunction with the other elements of a production testing plan “provide a high degree of assurance that the product being manufactured continues to comply with all applicable children’s product safety rules.”

While Intertek understands and embraces the desire on the part of the CPSC to allow as much flexibility as possible for manufacturers in undertaking production testing, it has been our experience that unless one or more test methods are specified as being acceptable by the agency, many entities in the supply chain, particularly those overseas, may be reluctant to “take the chance” that they will be viewed by the agency in retrospect as being inadequate. The CPSC should therefore specify at least

those test methods and procedures that, at minimum, would generally be considered by the agency to be adequate means of conducting production testing.

As a starting point here, all the methods recognized by the CPSC to date as being adequate for conducting third party testing to CPSC standards should explicitly be recognized as being adequate for production testing under Section 1107.21(c)(2). While many manufacturers will presumably not have the equipment or expertise necessary to utilize such test methods, if they do they should be allowed to use those methods for production testing. Alternatively, such manufactures should be explicitly allowed to engage CSPC-recognized third party labs to use such approved test methods, although perhaps under different conditions than might be utilized for certification or periodic testing, e.g., the testing of fewer samples than might otherwise be used, so long as a high degree of assurance of standards compliance is maintained.

In addition, the CPSC should develop a non-exhaustive list of alternative test methods not formally endorsed by the agency for certification or periodic testing, but that nonetheless would be considered to be adequate for production testing (whether in-house or third party). While such a list would not necessarily need to be enshrined in the Testing and Certification Rule itself, it could be maintained on a CPSC “policy” basis as a suggested but not mandatory or exclusive list of production test methods. This added level of clarity to what is a rather ambiguous provision of the Testing and Certification Rule would help give manufacturers/importers greater confidence to use production testing production testing plans to reduce the frequency of formal, third party periodic testing, thereby reducing their overall testing costs while maintaining assurance of compliance with mandatory safety standards.

## 2. Approve ASTM F2853-10 for Lead Substrate Testing.

In April 2011, the CPSC approved the use of this relatively new test method for third party testing to support certification of products to the lead paint standard (16 C.F.R. 1303). This method allows for the use of next generation XRF technology that is capable of meeting the precision and repeatability requirements specified in the method. As the CPSC is well aware, XRF has a number of advantages over traditional ICP (“wet chemistry”) testing, including non-destruction of samples, speed of and relative cost of testing, the ability to conduct on-site testing, and the ability to measure several areas on a product sample without significant added cost.

Intertek (and presumably other third party labs) are today routinely utilizing the F2853-10 method to support certification to the CPSC lead paint standard. However, as the agency is aware, the F2853-10 method also encompasses measuring lead in all major substrate materials of children’s products, at below the regulatory level of 100 parts per million. Particularly with the recent renewal of the third party testing and certification requirement of the CPSC lead substrate standard, Intertek (and, again, presumably other CSPC-recognized third party testing labs) and our customers would like to begin utilizing this test method for certification testing to that standard. Doing so would represent an immediate and significant step toward reducing the cost and time required for third party testing.

## 3. Formally Recognize the Use of Compound Test Reports.

Many children’s products are today tested to standards in several different countries/jurisdictions. Many toys, for example, are tested to both U.S., Canadian, and European Union toy safety standards,

and may be tested (and certified where required) to other country's standards as well. As a result, Intertek regularly issues test reports that encompass these different standards and required test methods for toys and other children's products, including, of course, to CPSC standards. While statements by senior CPSC staff have seemed to indicate that such "compound" test reports are typically sufficient to support certification of products to CPSC standards, no formal declaration to that effect has been made by the agency. Doing so may help reduce the need for the issuance of multiple test reports for a single product bound for multiple jurisdictions, thereby reducing testing costs for manufacturers and other firms that procure such testing.

D. Intertek Comments in Response to Issues Specified in H.R. 2715.

1. CPSC Reciprocity for Testing Under other Governmental Test Methods/Standards.

This issue presents itself whenever testing to a non-CPSC standard, test method or other requirement may relate to some extent to the testing required to demonstrate compliance with a CPSC standard covering a children's product. For example, The U.S. Food and Drug Administration's requirements for lead "leachability" from food contact surfaces may bear at least some relation for some products to the CPSC limits on lead in the surface coatings and substrate of the non-food contact surfaces of the same product.

Intertek favors any measures the CPSC can undertake to reduce or eliminate duplicative testing, including any appropriate recognition of FDA, OSHA, EPA or other (including foreign) product (or product component/material) testing where that other agency-required testing in fact assures compliance with a relevant CPSC children's product safety standard. However, we to some degree share the concern implicit in the specific questions posed by the agency in the November 8, 2011 Federal Register Request for Comments that the lab recognition and oversight system required by the other agency should ensure at least the level of qualification and scrutiny as is presently required by the CPSC lab accreditation and recognition system. There are a great many labs around the world with a wide variety of expertise and qualifications. To say that lab expertise in measuring lead in food contact surfaces, for example, encompasses the ability or expertise to accurately measure lead in children's metal jewelry, per the CPSC approved test method, may simply not be accurate. And it goes without saying that test procedures and, indeed, general approaches to testing substances or products for compliance with different regulatory schemes, may differ greatly.

2. Testing to Support Certification for Multiple Importers of the Same/Similar Product.

Intertek certainly agrees that, in situations in which multiple importers import the same or similar product, test reports and certificates for that product (or product component) should be allowed to be used for final product certification for those multiple importers, which is what we understand the recently finalized Component Part Testing Rule in fact allows for, under the conditions specified in the rule.

3. Allowing Certification Based on Testing Only Some Product Components/Products.

Intertek agrees with the implicit spirit of this issue raised in the HR 2715 legislation, i.e., that product components or materials that are the same or substantially similar with respect to compliance with one

or more CPSC standards, like those for lead or phthalates, should not have to be redundantly tested. And, while the Component Part Testing Rule does allow for the testing of component parts and materials in lieu of final product testing and therefore presumably addresses most instances of such redundant testing, it may not prevent some situations where redundant testing may be required, including of course where an importer/domestic manufacturer cannot or chooses not to utilize that rule.

#### 4. Use of Alternative Technology/Test Methods.

As indicated above, Intertek urges the CPSC to approve ASTM F2853-10 for lead substrate testing to support product certification. In addition, we urge the agency to increase its lab and other evaluative resources to review new and emerging XRF and other screening and measurement technologies, particularly for heavy metals, that may be employed to further reduce third party (and first party) testing costs. Currently, CPSC lab staff are overburdened by an ever increasing sample product testing load and are simultaneously called on to evaluate new test methods and technologies. The CPSC should consider establishing a new and separately staffed office within the Division of Laboratory Sciences that would be solely tasked with this latter mission.

Again, CPSC specification of such technologies and methods, particularly in the context of recognized production testing methods under the Testing and Certification Rule, would both encourage wider and more efficient manufacturer/importer compliance with that rule and would encourage instrument manufacturers and labs to increase their efforts to develop newer and more efficient and effective test methods for CPSC standards compliance testing.

#### 5. Risk-Based Analysis for Lowering Testing Costs.

Comprehensive risk assessment and risk management can and should be a key element of any company's quality and product safety assurance system, both with respect to compliance with overt product safety standards and with respect to reducing the likelihood that a product will contain a defect that poses a substantial product hazard to consumers. Different product types, made under different manufacturing conditions, with different materials and subject to different mandatory and voluntary standards, all may have very different risk profiles and therefore require more or less scrutiny, verification and testing. Having a formal recognition by the CPSC of the importance of risk assessment in product design and manufacture would itself be significantly advance awareness of this fact, and could lead to a system of tailored testing plans that take into account the relative risk of different products.

However, there must be a level of assurance in place that risk assessment is being conducted with rigor and validity, and preferably by qualified third parties. Otherwise, standards violations and subsequent recalls are likely to increase.

Intertek has long been a leader in providing a variety of risk assessment and management services and tools for makers and sellers of consumer products worldwide. For the sake of brevity, an overview of these services can be found at: <http://www.intertek.com/risk-management/consumer-goods/>. Again, Intertek is by no means alone in offering such services, but the agency should formally recognize that when adequate tools like these are properly utilized, the risk of nonconforming or otherwise hazardous products being sold to consumers can be dramatically reduced. As part of its review of ways in which



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it can reduce third party testing mandates and costs, the agency should carefully consider explicitly allowing recognized, third party risk management systems like these to substitute, for example, for more frequent third party periodic testing as part of a production testing plan or in other ways lessening the burden of such testing.

#### **IV. Conclusion**

In our comments, Intertek has set-forth a number of suggestions on how the frequency, cost and burden of the CPSIA third party testing mandates for children's products can be lessened, but without increasing the likelihood that consumers will be exposed to products that either violate CPSC safety standards or that are otherwise dangerous. Indeed, by formally recognizing the use of programs like Testing and Certification Rule IT compliance tools and product risk management programs, we firmly believe that the overall compliance and safety of children's products can be increased beyond what even the most demanding third party testing mandates could ultimately yield.

The vast majority of American and overseas product manufacturers, importers and retailers want to and strive mightily to do the right thing and to produce quality, safe products for consumers. Unleashing that drive and the massive resources behind it, while of course maintaining appropriate CPSC oversight and ultimate regulatory and enforcement authority, is certainly no easy task. But it is something the CPSC must begin to undertake if it is to simply keep up with its industry stakeholders, let alone lead the path toward a truly sophisticated and integrated fulfillment of its mission to protect consumers.

Intertek appreciates the opportunity to supply these comments, and looks forward to continuing to contribute to this process wherever and whenever we can.

Respectfully Submitted,

A handwritten signature in black ink that reads "Gene Rider". The signature is written in a cursive, flowing style.

Gene Rider, President  
Intertek Consumer Goods, North America

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0015

Comment from Sheila Millar

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**Organization:** Fashion Jewelry and Accessories Trade Association

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## General Comment

Attached please find comments on behalf of the Fashion Jewelry and Accessories Trade Association (FJATA) in response to CPSC Docket No. CPSC-2011-0081.

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## Attachments

FJATA Comments on Third Party Testing Costs fnl 2012-01-23



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January 23, 2010

*Via Regulations.gov*

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Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, Maryland 20814

**Re: FJATA Comments on Application of Third Party Testing Requirements;  
Reducing Third Party Testing Burdens (CPSC Docket No. CPSC-2011-0081)**

Dear Mr. Stevenson:

On behalf of the Fashion Jewelry and Accessories Trade Association ("FJATA"), we are pleased to have this opportunity to submit comments in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens; Request for comments, 76 Fed. Reg. 69,596 (Nov. 8, 2011). FJATA's membership includes in excess of 200 companies, consisting predominately of small businesses, that manufacture or distribute fashion jewelry in the United States. FJATA and its members are committed to consumer safety and support sensible testing requirements. FJATA is pleased that through its leadership, and with the support and collaboration of many members of the CPSC staff, a comprehensive children's jewelry safety standard, ASTM F 2923-11, was recently published by ASTM International, addressing not only cadmium but all known hazards relating to children's jewelry.

FJATA members test products at third party testing laboratories in accordance with the Consumer Product Safety Improvement Act ("CPSIA"). Even modest-sized members of FJATA might produce up to twenty-five thousand stock keeping units ("SKUs") of jewelry in a calendar year. As a result, millions of dollars are being spent by FJATA members to test their products. This does not include costs of destroyed inventory or returned products for failure to meet applicable limits by even a small amount, since the failure of even one sample by as little as 1

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part per million (“ppm”) constitutes a failure of the entire lot.<sup>1</sup> FJATA members recently saw costs soar further as they implemented yet another round of sourcing, design, and manufacturing changes to comply with new, lower lead content limits of 100 ppm. Some members have exited the children’s jewelry market, while many of those that continue to offer children’s jewelry have substantially reduced the variety of products and increased costs. In fact, because many retail customers require that all jewelry products be tested in compliance with the CPSIA regime of third party testing, costs affect the entire jewelry supply chain.

FJATA recently conducted a survey of its members to assess the impact of testing and certification requirements. The results emphasize the nature and scope of the burden that third party testing imposes.

- Almost 70% of FJATA members responding to the survey reported that products failed third party testing at amounts *within 5%* of the target levels. Nearly 50% reported that the test results were *just over the limit*. Another 20% reported that test results were *within 10%* of target limits.
- Most of the testing failures involved lead.
- 92% report having to implement price increases as a direct result of the new burdens imposed by CPSIA.
- More than 62% have had to change suppliers to ensure compliance with CPSC requirements.
- 24% have substantially reduced product offerings for children as a result of CPSIA.
- 16% have eliminated children’s products from their product lines entirely.

FJATA proposes that the Commission take the following steps to reduce the testing costs and burdens associated with third party certification and periodic testing requirements.

First, the Commission should issue guidance that addresses statistical uncertainty averaging and margins of error with respect to failing test results, often referred to as inter-laboratory variability. Adopting a clear statement of statistical uncertainty is one of the single most important changes that lie easily within the Commission’s discretion that will help reduce some of the attendant costs associated with a single test failure. As indicated above, almost 90% of FJATA members reporting test failures advise that products fail *by less than 10%*. The

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<sup>1</sup> See Final Rule on Testing and Labeling Pertaining to Product Certification, 76 Fed. Reg. 69,482, 69,499 (Nov. 8, 2011) (“Generally, certification testing of a children’s product requires all samples tested to pass the applicable children’s product safety standard.”) (“Testing Rule”).

## KELLER AND HECKMAN LLP

Mr. Todd A. Stevenson

January 23, 2012

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financial impact is enormous and, as indicated above, affects the entire jewelry supply chain due to retail customer third-party testing requirements.

Importantly, “CPSC staff has found no intentional application of lead in metals for functional purposes at the 300 ppm or 100 ppm level specified by the CPSIA. Thus, the presence of lead in the lower concentration range is considered a “trace” amount that does not affect the application of the alloy.”<sup>2</sup> Despite the fact that the Commission staff agrees that at levels below 300 ppm, industry is merely controlling for trace contaminants, if even one sample product is tested and results are below 110 ppm lead – where 90% of FJATA members experience failures – the entire lot must be rejected. It does not make scientific or statistical sense to fail an entire production lot or batch based on small deviations from a limit. In light of the documented problem of both material and inter-laboratory variability in product testing, and the fact that at levels below 300 ppm laboratories are testing for trace contaminants with no likely adverse health impacts, we urge the Commission to adopt a formal statistical uncertainty statement establishing that so long as results are within a certain percentage of the stated limit, the product will be deemed to pass. The Commission has previously indicated a willingness to consider this type of “safe harbor.”<sup>2</sup>

Second, certifiers should be permitted to use screening technologies such as first party XRF to reduce the cost burden of third party testing. Third party testing does not provide a greater level of consumer protection. Note that because component testing is required, even XRF testing is destructive, since finished jewelry items must be disassembled for testing purposes.

Third, the Commission should exercise its discretion to exclude paint present in a product component at extremely low total weight from testing requirements. Jewelry makers face laboratory requirements that involve scraping paint off as many as a thousand beads to have enough paint to test. Where the amount of total paint on the end product cannot pose a reasonable risk of harm, it should be completely excluded from third party test requirements.

Fourth, the Commission should provide an exclusion from the certification and periodic testing requirements for food-grade materials that are accompanied by supplier assurances.

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<sup>2</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, R. Howell and K. Hatlelid to The Commission, CPSIA Section 101: 100 parts per million lead content requirement (June 21, 2011), p. 7.

<sup>3</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, W. Zamula and D. Aiken to D. Williams, Economic Impacts of Reducing Lead in Children’s Products to 100 ppm, p.31 (May 9, 2011) available at <http://www.cpsc.gov/library/foia/foia11/briet/lead100tech.pdf> (“a safe harbor would be unlikely to result in any adverse health effects but could provide some relief to manufacturers of children’s products.”).

## KELLER AND HECKMAN LLP

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January 23, 2012  
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These materials comply with the requirements of the U.S. Food and Drug Administration (“FDA”).

As outlined below, the Commission has authority to grant the relief sought.

### I. Legal Framework

The Commission’s invitation to comment responds to Section 14(i)(3)(A) of the Consumer Product Safety Act (“CPSA”), as amended by H.R. 2715, Public Law 112-28. Congress directed that the Commission seek public comment on opportunities to reduce the cost of testing in Section 2 of H.R. 2715. In addition, the President issued Executive Order (“E.O.”) 13579 on July 11, 2011, directing independent regulatory agencies to periodically review existing significant regulations. E.O. 13579 also directs independent regulatory agencies to comply with E.O. 13563, to the extent permitted by law, which requires administrative regulations be based on “the best available science” and use the “least burdensome tools for achieving regulatory ends.”<sup>4</sup>

The Commission has solicited input generally on the process and principles of retrospective regulatory review in a separate proceeding.<sup>5</sup> We applaud this request for comments as not only required by H.R. 2715, but in keeping with the principles of E.O. 13579,<sup>6</sup> which has been interpreted by the Office of Management and Budget (“OMB”) to require agencies to reduce “unnecessary, redundant, unjustified, excessively burdensome, or counterproductive” rules.<sup>7</sup> With this rulemaking, the third-party testing rule is deservedly high on the Commission’s priority list of regulations to review pursuant to E.O. 13579 as well as H.R. 2715.

The CPSC also has authority to propose and adopt rule changes to reduce testing burdens under Section 3 of the CPSIA, which authorizes the Commission “to issue regulations, as necessary, to implement this Act and the amendments made by this Act.” Consequently the CPSC, consistent with this legal framework, has broad authority to take a variety of actions to

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<sup>4</sup> E.O. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3,821, at Section 1 (Jan. 21, 2011).

<sup>5</sup> Review of Commission’s Regulations; Request for Comments and Information, CPSC, 76 Fed. Reg. 64,865 (Oct. 19, 2011), *available at* <http://www.cpsc.gov/businfo/frnotices/fr12/regreview.html>

<sup>6</sup> Regulation and Independent Regulatory Agencies, Executive Order 13579, *available at* [http://www.reginfo.gov/public/jsp/Utilities/EO\\_13579.pdf](http://www.reginfo.gov/public/jsp/Utilities/EO_13579.pdf)

<sup>7</sup> Review of Commission’s Regulations; Request for Comments and Information, CPSC, 76 Fed. Reg. 64,865 (Oct. 19, 2011), *available at* <http://www.cpsc.gov/businfo/frnotices/fr12/regreview.html>

reduce the undue costs – both direct and indirect - of third-party testing. Where it believes it lacks authority, the Commission should seek more flexibility from Congress to implement common sense regulatory reforms that protect consumers while reducing costs.

## II. Overview of the Fashion Jewelry Industry

Fashion jewelry is an everyday fashion item. Products include bracelets, charms, cuffs, earrings, decorated hair accessories, necklaces, pins, rings, and other fashion accessories principally intended to be worn as an item of personal ornamentation.<sup>8</sup> Most companies offer products for the spring/summer and fall/winter seasons, and also offer a variety of seasonal products geared to various holidays.

The industry itself is a dynamic, highly competitive segment of the fashion industry. Product innovation, agility, and flexibility are required to successfully implement various market-driven style changes throughout the year. The industry is driven by design innovations, and fashion trends that affect colors, styles and materials used. FJATA members typically buy finished products from assemblers outside the U.S. Thus, they are importers, rather than manufacturers of products. As importers, most do not control the actual manufacture of the jewelry products, much less the raw materials. However, somewhat unique to the jewelry industry, because finished jewelry is purchased from assemblers, actual jewelry producers and assemblers, in turn, source beads, chains, clasps and other jewelry components from other suppliers. Components can be mixed and matched to form various products, but the diffuse nature of the industry and the role of assemblers makes component testing difficult to implement, especially for small American jewelry companies that import finished goods.

Initial product orders, especially for the children's market, are often relatively small, sometimes as low as 100 pieces. A 3,000 piece order would be an extremely large order even for the largest FJATA members. Jewelry production – which for jewelry products means the final assembly of various components into a finished piece of jewelry – may occur in an hour or a matter of one or at most several days, not over weeks or months. Because FJATA members sell many different products in small quantities, testing costs as a proportion of product costs are quite high.

One reason for the high test costs is the variety of components that go into a typical jewelry product and the absence of relevant exclusions for most materials. Unlike the apparel industry, where the principal material used, textiles, is excluded from testing by virtue of an

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<sup>8</sup> “Toy jewelry,” “novelty jewelry” or similar products where the play value of the item dominates are toys, not jewelry. Jewelry is principally an item of personal ornamentation.

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exemption,<sup>9</sup> there are few relevant exclusions that apply to fashion jewelry. Fashion jewelry often features a combination of materials in a single product. A child's charm bracelet with five charms containing dots of paint can represent as much as 15-20 different component parts requiring testing. Many designs require intricate models to be created by skilled model makers, and require assembly that is labor intensive. Often, fashion jewelry is made from a base metal that is plated with copper, nickel or another metal, and may include a finish coat of silver or gold. However, because the electroplated item is treated as a complete component, exemptions for precious metals offer no relief for fashion jewelry suppliers. To meet total lead limits, many FJATA members specify use of zinc as the base metal in children's jewelry, which has resulted in design limitations and increased costs as total lead limits have been reduced.<sup>10</sup> Low-lead tin carries an even higher cost premium and is too brittle to use in many jewelry applications.<sup>11</sup> Because lead is naturally present at some level in metal, absolute precision in controlling trace levels of lead is very difficult.

Fashion jewelry can also include glass, crystal, ceramic, plastic, and other natural and synthetic components (wooden beads, seeds, textiles, etc.). Epoxies and enamelwork, which bond to substrate, as well as paints or surface coatings, are also used. Vendors typically specify certain criteria such as size, shape, color, reflectivity, luster and quality for the non-metallic components such as beads, pearls, stones, crystals, ribbons, and cords used in their designs.

