

Public Submissions
Testing and Labeling Pertaining to Product
Certification Regarding Representative
Samples for Periodic Testing of Children's Products
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Comments due by – January 23, 2012

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0002

Comment from Richard Woldenberg

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General Comment

See attached file(s)

Attachments

Comment Letter on Representative Samples (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-2011-0082 Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products

Dear Mr. Stevenson:

I am hereby submitting comments in response to the Solicitation of Comments on Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products (Docket No. CPSC-2011-0082) published in the Federal Register on November 8, 2011 (the "Proposed Rule").

In this request for comments, the CPSC asks for comments on "any aspect of the proposed rule". I have several comments:

The Rule in Context.

Little is achieved by isolating in on this rule alone, as though no other rules relevant to testing of Children's Products exist. Certainly no regulated company will have that luxury. Having built an ornate, byzantine system of rules governing the purported safety risks inherent in Children's Products over the past four years, the CPSC made compliance with its rules impossible as a practical matter. Given the tightness of the regulatory noose already in place, it is hard to see the purpose of this rule as making anyone "safer". The purpose **must** be elsewhere - no data exists to confirm that people were being harmed or reasonably might be exposed to harm by the way we regulated companies select samples for testing. So what's going on?

Seen in the context of the web of rules already in place, one gets the sense that the purpose of the rule is stack the deck further in favor of the government. The rules pertaining to our products (educational products and toys) are now so absurdly complex that I am completely confident that NO COMPANY will be able to fully comply with them. NO COMPANY, no exception. Your rules governing companies making Children's Products now rival the excesses of the Internal Revenue Code. The IRS will be jealous. We regulated companies realistically face the prospect of CPSC citations and penalties at every turn. *This rule is part of a strategy to put your boot on our necks.*

Given the CPSC's repeated public pronouncements of its intent to vigorously enforce these rules, one cannot escape the conclusion that the rules were designed to provide maximum coercive power to an already brutish federal agency. The reasoning goes like this: the CPSC knows it is impossible to comply with all aspects of the rules – the cost is simply too high, the rules are too confusing and internally inconsistent, the burdens (particularly recordkeeping) will defy all efforts to comply, and there are just too many rules to master (most of which do not correspond to basic intuition for companies used to thinking through safety issues). Small businesses are particularly vulnerable, but no one will escape this noose. Thus the agency is assured that a laundry list of compliance failures awaits it at each and every company trading in Children's Products, all it has to do is send a letter requesting information. The CPSC knows this. The power of the agency to use violations of its rules to levy excessive fines and even attack via injunction ensures that it can dictate any outcome it wants. Due process for the regulated community is an obsolete notion, likewise fairness, proportionality or accountability. We now exist at the mercy of this agency – literally.

The rules which are the subject of this comment letter are layered on top of the rules creating that coercive power for the agency. In one sense, given that the situation is already grim and the exposure to random regulatory violence cannot be prevented by any sustainable effort as a practical matter, it hardly matters what your new rules say. We're already screwed.

The Cost Environment.

We must find the money to pay for your new rules somewhere. Perhaps the agency does not know about the weak economy – after all, we citizens pay your bills so you are insulated from these harsh realities. It is not possible to recover these new regulatory 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. 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. The cost of the new "representative samples" infrastructure will just make a bad situation worse. We have no spare cash to fund your new scheme.

[By the way, I presume you realize that the CPSC's imposition of such massive and purposeless costs on corporations creates a strong incentive to cheat that no barrage of new rules will suppress. This will no doubt feed the agency's sense of purpose to catch "bad guys" to keep children "safe". I think you should take a more realistic view of the CPSC's new role, however – your apparent newly-adopted purpose is to CREATE bad guys and then catch them. Better ask for more funding, this is going to get expensive!]

Where does it all end?

The invasiveness of the CPSIA implementation rules has no precedent in Children's Products. The scope, complexity and invasiveness of the rules can only be compared to the regulation of drugs by the FDA. It may be somewhat unfair to compare your rules to the FDA's, given that the drug approval process can cost more than \$1 billion to bring a single drug to market, but your regulation of our supply chain (lot tracking, component testing, process controls during production, recordkeeping needed to avoid frequent testing, etc.) is similar to restrictions placed on regulated substances intended to be ingested like drugs.

