



Staff Quarterly Report

To the Committees on Appropriations of the House and Senate on the Status of CPSC Efforts to Provide Third Party Testing Cost Relief While Assuring Compliance

June 10, 2016

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1 Introduction

The House of Representatives report 114-194, *Financial Services and General Government Appropriations Bill, 2016*, included the following section:

Test Burden Reduction.-The fiscal year 2015 enacted bill provided \$1,000,000 for test burden reduction and directed CPSC to report to the Committee on its efforts to work with the regulated community and identify steps CPSC can take to reduce third-party testing costs while still assuring compliance. The Committee is disappointed by the limited scope of the Commission's report and its failure to make real strides towards tangible test burden reduction. The CPSC has identified a significant number of opportunities for test burden reduction, yet there continues to be no meaningful relief. The Committee provides another \$1,000,000 in fiscal year 2016 for third-party test burden reduction and urges the Commission to take actionable steps to provide demonstrable relief from the burdens of third-party testing. The Committee directs the Commission to provide quarterly reports updating the Committees on Appropriations of the House and Senate on its efforts to reduce the costs of third-party testing, including any that the Commission has chosen not to pursue.¹

This document is the required June 2016 quarterly report.

2 CPSC Fiscal Year 2016 Operating Plan

The Commission's Fiscal Year 2016 Operating Plan² includes the following project listing a notice of proposed rulemaking (NPR) and two Final Rules (FRs):

25727 - Burden Reduction/Assure Compliance

This project provides funding, as specified by Congress in the Consolidated Appropriations Act 2016, for ongoing efforts toward potentially providing meaningful reduction of third party testing costs of children's products consistent with assuring compliance with all applicable rules, regulations, bans, and standards. During the fiscal year, and within the available funding level, staff will prepare for Commission consideration draft Federal Register notices and supporting briefing packages that address reduction of third party testing costs on as many of the

¹ <https://www.congress.gov/114/crpt/hrpt194/CRPT-114hrpt194.pdf>

² Available at: <http://www.cpsc.gov/global/about-cpsc/budget-and-performance/2016opplan.pdf>.

following categories staff determines that a reduction in third party testing costs can be accomplished consistent with assuring compliance:

- Determinations Expansion – Heavy Metals in Toys (FR)
- Determinations Expansion – Specific Plastics (NPR)
- Determinations Expansion – Lead (FR)

Staff will also continue to work on advancing the state of technology for Fourier Transform Infrared Spectroscopy (FTIR) for phthalates testing.

The two Final Rules (heavy metals in toys and lead) were finalized earlier in FY 2016.^{3,4} The statuses of the remaining items are presented below.

3 Status of Effort

3.1 Determinations Expansion – Specific Plastics

Phthalates are synthetic chemicals and are applied intentionally to materials to “plasticize,” or soften them. CPSC staff engaged a contractor to study the production, use, and disposition of phthalates in consumer products. In addition, the contractor researched four specified plastics⁵ to assess whether those specified plastics contain more than the maximum allowed level of phthalates for children’s toys and child care articles.

CPSC staff is developing a draft NPR recommending that the Commission determine that the four specified plastics do not to contain phthalates above the limit specified in section 108 of the CPSIA (0.1 percent, or 1,000 parts per million (ppm)), and thus, do not require third party testing for use in children’s toys and child care articles. The draft NPR is due to the Commission in the third quarter of FY 2016.

In addition, CPSC has engaged a contractor to study the presence of phthalates in additional specified plastics, and separately to study the presence of lead, phthalates, and the elements in Table 1 of the Toy Standard in specified manufactured fibers. The contractor’s reports are due to CPSC in the fourth quarter of FY 2016.

3.2 FTIR Study Expansion – Phthalates Testing

Based on information from manufacturers and testing laboratories, the approved test methods for phthalates are the most expensive tests to conduct for required third party testing. If an inexpensive method could be developed to screen out materials with no phthalates at the concentration limit specified in section 108 of the CPSIA, numerous expensive third party tests could be avoided. Only materials with phthalate detection above the concentration limit would be subject to additional testing to determine if a prohibited phthalate was present.

³ Component Part Testing – Heavy Metals in Toys, found at: <https://www.gpo.gov/fdsys/pkg/FR-2015-12-17/pdf/2015-31723.pdf>.

⁴ Determinations Expansion – Lead, found at: <https://www.gpo.gov/fdsys/pkg/FR-2016-01-04/pdf/2015-33068.pdf>. No significant adverse comments were received and the amendment was finalized on February 12, 2016.

⁵ The plastics are polypropylene, polyethylene, high impact polystyrene, and acrylonitrile butadiene styrene.

CPSC has awarded a multiphase contract for research and development (R&D) services to develop an FTIR analyzer to reduce the cost, overall timeframe, and labor associated with phthalates measurements. The prototype phthalate analyzer developed by the contractor in Phase 1 of the development effort successfully identified low concentrations of phthalates in various polyvinyl chloride (PVC) plastic materials within the specified tolerance. This performance satisfies the performance criteria for Phase 1 and demonstrates sufficient progress to justify continued work under Phase 2 of the development effort.

The contractor has delivered the Phase 1 development report as well as the recommendations for Phase 2 and Phase 3 development activities. Upon review and acceptance of this documentation, CPSC staff plans to issue an amended contract that provides funding and performance criteria for the Phase 2 development effort.

An initial prototype analyzer was evaluated by CPSC in April, 2016. The contractor will continue product development in FY 2017 to conduct Phase 2 work activities. Pending successful completion of the Phase 2 development effort, the contractor will commence the Phase 3 development effort to deliver a final “commercialized” product in the fourth quarter of FY 2018.

3.3 Determinations Expansion – Lead

Children’s products, toys, and child care articles made with engineered wood (plywood, particleboard, and medium density fiberboard) require third party testing for compliance to one or more of the materials listed in sections 101 (lead), 106 (the elements listed in Table 1 of ASTM F963, *Standard Consumer Safety Specification for Toy Safety*), or 108 (phthalates) of the CPSIA. CPSC staff engaged a contractor to study the presence of lead, phthalates, and the elements in Table 1 of the Toy Standard in engineered woods. The contractor’s report has been posted on the CPSC website.⁶

CPSC staff’s analysis of the report will inform staff’s decision on whether to recommend that the Commission determine that specific engineered wood-based materials identified in the report that do not contain one or more of the elements listed in the CPSIA or in ASTM F963, and thus do not require third party testing to assure compliance with the applicable children’s product safety rule.

⁶ The report can be found at: <http://www.cpsc.gov//Global/Research-and-Statistics/Technical-Reports/Chemical/Phthalates/ManufacturedWoodsTERATask14Report.pdf>.