FJATA has documented some of the cost impacts of CPSIA on the fashion jewelry industry in prior correspondence to the Commission, but focuses below specifically on the cost impact of third party testing.<sup>12</sup>

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<sup>9</sup> 16 C.F.R. §1500.91(d)(7).

<sup>10</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, R. Buttarini and T. Caton to D. Williams, Technological Feasibility of Reducing the Lead Content Requirement of Metals to 100 Parts Per Million from 300 Parts Per Million (May 7, 2011), Sec. 3.2. *available at* <http://www.cpsc.gov/library/foia/foial1/brief/lead100tech.pdf> ("High Grade specifies a maximum of 0.03 percent (300 ppm) lead in zinc. Special High Grade specifies a maximum of 0.003 percent (30 ppm) lead in zinc. Special High Grade is used mainly for zinc-based casting alloys. Using calendar year 2011 zinc prices, Special High Grade currently sells for about 3 percent more per metric ton than High Grade.")

<sup>11</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, W. Zamula and D. Aiken to D. Williams, Economic Impacts of Reducing Lead in Children's Products to 100 ppm, (May 9, 2011) *available at* <http://www.cpsc.gov/library/foia/foial1/brief/lead100tech.pdf> ("Low-lead metals, such as 40 ppm tin, are available at a 10 percent to 15 percent premium over other tin products") (citation omitted).

<sup>12</sup> See FJATA letter to Chairman Tenenbaum, Commissioner Moore and Commissioner Nord, July 15, 2009.

### III. Impact of Third-Party Testing Costs on the Jewelry Industry

With the exception of a few significant multi-national vendors, the majority of FJATA's members are small businesses, many of which remain family owned. As indicated above, the bulk of fashion jewelry is manufactured outside the U.S., often by companies who assemble components that they purchase from other suppliers. Finished products are then imported. While FJATA supports the concept of component testing, the practical realities of the jewelry supply chain make component testing a practical impossibility in many cases, as component traceability to the degree required by CPSC's rules cannot be assured.<sup>13</sup> Testing of finished products is thus standard practice by FJATA members, and was even before enactment of CPSIA. However, CPSIA has resulted in unreasonable cost burdens because third party testing is the exclusive method of compliance.

Most FJATA members do use XRF equipment for internal quality control screening of jewelry. XRF testing of jewelry component includes a destructive element as components must typically be disassembled from the final jewelry item for testing. Even where XRF testing suggests that lead is not present at levels exceeding limits, however, wet chemistry testing by third party laboratories is currently required for most materials. Most FJATA members do not have in-house laboratory testing facilities capable of conducting wet chemistry tests, and not even the largest jewelry producers have sought firewalled accredited laboratory status. As indicated above, unlike the apparel industry, where there are exclusions for major raw materials like textiles, and dominant suppliers, such as YKK, have sought firewalled accredited test facility status, the supply chain in the jewelry industry is much more diffuse. As a result, end product testing is the norm.

Since most American jewelry distributors are importers who purchase finished items from foreign manufacturers, this means the finished item of jewelry must be taken apart and individual components tested by a CPSC-accredited third party laboratory to verify that those components meet the applicable CPSC requirements. Because FJATA members sell many different children's jewelry products in small quantities, test costs as a proportion of product costs are quite high.

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<sup>13</sup> Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements, 76 Fed. Reg. 69,546 (Nov. 8, 2011); 16 C.F.R. § 1109.4(m) ("Traceable means the ability of a certifier to identify all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product."); 16 C.F.R. § 1109.5(f) ("A certifier must not rely on component part or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable.").

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FJATA agrees with the CPSC's assessment that current test costs for lead testing ranges between \$20-\$100 for inductive coupled plasma ("ICP") tests, and testing for phthalates ranges from \$100-\$350.<sup>14</sup> When these costs are multiplied by all of the components in a single piece of fashion jewelry, including the multiple samples needed to reach a "high degree of assurance," the testing requirements prove very costly. For example, FJATA members report that testing individual SKUs of jewelry for lead ranges from \$150-500 or higher, depending on the total number of components of the finished jewelry item. These costs do not account for destroyed samples ordered solely for test purposes, higher raw material costs, shipping of samples, administrative requirements such as recordkeeping and managing test reports and certificates of compliance, and the cost of destroyed lots of failing batches.

To illustrate how even a basic jewelry item can lead to extraordinary testing costs, take the following earrings as an example:



In this example we assume that the order is for 3,000 earrings (1,500 pairs), which would be a large order for many FJATA members. Substrate testing for lead must be conducted on the earwire, solder, chain links, and bead fasteners, which are metal in this example. Each component will need to be separated from the assembled jewelry for testing, adding additional labor costs. In this example we assume that the beads themselves are wood, and excluded from testing. The six different colors of paint used on the beads, however, must be tested for lead, but because there are only a few beads of each color per earring, thousands of earrings and many more thousands of beads will need to be destroyed to scrape enough paint together for a single test. FJATA members report that testing laboratories often demand that hundreds of beads be supplied so the laboratory can scrape together enough paint material to conduct a single test. As indicated above, component testing of the paint with requisite traceability is often not a realistic option in this situation because the finished product is purchased from an assembler that, in turn, has purchased painted beads from other vendors. The requisite traceability to test at the raw material (paint) level is lacking.

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<sup>14</sup> See Testing Rule at 69,530.

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As a result, upwards of 500 finished beads could be needed to gather enough paint to test the yellow paint. To conduct one test on each of the six colors (yellow, red, orange, green, teal and black) in this example might require 500 finished beads each, or a total of 3,000 finished beads. The Testing Rule also provides that a single test of a single sample will not typically provide a “high degree” of assurance that the product complies with CPSC requirements, so multiple tests will be needed.<sup>15</sup> This requires additional test samples to be tested in the destructive tests needed to measure total lead content. To conduct three replicate tests on these six colors would require 1,500 beads per color, or a total of 9,000 finished beads. Thus, thousands of samples must be destroyed to obtain enough paint to test the finished product. In this example, each earring contains two beads of each color, so 4,500 earrings – *one and one-half times the total order* - are needed solely for testing purposes. A testing regime that requires companies to order products for purposes of destructive testing often means that the order must be abandoned, especially when dealing with smaller “mom and pop” retailers who simply cannot order in larger quantities.

One of the most significant indirect costs involves test failures occasioned by material or inter-laboratory variability. The staff has documented variability in test results, noting difficulties in meeting the 100 ppm lead limit with metals in particular.<sup>16</sup> CPSC staff has also acknowledged that materials may be heterogeneous; that is, different parts of a sample may have different concentrations of lead. Stating that “CPSC staff test methods for lead are designed to determine the overall lead composition, and not reflect microscopic inhomogeneities that may be present in a material,” the staff goes on to recommend a testing strategy to “account for material variability or heterogeneity,” namely, “obtaining a representative homogeneous aliquot of the material by grinding or milling a component.”<sup>17</sup> What is a “representative homogeneous aliquot of material” in a small earwire, clasp, chain or solder? The staff’s hypertechnical suggestion is not a real world solution calculated to reduce costs or help jewelry companies manage

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<sup>15</sup> 16 C.F.R. § 1107.2 (“High degree of assurance means an evidence-based demonstration of *consistent performance* of a product regarding compliance based on knowledge of a product and its manufacture.”) (emphasis added); 16 C.F.R. § 1107.20(a) (“The number of samples selected must be sufficient to provide a high degree of assurance that the *tests* conducted for certification purposes accurately demonstrate the ability of the children’s product to meet all applicable children’s product safety rules.”) (emphasis added).

<sup>16</sup> The Technological Feasibility of Reducing Lead Content to 100 ppm: Compliance Data (June 29, 2011), available at <http://www.cpsc.gov/library/foia/foia11/brief/100ppmlead.pdf>

<sup>17</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, R. Howell and K. Hatlelid to The Commission, CPSIA Section 101: 100 parts per million lead content requirement (June 21, 2011), p. 5.

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unintended consequences of rigid rules that fail to properly account for material and inter-laboratory variability. Instead, if it is followed, it is sure to introduce added testing costs due to the additional handling. Even a very small added cost adds considerably to the aggregate total costs and to the ultimate burden of third party testing. More importantly, this suggestion will not account for variability in the materials used between the very small component samples often involved in testing children's jewelry or inter-laboratory variability that results in the failure of components at the margins of the current lead limits.

Lead is naturally present in a variety of materials, and can be introduced as a contaminant through the supply chain. The CPSC staff has indicated that at levels below 300 ppm, tests are simply identifying a level of trace contamination. Consequently, there are two testing realities to consider. First, the lower the total lead limit, the greater even a small amount of standard deviation in material or laboratory testing has on compliance. Second, because small deviations are likely, the more tests that occur, the more likely it is that at least one sample will fail. Under the rules, where a single failing component in a single test constitutes a failure of the lot, the greater the total cost burden of testing.

In this regard, while the Commission has provided realistic estimates of actual test costs, its total cost estimates fail to fully account for the actual costs of third party testing. In responding to the mandates of E.O. 13579, the Commission must better account for total costs of third party testing.

In addition to actual third party test costs, total cost estimates must necessarily include costs of samples ordered for destructive testing, costs of quality control screening, costs of destroying products that fail even a single test, increased costs of raw materials, and software and personnel costs associated with managing and storing thousands of children's product certificates ("CPSC") and test reports. Some FJATA members estimate that these costs may be 50% of actual out of pocket testing costs. For example, a large jewelry company that currently spends an estimated \$1 million in actual out-of-pockets funds to test products at CPSC-accredited third party testing laboratories may actually spend \$1.5 million in total to test products and manage and handle testing requirements.<sup>18</sup>

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<sup>18</sup> Fashion jewelry industry members routinely also test for cadmium and support the cadmium requirements of the new children's jewelry safety standard, ASTM F2923-11. This standard includes a 300 ppm screening limit for cadmium in metal and plastic components, with migration testing required where components exceed the screening limit. The standard reflects CPSC staff's conclusion, based on extensive technical work, that a total content limit for cadmium could not be set with scientific confidence.

#### IV. Recommendations to Reduce Testing Costs

FJATA recently surveyed its members in an attempt to quantify the impact of CPSC testing and compliance requirements. The results were clear: FJATA's members now spend more on testing than ever before. Many have struggled to reformulate or alter their children's products offerings to comply with CPSC requirements. Based on the survey, 91.7% of members responding reported increased product prices to account for compliance and testing costs. Actual out-of-pocket expenses for testing are only a portion of the total testing and certification costs, however, as noted above. Because the mandated third-party tests are destructive, a calculation of total test costs must also include the value of destroyed test samples, which may involve thousands of components or products, especially in the case of painted items that do not contain enough paint to test a single component. Additional costs include more expensive raw materials, costs to administer and manage test reports, handle take-back and destruction of non-compliant inventory, and reworking product, remembering that an entire lot fails when a single replicate test result is even slightly over the limit. Due to the CPSIA requirements, *almost one quarter of FJATA members have reduced their children's products offerings, and 16% have exited the children's jewelry market entirely.*

FJATA offers the following recommendations to reduce the costs associated with certification and periodic testing. As noted above, FJATA believes that the Commission does have authority to implement each of the recommendations. If the Commission determines that it does not have the authority to adopt any of these recommendations, it should promptly request such authority from Congress pursuant to Section 14(d)(3)(C) of the CPSA, as amended by Section 2 of H.R. 2715.

##### A. Adopt Formal Statistical Uncertainty Bands for Laboratory Test Results

CPSC does apply enforcement discretion in deciding whether, and under what circumstances to address violations of its standards. Retail customers, however, apply strict requirements on total content because products that test at 101 ppm lead are classified as a "banned hazardous product." Failure to meet the CPSIA lead limits does result in adverse market consequences even where the test results indicate that the product failed by just a small amount because no one – not the retailer, and not the jewelry producer – can offer a product that is defined as a "banned hazardous product." Additionally, failing test results mean that importers cannot legitimately issue CPCs for products where one component in one test is above 100 ppm.

Adopting and publicizing formal statistical uncertainty bands for product testing is the single most helpful change the Commission can make to reduce the associated indirect costs of third party testing. While this will not reduce the number of tests required, it will significantly reduce the extraordinary associated costs of test failures. The Testing Rule currently requires an entire lot or batch to be destroyed if even a single component part test sample fails *by even one ppm*. 16 C.F.R. § 1107.20(d); Testing Rule at 69,499 ("Generally, certification testing of a

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children's product requires all samples tested to pass the applicable children's product safety standard."'). This interpretation is simply too rigid; it does not account for either testing realities and material inhomogeneity, or actual safety to children. Again, nearly 50% of FJATA's members reported that when products failed, the test results were just over the target limit. In total, almost 90% reported that test results were within 10% of target limits.

These statistics are not unique to the jewelry industry, another reason why it is critical for the CPSC to issue guidance that addresses statistical averaging and margins of error with respect to failing test results, both for laboratory test results and X-ray fluorescence (XRF) results. In particular, at the very low lead limits set by the CPSIA, there is increased likelihood for inter-laboratory variability. The limitations of migration or solubility tests, and the possibility of inter-laboratory variation, are well-known based on round robin testing, and have resulted in the adoption of analytical correction factors for testing of heavy metals in paint under ASTM F-963, a Congressionally approved and mandated toy safety standard, EN-71-3, the European Union's counterpart standard, and the newly adopted ASTM Children's Jewelry Safety Standard, that was developed in conjunction with CPSC staff. *See* ASTM F-963 § 8.3.4.3; EN-71-3 § 4.2; ASTM F-2923 § 12.5.1. In contrast, CPSC has not recognized or formally adopted analytical correction factors or statistical uncertainty limits based on material inhomogeneity or interlaboratory variability.

FJATA previously filed comments in the Commission's rulemaking on the feasibility of meeting the 100 ppm lead limit, recommending that statistical uncertainty bands be adopted for lead testing.<sup>19</sup> In support, FJATA submitted test data furnished by a FJATA member that showed the potential for considerable inter-laboratory variability in test results. For the tests, a FJATA member sent identical samples of a soldering alloy to eight independent testing facilities between December 2009 and July 2010 for testing of total lead (digestion method using ICP). Eight different CPSC-accredited firewalled laboratories found the samples' lead content to range between less than 50 ppm to 262 ppm. This represents more than a five-fold variation at levels that the CPSC staff believes reflect trace contamination since all were below 330 ppm. Each laboratory reported different results.

The type of variability between laboratories reported by FJATA's member is not unique. The Toxics in Packaging Clearinghouse ("TPCH") also released a report on July 21, 2011, that identified significant variability in laboratory testing for heavy metals.<sup>20</sup> The round-robin study

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<sup>19</sup> *See* Children's Products Containing Lead; Technological Feasibility of 100 ppm for Lead Content; Request for Comments and Information, 75 Fed. Reg. 43, 942 (July 27, 2010), Document: CPSC-2010-0080-0016, available at <http://www.regulations.gov/#!documentDetail:D=CPSC-2010-0080-0016>

<sup>20</sup> Laboratory Round Robin Test Project: Assessing Performance in Measuring Toxics in Packaging, available at [http://www.toxicsinpackaging.org/docs/assessing\\_lab\\_performance.pdf](http://www.toxicsinpackaging.org/docs/assessing_lab_performance.pdf)

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was commissioned by the California Department of Toxic Substances Control (“DTSC”) to evaluate the performance of testing laboratories for testing of lead and cadmium principally in polyvinyl chloride packaging such as consumer product packaging or shopping bags. Sixteen percent of the lead and cadmium results were considered “unacceptable” based on the variability of test results, interpreted by TPCH to mean the measured concentration of the metal was 25 percent above or below the baseline reference points.

The CPSC rules establish that a failure can constitute a single component part test over the applicable limit, yet the Commission staff has also noted that overall contribution of products which contain less than 300 ppm but more than 100 ppm lead is minimal.<sup>21</sup> In light of the absence of any demonstrable safety benefit and the disproportionate costs, the Commission should adopt a formal statistical uncertainty factor to account for material or laboratory error in lead testing in addition to continuing its ongoing enforcement discretion policy. As indicated above, FJATA urges the Commission to adopt a statistical margin of error under which products could still qualify and a children’s product certificate (“CPC”) issued. This is well within the Commission’s discretion, and will avoid the added financial costs of destroying an entire lot or batch because of minor failures attributable to natural and laboratory variability, and of recalling products that initially test at compliant levels but in the field exceed the lead limits by a small amount.

#### **B. Permit Broader Use of First-Party Tests for Certification**

While the CPSC has recognized that XRF is a reliable method of assessing total lead content in certain types of materials (*e.g.*, plastics), current rules do not permit certifications of children’s products to be issued based on first-party testing. This means that even where XRF tests support compliance with total lead limits, additional testing by CPSC-accredited third party testing laboratories is required at additional cost. Thus, while most FJATA members have invested in XRF technology, they cannot enjoy the full benefit of that investment even for plastic components since additional third party testing is a requirement for issuance of CPCs. Authorizing “first-party” certification could significantly reduce test costs. The Commission could provide guidance on calibration and other related aspects regarding use of screening tools as well. As recommended above regarding statistical uncertainty bands for wet chemistry test results, such guidance should also include appropriate uncertainty factors related to screening tests such as XRF tests.

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<sup>21</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, R. Howell and K. Hatlelid to The Commission, CPSIA Section 101: 100 parts per million lead content requirement (June 21, 2011), p. 9.

**C. Adopt an Exclusion from Testing for Small Amounts of Paint**

The Commission should also adopt an exclusion from testing requirements for paint or surface coatings present in a product at a total weight of less than 10 mg. This is the same exclusion provided in ASTM F-963 and ASTM F-2923, for migratable heavy metals (other than lead) in paint.<sup>22</sup> The rationale for the exclusion from heavy metal testing in paint and surface coatings embodied in these other safety standards is that at such low quantities, the amount of material involved cannot pose a reasonable risk of harm. The CPSC has the discretion under Section 3 of the CPSIA, this rule, and E.O. 13789 to adopt such an exclusion. Doing so would immediately relieve the excessive testing burdens that, as illustrated above, in many cases requires jewelry companies to order more samples for destructive test purposes than are required to fulfill a customer order. The Commission should consider whether other similar exclusions for other components are appropriate to reduce test costs while assuring safety.

**D. Exclude Food Grade Materials From Testing with Reputable Supplier Assurances**

The Testing Rule does not currently allow product certifications to be based on supplier assurances of “food grade” resins or packaging because third party testing is not required to meet these requirements. *See* Testing Rule at 69,497. H.R. 2715, however, directs the Commission to consider the extent to which other “governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations.”<sup>23</sup> H.R. 2715’s directive applies whether or not third party testing is required.

Commenters have previously explained that it is common for customers who make various types of consumer products to specify the use of “food grade” materials. Suppliers of resins routinely provide supplier certificates or other assurances that materials meet the federal Food, Drug and Cosmetics Act’s (FDCA) requirements and also requirements for limits on specific heavy metals (lead, mercury, cadmium and hexavalent chromium) through packaging requirements of the Coalition of Northeastern Governors (CONEG). Together these standards prescribe even lower levels of total lead and phthalates than the limits mandated by the CPSIA. These types of assurances, along with tests such as gas chromatography mass spectrometry (GC-MS), mass balance or similar analyses of raw materials, should be recognized to form a part of a consumer product manufacturer’s testing program as indicating, with a high degree of assurance, that products as produced would meet relevant requirements.

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<sup>22</sup> *See* ASTM F-963 § 8.3.3.1(2); EN-71-3 § 7; ASTM F-2923 § 12.3.

<sup>23</sup> H.R. 2715, Section 2 (adding a new Section 14(d)(3)(A)(v) to the CPSA).

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The Commission has authority to exempt these products from third party testing under Section 3 of the CPSIA and through this rulemaking. Also, authorizing an exclusion for food-grade materials is consistent with E.O. 13579, and would be similar to the Commission's recognition that precious metals, gemstones, wood and textiles are exempt from testing.<sup>24</sup> Authorizing jewelry makers to rely on supplier certifications for food-grade materials would provide relief from what would otherwise be expensive and redundant testing requirements.

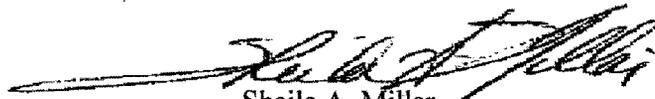
**V. Conclusion**

FJATA and its members are committed to consumer safety and support sensible testing requirements. FJATA believes that third party testing does have a place in the mix of techniques that can be used to provide assurances of compliance with applicable consumer product safety requirements. However, the CPSC's interpretation of the legislation imposes crushing burdens on industry that have directly led to reductions in consumer choices of products, and indeed to companies simply exiting the marketplace for children's products. An unintended consequence of the third-party testing requirements is that costs are extended throughout the supply chain beyond simply the children's product category as retail customer impose testing requirements for all products according to CPSIA conventions.

The Commission should implement policies that reduce third party and periodic testing burdens as a result of the Testing Rule. We have outlined here options that could help reduce testing costs while assuring product safety. Specifically, the CPSC should 1) issue formal guidance to address statistical margins of error for failing test results, 2) permit first-party reliance on XRF testing, 3) exclude from the testing requirements paint present at extremely low quantities (less than 10 mg), and 4) provide an exclusion from the certification and periodic testing requirements for food-grade materials that are accompanied by supplier assurances.

FJATA appreciates the opportunity to submit these comments.

Sincerely,



Sheila A. Millar

cc: Brent Cleaveland, Executive Director, FJATA  
Randy Butturini, U.S. Consumer Product Safety Commission

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<sup>24</sup> 16 C.F.R. §1500.91 ("Determinations Regarding Lead Content for Certain materials or Products under Section 101 of the Consumer Product Safety Improvement Act").

# PUBLIC SUBMISSION

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Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

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Comment from Kyra Mumbauer

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## General Comment

See attached file(s)

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## Attachments

SPI Comments on Reducing Third Party Testing Burdens



January 23, 2012

*Via [www.regulations.gov](http://www.regulations.gov)*

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4330 East West Highway  
Bethesda, Maryland 20814

**Re: Comments on Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens (CPSC Docket No. CPSC-2011-0081)**

Dear Mr. Stevenson:

The Society of the Plastics Industry, Inc. (“SPI”) appreciates this opportunity to submit comments in response to the Consumer Product Safety Commission’s (“CPSC” or “Commission”) Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens; Request for comments.<sup>1</sup> Founded in 1937, SPI is the trade association that represents the third largest manufacturing industry in the United States. SPI’s members represent the entire plastic industry supply chain, including large and small processors, machinery and equipment manufacturers, raw material suppliers, resin suppliers who sell plastic resins used to fabricate consumer products or components, processors who make consumer products or components, and suppliers of equipment used to fabricate plastic products and components. SPI members are also engaged in initiatives to expand recycling of plastic products into various consumer products. The U.S. plastics industry employs approximately 1 million workers and provides more than \$327 billion in annual shipments.

SPI previously submitted comments regarding third party testing, certification and labeling of certain children’s products for lead and phthalates content, and other issues related to the implementation of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”).<sup>2</sup> Testing and certification obligations may affect the entire supply chain, and even small reductions in testing costs may lead to tremendous economic benefits while maintaining safety.

Testing is expensive. For example, in the Final Rule on Testing and Labeling Pertaining to Product Certification (“Testing Rule”), the Commission noted that while lead tests at U.S. laboratories range from \$20-\$100 per test, phthalates tests can be up to seven times more expensive, ranging from \$100 (a discounted price by a laboratory in China) to about \$350 per

<sup>1</sup> 76 Fed. Reg. 69,596 (Nov. 8, 2011) (“Request for Comments”).

<sup>2</sup> See Comments of SPI, CPSC Docket Nos. CPSC-2011-0052; CPSC-2010-0037, 0038.



test per component part.<sup>3</sup> Yet, as the Commission has also acknowledged, the presence of lead is rarely an issue with virgin plastics.<sup>4</sup> In particular, makers of children's products often specify use of "food-grade" plastics because lead is effectively not permitted in food contact materials. Further, ortho-phthalate plasticizers restricted under CPSIA are used only in a few types of plastics, so phthalate testing can be eliminated in many cases by proper identification of the polymeric material. SPI believes that regulatory decision making should be based on sound science and incorporate cost-benefit considerations. Consequently, SPI urges the Commission to take the following four steps to reduce testing costs:

1. The Commission should revise the Phthalates Notice of Requirements ("NOR")<sup>5</sup> to specifically identify the many types of plastic materials that are known not to contain the restricted ortho-phthalates in excess of specified limits, or, alternatively, to identify the few types of plastics that might contain the restricted ortho-phthalate plasticizers. Such action will ensure that testing is conducted only on plasticized plastic components of covered toys or child care articles that may contain the restricted phthalates, thereby minimizing the costs and burdens of the NOR.

2. The Commission should provide an exclusion from the certification and periodic testing requirements for food-grade materials that are accompanied by reputable supplier assurances. These materials comply with the requirements of the U.S. Food and Drug Administration ("FDA").

3. The Commission should issue guidance that addresses statistical uncertainty averaging and margins of error with respect to failing test results. A statement on statistical uncertainty will help reduce some of the costs associated with test failures by addressing the documented problem of both material and inter-laboratory variability in product testing.

4. The Commission should assess how other techniques, such as use of audits, good manufacturing practices, and manufacturer attestations can be relied upon to minimize the burden of third party testing throughout the supply chain while maintaining appropriate accountability by the ultimate manufacturer or importer.

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<sup>3</sup> 76 Fed. Reg. 69,482, 69,530 (Nov. 8, 2011).

<sup>4</sup> Technological Feasibility of 100 ppm for Lead Content, CPSC Briefing Package, Memorandum, R. Howell and K. Hatlelid to The Commission, CPSIA Section 101: 100 parts per million lead content requirement (June 21, 2011), pp. 3-4. The 100 ppm lead limit does result in a practical ban on the use of some recycled content plastics, particularly recycled mixed-use plastics, since source materials may include plastics where lead was intentionally added for UVB stabilization or other technical purposes.

<sup>5</sup> Comments on Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Phthalates in Children's Toys and Child Care Articles (CPSC Docket No. CPSC-2011-0052), 76 Fed. Reg. 49,285, CPSC Docket No. CPSC-2011-0052 (Aug. 10, 2011).

## I. Legal Authority

The Commission has authority to implement policies that address each of the recommendations proposed by SPI under a variety of legal instruments.

First, H.R. 2715,<sup>6</sup> directs the Commission to seek public comment on opportunities to “reduce the costs of third party testing requirements” through this rulemaking.<sup>7</sup> Second, Executive Order (“E.O.”) 13579<sup>8</sup> directs independent regulatory agencies to review significant regulations to reduce “unnecessary, redundant, unjustified, excessively burdensome, or counterproductive rules.”<sup>9</sup> E.O. 13579 also directs independent agencies to comply with E.O. 13563 to the extent permitted by law. E.O. 13563 requires administrative regulations be based on “the best available science” and use the “least burdensome tools for achieving regulatory ends.”<sup>10</sup> Third, even absent H.R. 2715 and E.O. 13579, Section 3 of the CPSIA provides the Commission with authority to implement these policies by giving it the flexibility to implement the CPSIA. This includes the ability to make common sense determinations that certain commodities or classes of materials or products do not, and by their nature will not, exceed Section 101(a)’s lead limits and/or Section 108’s phthalates limits. For materials not known to contain lead or phthalates in excess of regulatory limits, mandating third party testing on the supply chain is not the answer.

## II. Identify Plastic Materials Known Not to Contain Phthalates

Under CPSIA, three ortho-phthalate plasticizers – Dibutyl phthalate (DBP), Benzyl butyl phthalate (BBP), and Bis(2-ethylhexyl) phthalate (DEHP) - may not be present at levels that exceed 0.1% in any children’s toy or child care article. In addition, on an interim basis, three other ortho-phthalate plasticizers – Diisononyl phthalate (DINP), Diisodecyl phthalate (DIDP), Di(n-octyl) phthalate (DnOP) – may not be present at concentrations above 0.1% in any child care article or children’s toy that could be placed in a child’s mouth. The Commission should revise the NOR to specifically list all plastic materials that are known not to contain these restricted ortho-phthalates above the applicable limits. As SPI indicated in comments filed September 9, 2011,<sup>11</sup> a great variety of plastics, including, but not limited to, those identified in the Commission’s 2009 Statement of Policy: Testing of Component Parts with Respect to Section 108 of the CPSIA (Aug. 7, 2009) (“Phthalates Testing Policy”), would not contain the restricted ortho-phthalates above the applicable limits. For example, synthetic textiles such as

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<sup>6</sup> Public Law 112-28.

<sup>7</sup> H.R. 2715, Section 2 (adding a new Section 14(d)(3)(A) to the Consumer Product Safety Act).

<sup>8</sup> E.O. 13579, Regulation and Independent Regulatory Agencies, 76 Fed. Reg. 41,597 (July 14, 2011).

<sup>9</sup> Review of Commission’s Regulations; Request for Comments and Information, CPSC, 76 Fed. Reg. 64,865 (Oct. 19, 2011), *available at* <http://www.cpsc.gov/businfo/frnotices/fr12/regreview.html>.

<sup>10</sup> E.O. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3,821, at Section 1 (Jan. 21, 2011).

<sup>11</sup> Comments of SPI, NOR, CPSC Docket No. CPSC-2011-0052-0003.

polyester, acrylic and nylon, polyethylene, and polypropylene (polyolefins) would not contain the restricted ortho-phthalates above the applicable limits. The NOR, however, references a more limited universe of materials identified as known not to contain phthalates than the original Phthalates Testing Policy. Because the NOR states that “[u]ntreated/unfinished wood, metal, natural fibers, natural latex and mineral products are not expected to inherently contain phthalates and need not be tested or certified . . .,” but does not reference any plastic materials, this has caused some confusion and may lead to unnecessary testing.<sup>12</sup>

Phthalates or other plasticizers are not naturally occurring elements, unlike lead, and must be intentionally added to plastics. SPI requests that the Commission publicly list all the types of plastics identified below in the Phthalates Testing Policy as materials known not to contain the restricted ortho-phthalates above the applicable limits. Doing so will ensure that participants in the plastics supply chain subject to the NOR are not unfairly burdened with added and unnecessary testing costs.

- Acrylic
- Acrylonitrile butadiene styrene copolymers
- Butadiene-ethylene resins
- Butene-ethylene copolymers
- Ethylene copolymers
- Ethylene acrylic acid copolymers
- Ethylene-propylene copolymers
- Ethylene vinyl acetate copolymers
- Ethylene vinyl acetate vinyl alcohol copolymers
- Ethylene vinyl alcohol copolymers
- Ionomers
- Liquid crystal polymers (Hydroxybenzoic acid copolymers)
- Nylon
- Polyamide
- Polybutene
- Polybutylene terephthalate
- Polycarbonate
- Polyesters<sup>13</sup>
- Polyethylene
- Polyethylene terephthalate<sup>14</sup>

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<sup>12</sup> NOR at 49,288, note 2.

<sup>13</sup> An SPI member recently tested five commercial polyester polymers used for food packaging and analyzed extracts by GC/MS for five ortho-phthalate esters. The study found no evidence of the ortho-phthalate esters in the polyester polymers using a test procedure sensitive to at least 0.2 ppm in the polymer.

- Polylactic acid
- Polyphenylene sulfide
- Polypropylene<sup>15</sup>
- Polystyrene
- Polytetramethylene glycol-dimethyl terephthalate-1,4-butanediol copolymer
- Propylene-ethylene copolymers
- Styrene-butadiene copolymers
- Vinylidene chloride /methyl acrylate copolymers
- 1,3,5-Trioxane, polymer with 1,3-dioxolane (Polyoxymethylene copolymer)

As SPI has previously commented, the vast majority of plastics do not use or contain the restricted ortho-phthalates above the applicable limits. Requiring testing to prove the absence of a material is an enormous unnecessary cost burden. Adopting a clear policy statement explicitly identifying plastic materials that can be excluded from testing because they do not contain the restricted ortho-phthalates above applicable limits is in keeping with Congressional and Administration policies and will reduce testing costs. Under Section 3 of the CPSIA, for example, the Commission could list materials known not to include phthalates. Excluded materials do not have to be tested by accredited third party laboratories. Alternatively, the Commission could, consistent with Section 3, identify the small number of plastic resins that might contain the restricted ortho-phthalate plasticizers, such as flexible (but not rigid) polyvinyl chloride, or thermoset polyurethanes. Such a rule or guidance could also incorporate specifications for hardness or rigidity, recognizing that rigid plastics do not require the addition of any type of plasticizer, and that the addition of a plasticizer, which promotes flexibility, compromises hardness or rigidity.

### III. Exclude Food Grade Materials from Lead Testing

In the final Testing Rule, the CPSC rejected the concept of allowing product certifications for compliance with lead limits to be based on supplier assurances of “food-grade” resins or packaging, asserting that third party testing is not required to meet FDA requirements.<sup>16</sup> However, H.R. 2715 does not simply require the Commission to determine what agencies require proof of conformity through third party testing. It asks the Commission to consider “[t]he extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations

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<sup>14</sup> Polyethylene terephthalate (PET) is not a polyethylene-based material. It is produced from ethylene glycol and either terephthalic acid or dimethyl terephthalate.

<sup>15</sup> Polypropylene and Propylene/ethylene copolymers do contain phthalates, albeit in very low levels that are well below CPSIA limits. One member reports that potential levels are about 15-25 ppm maximum in the polymer (by mass balance); further, using EU food migration testing procedures, this company reports no migration at 20 ppb.

<sup>16</sup> See Testing Rule at 69,497.

applicable under this Act.”<sup>17</sup> This general directive to assess evidence of conformity applies irrespective of whether or not the relevant agency or standard requires third party testing, or indeed any testing, or application of government or laboratory markings.

SPI has previously explained that FDA laws and regulations impose rigorous limits on substances that could migrate into foods, including lead (which is not permitted in food contact applications for plastic materials). Specifically, 21 C.F.R. § 174.5 (“General provisions applicable to indirect food additives”) of FDA’s rules require food-contact materials to be of a “purity suitable for [their] intended use,” meaning packaging materials may not have a technical effect in food, must not create a taste or odor problem in the contacted food, and must be of a purity suitable for the intended use. In addition, FDA lists specific polymers approved as indirect food additives in 21 C.F.R. Part 177. Recognizing an exclusion for food-grade materials is another technique for lowering costs of third party testing consistent with assuring compliance, as outlined in Issue 7 of the Request for Comments.<sup>18</sup>

Suppliers of food-grade or medical-grade materials routinely provide assurances that their materials (which are often used to make children’s products) meet the requirements of the federal Food, Drug and Cosmetics Act (“FDCA”). Because these materials are known to be low in lead, children’s product manufacturers often specify that “food-grade” plastics be provided. For example, one SPI member reports that tests of lead content in polyester polymers used for food contact applications routinely show that lead levels are below 10 ppm. The Commission has authority to exempt any materials that are recognized to meet CPSIA lead limits from third party testing under Section 3 of CPSIA and through this rulemaking. Consequently, SPI urges CPSC to modify 16 C.F.R. § 1500.91 to add a new category of materials, “food grade materials,” as exempt from lead testing, in the same way that it has recognized that precious metals, gemstones, wood and textiles are exempt.<sup>19</sup>

Consistent with 16 C.F.R. § 1500.91(d), the exemption would apply only so long as the materials “have neither been treated or adulterated with the addition of materials that could result in the addition of lead into the product or material.” The Commission has previously relied on Section 3 of the CPSIA to exempt certain materials or products from the lead content limits, including wood, paper, and all textiles.<sup>20</sup> Section 3 provides the Commission with authority to make determinations that certain commodities or classes of materials or products do not, and by their nature will not, exceed Section 101(a)’s lead limits. In this case, relying on FDA compliance, evidenced by supplier assurances for food-grade materials, would provide relief

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<sup>17</sup> H.R. 2715, Section 2 (adding a new Section 14(d)(3)(A)(v) to the Consumer Product Safety Act (“CPSA”); *see also* Request for Comments at 69,598, Issue 5.

<sup>18</sup> *See* Request for Comments at 69,598, Issue 7.

<sup>19</sup> 16 C.F.R. § 1500.91.

<sup>20</sup> *See* 16 C.F.R. § 1500.91 (“Determinations Regarding Lead Content for Certain Materials or Products under Section 101 of the Consumer Product Safety Improvement Act”).

from the otherwise expensive and redundant testing requirements. These assurances are legally binding, adding to their utility, because if they are found to be false, the FDA and the Federal Trade Commission (“FTC”) can bring an enforcement action against the supplier for false and deceptive practices under Section 5 of the FTC Act. State Attorney’s General enforce these laws as well.

The Commission’s primary objection to recognizing that “food grade” plastics meet lead limits appears to be predicated on the fact that the FDA does not require third party testing for these products. The Commission has authority under Section 3 of the CPSIA and through this rulemaking to adopt an exclusion from the testing requirements for “food-grade” resins and materials. Recognition of an exemption for food-grade materials, with supplier assurances of compliance, represents a viable alternative to third party testing for these materials consistent with other exemptions authorized by the Commission. Like other exemptions, CPSC could exempt these materials from third-party testing for lead based on recognition that in light of FDA requirements, the exempt materials are low in lead. Testing these products would essentially prove a negative – the absence of lead at levels exceeding CPSIA requirements. Denying recognition of compliance with FDA requirements cannot be what Congress intended in light of H.R. 2715’s charge to reduce redundant third party testing. A fundamental requirement of all § 1500.91 exclusions is that the material not be treated to add lead or result in adulteration of lead. Adopting this exclusion would require traceability, and concomitant assurances that the manufacturer of the product, or a component, did not introduce lead, and thus vitiate the supplier assurance, much as the exclusion for wood and textiles requires assurances that the material was not treated in any way to add lead.

Section 3 of the CPSIA and H.R. 2715 provide an appropriate vehicle for the Commission to implement policies that will reduce the costs of third party testing and minimize duplicative and redundant testing by duly recognizing evidence of conformity with national regulatory standards that are in keeping with CPSIA requirements. Authorizing an exclusion for food-grade materials is also in keeping with E.O. 13579.

#### **IV. Adopt Statistical Uncertainty Margins**

Adopting a formal statistical uncertainty band or margins of error for product testing will also reduce costs associated with third party testing. In its current form, the Testing Rule requires an entire lot or batch to be destroyed if even a single test sample fails by one part per million. 16 C.F.R. § 1107.20(d); Testing Rule at 69,499 (“Generally, certification testing of a children’s product requires all samples tested to pass the applicable children’s product safety standard.”). This provision does not accommodate the known issues of material and inter-laboratory variability documented by CPSC.

Variability in total heavy metal content tests has been identified by other regulatory bodies as well. The Toxics in Packaging Clearinghouse recently released a report of a round-robin study it conducted, which identified significant variability in laboratory testing for heavy

metals in selected packaging materials.<sup>21</sup> The study, commissioned by the California Department of Toxic Substances Control, evaluated the performance of testing laboratories for testing of lead and cadmium in polyvinyl chloride. Sixteen percent of the lead and cadmium results were considered “unacceptable,” meaning the measured concentration of the metal in the sample was 25 percent above or below its baseline reference point.

The Commission should take action to establish some statistical level of testing error. This will help reduce retesting costs and avoid the need to destroy a batch or lot of consumer products that fails by a margin within the statistical level of error. Such a provision is well within the Commission’s discretion. As a result, SPI urges the Commission to identify statistical averaging and margins of error under which products could still qualify to avoid the need to destroy an entire lot or batch.

#### **V. Rely on Other Techniques to Reduce the Cost of Third Party Testing**

As noted above, there are many alternative techniques that can provide confidence, with a high degree of assurance, that products meet applicable lead and phthalates limits. The Commission already requires use of some techniques to establish compliance with lead limits. For example, exclusions from lead testing apply to a list of designated materials unless the product was otherwise treated to include lead. The CPSC could allow finished children’s product producers to rely on supplier assurances that lead is not included in the raw material, much as a manufacturer of a children’s product made of leather or wood can rely on exemptions for those products.

As component material producers, resin manufacturers who carefully control the inputs can provide assurances that no lead (or phthalates) are present at levels in excess of established limits without the need for expensive third party testing. Plastics resin producers are typically not makers of consumer products, and are not generally subject to the jurisdiction of the CPSC in connection with the production of these materials. Moreover, the regime of representative testing mandated by the Testing Rule is ill-suited to raw manufacturing environments, and is unnecessary. Resin producers who make resins for food contact applications are subject to FDA Good Manufacturing Practices (GMPs), which also help to establish that the raw material will not be subject to the unintentional introduction of lead. Guarantees by raw material producers in these circumstances do not need to be subjected to independent verification by third party testing laboratories. Rather than the expensive regime of third-party testing currently mandated by CPSIA, the better alternative is to adopt the exemptions for plastic materials proposed here, and to clearly establish that finished product producers may rely on supplier assurances of compliance so long as the finished product producer has exercised due care to assure, with a high

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<sup>21</sup> Laboratory Round Robin Test Project: Assessing Performance in Measuring Toxics in Packaging (July 21, 2011), available at [http://www.toxicsinpackaging.org/docs/assessing\\_lab\\_performance.pdf](http://www.toxicsinpackaging.org/docs/assessing_lab_performance.pdf). Based on the report, products tested include shopping bags, consumer product packaging and textile bags.

degree of assurance, that the final children's product meets the standards for lead and phthalates as to components made of plastic resins.

## **VI. Conclusion**

Raw material and component part producers can certify to what they know: that lead or phthalates will not be present in the raw material or component because it was not intentionally introduced. Those assurances are based on the manufacturer's knowledge of the inputs. For food grade plastics, GMPs are in place to limit any unintentional contamination from lead. The Commission has authority to adopt the recommended exemptions proposed here, which will eliminate third party testing. Supplier assurances of compliance can be relied upon to establish, without additional third party testing, that the material indeed is comprised of the referenced plastic excluded from the phthalates limits, and meets lead limits because it is a food-grade material. A manufacturer of a finished children's product should be entitled to rely on such assurances without additional third-party testing, so long as they can confirm that due care was taken to assure that the finished product, and the manufacturing process by which it was manufactured, does not result in the addition of lead or phthalates.

To reduce testing costs in a meaningful way, the Commission should update the NOR to list the plastics identified in the Phthalates Testing Policy and those otherwise identified in these comments. The Commission should also exclude from testing requirements food grade materials that are accompanied by reputable supplier assurances, and issue guidance that addresses statistical uncertainty averaging and margins of error. Importantly, the Commission has ample authority to take these actions through this rulemaking and Section 3 of the CPSIA, as well as through the general policy to examine ways to reduce overall regulatory burdens as expressed in E.O. 13578 and 13563.

As it considers ways in which the costs and burdens of third party testing can be reduced, the CPSC should consider both adopting the recommendations here as well as further strengthening the assurances required by final product certifiers that rely on component material/part third party tests/certificates, particularly with regard to lead and phthalates testing. This might include a statement that the manufacturer has not knowingly altered the manufacturing environment in a way that intentionally introduces lead or phthalates or might result in contamination of the materials used. To rely on the exemptions from third party testing of plastics recommended here, the finished product manufacturer will need to implement appropriate controls to avoid the risk of violations at the stage in the production process where they could occur.

To the extent the Commission believes that it lacks authority to adopt SPI's recommendations, the Commission should request such authority from Congress pursuant to Section 14(d)(3)(C) of the Consumer Product Safety Act, as amended by Section 2 of H.R. 2715.

SPI appreciates the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Kyra M. Mumbauer". The signature is written in a cursive style with a large initial "K" and "M".

Kyra M. Mumbauer  
Director, Industry Affairs – Food, Drug and  
Cosmetic Packaging and Consumer Issues  
Society of the Plastics Industry, Inc. (SPI)

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# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0017

Comment from Michael McDonald

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## Submitter Information

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**Organization:** American Apparel & Footwear Association

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## General Comment

See attached file(s)

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## Attachments

012312cpsctesting



**we wear™ product safety**

January 23, 2011  
Office of the Secretary  
Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, Maryland, 20814

**REF: Seeking public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.  
Docket No. CPSC-2011-0081**

On behalf of American Apparel & Footwear Association (AAFA) I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC) on the above-captioned issue.

AAFA is the national trade association representing the apparel and footwear industry including its suppliers, manufacturers, retailers and service providers. Our members produce and sell products that touch every American – clothing and shoes. Our industry accounts for more than one million U.S. employees and more than \$340 billion in retail sales each year.

To achieve the goal of providing consumers with the safest products available, AAFA has established longstanding and active relationships with the CPSC and other product safety stakeholders. Through these alliances, we have educated the industry on the development and implementation of new product safety standards, while at the same time informing the CPSC of the many concerns of the industry regarding product safety initiatives and activities. It is with our continued cooperation and the advancement of product safety at heart that we submit these comments on ways to reduce the cost and burden of the third party testing requirements.

#### **BACKGROUND**

When the *Consumer Product Safety Improvement Act (CPSIA)*<sup>1</sup> was signed into law by President George W. Bush on August 14, 2008, it required the implementation of a Testing and Certification program for all children's products subject to a children's product safety rule under the Consumer Product Safety Commission (CPSC). This included initial third party testing and a periodic testing program. The implementation of the third party testing was stayed several times, rightfully so, in order to ensure a successful implementation that protected the nation's children while imposing the least possible burden on industry. Congress realized that the original legislation had left the CPSC with its hands tied and unable to grant much needed relief to American industries with no reduction in safety. In the interest of addressing this unintended consequence, Congress passed H.R. 2715<sup>2</sup> in order to provide the CPSC with the authority to provide the necessary reprieve. On August 1, 2011 H.R. 2715 passed the House with a vote of 421-2 and passed the Senate unanimously, and was enacted into law on August 12 after being signed by President Barack Obama.

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<sup>1</sup> CPSIA (<http://www.cpsc.gov/cpsia.pdf>)

<sup>2</sup> H.R. 2715 (<http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.2715>)

H.R. 2715, among many other things, required the CPSC to issue a request for comments on ways that it could use its newly granted authority to reduce the burden of third party testing, and cited several of its own suggestions in the process. In accordance with H.R. 2715, the CPSC issued this request for comments in the *Federal Register*, seeking suggested ways to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations.

#### AAFA RECOMMENDATIONS

H.R. 2715 created seven categories for ways that third party testing burdens can be reduced. In an effort to organize our comments we will be listing those seven categories and placing each suggestion into its related area. Listed below are the categories laid out by H.R. 2715 on which AAFA offers comments:

**The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of a product that is substantially similar or identical in all material respects.**

*AAFA Recommendation: Make clear that an item that is exempt from testing does not require a GCC.*

The CPSC should make clear, with a guidance document, that no certification is required when an item is exempt from testing, including but not limited to items exempt under the *Flammable Fabrics Act* (FFA). Based on past CPSC guidance and language, AAFA believes that, in the case of the FFA, if a garment is exempt from testing then there should be no requirement to submit a GCC. The burden of paperwork has been one that has always coincided with the burden of testing, and making a clear and concise statement that will eliminate a large paperwork burden as well as relieve a lot of confusion for manufacturers and retailers alike and will go a long way in bringing clarity to the testing regime.

Such an approach is consistent with several documents that the CPSC has released over the past several years. First, the CPSC's *Statement of Policy: Testing and Certification of Lead Content in Children's Products*, which was issued by the CPSC to provide guidance on the testing and certification of children's products for compliance with the lead content limits established in the CPSIA. In this statement, the CPSC declared that it, "found that certain products, by their nature, will never exceed the lead content limit so those products do not need to be tested and *do not need certifications* to show that they comply with the law." (emphasis added) After listing the products, of which many natural and synthetic fibers are included, it goes on to state, "The products on this list are all things the Commission has determined do not contain lead over 100 ppm, which is within the allowable 300 ppm limit. Thus, they will comply with the law (and must always comply) and, therefore, *do not need testing and certification.*"<sup>3</sup> (emphasis added)

The second document is the *Statement of Policy: Testing of Component Parts With Respect To Section 108 of the Consumer Product Safety Improvement Act*. This statement was created in order to provide guidance on complying with the Phthalate standard required by the CPSIA. This statement contains a list, which again includes many natural and synthetic fibers, that are, "Examples of materials that do not normally contain phthalates and, therefore *might not require testing or certification.*"<sup>4</sup> (emphasis added)

Lastly, the CPSC Small Business Ombudsman published a set of Frequently Asked Questions (FAQ) that includes the question, "If all of the component parts of my product are inaccessible or else satisfy the lead determinations, am I still required to issue a children's product certificate?" In the response, the Ombudsman describes that, "If, however, your children's product is wholly composed of components that satisfy the determinations and/or satisfy the determinations on inaccessibility, and there are no other applicable children's product safety rules, then *you do not have to issue a children's product certificate*"<sup>5</sup> (emphasis added)

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<sup>3</sup> <http://www.cpsc.gov/about/cpsia/leadpolicy.pdf>

<sup>4</sup> <http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf>

<sup>5</sup> <http://www.cpsc.gov/info/toysafety/leadfaq.html#assurances>

Based on these three documents, we believe there is significant evidence that the CPSC has supported the position that no certification is required when testing is not required, and we request that the CPSC make approve this position specifically with respect to the FFA.

**The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under this Act.**

***AAFA Recommendation: Interpret the definition of a child care article to exclude sleepwear.***

CPSC staff has issued several documents since enactment of the CPSIA that include sleepwear in the definition of child care articles - guidance by the CPSC General Counsel in 2008<sup>6</sup> and a letter on loungewear enforcement at the end of 2011.<sup>7</sup> The practical result of these decisions is that sleepwear (and presumably related garments including loungewear) is subject to testing and certification requirements for certain phthalates. AAFA believes inclusion of sleepwear in this definition is incorrect and that such a decision leads to unnecessary testing costs for phthalates in this category of garments.

The *Merriam-Webster* definition of “facilitate” is “to make easier: to help bring about”<sup>8</sup>. Children’s sleepwear, under this definition, is not intended to facilitate sleep and therefore should not be included in the definition of a child care article under the requirements for phthalate testing. Although one may be tempted to reach the conclusion that sleepwear facilitates sleep because the word “sleepwear” contains the word “sleep,” sleepwear in itself does not facilitate sleep in any manner. It is axiomatic that other articles of clothing, such as playwear, do not facilitate being awake. Likewise, it is difficult, if not impossible, to reach a conclusion that sleepwear facilitates being asleep. Indeed, most individuals can probably find multiple examples where they had difficulty falling asleep wearing sleepwear or difficulty staying awake while wearing other garments.

We note that the CPSC itself, with respect to flammability of children’s sleepwear, the CPSC has developed policies that reflect a risk analysis that go beyond the simple name of the garment. For more than 15 years, the CPSC has considered loungewear to be sleepwear even the children can do more than sleeping in loungewear. Likewise, the CPSC exempts underwear from the sleepwear standard even though children can sleep in their underwear. The point here is that an examination of the risk profile of the garment itself, not a narrow fixation on the name, should determine whether the article is included in the standard and subject to testing.

The context of the child care phthalate ban is also critical to understanding why it is inappropriate to include sleepwear in the definition of child care articles. In that ban, Congress defined child care articles as those that are intended by the manufacturer to “facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.”<sup>9</sup> The concept of facilitating sleep in this context involves articles that children suck in order to fall asleep, such as a pacifier. The common denominator of these actions is mouthing article that might contain one of the banned phthalates. Clearly, sleepwear, by any examination, is not an article intended to be associated with mouthing. Moreover, the feature in sleepwear that was cited by the General Counsel in her letter in 2008, and which is likewise the only feature ever noted by CPSC staff, is the non-slip pad that is sometimes found on the bottom of kids’ footed pajamas. Such non-slip pads are specifically intended to facilitate walking, further distancing such garments from the sleep facilitation context.

Further, the phthalate ban in the CPSIA is ultimately based on a nearly identical ban that was enacted in the European Union (EU). Using virtually identical terms, the EU has issued guidance on child care articles, explaining that it does not consider sleepwear to facilitate sleep. The EU guidance states, “The main purpose of pyjamas is to dress children when sleeping and not to facilitate sleep. Pyjamas should

<sup>6</sup> <http://www.cpsc.gov/library/foia/advisory/323.pdf>

<sup>7</sup> <http://www.cpsc.gov/cpscpub/prerel/prhtml/12/12072.html?tab=news>

<sup>8</sup> <http://www.merriam-webster.com/dictionary/facilitate>

<sup>9</sup> See section 108 of the CPSIA. <http://www.cpsc.gov/cpsia.pdf>

therefore be regarded as textiles and, like other textiles, do not fall under the scope of the Directive.”<sup>10</sup> We understand that Canada, working with the industry and stakeholders, is working on a similar approach.

***AAFA Recommendation: More aggressive use of CPSC preemption to ensure better alignment among different regulatory regimes.***

A large and ever expanding issue that is affecting all US industries is the drastic increase in state implementation of individual product safety regulations. Whether it is reporting or labeling there has been an emergence of many separate regulations which differ drastically, and in many cases contradict one another. It is becoming increasingly difficult and nearly impossible for a company who has all the necessary resources, much less smaller businesses, to comply with each and every regulation. We are only in the beginning stages of what appears to be a wave of state regulations that ignore and circumvent what Congress did when it enacted the CPSIA and what the CPSC has done in interpreting and implementing the CPSIA.

The Commission has spoken at great length on the goals of harmonizing international regulations, especially with Canada and Mexico, and we strongly encourage the CPSC to continue these efforts, but as it stands we are losing the harmonization fight within our own country. Current and planned regulations are numerous and growing including: Washington State’s Children’s Safe Product Act; Illinois Lead Labeling Law; California’s Proposition 65 and Green Chemistry Acts; the individual, and substantially different cadmium bans in California, Connecticut, Illinois, Maryland, Minnesota, and Washington; Wisconsin and New York’s drawstring regulations; and much more. It is becoming a minefield of compliance issues and companies are having trouble avoiding violating one regulation in an attempt to comply with another. In the process, testing costs are increasing. As we continue to grow and integrate into a global marketplace the US regulatory marketplace is become more and more fragmented and disconnected. The CPSC needs to be more aggressive in using its authority to work with local and state legislators and regulators to ensure that all new regulations created are in sync with national regulations and that testing requirements flow from federal requirements to minimize testing costs.

***AAFA Recommendation: Third party testing requirements specified in the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act (CPSIA), do not extend to children’s products subject to general product safety requirements like 16 CFR 1610.***

When Congress wrote the CPSIA, it made a clear effort to differentiate between general product safety standards and children’s product safety standards. For example, Section 14(a)(3) of the CPSIA includes a timeline to accredit third party conformity assessment bodies to test children’s products for compliance with lead paint, cribs and pacifiers standards, small parts, children’s metal jewelry standard, baby bouncers standard, walkers and jumpers standard, and all other children’s product safety rules. Logically, “other” children’s product safety rules include standards specifically targeting children’s products like those for toys or bicycle helmets, or the ban on phthalates in child care articles. These *children’s* product safety standards can be differentiated from product safety standards applicable to all consumer products such as the *Flammable Fabrics Act* (FFA).

The CPSC took a step in the right direction by reserving Subpart B in *16 CFR 1107 Testing and Labeling Pertaining to Product Certification*<sup>11</sup>, but there are still many areas where the CPSC has created overly burdensome testing and paperwork requirements in regards to general product safety rules. By applying third party testing under the CPSIA to a general product safety rule (such as 16 CFR 1610) it is requiring redundant testing that does not increase the safety of the product. The CPSC is also creating contradictory requirements in several areas such as the periodic testing plan, which is already incorporated in the FFA and requires periodic testing every 5 years, and the remedial action plan.

Application of third party testing to the portion of children’s products covered by the FFA also bifurcates the FFA into a double standard, creating confusion and adding costs. Before this decision, companies could follow one set of testing rules for this standard. Now, companies have to understand two separate

<sup>10</sup> [http://ec.europa.eu/enterprise/sectors/toys/files/qdoo8\\_en.pdf](http://ec.europa.eu/enterprise/sectors/toys/files/qdoo8_en.pdf)

<sup>11</sup> <http://www.cpsc.gov/businfo/frnotices/fr12/certfinal.pdf>

set of testing rules for the same standard (notwithstanding the fact that the underlying testing procedures in the FFA are still intact).

Furthermore, requiring manufacturers to go beyond the testing requirements laid out in 16 CFR 1610 to demonstrate compliance in effect amends the FFA regulation violating the requirements laid out in Section 4(b) of the FFA regarding the proper way in which the FFA is to be amended. Any amendment to an FFA standard, “shall be *based on findings*” that the amendment, “*is needed* to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, *is reasonable*, technologically practicable, and *appropriate*”<sup>12</sup>(emphasis added). The CPSC has *not* demonstrated that third party testing is needed, and the burden companies subsequently take on is *not* reasonable; therefore, the CPSC has not made any findings that amending 16 CFR 1610’s testing requirements is appropriate.

Nothing in the FFA suggests there needs to be such a differentiation between adult and children’s clothing. Moreover, the CPSIA offers little to suggest that such a differentiation was intended for the FFA. There is no evidence that Congress wanted to apply the third party testing requirements to children’s products subject to general product safety standards. In addition, when Congress created the age distinction in the CPSIA, it was addressing a concept known as the so-called “family toy chest” where toys are simultaneously shared among different age groups. In contrast, clothes are not shared among different children’s age groups, but are instead handed down as younger children age.

**The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.**

***AAFA Recommendation: Build into the 100ppm limit a tolerance factor to accommodate inter-lab variability, based upon a correlation exercise among all CPSIA-certified labs.***

The CPSC should incorporate a *tolerance factor* into the 100ppm lead limit to accommodate inter-laboratory variability. The variability of inter-laboratory testing for lead in substrate and paint at the 100ppm level is not a new issue, and is one that the CPSC has received hundreds of thousands of data points from AAFA, our members, and several other sources including their own findings released in their briefing package on the *Technological Feasibility of 100 ppm for Lead Content*.<sup>13</sup> In the briefing package, the staff recognized and discussed the existence of material and testing variability. There have also been several studies of over 100 different laboratories performed by the Institute for Interlaboratory Studies on the *Results of Proficiency Test Total lead in Paint*.<sup>14</sup> In one report published in 2010, the Institute found that when testing a component at 360ppm there was an acceptable level of error of 78ppm with outliers ranging from 110ppm below to 212ppm above. In a 2011 report the Institute made the determination that, “Total lead determination on this sample, at a concentration level of 106mg/kg, may be somewhat problematic.” AAFA members are also involved with the work that the CPSC has received from the Global Apparel, Footwear and Textile Initiative (GAFTI), which is working to pinpoint the causes of the testing variability.

With all this data it is hard to ignore the existence and influence of inter-lab variability and while industry is striving to minimize its effects, it is impossible to eliminate all variability at the 100 ppm level. It is with this reasoning that we suggest the CPSC implementing a *tolerance factor* for the 100ppm lead limit. Such a factor would not change the lead limit – which would stay at 100ppm – but would accommodate for the inevitable variability that will always occur in testing, contributing to a net reduction in testing costs.

We also recommend that the CPSC should have, as an ongoing component of certifying laboratories, a regular correlation exercise by laboratory location to ensure that the *tolerance factor* level of a substance is reasonable and practicable based on the testing capabilities and accuracies of the CPSIA-certified laboratories.

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<sup>12</sup> SEC. 4. [15 U.S.C. § 1193] (b) (<http://www.cpsc.gov/businfo/ffatext.html#sec4>)

<sup>13</sup> <http://www.cpsc.gov/library/foia/foia11/brief/lead100tech.pdf>

<sup>14</sup> [http://www.iisnl.com/home\\_en.html](http://www.iisnl.com/home_en.html)

Companies should have a very high degree of certainty that the *tolerance* level will never be violated by test results that a particular lab might achieve because of poor laboratory correlation. This practice will provide both the CPSC and all industries with the assurance that their tests are being performed correctly and the results are as accurate as possible.

***AAFA Recommendation: Allow Third Party XRF testing to be used to screen products before requiring far more expensive chemical testing.***

The advantages and disadvantages of XRF testing are well known by the CPSC who has hosted many hearing and discussions over the possible uses of XRF to benefit small batch manufacturers. The hindering factor of XRF testing continues to be that it has not always been reliable enough to give accurate readings under 100ppm lead level. While XRF technology is quickly improving and becoming more accurate it is still not capable of being 100 percent reliable for an accurate result. It has, however, shown to be very capable for determining if a product requires further testing.

We believe that the CPSC has received enough scientific evidence to allow for XRF testing to be used as a screening process for further testing. By allowing a third party lab to accept XRF results for lead under 40ppm the CPSC could drastically reduce the cost of third party testing by reducing the need for further wet chemistry testing while still maintaining the high degree of assurance of compliance.

**Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.**

***AAFA Recommendation: Fix the determination of fabric as a barrier for inaccessible parts.***

The CPSC must fix the determination on inaccessibility and fabric barriers that renders it useless for footwear and clothing. In their guidance to industry on “Inaccessible Component Parts for Children’s Products Containing Lead” the CPSC correctly stated that, “unlike other children’s products that have lead-containing components that are accessible, children will not touch the lead containing component with the hands or fingers if the component is enclosed or encased in fabric.” The CPSC also mentioned that “The Commission believes that, in general, fabric coverings may be considered barriers to physical contact with underlying materials...”<sup>15</sup> Unfortunately, the CPSC then used the definition of “a toy that can be placed in a child’s mouth” for the phthalate ban under the CPSIA<sup>16</sup> to formulate their guidance for inaccessibility of a fabric barrier. The problem with this, as with many other regulations the apparel and footwear industries are subject to, is that apparel and footwear are not toys. While being worn as intended it is impossible for a child to swallow an article of clothing or a shoe and therefore the one-size-fits-all definition of an inaccessible toy does not apply to these categories.

Due to this incorrect assumption, the CPSC declared that, “For fabric-covered children’s products, an additional test to determine whether any part **in one dimension** is smaller than 5 centimeters should be performed to see if it can be placed in the mouth. If mouthing or swallowing of a component part could occur, the material beneath the fabric covering is considered to be accessible to a child.” This requirement renders this determination useless for our industry. It is impossible for any apparel or footwear article to be greater than five centimeters **in all dimensions**, which in turn makes this exemption, which was created amid commission support with the apparel industry in mind, invalid for any product created by an apparel or footwear manufacturer.

Determining that fabric is a proper inaccessibility barrier – as practical experience suggests – would lower testing costs in the apparel and footwear industry by eliminating testing requirements for certain components that will be covered by fabric once the article is made.

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<sup>15</sup> <http://www.cpsc.gov/about/cpsia/inaccessiblefr.pdf>

<sup>16</sup> CPSIA §108(e)(2)(B)

***AAFA Recommendation: Fix the boundaries of lead in fabric determination (prints, screen prints, etc.).***

On August 26, 2009, the CPSC published in the *Federal Register* their finding that textiles (dyed or undyed) cannot possibly contain lead. In its explanation of the ruling the CPSC stated that,

“We also examined the dyes used on textiles. [Refs. 1 and 3]. Dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so they can penetrate into the fiber. Dyes can be used in solutions or as a paste for printing. Commercial dyes are classified by chemical composition or method of application. Many dyes are fiber specific. For example, disperse dyes are used for dyeing polyester, and direct dyes are used for cellulosic fibers. Dyes can be applied to textiles at the fiber, yarn, fabric, or finished product stage. Dye colorants are not lead based. Although not typical, some dye baths may contain lead. However, even if the dye bath contains lead, the colorant that is retained by the finished textile after the rinsing process would not contain lead above a non-detectable lead level. In contrast to dyes, pigments are either organic or inorganic. Pigments are insoluble in water, are applied to the surface of textile materials, and are held there by a resinous binder. Binders used with pigments for textiles are non-lead based. Processes that are lead-based are used for some industrial textiles that require a greater level of colorfastness or durability, but are not typically intended for apparel textiles. Although most pigments do not contain lead, there may be some lead based paints and pigments on non-textile materials that may be directly incorporated into textile products or added to the surface of textiles, such as decals, transfers, and screen printing.”<sup>17</sup>

The CPSC determination goes further in including the term “prints” with the term “screen prints” as operations that are not inherently lead free. While we believe the CPSC was focusing more on the term “screen prints,” the inclusion of the term “prints” has captured many inherently lead free operations. The resulting confusion has been costly and caused much unnecessary testing.

While we still believe that even when using any form of pigment dye, apparel items will not contain lead over the 100ppm limit, and that basing a determination on apparel off of an industrial application is an unfair and unreasonable conclusion, we do understand the Commission’s concern with some forms of screen printed items. This being said, the CPSC caused much unnecessary confusion when it excluded from “Textiles”, under new paragraph § 1500.91(d)(7), any textiles that are, “after-treatment applications, including screen prints, transfers, decals, or other prints.”<sup>18</sup> There is a distinct difference between screen prints and “other prints”, which includes several forms of dyeing that fall distinctly under the category of exempted items. We ask that the CPSC relieve this confusion by revising the determination to make clear that “other prints” are determined to be lead free unless specifically identified otherwise.

***AAFA Recommendation: Provide a small batch exemption for all manufactures producing a small batch.***

We believe that the CPSC has the authority to provide a small batch exemption from third party testing for large manufacturers producing a small batch. In their guidance to industry on the small batch exemption, the CPSC explains that while all manufacturers are required to third party test for certain children’s products, such as pacifiers, toddler beds, and cribs, small batch manufacturers are not required to do so for other types of children’s products, which include electronically operated toys, mattresses, and namely, children’s apparel.<sup>19</sup>

“Small batch manufacturers”, in this context, are defined by H.R. 2715 and by the CPSC as, “a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year”, and manufactures less than 7,500 units of the product qualifying for the small batch exemption. The spirit of the exemption would appear to be to reduce the burden of third party testing when a small batch of products is being manufactured. However, as it currently stands, the exemption only applies to manufacturers whose total gross revenue is less than \$1 million for all their

<sup>17</sup> <http://www.cpsc.gov/businfo/frnotices/frog/leadcontent.pdf>

<sup>18</sup> <http://www.cpsc.gov/businfo/frnotices/frog/leadcontent.pdf>

<sup>19</sup> <http://www.cpsc.gov/info/toysafety/smallbatch.html>

products. Many manufacturers, while they may have a total gross revenue exceeding \$1 million, have certain product lines that consist of very small batches. To require third party testing on these small batches of products can incur prohibitive costs and reduce the ability of the manufacturer to create those product batches that is identical to those experienced by small batch manufacturers. Regardless of whether a manufacturer is large or small, requiring an expensive third party testing process on, for example, a 100-item specific product batch, takes away a large chunk of the small revenue received from this small product batch, and goes against the spirit of the exemption not to mention the spirit of American ingenuity. Requiring third party testing on such small production batches will severely hinder a large company's ability to test new markets and create new and innovative products that could advance America's technology and global competitiveness.

We believe that the CPSC can fashion a small batch exemption for larger companies – akin to the small batch exemption from H.R. 2715. We understand the exemption in H.R. 2715 only applies to small batch manufacturers but the authority also given to them by H.R. 2715 to create a testing exemption for a batch of products for which the cost of testing would otherwise be prohibitive and ineffective.

***AAFA Recommendation: Apply the inaccessibility exemption that pertains to lead in substrate to also apply to lead in paint.***

Section 101(b) (2) (A) of the CPSIA states that, “[a] component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product.”<sup>20</sup> The CPSC has made several determinations and provided extensive guidance in terms of inaccessibility for lead in substrate, which continue to dictate whether third party testing is required. However, the CPSC has still never applied this exemption to lead in paint. In terms of inaccessibility and the absorption of lead, there is no difference between lead in paint and lead in substrate when a CPSC accepted barrier is involved.

The perfect example of this situation is a component inside of a children's shoe. One of the most popular forms of children's shoes is one that contains painted figures of a child's favorite TV show or movie characters on the side of the shoe, which is then covered over by a clear plastic coating to maintain a smooth feel of the shoe. These shoes are just as protected and just as safe as any product that falls under the inaccessibility exemption for lead in substrate, but they are still required to perform expensive third party testing due to the omission of an inaccessibility exemption for lead in paint.

Because the determination that children's products bearing lead-containing paint are hazardous was made by CPSC in a regulation, not by Congress in a statute, CPSC has the authority to change the determination. The CPSIA did revise the regulation's numeric threshold (changing 0.06% to 0.009%); but CPSC could still revise its regulation to state that children's products bearing paint with the specified amount of lead “in accessible components” are banned hazardous substances. These items are just as deserving of relief from the burden of third party testing as those that enjoy relief from phthalates and lead in substrate, and the CPSC has the authority and understanding to provide this relief without any reduction in product safety.

***AAFA Recommendation: The CPSIA should not require that all periodic continuing testing of children's products needs be done by a third-party lab.***

Section 102(a)(2) of the CPSIA states that,

“Effective on the dates provided in paragraph (3), before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, every manufacturer of such children's product” which must be based on, “sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance with such children's product safety rule.”

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<sup>20</sup> <http://www.cpsc.gov/about/cpsia/inaccessiblefr.pdf>

This is the section of the CPSIA on which all third party testing requirements are based.

Section 102(b)(d)(2) states that the CPSC should:

“(A) initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of subsection (a); and

‘(B) establish protocols and standards—

‘(i) for ensuring that a children’s product tested for compliance with an applicable children’s product safety rule is subject to testing periodically and when there has been a material change in the product’s design or manufacturing process, including the sourcing of component parts;

‘(ii) for the testing of random samples to ensure continued compliance;

‘(iii) for verifying that a children’s product tested by a conformity assessment body complies with applicable children’s product safety rules; and

‘(iv) for safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.”<sup>21</sup>

This is the one and only section of the CPSIA that dictates on what a periodic testing plan should be based. There is no language in 102(b)(d)(2) that states all of this must be done by a third party testing lab. Each and every one of these requirements can be met by an individual company that is able to perform its own periodic in-house testing. By following the language of the law and removing the requirements for periodic testing to be performed by a third party testing lab the CPSC can drastically reduce the cost of testing without in anyway compromising the safety and integrity of a children’s product. To clarify, this does not remove the requirement that third party testing is not done. It only removes the requirement – which is not found in statute – that *periodic* testing be performed by a third party.

***AAFA Recommendation: The decision to eliminate the three temporary phthalates from being banned needs to be expedited or the test requirement need to be stayed until a final determination is made.***

AAFA members have been on the front lines of removing the harmful phthalates from any and all accessories and items that may include them, but as the CPSC knows, phthalate testing is extraordinarily expensive. While the Chronic Hazard Advisory Panel (CHAP) is working very diligently and attentively to ensure that the correct studies, facts and sciences are used while determining the risks involved with the three phthalates being studied, companies are left wondering when a decision will be made and how long it will be before any alternatives for those phthalates are temporarily banned for study as well. By working with industry to come to a final decision on the three phthalates the CPSC could cause millions of dollars in savings in testing while at the same time giving industry the assurance that there is a safe alternative to the banned phthalates.

***AAFA Recommendation: Risk potential and level of risk should be taken into consideration. Evaluations should be reasonable.***

All product safety regulations should be designed to mitigate and protect against specific risks and be clearly supported by the data and facts. Understanding new safety regulations involves understanding how they will address the specific hazard. Without that, the standards seem arbitrary and that perception will undermine the standards’ effectiveness and acceptance. The footwear and apparel industry is still chafing under many of the CPSIA rules that appear designed to address product safety concerns with toys. The same risks that apply to toys do not apply to apparel and therefore it is unjust to apply the same regulations.

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<sup>21</sup> CPSIA102(b)(d)(2)

It is important to also use risk potential when doing a retrospective review. If an unintended consequence is the result of a broad regulation that shows no evidence of mitigating risk it should be examined, and if determined to have shown no history of risk it should be removed or exempted from the rule. Many of the suggestions listed here today were never considered to be a feasible outcome of the requirements created by Congress in the passing of the CPSIA. While some unexpected risks can be prevented by the CPSIA, many more nonexistent risks were created by it. These nonexistent risks, many of which are listed in these comments, have cost millions of dollars to American companies without providing any increase in safety or protection for our nation's youth.

## CONCLUSION

AAFA and its members share the CPSC's goal of improving product safety and public health, particularly for our most vulnerable citizens. We are pleased to have the opportunity to work closely with the CPSC moving forward on the reduction of third party testing burdens along with several other key issues that face the CPSC. We are mindful of the many challenges related to the CPSIA and to the on-going work of the CPSC. We believe there are many opportunities for further collaboration between AAFA and the CPSC, and we look forward to working with you to create a stable, predictable, risk-based regulatory environment that can be clearly understood, followed and complied with.

Thank you for your time and consideration in this matter. Please contact Michael McDonald at 703-797-9052 or by e-mail at [mmcdonald@wewear.org](mailto:mmcdonald@wewear.org) if you have any questions or would like additional information.

Please accept my best regards,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style.

Kevin M. Burke  
President and CEO

# PUBLIC SUBMISSION

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Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0018

Comment from Jennifer Jaffee

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## Submitter Information

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## General Comment

Please see the attached comment from Libbey Inc. regarding Docket No. CPSC-2011-0081.

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## Attachments

Libbey CPSIA Third Party Testing Comment



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January 23, 2012

Todd A. Stevenson  
Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Room 502  
Bethesda, MD 20814

Re: Comments on CPSA Section 14(a)(2) – Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

Dear Mr. Stevenson:

Based in Toledo, Ohio since 1888, Libbey (NYSE Amex: LBY) is the leading producer of glass tableware products in the Western Hemisphere, in addition to supplying key markets throughout the world. We design and market an extensive line of high-quality glass tableware, ceramic dinnerware, metal flatware, hollowware and serveware to a broad group of customers in the foodservice, retail and business-to-business markets. We own and operate two glass tableware manufacturing plants in the United States as well as glass tableware manufacturing plants in the Netherlands, Portugal, China and Mexico.

Libbey supplies decorated glassware to many of its customers in the retail market. The vast majority of the decorated glassware Libbey sells is developed and produced on a "custom order" basis for its retail customers. As such, the production runs for decorated glassware items are relatively small compared to undecorated stock items. The decorated glassware that Libbey supplies to its U.S. customers is decorated with leadless ceramic enamels. The ceramic enamels are applied to the glass and then fired at temperatures of around 1140°F, permanently fusing the ceramic enamels to the glass substrate.

Libbey is committed to complying with the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), and all other rules and regulations promulgated by the Consumer Product Safety Commission. Accordingly, Libbey evaluates each proposed design for decorated glassware in an attempt to determine if the finished product would be considered a "children's product" under Section 3(a)(2) of the CPSA. Until recently, Libbey management had taken the position that Libbey would not produce decorated glassware designs that Libbey considered to be at risk of being a children's product. Due to increased customer demand for decorated glassware designs that, in Libbey's opinion, may be considered children's products, Libbey has begun to explore the potential burdens associated with testing such products in accordance with the CPSA in order to certify that the products meet the total lead limits set forth in Section 101 of the CPSIA.

Testing procedures developed by the CPSC recommend testing the decorated glass finished product. After consulting with multiple accredited third party laboratories, we have discovered that such labs do not have the proper tools to grind the decorated glass to a powder so that the product can be properly tested. One lab commented that it would take a technician a week to properly grind the glass with a mortar and pestle. If possible at all, this process would be not only time consuming, but also prohibitively expensive.

Due to the infeasibility of testing the finished product as a whole, Libbey investigated the possibility of component part testing. Based on Libbey's understanding of the CPSC rule regarding component part testing (16 CFR Part 1109), Libbey would have to submit to an accredited third party laboratory for testing the glass substrate and each of the ceramic enamels to be used on the decorated glass item.

The ceramic enamels used in a multi-color decoration contain a wax based medium that evaporates during the manufacturing process. CPSC rules require that such "volatile components" not be included in calculating total lead concentration (see CPSC Response 7, 16 CFR Part 1109). Therefore, the testing laboratory must remove the wax medium from each ceramic enamel before performing the lead concentration test. This step requires additional time and expense.

Based on quotes received from accredited third party laboratories, Libbey estimates that lead concentration testing would cost approximately \$100 per color of ceramic enamel, \$90 for the glass substrate, and \$50 for test report fees. For a decoration containing eight colors (typical for many designs), the testing costs for an initial production run would be approximately \$940, not including costs associated with shipping samples to the laboratory for testing. When one considers that the testing may need to be performed again for each subsequent re-order of the design, overall testing costs could escalate rapidly. In many instances the financial returns from small production runs associated with decorated glassware projects could be greatly reduced or eliminated by the costs of complying with third party testing requirements.

Libbey believes third party testing burdens on manufacturers of decorated glassware could be significantly reduced if such products were held to a leachable lead limit, as opposed to the total lead content limit set forth in Section 101 of the CPSIA. As a practical matter, it is unlikely that a child age 12 or under would consume an entire decorated glass, thereby being exposed to the total lead content of the item. Instead, the lead that a child would potentially be exposed to while using a decorated glass would be limited to the lead leaching from the surface of the decorated glass itself. Tests of the leachable lead of decorated glassware would therefore provide a more accurate assessment of the risk of potential lead exposure to the child. In addition to providing a more accurate risk assessment, test methods for leachable lead cost as little as \$150; significantly less than those for total lead concentration.

Sincerely,

Jennifer M. Jaffee

# PUBLIC SUBMISSION

<b>As of:</b> January 26, 2012
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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0019

Comment from Jim Neill

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## Submitter Information

**Name:** Jim Neill

**Organization:** Retail Industry Leaders Association

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## General Comment

See attached file(s)

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## Attachments

RILA HR 2715 comments 1-23-12



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January 23, 2012

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 502  
4330 East West Highway  
Bethesda, MD 20814

Re: Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens, CPSC Docket No. CPSC-2011-0081 & CPSC-2011-0082

Dear Secretary Stevenson:

The Retail Leaders Industry Association (RILA) appreciates the opportunity to offer comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation, pursuant to section 14(i)(3)(A) of the Consumer Product Safety Act ("CPSA"), as amended by H.R. 2715, Public Law 112-28.1.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA members are committed to placing the highest priority on the safety and quality of the products they sell to their customers.

Please note: throughout this document, we will refer to the "Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements" as the "Certifier Rule" and to the "Testing and Labeling Pertaining to Product Certification" as the "Periodic Testing Rule."

**Issue 1**

No comment to submit for this section.

**Issue 2:** *The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.*

We support the existing language in the Certifier Rule, as it is developed in the preamble to that rule, in which CPSC stated, “If the supplier providing a certificate is also a required certifier (a domestic manufacturer or importer), then the party receiving a certificate does not need to reissue a certificate.” 76 Federal Register 69548 This acknowledgement by the CPSC that a retailer importer can rely on the certificates of manufacturer importers and domestic distributor importers who are “required certifiers” without the retailer importer re-issuing its own certificate will help to reduce cost and testing burden by reducing redundant testing and record keeping. Furthermore, the Certifier Rule’s recognition that manufacturers can act as final product certifiers upon whose certification the retailer importer can rely (with due care) to issue their required certification is an important addition to the rule. This addition recognizes that both components and final products can be appropriately tested and certified by the manufacturer.

Overall, the Certifier Rule acts to reduce testing burdens by allowing retailer importers to rely upon the product experts – their manufacturers and suppliers – to develop the procedures for assuring compliance, and appropriately focuses the retailer importer’s efforts to exercise “due care” in selecting vendors who can effectively certify product compliance. This reasonable adjustment in the Rule fully preserves the verification of compliance and any further changes should focus on confirmation that certain activities constitute due care. For example, we believe that a thorough factory evaluation/audit such as one consistent with the BRC/RILA Global Standard for Consumer Products, Issue 3, or an equivalent evaluation or audit based on good manufacturing systems and process controls (such as the audits currently conducted by some retailer importers), can be used as a basis for due care, when paired with documentation support as outlined in Section 1109.5(g) of the Certifier Rule.

With respect to provisions in the Periodic Testing Rule that reflect the intent of HR 2715, Section 1107.21 affords greater flexibility to demonstrate compliance to safety rules. It permits such activities as management controls, measurements, and other alternatives to testing, provided the certifier has a Production Testing Plan. This attention to the benefits of good process control as a compliance strategy is consistent with RILA’s belief that safety cannot be tested into the product – and that instead, compliant product begins at the initiation of manufacture.

**Issue 3:** *The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.*

Provisions in the Certifier Rule (Section 1109.5), coupled with greater flexibility in the Periodic Testing Rule (Section 1107.21), permit the testing and certification of components, and further permit a single component certification to underlie the certification of multiple products, so long as that single component certification represents the only certification needed for those products, or that single component certification is paired with other testing and certifications as necessary to issue a final product certificate for that particular product. We enthusiastically support these aspects of the Certifier Rule as a recognition of an accurate understanding of how components are used and incorporated in

final products, and the benefits of component certification. We believe that the challenges associated with maximizing the efficiency of this rule lie in the traceability requirements applicable to component certification, and we encourage Congress and CPSC to consider carefully whether the level of traceability that is currently required is necessary to assure compliance.

**Issue 4:** *The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.*

RILA appreciates Congress's action to modify the word "random" in HR 2715 Section 2 (a) (1) to state that sampling must be "representative." For some manufacturers, particularly suppliers of raw materials or components, or manufacturers of simple products, substantially similar products may be representative of the whole body of product to be certified. Therefore, requiring representative sampling rather than statistically random sampling will reduce the testing burden, particularly for those manufacturers.

**Issue 5:** *The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumers product safety rules, bans, standards, or regulations applicable under [the CPSA].*

CPSC should continue and increase efforts to harmonize international *and state* laws and regulations applicable to consumer products. Examples of opportunities include authorizing alternate test methods as evidence of compliance with CPSC standards and accepting similar labeling and warnings. Serious consideration should be given to whether the U.S. standards and rules provide additional protection to children, or simply impose additional burden upon retailer importers, without measurable benefit. Subtle and substantial variations in laws throughout North America present complex challenges for suppliers and retailers alike and complicate compliance efforts and, at times, have negative economic impact on the consumer.

CPSC should consider participation in cross- functional regulatory discussions occurring between the U.S. and Canada such as Canadians on Regulatory Cooperation Council and the Beyond the Border Working Group.

**Issue 6:** *The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.*

The agency should continue to encourage private sector technological advancements to test and screen consumer products. Advancements in the last 5 years alone have dramatically increased the tools available for all stakeholders to evaluate products. However, the agency should take care not to mandate through regulation the use of particular technologies, tools or test methods and should allow the marketplace to continue its innovations.

**Issue 7:** *Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.*

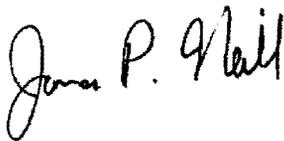
While testing of products is important to ensure compliance, the awareness of safety standards and regulations must exist throughout the supply chain. A commitment to safety and robust manufacturing processes to underscore this commitment is critical in the final assembly of any consumer product. Manufacturers consistently following respected and widely-used QMS standards may find that the need for final testing of products, where not required by law or regulation, will decline.

Congress recognized that some products have been over-regulated under CPSIA, and modified its expectations regarding exemptions in HR 2715. We believe that a robust, thoughtful process for granting exemptions from the CPSC standards for individual products, or for categories of products, and even for particular classes of materials, could lower the cost of third party testing, without reducing the safety of the products provided to U.S. consumers.

As noted above in Issue 5, we believe that recognition of alternate standards and testing methods could also reduce these burdens. In short, we are concerned that the laws, rules and standards resulting from CPSIA, particularly with respect to lead, are promulgated in a way that reduces the product selection and performance available to U.S. consumers, increases the cost of products available to consumers, and increases the burdens and cost for U.S. businesses, without materially enhancing the safety of those products. We encourage CPSC and Congress to carefully consider whether the exemption process can be applied in a manner that counteracts these unintentional consequences to U.S. consumers and U.S. businesses as rule making proceeds.

Thank you for allowing RILA the opportunity to comment on these questions. I would welcome the opportunity to discuss further, and can be reached at 703-600-2022 or [jim.neill@rila.org](mailto:jim.neill@rila.org).

Sincerely,

A handwritten signature in black ink that reads "James P. Neill". The signature is written in a cursive, slightly slanted style.

Jim Neill  
Vice President, Product Safety

# PUBLIC SUBMISSION

<b>As of:</b> January 26, 2012
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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0020

Comment from Lauren Pfeiffer

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## Submitter Information

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**Submitter's Representative:** Assistant Executive Director

**Organization:** JPMA

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## General Comment

See attached file(s)

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## Attachments

JPMA Comments on Application of Third Party Testing Requirement

January 23, 2011

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 820  
4330 East West Highway  
Bethesda, MD 20814



**Re: Comments on Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens, CPSC Docket No. CPSC-2011-0081**

The Juvenile Products Manufacturer's Association ("JPMA") submits these comments regarding the Federal Register notice of requirements, "Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens" (CPSC Docket No. CPSC-2011-0081). The U.S. Consumer Product Safety Commission ("CPSC") was directed, pursuant to the requirements of H.R. 2715, to solicit public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable children's product consumer product safety rule, ban, standard, or regulation.

The JPMA is a national trade organization of more than 250 companies in the United States, Canada and Mexico. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification and business development assistance conducted with appreciation for the needs of parents, children and retailers. Each year, JPMA sponsors Baby Safety Month in September to educate parents and caregivers on the importance of the safe use and selection of juvenile products.

JPMA and its members appreciate the importance of third party compliance verification testing and a reasonable Quality Management Process similarly based upon certification of compliance by material and component parts suppliers in an increasingly complicated global marketplace with intricate supply chains. For more than 30 years, well before the passage of Consumer Product Safety Improvement Act (CPSIA), our members have worked to promote development of product specific ASTM standards and verification testing within member's quality control programs. Since its inception in 1976, the JPMA Certification Program continues to grow and play an important role in the juvenile products industry. Currently, more than 2,000 products are JPMA Certified in 20 categories!

ASTM International develops and publishes the standards. JPMA manufacturers, retailers, other industry members, consumer groups and staff from the CPSC are involved in the development of the standards.

The JPMA Certification Seal on a product, as the program requirements have been currently revised, indicates that a representative product sample has been verified as conforming to the requirements established by ASTM, through independent laboratory testing and follow-up on-site inspection of the manufacturer's production line. The test laboratories used are

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required to meet CPSC laboratory accreditation requirements. The manufacturers that participate in the JPMA Certification Program are held to high standards and are obligated to meet those principles with each product style within a designated covered category. Our symbol of certification denotes that a representative sample of the subject the juvenile product has met these performance standards<sup>1</sup>.

Through such programs, we have been supportive for many years of the concepts incorporated into the rules governing “Testing and Labeling Pertaining to Product Certification” and “Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party’s Finished Product Testing or Certification, to Meet Testing and Certification Requirements.” We are interested in continuing to work with the Commission to further improve the testing and certification requirements and to promote adherence to our Certification Program for applicable covered products. Our responses to the specific requests for comments are below.

### **Greater Flexibility and Mutual Recognition of Accredited Laboratories and Government Accredited Laboratories is Desirable**

For many of our product categories CPSC requires third party testing to be conducted by a third party conformity assessment body meeting the requirements of section 14(f)(2) of the CPSA. Concurrently, many products are also subject to jurisdiction of the Food and Drug Administration (FDA) and their requirements. The Code of Federal Regulations (CFR) Title 21 Part 177 - Indirect Food Additives: Polymers lists standards for polymers acceptable for use in components of single and repeat use food contact surfaces. Part 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers includes standards for certain polymer additives. Parts are divided into Sections identified by chemical family which indicate physical, chemical, and compositional requirements, as well as acceptable service conditions for food contact. Regulations generally limit the extractable substance when exposed to



<sup>1</sup>



selected solvents. Within the FDA, there is no government-operated process of inspection of plastics produced for food contact use. Rather, the FDA in their regulations provides

certain specifications regarding composition, additives, and properties. A material which meets these standards can then be stated as FDA compliant. This approach may be deemed superior to an approach taken under 14(f)(2) of the CPSA. CPSC should consider when possible acceptance of such approach as suitable evidence of a reasonable quality assurance process.

JPMA favors a broad open architecture system and believes the CPSC should continually make it clear to the regulated community that one CPSC accredited test laboratory is not superior to another. Furthermore to assure suitable numbers of accredited laboratories are available along the global supply chain, the CPSC should consider mutual recognition of laboratories already recognized by NIST (Department of Commerce) in accordance with generally recognized international accrediting bodies. This would reduce fulfilling and record keeping requirements and an additional unnecessary bureaucratic filing with the CPSC. Mutual recognition of accrediting bodies has long been recognized as effective as between jurisdictions and across borders. In addition to reducing redundant accreditation and filing costs, it is a means of assuring a greater number of qualified laboratories along the supply chain. Reasonable compliance with all applicable consumer product safety rules, bans, standards, or regulations, would be assured since accredited laboratories already recognized by NIST could be available to do testing. This would have little negative impact on JPMA's own accreditation program since we use accredited laboratories that would in all cases mimic CPSC requirements. The benefit to global producers would be immediate in that additional internationally accredited and recognized laboratories would be available for production, material or parts testing.

**The extent to which the use of materials subject to regulations of another government agency may provide sufficient assurance of conformity with an applicable product safety regulation.**

When possible compliance with multiple requirements for a single product safety standard should be avoided. We have already noted how recognition of approaches taken by other governmental agencies, such as FDA's regulatory approach under The Code of Federal Regulations (CFR) Title 21 Part 177, should be provided comity. This should be considered even when the approach is by recognition of reduced risk of contamination by material selection, rather than accredited laboratory testing. For example purity of material or ingredient requirements as used by the FDA regulatory protocol provides a reasonable basis to assure that material uncontaminated by lead are used in the production of the finished product, in lieu of a requirement for finished product testing. Similarly product whether Child Restraint Seats, or accessories thereto or "hybrid" multi-use products subject to

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**JPMA**

concurrent CPSC NHTSA jurisdictional claims, meeting applicable flammability requirements under FMVSS Section 302 should also be accorded safe harbor status under any FFA required testing. Finally, within the United States, we have also long favored the use of uniform national standards and test methods to avoid disruption and inconsistent, non-identical state standards that differ from federal standard. Compliance with a patchwork of state standards is impractical, extremely burdensome, and does not make the product any safer. Therefore, we recommend the CPSC continue to work with states to deter any state product safety legislation, standards, testing requirements or test methods that substantively differ from federal requirements.

**The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of record that is substantially similar or identical in all material respects.**

The predominant issue our members and almost all manufacturers face regarding third party testing is that often times multiple retailers require third party testing be conducted by specific testing facilities. As a result, manufacturers must conduct multiple third party tests and use multiple third party testing facilities to satisfy retailer requirements on the same production involving a single, otherwise identical, product model. Moreover, retailers have very specific periodic testing requirements that have yet to be updated to be consistent with the “Testing and Labeling Pertaining to Product Certification” rule and the alternate permissive test frequencies enumerated therein. JPMA and other Associations have repeatedly requested that the Commission staff clearly and expressly advise retailers that there is no preference accorded to one CPSC accredited laboratory over another. Similarly we have supported an Enforcement Policy that looks to substantive product brand ownership and corporations that assume primary responsibility for such product in lieu of a myopic imposition of duplicative testing requirements on importers of record, where a domestically located organization has assumed primary responsibility for the brand and issued its own Certifications of Compliance, related to the same model and production lots for such product. Substance rather than form should govern in such instances. Mere testing due to the status of multiple retailers as importer of record of substantially the same product has the results of imposing needless duplicative testing of such products without demonstrable safety benefit. Where domestic brand has certified compliance of its exclusive product, it should be able to be unconditionally relied upon along its customer base. Requiring duplicative testing by retailers should be avoided and it should be clearly stated that under such circumstances form of importation and delivery mechanisms in commerce for such goods will not be determinative of testing and certification of compliance for such

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goods<sup>2</sup>. Otherwise needless testing based solely upon forms of delivery of the same product will continue to accrue, at expense to producers and ultimately consumers who have to pay needless higher process for delivered production. We recommend this messaging be included in the CPSC's education campaign.

**Such clear messaging would substantially reduce duplicative testing costs of the same product by different importers.**

CPSC should further clarify that the definition of manufacturer used in the "Testing and Labeling Pertaining to Product Certification" rulemaking. § 1107.2 which defines "manufacturer" as "the parties responsible for certification of a consumer product pursuant to 16 CFR 1110." Applies regardless of the method of delivery and importation of such goods. According to § 1110.7(a), when products are manufactured outside of the United States, the importer must issue a certification of conformity. Clarification that such importer may rely and present certifications provided by the actual brand owner/manufacturer of the goods should be explicitly stated.

If the importer is relying on supplier based testing and/or certification, it does not make sense to require importers to determine what a "representative sample" is. Many of the testing decisions are made upstream in the supply chain. With CPSC having now accepted component part testing<sup>3</sup>, decisions related to the testing interval and sample size is appropriately made by the manufacturer that is ultimately responsible for the production samples to be tested, regardless of method of importation. While it is important that the finished product certifier exercises due care in its reliance on supplier certifications, this should not mean that the finished product certifier should necessarily dictate its suppliers' sampling procedures or that the importer of record should require duplicative testing. Indeed the reverse is more appropriate.

**The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body; How third party testing may reasonably make use of sampling procedures.**

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<sup>2</sup> This of course does not alleviate the direct importer from ultimate responsibility to Recall non compliant product if the primary brand owner/ manufacturer refuse to do so. However, such recognition would reduce needless redundancies predicated solely upon a retailer's position as a direct importer of the product.

<sup>3</sup> As reflected in **16 CFR 1109, et seq.** "Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements"



We have been supportive of permissive reliance upon component part or material testing and certification (16 CFR 1109, et seq.). Many juvenile products are complex manufactured products with multiple materials and components that may be technically accessible to a child. It is logical that to the extent component materials or subcomponents are wholly manufactured in other industrial sectors that reliance upon certifications with such sectors can and should be relied upon. Similarly CPSC's recognition of "composite" testing of substrate and surface coating under defined protocols, further recognized that when component part testing cannot be relied upon, testing with composite materials in accordance with reasonable sample selection criteria and test methods can further reduce unnecessary testing and costs. So long as representative materials or components used in finished production can be sampled such process should be maintained as suitable for determining compliance with the lead paint, substrate and phthalate limits for toys and other childcare articles. Congress clearly recognized the advantage to permissive use of "representative sampling" for the purpose of certifying compliance for like materials and components to these requirements. As we've noted in citing FDA's preference for good manufacturing practices as superior to sample testing manufacturers use the same inputs, supplied materials and processes to manufacture products over a long period of time. Generally this is indicia that testing of finished production need not be conducted as frequently or smaller samples from a larger population may be suitable. Certainly this is the case given production requirements under 16 CFR 1611, et seq for pacifiers and 16 CFR 1615 and 1616 for children's sleepwear. A QA process is built into these standards and should be fully recognized as demonstrable of reasonable testing and certification under CPSIA Section 102, as amended and accorded safe harbor status. Moreover, there are times when testing is not required at all. For example, if a manufacturer employs inaccessible materials (16 CFR 1500.87), is comprised of certain electronic parts (16 CFR 1500.88) or only excluded material (16 CFR 1500.91) in the production of product, it is recognized that they need not conduct lead substrate testing because the CPSC recognized that wood is a material that will not violate the lead content limit. Following the same logic, and taking into account the amendment to the CPSIA, we believe the CPSC publish a similar list of materials that would not violate the phthalate standard and therefore do not require phthalate testing.

The CPSIA amendment states that the phthalate standard only applies to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates. Even before the CPSIA amendment, there has been a great deal of confusion as to the scope of the Phthalate standard Statement of Policy and how to apply the Statement of Policy to quality assurance and testing programs. Needless testing of plastics in toys and certain defined childcare articles to which phthalates are not intentionally added as part of formulation of the plastic material (primarily PVC) should be specifically discouraged.

As we have commented in the past, we agree with the CPSC's list of examples of materials that do not normally contain phthalates and, therefore, should not generally require testing

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or certification. We also agree that manufacturers either know or should know what materials and components go into the products they make. However, as phthalates are chemicals intentionally added to materials for various purposes, it is likely impossible to create an exhaustive list of *all* materials that may not include phthalates and therefore may not require testing. Therefore, we believe the CPSC should make it clear in any issued policy that examples of excluded materials that are compiled are not exhaustive and similar, related or other such materials may also not require testing and may be added in the future.

Finally given the health based criteria now available to the agency under the HR 2715 amendments to the CPSIA, CPSC should of its own initiative re-visit materials previously submitted for exclusion and addition to those listed at 16 CFR 1500.91, and add them to such list. This could quickly expand the list of materials that are not reasonably likely to present any health hazard (i.e. resulting in hazardous increases in human blood levels). HR 2715 provided additional examples of products and material parts that must now be considered as exempt from lead requirements and printed material that is now exempt from testing and certification requirements. However, the CPSC web sites and rules have yet to be updated to reflection these specific exemptions nor based upon their newly afforded discretion to expand materials (which similarly present no demonstrable human health hazard as used) need not be tested and subject to expensive testing requirements. They should do so as expeditiously as possible.

**The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety regulations under the CPSIA.**

We note that under the Flammable Fabrics Act ("FFA") at 16 CFR 1608.3 continuing guaranties are permitted and can be relied upon (as part of component supplier certification reliance). They should similarly be recognized without further requirement for testing and certification which is needlessly redundant. Other flammability requirements which inherently contain testing requirements as part of the standard itself should similarly be able to be relied upon as a basis for certification without imposition of an additional redundant layer of testing and certification (See for example 16 CFR 1615 and 1616). The "Labeling of Hazardous Art Materials Act" (LHAMA) amended the Federal Hazardous Substances Act (FHSA) by adding Section 23 and designating the ASTM Standard Practice for Labeling Art Materials for Chronic Health Hazards (ASTM D-4236-88) as a regulation under Section 3(b) of the FHSA. LHAMA toxicological risk assessments that also include lead testing as an adjunct should also be able to be relied upon without duplicative or redundant testing.

We recommend the CPSC revise the lead paint standard to include a *de minimis* exception for small painted areas. The CPSC stresses that supplier based testing or component testing is entirely voluntary stating in §1109.3, "This part also applies to manufacturers and suppliers of component parts or finished products who are not required to test or certify consumer

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products pursuant to part 1110 of this chapter, but who voluntarily choose to undertake testing or certification.” Therefore, should a supplier decide to not conduct third party testing and certification of inks, stickers, paint, or other liquids that are subject to the lead paint standard, the manufacturer (or importer) is required to third party test and certify the painted area. Without a *de minimis* exemption, manufacturers then have no choice but to submit multiple samples of the product simply to test the small painted area. The additional testing is unduly burdensome for all manufacturers. We recommend the CPSC incorporate the ASTM F963, Section 8.3.3.1 (under the *Method to Dissolve Soluble Matter*) into the test method for 16 CFR 1303. Likewise, third party conformity assessment bodies and the testing protocols for phthalates recognize no *de minimis* exception from testing requirements where the amount of accessible, plasticized material is so small that, literally, hundreds or even thousands of individual products must be used to get enough plasticized material to perform the specified testing.

Finally we support greater alignment and recognition of existing ASTM and International durable juvenile product safety standards, without substantive re-engineering without a sound scientifically based hazard record, as the basis for adoption of standards as required under CPSIA Section 104, as amended by HR 2715. Since test methods, labeling requirements, and standards themselves can vary from jurisdiction to jurisdiction, CPSC should direct its staff to promote uniformity whenever practicable and possible as part of its standard setting and enforcement policies. Further communication of such commitment may help reduce the number of redundant tests for the same hazards; a manufacturer must conduct on internationally distributed product.

In this regard, we are very supportive of the CPSC’s decision to adopt both CPSC-CH-C1001-09.3, *Standard Operating Procedure for Determination of Phthalates* (the CPSC Test Method) and GB/T 22048-2008 *Toys and Children’s Products-Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic* (the Chinese Test Method). As we have commented in the past, there are several methods suitable for the routine identification and measurement of total phthalate concentration for consumer products under Section 108 of the CPSIA. In addition, we believe the CPSC should consider Health Canada’s test method for total phthalate content in PVC products. Recognition of the Canadian test method would further reduce redundant testing as companies would be able to certify compliance to the US and Canadian phthalate requirements with one test. Likewise we will recommend that Canada and Mexico fully align with U.S. requirements whenever possible.

**The extent to which technology may more efficiently screen for testing consumer products subject to a third party testing requirement.**

Many manufacturers have invested significant resources into alternative testing technology like XRF. Manufacturers find XRF a helpful screening tool for lead content. While not perfect, many manufacturers will include the use of XRF (and other alternative testing

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**Juvenile Products Manufacturers Association, Inc.**

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525

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methods) into their quality control programs. We ask that the CPSC continues to look at the effectiveness of alternative testing tools and update test standards as appropriate. The use of non-destructive testing techniques is much more preferable as they are generally more cost effective. An enforcement policy that recognizes that use of such screening tools is considered evidence of reasonably prudent conduct in verifying compliance may be beneficial and encourage increased screening.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "MR DWYER", with a horizontal line extending to the right.

Michael Dwyer, CAE

Executive Director

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0021

Comment from Rebecca Mond

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## Submitter Information

**Name:** Rebecca Mond

**Organization:** Toy Industry Association

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## General Comment

TIA's comments to "Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens" (Document ID CPSC-2011-0081-0001) are attached.

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## Attachments

Reducing Testing Burden Final



Toy Industry Association, Inc.

[www.toyassociation.org](http://www.toyassociation.org)

January 23, 2011

Office of the Secretary  
U.S. Consumer Product Safety Commission  
Room 820  
4330 East West Highway  
Bethesda, MD 20814

**Re: Comments on Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens, CPSC Docket No. CPSC-2011-0081**

These comments are provided on behalf of the Toy Industry Association (TIA), its members and the U.S. toy industry regarding the Federal Register notice of requirements, "Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens" (CPSC Docket No. CPSC-2011-0081).

TIA's membership is made up of more than 500 toy manufacturers and importers that collectively account for approximately 85% of annual U.S. domestic toy sales. Since the 1930s, TIA has been a leader in the development of toy safety standards, and toy safety has long been a priority for TIA and its members.

We would first like to thank the U.S. Consumer Product Safety Commission (CPSC) for seeking public comments regarding ways to reduce the costs and burdens associated with third party testing. All of TIA's members understand the importance of third party testing. Since well before the passage of Consumer Product Safety Improvement Act (CPSIA), TIA's members have included robust testing programs within their quality control programs. TIA has worked with members to explain the testing requirements, educate members on how to comply with the requirements, and worked with members to help navigate the challenges of implementing a new testing program.

Overall, TIA is very supportive of the recently finalized "Testing and Labeling Pertaining to Product Certification" and "Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements." We appreciate the Commission's efforts to listen to and integrate many of the public's comments and suggestions. We look forward to continuing to work with the Commission to further improve the testing and certification requirements.

Our responses to the specific requests for comments are below.

**The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable product safety regulation.**

One of the biggest challenges companies face is compliance with multiple requirements for a single product safety standard. This can be an issue if, for example, state standards differ from a federal standard. A strong federal standard that preempts state standards is very important for the success of a business. Compliance with a patchwork of state standards is impractical, extremely burdensome, and does not make the product any safer. Therefore, we recommend the CPSC continue to work with states to deter any state product safety legislation that differs from federal requirements.

In addition, in some cases, third party testing to another government agency's requirements may provide a company with reasonable assurance of conformity to CPSC requirements. An example would be if a manufacturer elects to utilize a plastic resin grade which is shown (by test or supplier certification) to meet the Food and Drug Administration's requirements for food contact materials at 21CFR 177. In these and other similar cases, that manufacturer should be able to rely upon this as evidence of compliance with the lead substrate requirement for that material without further testing.

**The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of record that is substantially similar or identical in all material respects.**

The predominant issue TIA members face regarding third party testing is that often times multiple retailers require third party testing be conducted by specific testing facilities. As a result, manufacturers must conduct multiple third party tests and use multiple third party testing facilities to satisfy retailer requirements on a single product. Moreover, retailers have very specific periodic testing requirements – requirements that are far more stringent than those required in the “Testing and Labeling Pertaining to Product Certification” regulation. One company gave the following example:

I have a product sold at Major Retailer A, Retailer B and Retailer A's Canadian location as well. The following testing is required:

- I will need to test the product at Test Lab A for Retailer A,
- I will also need to test the product again at Test Lab A for Retailer A's Canadian location because they will not allow a combined US/Canadian Test encompassing both protocols,
- I will additionally need to test the product at Test Lab B, because Retailer B dictates the test lab I must use for a given product category of toy. However, Retailer B does use Test Lab A for other product categories.

Essentially the product will be tested 6 times per year because both Retailer A, B and Retailer A's Canadian location require testing every 6 months. It is also very interesting that Retailer B uses Test Lab A for certain toy categories but will not accept test reports from Test Lab A for others.

As this company pointed out, “If the testing lab is qualified to use for some toys, it should be qualified for all categories of toys since the *same tests* apply to both categories for our products.”

TIA is on record, by its Counsel, requesting that the Commission clearly and expressly advise retailers that there is no preference accorded to one CPSC accredited laboratory over another. As the CPSC continues to accredit third party testing facilities for additional standards, this request is more imperative than ever. We recommend this messaging be included in the CPSC's education campaign. **There is probably no single action which the Commission could undertake which would have a greater impact in reducing testing costs than to discourage this duplicative testing by making clear that it is wasteful, unnecessary, diverts resources from more productive safety efforts, and adds cost to products without improving safety.**

We also recommend the CPSC look at the definition of manufacturer used in the "Testing and Labeling Pertaining to Product Certification" rulemaking. § 1107.2 defines "manufacturer" as "the parties responsible for certification of a consumer product pursuant to 16 CFR 1110." According to § 1110.7(a), when products are manufactured outside of the United States, the importer must issue a certification of conformity. Some could read this to mean that a "representative sampling" procedure must be determined by the importer even if component part testing is conducted by suppliers.

If the importer is relying on supplier based testing and/or certification, it does not make sense to require importers to determine what a "representative sample" is. Many of the testing decisions are made farther upstream in the supply chain since the CPSC accepted component part testing. Decisions like whether a sample is "representative," the testing interval and sample size should therefore be made by the testing party that is submitting samples to be tested. We believe this logic is consistent with the "Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements" rulemaking. While it is important that the finished product certifier exercises due care in its reliance on supplier certifications, this should not mean that the finished product certifier must dictate its suppliers' sampling procedures.

**The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.**

TIA is supportive of such an effort, as it has the potential to reduce testing burdens without negatively impacting safety. An example would be a construction set comprised of fifty (50) different physical component configurations, but with those components injection-molded of four different colors of PVC resin. So long as all four colors of material are sampled, it is not necessary to sample all fifty component types to establish compliance with the lead substrate or phthalate limits, and the subset of components sampled should be explicitly recognized as a "representative sample" for the purpose of certifying compliance to these requirements.

**The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures.**

In some cases, manufacturers use the same inputs and processes to manufacture products over a long period of time. As the CPSC recognized in the "Testing and Labeling Pertaining to

Product Certification” rulemaking, in these cases, testing may not need to be conducted as frequently or the company may choose a smaller sample from a larger population. Moreover, there are times when testing is not required at all. For example, if a manufacturer is only using wood to make a toy – the manufacturer will not need to conduct lead substrate testing because the CPSC recognized that wood is a material that will not violate the lead content limit. Following the same logic, and taking into account the amendment to the CPSIA, we believe the CPSC publish a similar list of materials that would not violate the phthalate standard and therefore do not require phthalate testing.

The CPSIA amendment states that the phthalate standard only applies to any plasticized component part of a children’s toy or child care article or any other component part of a children’s toy or child care article that is made of other materials that may contain phthalates. Even before the CPSIA amendment, there has been a great deal of confusion as to the scope of the Phthalate standard Statement of Policy and how to apply the Statement of Policy to quality assurance and testing programs. Without CPSC clarification as to how the amendment changes (or doesn’t change) the Statement of Policy, this confusion will only grow. Needless testing of plastics to which phthalates are not intentionally added as part of formulation of the plastic material (primarily PVC) should be specifically discouraged.

As we have commented in the past, we agree with the CPSC’s list of examples of materials that do not normally contain phthalates and, therefore, should not generally require testing or certification. We also agree that manufacturers either know or should know what materials and components go into the products they make. However, as phthalates are chemicals intentionally added to materials for various purposes, it is likely impossible to create an exhaustive list of all materials that may not include phthalates and therefore may not require testing. Therefore, we believe the CPSC should make it clear in any issued policy that examples of excluded materials that are compiled are not exhaustive and that similar, related or other such materials may also not require testing and may be added in the future. For example, many members have indicated that they use Thermoplastic Rubber (TPR), a synthetic material without added phthalates. The current tendency to test materials unlikely to contain restricted phthalates in their formulation must be discouraged.

**The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety regulations under the CPSIA.**

TIA notes that Flammable Fabrics Act (FFA) continuing guarantees should be able to be relied upon (as part of component supplier certification reliance) and Labeling of Hazardous Art Materials Act (LHAMA) toxicological risk assessments that also include lead testing as an adjunct should also be able to be relied upon without duplicative or redundant testing.

TIA has long advocated for greater harmonization of international product safety standards. The most effective and efficient way for a company to run a quality control program is to establish the strictest product safety standards and comply with those. Unfortunately this can be a difficult task. Test methods, labeling requirements, and standards themselves may vary from jurisdiction to jurisdiction. We appreciate the CPSC’s efforts to work with international governments to streamline regulations. We hope to continue to work with the agency and participate in these alignment efforts wherever possible.

In the meantime, while we work for the broader goal of harmonization of international product safety standards, the CPSC can clarify to the regulated community that, in situations where international standards are identical, or compliance with US standards can be determined mathematically or scientifically from results of testing for compliance with international standards, third party testing for an international standard would satisfy third party testing requirements for the U.S. counterpart. Simply communicating this message will greatly reduce the number of redundant testing a manufacturer must conduct should the product be sold both domestically and internationally. For example, the European standard EN71-1 specifies that the sound pressure level of close-to-the-ear toys be measured at a distance of 2.5 cm while the US standard ASTM F963 specifies that the sound pressure be measured at a distance of 50 cm. Since it is a law of physics that sound pressure varies inversely to the square of the distance from the source, a simple calculation based on testing for compliance to the European standard would establish compliance with the US standard, and vice versa. Other instances where compliance to one standard can be deduced from testing to another include various abuse tests included in the standards ASTM F963, ISO 8124-1, and EN71-1. In those that require a force application, it can be a simple matter to determine which standard is most onerous.

We also recommend the CPSC consider incorporating language into the testing rulemaking similar to 16 CFR 1610.40, "Use of alternate apparatus, procedures, or criteria for tests for gratuity purposes." The section grants companies the ability to rely on alternative test procedures to demonstrate compliance with the underlying standard provided that the test procedure used is as stringent as or more stringent than the test procedure in the standard itself. Adoption of this language would alleviate many of the issues companies face in having to comply with multiple, similar (if not identical) regulations. Furthermore, if the CPSC were to adopt this language, the agency would not have to go through and compare various product safety standards and test methods to determine whether compliance with one denotes compliance with another.

Finally, we are very supportive of the CPSC's decision to adopt both CPSC-CH-C1001-09.3, *Standard Operating Procedure for Determination of Phthalates* (the CPSC Test Method) and GB/T 22048-2008 *Toys and Children's Products-Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic* (the Chinese Test Method). As we have commented in the past, there are several methods suitable for the routine identification and measurement of total phthalate concentration for consumer products under Section 108 of the CPSIA. In addition, we believe the CPSC should consider Health Canada's test method for total phthalate content in PVC products. Recognition of the Canadian test method would further reduce redundant testing as companies would be able to certify compliance to the US and Canadian phthalate requirements with one test.

**The extent to which technology, other than technology already approved by the Commission, exists for third party conformity assessment bodies to test or screen for testing consumer products subject to a third party testing requirement.**

Like the CPSC, many manufacturers have invested significant resources into alternative testing technology like XRF. Manufacturers find XRF a helpful screening tool for lead content. As the CPSC has recognized, XRF is more effective on some materials are more effectively tested using XRF technology than others. While not a perfect testing tool, many manufacturers will include

the use of XRF (and other alternative testing methods) into their quality control programs. We ask that the CPSC continues to look at the effectiveness of alternative testing tools and update test standards as appropriate. The use of non-destructive testing techniques is much more preferable to companies as they are generally quicker and more cost effective.

**Other techniques for lowering the cost of third party testing.**

We recommend the CPSC revise the lead paint standard to include a *de minimis* exception for small painted areas. If a company submits a product for third party testing, and the product has a sticker or a small painted area, testing labs are unable to obtain enough of the sample to test for lead paint. For example, one company reported that a testing lab requested 600 samples of a black "coating" used to stamp a number on the back of a product. The CPSC stresses that supplier based testing or component testing is entirely voluntary stating in §1109.3, "This part also applies to manufacturers and suppliers of component parts or finished products who are not required to test or certify consumer products pursuant to part 1110 of this chapter, but who voluntarily choose to undertake testing or certification." Therefore, should a supplier decide to not conduct third party testing and certification of inks, stickers, paint, or other liquids that are subject to the lead paint standard, the manufacturer (or importer) is required to third party test and certify the painted area. Without a *de minimis* exemption, manufacturers then have no choice but to submit multiple samples of the product simply to test the small painted area. The additional testing is unduly burdensome for the manufacturer and does not make the child any safer. We recommend the CPSC incorporate the ASTM F963, Section 8.3.3.1 (under the *Method to Dissolve Soluble Matter*) into the test method for 16 CFR 1303.

Likewise, third party conformity assessment bodies and the testing protocols for phthalates recognize no *de minimis* exception from testing requirements where the amount of accessible, plasticized material is so small that, literally, hundreds or even thousands of individual products must be used to get enough plasticized material to perform the specified testing.

**Conclusion**

Thank you for taking the time to read our comments. Please contact Rebecca Mond at [rmond@toyassociation.org](mailto:rmond@toyassociation.org) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Desmond". The signature is fluid and cursive, with the first name "Ed" being particularly prominent.

Ed Desmond  
Executive Vice President, External Affairs

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0022

Comment from Khoi Do

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## Submitter Information

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**Organization:** UL

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## General Comment

See attached file(s)

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## Attachments

12.01.23 UL Third Party Testing Comments FINAL



January 23, 2012

Submitted Electronically to Docket No. CPSC-2011-0081

Mr. Randy Butturini  
Project Manager, Office of Hazard Identification and Reduction  
US Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814

Dear Mr. Butturini:

UL LLC appreciates the opportunity to comment on the Consumer Product Safety Commission's (CPSC) Request for Comments (CPSC-2011-0081) regarding opportunities to reduce the cost of third-party testing requirements, as directed by H.R. 2715.

UL is an independent standards developer and product testing and certification organization dedicated to public safety. Since our founding in 1894, UL's engineers and staff have helped develop safety standards and product-testing protocols, provided independent product safety testing and certification, and conducted inspections at manufacturing facilities around the world to promote safe living and working environments for people worldwide. This requires consciously adapting and evolving our services to address emerging safety issues in an increasingly global and complex marketplace. Because UL's programs seek both to improve compliance assurances and to facilitate market access of products for manufacturers, UL designs programs that help to reduce testing burdens without compromising the integrity of its programs.

UL's role in consumer product safety expanded in 2011 with the acquisition of Specialized Technology Resources's (STR) Quality Assurance division, which currently operates under the UL umbrella as UL-STR. UL-STR is one of the largest US-based consumer product testing and quality assurance providers worldwide, focusing exclusively on general consumer merchandise, including toys. Moreover, UL-STR is registered with the CPSC as an accredited third party conformity assessment body, to assist manufacturers of children's products in complying with testing and certification obligations of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Given the paramount concern for product safety and the required technical capability needed to provide accurate conformity assessment, UL generally believes that third-party testing by accredited and independent testing, inspection, and certification bodies provides more reliable product assessments and program integrity, the efficient flow of goods, and a reduced economic burden for the federal government. In our experience, UL believes that when determining whether requirements of other federal or international agencies can be leveraged, CPSC should consider not only alignment of the requirements but also whether the processes for demonstrating compliance are equivalent. Equivalent compliance program requirements are as important in the efficacy of the program as the actual requirements themselves. Moreover, in the absence of aligned standards and compliance protocols, accreditation and national treatment for foreign testing laboratories from those countries with reciprocity provisions is the optimum approach to third-party testing. It provides a level playing field for all manufacturers and conformity assessment providers without compromising the program's integrity.

With this backdrop, UL is pleased to share recommendations for the Commission's consideration regarding how to make third-party testing most efficient and for all parties. These recommendations draw from UL programs, services, and training platforms and illustrate how such programs of third-

party testing, inspection, and certification organizations can help to minimize the economic cost, redundancy, and time to market of products for qualified manufacturers. With these resources at their disposal, most qualified manufacturers can streamline their compliance processes.

The following principles or tenants serve as the bedrock for the programs outlined below, and warrant mentioning here, as the absence of them would be viewed as compromising the integrity of the program that CPSC seeks to uphold:

#### *Accreditation of Testing Bodies*

Ensuring that any conformity assessment body, either foreign or domestic, is qualified to perform the specific tests lends credibility to the CPSC third-party testing program. ISO/IEC 17025 accreditation of laboratories for determinations of compliance with the CPSC testing requirements for covered product categories will help to improve initial product quality and provide confidence that products are compliant with CPSC requirements. CPSC currently utilizes third-party testing laboratories, accredited by a full member of the International Laboratory Accreditation Cooperation--Mutual Recognition Arrangement ("ILAC-MRA"). This accreditation includes an assessment to confirm the technical competence of the laboratory for certain testing methods and also includes an assessment of a laboratory's management and organization to ensure safeguards against undue influence. The laboratory must have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial, and other pressures and influences that may adversely affect the quality of their work. Comprehensive accreditation by a capable accreditation body is an essential aspect to promoting the integrity of any third-party testing program.

#### *Recognition of Accredited Certification Schemes*

Where third-party product safety certification programs exist and are relied upon by other federal agencies, UL encourages CPSC to consider leveraging them to minimize the burden on manufacturers. One such option would be for CPSC to recognize certifications from such programs as satisfying the CPSC Certificate of Conformity (CoC) requirement.

The third-party product certification for safety requirements model has provided confidence for regulators for more than a century; it is a model utilized by other federal agencies as discussed later in this submission. The model is based on the concepts of ongoing compliance throughout the distribution chain – from production, to sale, and finally consumer use. It builds on recognized industry practices to define critical pre- and post-market compliance points. These include:

- **Testing Function** – in accordance with ISO/IEC17025, outlines procedures for operating a competent laboratory, including the competency of staff conducting testing.
- **Certification Function** – in accordance with ISO/IEC Guide 65, identifies standards/requirements used to certify products and technical competency of staff certifying products
- **Factory Inspection Function** – in accordance with ISO/IEC 17020, verifies continuous compliance to related standards/requirements through procedures and staff for a competent inspection activity
- **Market Surveillance Function** – provides post-market surveillance of products in the marketplace for verifying continued compliance
- **Corrective Action Function** – in accordance with ISO/IEC Guide 27, requires a process to address misuses of a certification mark

Any certification scheme that incorporates all of these elements and complies with the various ISO/IEC Guides to preserve program integrity would provide a high level of product safety compliance. Again, while CPSC does not require mandatory certification by this definition, the program could recognize those manufacturers and products that voluntarily choose to adopt the

additional rigor of an established certification scheme. The CPSC program should allow those products that are certified under a particular program from a CPSC recognized certification body to be exempted from requirements under the CPSC program. This recognition will protect manufacturers from being subject to costs associated with participation in potentially redundant programs, while not discouraging those who choose to leverage third-party certification schemes.

**Issue 1 – *The extent to which the use of materials subject to regulations of another government agency that requires third-party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third-party testing.***

UL is not currently aware of other domestic Federal agencies that require mandatory third-party testing for materials. While we have not identified any applicable Federal programs that require third-party material testing, we are aware that some material testing can add time and cost to the compliance process for manufacturers. However, a program such as UL's iQ<sup>™</sup> Database allows manufacturers and importers to select continually updated materials such as plastics, wiring, printed wiring boards (PWB), switches, and motor insulation systems that have been pre-screened and certified by an independent third-party testing organization and selecting these materials disseminates the responsibility of compliance through the supply chain, while decreasing significant amounts of time for end product testing. There are currently 70,000 different materials listed in the publicly available iQ<sup>™</sup> Database for manufacturers and importers to select pre-screened materials. For example, printed wiring board materials are subject to various arcing and flame tests to simulate long-term use, some of which can take a minimum of 12 months. If a manufacturer of an electronic game console chooses to use a certified printed wiring board then the game console manufacturer could save a minimum of one year of testing time. While the use of these pre-screened materials can provide opportunities for expedited product safety testing, the ultimate assessment of product compliance is best performed by an, accredited, third-party testing or certification body.

There are occasions at the end product level however, where multiple agencies have overlapping jurisdiction of the same product categories. In these cases, differing compliance documentation requirements between Federal agencies can add redundant testing and administration to the compliance process for manufacturers. One way for the CPSC to alleviate or minimize redundant third-party testing and documentation is to look at third-party testing programs administered by other Federal agencies that have equivalent or more stringent safety rules, standards, or regulations and accept compliance to these programs for CPSC requirements. One program that operates relatively efficiently and leverages the expertise and capabilities of third-party testing organizations is the US Occupational Safety & Health Administration's (OSHA) Nationally Recognized Testing Laboratory Program (NRTL). The NRTL Program accredits independent third-party certification bodies to certify specific equipment and materials to consensus-based safety standards for the workplace. For products under the jurisdiction of both the OSHA NRTL Program and CPSIA requirements, the CPSC currently requires the issuance of a separate paper certificate of conformity (CoC) for compliance with CPSC requirements, even though comparable certification data is accessible through the Certification Mark and its issuing NRTL. While CPSC does recognize NRTL Certification Marks for the compliance of some products like garage door openers, UL recommends extending the recognition of registered NRTL Certification Marks to satisfy the CPSC paper CoC requirement to other relevant product categories under the jurisdiction of both CPSIA requirements and the OSHA NRTL Program. This would allow manufacturers to provide consistent and efficient compliance for both agencies. By instituting this change, the CPSC can leverage the long standing product certification activities under the OSHA NRTL Program. Additionally, the Certification Marks utilized by these certification bodies offer traceability, as they are registered to a ISO/IEC Guide 65-accredited conformity assessment body, and are linked back to certification directories that detail only compliant products and include pertinent information about the product and the manufacturer.

**Issue 2 – The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.**

Outside of CPSIA requirements, testing is a prevalent aspect of the global supply chain when importers, manufacturers, and retailers are unsure of the various materials, components, and inputs from various suppliers along the supply chain. While it is worthwhile to review opportunities to eliminate redundancies, it is not accurate to conclude that all cases of repeated testing are redundant. Retailers, manufacturers, and importers may impose their own requirements for third party testing, and upstream manufacturers are often asked to comply with these requirements as an obligation of doing business. Further, repeated testing may be an important element of establishing continued confidence in effective supply chain management. As mentioned, the CPSIA requirements already allow for component or raw material testing, and this is one opportunity for manufacturers to verify the compliance of various materials and components, while shifting the burden of compliance to material and component suppliers. This in turn saves the manufacturer and importer time and certification costs.

Regarding importers of a product that is “substantially similar or identical in all material respects,” if the manufacturer or an accredited third-party testing laboratory is authorized to issue a Certificate of Conformance (CoC) to multiple importers or distributors, the opportunity exists for importers to leverage a manufacturer’s certification with only an evaluation on packaging material needed for the brand name they will be marketed under. This still requires a contractual, explicit agreement between manufacturer, third-party testing organization, and subsequent importer, as well as a strong traceability or market surveillance program to maintain confidence of ongoing compliance. Nevertheless, this authorization of CoC issuance would be another opportunity to reduce redundant testing and documentation in the marketplace for manufacturers.

In addition to the aforementioned use of pre-identified compliant materials and components, UL and other third-party conformity assessment bodies offers a number of programs in various industries that could be viable for manufacturers producing products under CPSIA certification requirements. These programs include the General Coverage program, the Data Acceptance Program (DAP), and the Multiple Listing program for identical products except for the company identification. These programs and services are commonly used by qualified manufacturers to reduce cost and time burdens on a regular basis. Within all of these scenarios and compliance processes, the judgment of compliance should ultimately be at the determination of an accredited third-party conformity assessment body at various stages of the supply chain. (Please see **Figure 1** for a graphical breakdown of these programs and services and their benefit to manufacturers)

#### *General Coverage Program*

One program that UL offers for electric signs (*commonly known as the General Coverage program*) has now been used successfully by UL and electric sign manufacturers for more than 30 years. The program is based on the selection of suitable, pretested sign components, compliance with construction parameters contained in UL 48 Standard for Electric Signs, and compliance with specific sign program guidelines provided in UL certification documents. For example, recent updates to the sign certification program are intended to promote continued compliance given dramatic changes in sign technology and construction. The use of changing message signs, and in particular LED changing message signs, is expanding in all areas of sign application where flexibility is needed for commercial advertising displays as well as information exchange. These include stadium signs and scoreboards, changing message and advertising displays inside and outside stores, and roadside and traffic information along highways and streets.

Coverage can be specific to a unique design or include a complete family of changing message signs that are permitted to vary within specified construction and electrical parameters. That means one listing covers many variations and models of signs without resubmitting each variation to UL. UL recognizes that commercial electric signs are generally custom built to specifications of the customers and may vary in size, shape, and illumination type, including combination types. To address this kind of custom product UL has developed a unique and highly flexible approach to sign certification that provides 1) compliance with applicable safety standards, 2) customer control of the certification timing, and 3) high value in listing a wide variety of custom sign constructions. This program or a program with similar parameters could be applicable to small batch manufacturers producing products under CPSIA requirements.

#### *Data Acceptance Program*

Another avenue to decrease testing costs is to manage the time it takes to conduct testing for a particular product, while utilizing in-house resources to conduct the required tests. UL also facilitates a Data Acceptance Program (DAP) as a means for UL to accept externally generated test data in support of UL mark certification. The Data Acceptance Program provides mechanisms for UL acceptance of externally recorded test data as an alternative to testing conducted at UL testing facilities. All other aspects of the investigation, including responsibility for test development and program content, use of UL data sheet packages, review of client supplied information, and descriptive reports and evaluation for conformance with requirements remain unchanged. The client must have in place a laboratory with physical resources, equipment, and qualified personnel to conduct the tests. These need to be assessed by UL each time, before data can be accepted. After the program is established, the test laboratory is annually reassessed. All data submitted is thoroughly reviewed by UL before being utilized. This type of data acceptance program allows manufacturers to continue to use their in-house lab for some testing, increasing speed to market and lowers costs, but also maintains a level of integrity and assurance by having those results reviewed and validated by an independent, third-party organization that ultimately makes the compliance determination. Additionally, working with UL throughout the product development and testing process, as opposed to the various testing gates, allows the manufacturer to correct product failures and fix design defects on a more-timely basis, again saving the manufacturer time and subsequent costs associated with testing. This would be further supported through the ongoing testing and factory inspection requirements by the program and product certification organization.

#### *Multiple Listing Program*

Multiple Listing is used when products certified for one company are produced for marketing under the name of another company. Through this service, manufacturers and their private label distributors are authorized to use the appropriate UL Mark, if the products are identical except for company identification, product designation, and other superficial features. All construction, packaging and labeling of the Multiple Listed product must be done at the basic applicant's manufacturing location or locations. The Multiple Listing Service offers a way to provide customers a full line of products carrying the manufacturer's brand name, leveraging the UL Mark of safety earned by the manufacturer producing the product. This program would significantly decrease the redundant testing for identical products, and could allow a particular product sold by multiple distributors or importers to be tested only once.

**Issue 3 – *The extent to which products with a substantial number of different components subject to third-party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third-party testing of a subset of such components selected by a third-party conformity assessment***

Component testing may allow for the elimination, or at least reduction, of redundant testing only when testing for a product's composition or content. Toxicity tests such as lead in paint, lead content, and

phthalate content are examples of such tests. If a final product can be proven to be composed of the same material throughout the end product, then a manufacturer may reduce toxicity testing by submitting a component as a representative sample for composition testing. Traceability is important in this approach as there are several ways of contaminating raw materials in the assembly of components or end-product manufacturing.

While these conformity assessment activities might allow for component level results to be sufficient, other requirements, including safety design requirements and other CPSCA-required safety metrics, can only be determined at an end-product level. Component testing for toys and children's products cannot constitute final product testing as it does not take fully into account the potential hazards that may be introduced during the manufacturing process or the configuration of components in the end product. Physical tests such as the test methods for simulating use and abuse of toys and other articles intended for use by children (16 CFR § 1500.50) typically require testing of the full final product. Another example is compliance of electronic toys with such safety requirements as fire and electric shock hazards, which can be assessed only once all of the electrical circuitry is assembled, insulated, and oriented to its final configuration. In these cases component testing cannot take into account the potential interaction of the combination of materials and chemicals, or the hazard that could be produced by not properly assembling or incorrectly connecting heat-producing, electrical components. UL supports component testing as a means to alleviate the costs of end product testing and to streamline the compliance process, however UL believes that the ultimate assessments of product compliance is best performed by an, accredited, third-party testing or certification body

**Issue 4** – *The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.*

The parameters for sampling a particular product are important to the overall compliance of this product in the marketplace at different stages of the supply chain. From a pre-market standpoint, without testing every individual unit produced, a third-party testing laboratory uses a representative sampling of products to verify the compliance of the entire family of products. To ensure that a third-party testing body is receiving a sample that is representative of the entire product family, UL also conducts Follow-Up Services (FUS) inspections, a prominent piece of UL product certification. UL's Follow-Up Services program consists of product inspections of UL certified products at the manufacturing facility. The purpose of these inspections is designed to check on the means that the manufacturer is using to determine its products are in compliance with UL requirements and confirm that markings referencing UL certifications are used appropriately. UL Follow-Up inspections cover review of products, testing of samples, and selection of samples for testing at a manufacturer's factory. If a UL field representative finds features of the production method, factory test, or product construction not in compliance with UL's requirements, UL issues a Variation Notice and the manufacturer can choose to, rework the units to bring them into compliance, remove the UL Mark from affected units, or hold the units pending further review by UL. Thus, Follow-Up Services help to supplement pre-market representative sampling to promote the integrity of product certification and verification of product safety.

From a post-market surveillance standpoint, many third-party certification bodies routinely engage in random sampling of products bearing their certification out in the market to verify that these products still comply with relevant standards and regulations. This is an important aspect of any product safety system, and while the volume of a particular product family may dictate the frequency of or volume of sampling, all products should comply with relevant standards and regulations when in the marketplace, whether they number in the tens or the thousands.

As mentioned in Issues 1-3 above, in the case of compliance testing, "substantially similar" refers to the composition of the materials and components used to make the finished product. A particular product may be substantially similar if they all use the same raw materials and components, but regardless of the broad or narrow definition of "substantially similar," the key aspect is the determination of compliance from an accredited third-party conformity assessment body. Additionally, from a mechanical and safety metric standpoint for product construction and configuration, CPSC would still require a third-party testing laboratory to perform safety testing of the end product. Again, there are a number of programs and services within the third-party testing process that can be utilized by the manufacturer to minimize redundant testing.

**Issue 5** - *The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under [the CPSA].*

Recognized standards in any country address specific national safety issues. Although many national, regional, and international standards and conformity assessment schemes around the world share the common goals of facilitating product safety and performance, and harmonization efforts continue, there is not a single system in place today to assure compliance with all relevant standards, regulations, and schemes. Manufacturers must demonstrate that their products comply with applicable local conformity assessment requirements, and the World Trade Organization, Technical Barriers to Trade Agreement, allows for a variety of conformance mechanisms that government can select as a means of demonstrating conformance to their respective regulations and requirements, including third-party testing. Thus, one aspect for consideration is the harmonization of requirements, standards, and regulations, and the other aspect is the harmonization and convergence of conformity assessment and compliance regimes. While the ultimate goal for most national and international product safety regimes is full harmonization of requirements and conformity assessment schemes with appropriate national differences, product safety regimes with differing requirements and varying levels of conformity assessment should utilize direct accreditation, or national treatment of foreign conformity assessment bodies, in the short-term to maintain program integrity, a level playing field for all manufacturers, and to facilitate fair trade.

To help minimize the economic impact of meeting duplicative or conflicting requirements in multiple markets for manufacturers, UL supports the goals of diligent standards harmonization and regulatory convergence across countries. In this regard, UL supports and participates in multiple international dialogues that strive to achieve such harmonization, such as the bilateral High Level US – EU Regulatory Cooperation Forum, the US – Canada Regulatory Cooperation Council, the U.S. – Mexico High Level Cooperation Regulatory Council, as well as supporting the goals of standards and regulatory convergence in the Trans-Pacific Partnership (TPP) Agreement negotiations, which we view as a critical multilateral trade agreement. However, there must be an allowance for national differences between the United States and foreign product safety regimes given infrastructure, risk tolerance, and other relevant safety factors specific to the US market. Thus, to promote the integrity of the CPSA third-party testing program, harmonization of regulations, requirements, and standards should only be initiated if foreign or international requirements and test methods are technically equivalent to, or more stringent than, CPSC requirements.

Additionally, assurance of compliance to a particular market's regulations and requirements is essential to the integrity of any third-party testing program and to level the playing field for all manufacturers. In a third-party testing model, compliance should be performed by a qualified, competent, independent laboratory that is free from undue influence in order to maintain a level playing field for compliance and competition. The analysis of the testing and decision of conformity should also be performed by a qualified, competent, independent body that is free from undue influence. If a CPSC-accepted third party conformity assessment body is not used, the CPSC should

institute a suitable oversight program similar to that used by OSHA for the NRTL program, in order to establish confidence in the testing results.<sup>1</sup> The testing laboratory should have ISO/IEC 17025 accreditation for the specific tests it performed to assess compliance. In addition, a declaration from the testing laboratory should be required that it will provide specific information on its fulfillment of ISO/IEC 17025 4.1.5 b and ISO/IEC 17025 4.1.5 d, these are clauses protecting a laboratory from undue influence. If a lab knows it must produce specific information on fulfillment of those clauses it will give them the important consideration needed for public safety testing. Finally, appropriate surveillance programs and/or production testing programs elevate confidence that supply chain issues are appropriately managed and products continue to conform to the applicable requirements on an ongoing basis. CPSC should require that conformity assessment bodies demonstrate that they have adequate control over their certification mark and have processes in place to respond to the use of unauthorized or counterfeit certification marks.

Similar programs, like the Worldwide System for Conformity Testing and Certification of Electrotechnical Equipment and Components (IECEE) CB Scheme have installed basic principles of standards harmonization, verified technical competence and accreditation, and allowing a qualified, independent body that is free from undue influence to make the ultimate assessment of a product's compliance to applicable harmonized requirements. Manufacturers can leverage the ICEEE CB Scheme to obtain certification accepted in the United States, but only when the prevailing US standard is harmonized with relevant IEC standards and the assessment is performed by an independent third-party testing laboratory. In the end, the best way to address redundant requirements in markets beyond the United States is through consistent national treatment for certification organizations across all markets. This is especially true when harmonization is not technically or politically feasible, or is a long way off. National treatment, or in CPSC's case, direct accreditation of foreign testing and certification bodies by a qualified accreditation body, enables certifiers to streamline a manufacturer's certification needs across all markets of interest, while satisfying the confidence needs of regulators.

While UL supports national treatment to assure the competency and confidence in testing of any third-party testing and certification body, it should be noted for trade purposes that US third-party testing and certification bodies should also be allowed to provide these services in any market that foreign-domiciled testing and certification bodies would seek to provide services for the CPSC program. This concept referred to as reciprocity is included in the OSHA NRTL program. Under the NRTL program, both domestic and foreign certifiers can be accredited following the same criteria, as long as the foreign certifier's host country also provides a similar mechanism for accrediting US conformity assessment bodies. Reciprocity facilitates the ability of a manufacturer to work internationally with their preferred conformity assessment body seamlessly, while not disadvantaging the conformity assessment bodies domiciled in any particular country.

**Issue 6 – *The extent to which technology, other than the technology already approved by the Commission, exists for third-party conformity assessment bodies to test or to screen for testing consumer products subject to a third-party testing requirement.***

UL is not currently aware of any technology in the market place not already approved by the CPSC that would allow for third-party conformity assessment bodies to test or screen consumer products and certify to testing requirements. Once a product is certified by a third-party conformity assessment body screening technology is a valuable tool for manufacturers to assess continued compliance of their product in between the mandated third-party testing time periods. Screening technologies may also play an important role in routine quality control for the manufacturers and market surveillance for

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<sup>1</sup> For reference to UL's position on the OSHA NRTL Program and the effective use of conformity assessment determinations from foreign product safety regimes, please reference <http://www.regulations.gov/#:documentDetail;D=OSHA-2008-0032-0072>

distributors, retailers, and regulators. Screening technologies however should not replace third-party testing for certification or to prove initial compliance as it is not suitable and less technically capable than more sophisticated testing technologies.

When evaluating testing or screening technologies for the consumer products, accuracy, precision, repeatability, sensitivity, and linearity are all important to understand the precision and bias in each analytical test method. Each method requires its own calibration protocols and there is no single algorithm that can be applied to all technologies. When evaluating the viability of screening technologies in comparison to more sophisticated testing technologies one must consider a variety of questions. Researchers must take in to account the precision and accuracy requirements of the data, alternate test methods, the availability of equipment, and the level of operator training and overall strengths and weaknesses of the test method under consideration from a cost-benefit analysis. There is no generalized answer or solution for evaluating the suitability of testing and all screening technologies as it depends upon the requirements of the problem being investigated. One way to assure the competency of operating screening technologies is to promote the use of traceable standard reference materials (SRM's) for calibration and operation. Standard reference materials are commonly NIST-traceable and can be usually identified for each class of material such as organics, inorganics, metals, and plastics as appropriate for the end-use application. From a third-party lab standpoint, the ISO/IEC 17025 accreditation includes testing competency which encompasses appropriate equipment calibration and technician training. These types of requirements should be applied to any testing or screening technologies allowed for use to determine compliance. As they are developed, UL encourages the CPSC to continue to evaluate new technologies for their technological competency and the cost impact of testing at an accredited third-party testing laboratory. Much like the CPSC approved XRF technology test methods as described in ASTM F2853-10 Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams for conforming with 16 CFR 1303, new accurate and precise methods may reduce costs for manufacturers to test their products through accredited independent third-party testing laboratories.

**Issue 7 – Other techniques for lowering the cost of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.**

As has been referenced, UL has potentially applicable programs and services that produce testing results that assure compliance while attempting to spread the costs of testing across the supply chain. The Data Acceptance Program, the General Coverage Program, and the Multiple Listing Service are all programs that help to streamline the compliance and third-party testing process. These programs offer different options for manufacturers, but they assure that an independent third-party testing organization is making objective and well informed judgments of product compliance with consumer product safety rules, standards and regulations.

In addition to the previously mentioned established programs, UL is currently piloting a program that will provide manufacturers with an opportunity to reduce the cost of testing and time to market for their products. UL Advantage will be piloted in six small appliance categories; portable residential fans, portable residential air cleaners, ceiling suspended fans, electric irons, residential hand mixers, and clippers and shavers. The foundation of the program is component testing, and the intent is to push as much of the product evaluation as possible back to the component level. Manufacturers are required to maintain records providing construction details for products built under this program, including validation test results. The most important aspect of this program is that manufacturers wishing to participate in UL Advantage will be required to go through program and technical training to ensure understanding of compliance with the handbook, conduct test, and sign off on the final product design. Within this program additional Follow-Up Services (FUS) will be introduced through a

two-audit program focusing on process and documentation. Once a manufacturer is confirmed through the audit process they would be allowed to make minor modifications or variations to the product design and maintain compliance with the category handbook without further UL Certification staff interaction. This will allow a manufacturer to use approved certified components on their final product and demonstrate compliance to the applicable standard or rule without having to conduct ongoing third-party product testing.

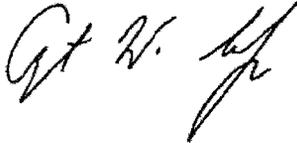
As shown centrally in UL Advantage, the front-end investment in training and education to applicable rules, standards and regulations allows manufacturers to reduce costs over the long term. In addition to training to specific testing programs, risk assessment strategies provide manufacturers with the tools to ultimately help them manage their risk and produce safe products for their customers. UL Knowledge Services, one of UL's five business units, provides technical expertise to manufacturers through facilitated workshops, offered both publicly and privately, online training, books and videos, and personnel certification programs. With respect to risk assessment, UL offers Applied Safety Science and Engineering Techniques (ASSET) Safety Management Process which uses risk-based analysis, combined with other techniques, to promote compliance with applicable consumer product safety rules, bans, standards and regulations, which can potentially reduce the cost of third-party testing. ASSET helps manufacturers make informed decisions to achieve, maintain, and improve safety, while helping to prioritize and apply requirements effectively. As risk-based analysis alone is not sufficient, ASSET uses Hazard-Based Safety Engineering (HBSE) and other techniques to achieve and maintain an acceptable level of safety by focusing on the potential nature, degree, causes, and conditions of harm to prioritize and verify the needed performance of protective measures. This approach lends itself to identifying, developing, and applying applicable safety requirements. When appropriately applied, these principles can help manufacturers eliminate missteps and failures in the compliance and third-party testing process, while providing a greater understanding of the requirements and strategies for product safety corresponding to an appropriate level of risk.

## **Conclusion**

UL appreciates the opportunity to provide comments for the Commission's consideration to address opportunities to reduce the cost of third-party testing requirements. We applaud the CPSC for its efforts to improve the efficiency of the consumer product safety compliance process and thank the Commission for its time and consideration. As we work with CPSC to promote safe living and working environments for people worldwide, our comments draw from programs, services, and platforms that could have potential application to assist manufacturers in complying with CPSC testing and certification requirements. Should the CPSC decide to explore modifications to any third-party testing requirements or new testing methods to provide proof of compliance to current CPSC obligations, UL maintains the belief that third-party testing by accredited and independent third-party testing, inspection, and certification bodies at various stages of the supply chain results in more reliable product assessments and program integrity. Additionally, the alignment of relevant regulations, requirements, and standards must be coupled with the alignment of conformity assessment and compliance demonstration as well. Finally, the direct accreditation or national treatment of foreign testing laboratories from those countries with reciprocity provisions will enable a level playing field for all manufacturers and conformity assessment providers without compromising the program's integrity.

UL is pleased to speak with the CPSC further about this topic. Please contact Khoi Do ([khoi.do@ul.com](mailto:khoi.do@ul.com)) in our UL Government Affairs Office in Washington, DC should you have any questions on this submission.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Schaefer". The signature is fluid and cursive, with a large initial "A" and a stylized "S".

August Schaefer  
Senior Vice President & Public Safety Officer  
UL LLC

**Figure 1: Program Overviews and Advantages**

<b>UL Program</b>	<b>Recognized Component</b>	<b>Multiple Listing</b>	<b>IQ Materials Testing</b>	<b>General Coverage</b>	<b>Data Acceptance Program</b>	<b>Global Market Access</b>
<i>Industry Benefit</i>						
<i>Reduces End Product Testing</i>	Component supplier pays for basic testing, saves significant time and testing of major components		Reduce testing by selecting pre-screened plastics, wiring, PWBs, switches and motor insulation systems		End product mfr is qualified to perform in-house testing on products, UL spot checks	End product testing reduced by selecting worst case test plan and/or using harmonized requirements
<i>Eliminates End Product Testing</i>	Accessories are tested to eliminate end product testing for general coverage use, saves time and significant cost for sign mfr	Manufacturer can sell same product to many private labelers, eliminates redundant testing, product tested once	Pre-screened materials can eliminate some end product testing. i.e., certified printed wiring board materials testing for end mfr	Components are 100% pretested for specific end use applications for two select products, Electric Signs and Luminaires		
<i>Time Savings</i>	End Product Manufacturer saves significant time		End Product Manufacturer saves significant time	End Product Manufacturer saves significant time	Manufacturer controls time to test product	Additional in-country testing may be avoided, saving time and cost.
<i>Cost Savings</i>	End Product Manufacturer saves significant cost	Testing cost incurred only by OEM, reduces cost to private labelers	End Product Manufacturer saves significant cost	Standardized upfront cost due to no end product testing	Reduces cost to end product manufacturer	Submit product to one certification body for multiple country marks

# PUBLIC SUBMISSION

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**Docket:** CPSC-2011-0081

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Comment On:** CPSC-2011-0081-0001

Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens

**Document:** CPSC-2011-0081-0023

Comment from Courtney Yin Duke

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## Submitter Information

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**Organization:** Orbit Baby, Inc.

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## General Comment

Please see our comments in the attached file.

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## Attachments

2012JAN23 CPSIA Third Party Testing Comments\_ORBIT BABY



Orbit Baby, Inc.  
8445 Central Avenue  
Newark, CA 94560-3431

January 23, 2012

The Honorable Inez Tenenbaum, Chairman  
United States Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Chairman Tenenbaum:

Thank you for the opportunity to respond to the CPSC request for comments to reduce third party testing burdens. As a quick introduction, our company – Orbit Baby – is a medium-sized designer and manufacturer of premium baby travel gear (strollers, car seats, bassinets and accessories) located in the San Francisco Bay Area of California (please see our website at [www.orbitbaby.com](http://www.orbitbaby.com) for a full presentation of our product offering). We make every effort to ensure that our products are fully compliant to all applicable United States and international regulations as well as our own high quality standards. However, the costs of testing at third party laboratories are becoming increasingly burdensome, and we have some thoughts on how they might be reduced.

We have addressed our comments to two proposals:

1. **Reinstate exemption for low-volume manufacturers:** these parties are not the same as small-batch manufacturers but are still considerably different from large volume manufacturers.
2. **Adopt prioritized testing based on primary interaction:** not all parts of a children's product pose an equal amount of risk based on a child's typical interaction.

We make these comments out of a firm belief that they will not compromise the safety of our products nor of our children. Because we share this ultimate goal with your organization, we appreciate the opportunity to present our ideas and thoughts to you.

1. **Reinstate exemption for low-volume manufacturers:** these parties are not the same as small-batch manufacturers but are still considerably different from large volume manufacturers.
- Low-volume manufacturers that produce less than 10,000 units a year should not be required to third party test at the same frequency as large volume manufacturers.



The initial proposed rule for testing and certification included a partial exemption for low-volume manufacturers that was not addressed in the final rule. The Staff Briefing Package of April 1, 2010 proposed an alternative testing interval stating, “if fewer than 10,000 units of a product have been manufactured or imported since the last time the product was submitted to a third party conformity assessment body, the manufacturer or importer would not be required to obtain additional third party testing until 10,000 units have been manufactured or imported” (p98). By extending the periodic testing intervals, the Commission would relieve low-volume manufacturers two-fold: testing costs and sample costs. Because products manufactured at low-volumes tend to be more expensive, the annual costs of testing are also proportionately more than large manufacturers because of the product cost itself.

Commissioner Nancy Nord wrote in her statement on October 20, 2011:

“Without explanation, the majority also deleted an exemption for low-volume manufacturers that we included in §1107.21(c)(3) of the proposed rule and which our career staff recommended be included in the final rule. The exemption was reasonable: a small run of products does not pose the same risk as a run of 10 million products. There is less likelihood of something going awry in such a small run, and the burdens of testing could drive such small runs out of existence. Congress was aware of this exemption when it passed H.R. 2715, and did not move to eliminate it. The inclusion of the small-batch exemption does not vitiate the need for this exemption, because small-batch manufacturers and low-volume manufacturers are not always the same parties” (2).

Orbit Baby is a prime example of one of those many companies that are low-volume manufacturers but not small-batch manufacturers as defined by the exemption in H.R. 2715. Like small-batch manufacturers, the cost of third party testing is becoming an increasingly higher proportion of our revenue. We believe that many of these costs are unnecessary because we have greater capabilities as a low-volume manufacturer to implement quality control processes such as 100% inspection. We can achieve a high degree of assurance that all products are compliant to applicable safety standards without third party testing performed as frequently as large manufacturers.

2. **Adopt prioritized testing based on primary interaction:** not all parts of a children's product pose an equal amount of risk based on a child's typical interaction:
  - There should be a subcategory of components on a product that are allowed less frequent testing if a child has the least amount of interaction with them.

The Commission's definition of an accessible component part is “one that a child may touch, and an inaccessible component part is one that is located inside the product and not capable of being touched by child, whether or not such part is visible to a user of the product” (Federal Register, Vol. 74, No. 10, p2). This definition of accessibility can mean that a substantial number of component parts of a product are considered accessible and must be third party tested. For many products, not all accessible components will have equal interaction with a child. For example, a child's primary interaction with a child-sized desk would be touching the top surface of the desk. In contrast, a secondary interaction—one that is less likely since it is not the intended interaction—would be a child touching the legs or underside of the desk. We believe that it makes sense to subdivide the category of accessible



components on a product and adopt a prioritized testing approach to focus on the parts of highest interaction while reducing the testing interval for other accessible components that have the least amount of interaction.

Not all products may have components that divide into all subcategories, but we propose the following prioritized scheme:

1. Mouthable components within the primary interaction area
2. Components within the primary interaction area
3. Other accessible components

For almost all durable nursery goods, there is a clear primary interaction between a child and the product: children sit in a stroller or high chair, sleep on the mattress of a crib or bassinet, etc. While it is possible that a child may come into contact with the wheels of a stroller or legs of a high chair or crib, these would be secondary forms of interaction and less likely to occur. In fact, numerous international standards including the United States and Europe take the approach to product safety that the seating surface or mattress surface of the product should be treated differently from the rest of the components simply because of the amount of time a child spends in that area. This has resulted in additional requirements either for the physical construction or chemical safety standards for those components.

We believe that a similar approach can be taken to all products. Based on the primary form of interaction between a child and the product, what components become the most frequently touched? For example, with a child's tricycle, the primary interaction results in the seating surface, handlebars, and pedals being the most frequently touched. In contrast, it is less likely that a child will touch the seat post, handlebar stem, pedal axles or wheel hubs on a regular basis. The areas of primary interaction should take priority in the testing frequency, but accessible components that fall outside the range of the primary interaction pose a smaller amount of risk and can be tested less frequently without sacrificing safety.

Within the areas of the primary interaction, the components that are the most frequently touched can be subdivided to prioritize the testing frequency need around components that are mouthable. There is already a precedent for assessing child care articles and toys for components "that can be placed in a child's mouth" or "can actually be brought to the mouth and kept in the mouth...so that it can be sucked and chewed" (CPSIA section 108(e)(2)(B)). If this 5 cm criterion to determine mouthable components were applied to all products, it would identify areas that pose the most risk through direct absorption of harmful chemicals.

We recognize that the definition of accessible components is unlikely to change, but we hope the Commission will see the value in prioritizing which accessible components pose the most risk: mouthable components within the areas of a child's primary interaction with a product. Other components that can only be touched but are within the primary interaction area pose a lesser risk, while those accessible components outside the primary interaction area pose the least amount of risk. A risk-based approach to testing frequency requirements is a reasonable way to alleviate the burden of third party costs while maintaining compliance and safety.



Thank you for the time you have spent in reading and considering our comments above. We respect the committee's dedication to improving child safety, and strongly believe that our suggestions help reinforce the CPSC's ultimate goal.

Sincerely,

Courtney Yin Duke  
Global Product Compliance and Regulatory Manager  
Orbit Baby, Inc.