Interestingly, there is a loophole available to drugmakers to avoid the FDA's strictures, namely taking drugs to market as "nutraceuticals". Nutraceuticals

(dietary supplements, herbal remedies and related processed foods and foodstuffs) are entirely unregulated, and represent a cheap and quick way to get drugs to market without the expense of the FDA approval process. Nutraceuticals can be fed to children without any regulatory oversight at all. No lead testing, no choking hazard warnings, no lot markings, no nothing. Yet nutraceuticals have a long and well-known history of causing injury. Ironically, if our toys were INTENDED to be eaten, we could sell them as nutritional supplements without any helpful oversight by the federal government. Because we make products that AREN'T supposed to be eaten, we face your Dickensian rules.

In this environment, dealers are increasingly discontinuing direct importing of children's products and relying more on branded goods in an effort to pass the regulatory trash to manufacturers like us. While this may seem like an economic benefit to us, it is a sign of the accelerating withering of our market in the face of out-of-control regulation, and means that while we may enjoy a slight shift in sales in our favor with certain customers, the mega-trend is for retailers to limit their regulatory risk by withdrawing from the market in various ways. The benefit of customers shifting from direct importing to selling our products is expected to be more than offset by the impact of retailers offering fewer Children's Products or finding unregulated products to sell in lieu of Children's Products. You cannot possibly believe that rules of this complexity can be absorbed by thousands of companies without a ripple. To the extent that you will concede that Children's Products add value to families, schools and children's lives in general, you are responsible for moving the market backwards.

What a perfect environment to add some new layers of regulatory complexity and cost!

Why did Congress Change from "Random Samples" to "Representative Samples"? Not to Create New Jobs for Statisticians

When the CPSC took its first swipe at this rule, it interpreted the words "random samples" to imply a statistical approach to sampling. In a laughable attempt to ensure that testing samples were always "random", the agency set up proposed rules that would have made it necessary for us to hire in-house statisticians to supervise "randomness". Incredibly, I actually know one small company who began this absurd process, all in an effort to appease the now all-powerful CPSC. This misadventure was perhaps the perfect illustration of a rule for a rule's sake, and even the Democrats behind the CPSIA in Congress knew they had erred. When the CPSIA was amended by ECADA last August, Congress changed the reference to testing samples from "random" to "representative" to relieve corporations of the absurd burden you had designed for us. This was Congress' CLEAR intent.

Despite this clear legislative history, the CPSC seems hell-bent to interpret the word "representative" in an insufferably rigid way and thereby recreate the effect of "random" as in the original wording of the CPSIA in defiance of Congress. *One wonders why the word "representative" requires ANY clarification, much less a nine-page rule.* The agency appears to fear that companies will "game" the testing

process with "golden samples". **Evil** corporations!!! This fear as properly described as "neurotic" (defined as an "excessive and irrational anxiety or obsession"). How many times has the agency "caught" companies in gaming safety tests? Is the agency powerless to address cheating on testing in the absence of this rule? How does this rule IN ANY WAY change the incentive to cheat (in other words, does the rule really address the perceived "risk")? It doesn't - except that it ensures that testing will become even more breathtakingly expensive for companies who want to continue to legally make or sell Children's Products in this country.

The notion that we would risk our business to save some nickels with "golden samples" is ridiculous on its face. Seriously, do you think we would authorize testing expenses far in excess of \$1 million per annum to generate meaningless test results? This is patently against our own interest. First, it exposes us to product liability claims that far exceed the agency's ability to punish us. Yes, the market can put us out of business faster than you can. Second, misleading test results may appear to hold the promise of postponing the day of reckoning, but then again, isn't the arrival of the CPSC on our doorstep likely to be prompted by a safety issue? Wouldn't a sustained and organized effort to produce misleading (meaningless) test results enhance the possibility of a safety problem, the very outcome we are trying to avoid? And this fantastic scenario posits that we would pay (a lot of) good money to achieve this very self-destructive result. I do not understand the agency's longstanding irrational fear of "golden samples". Needless to say, the agency has never had to defend its position on this matter.

Don't miss this important point - your new rule changes nothing from the agency's end. The CPSC is fully empowered to catch "bad guys" and punish them, and presumably, bad guys don't care about rules. Long, arduous, complex rules are not going to deter "bad guys" - in fact, your inflexible rules tender a large commercial advantage to "bad guys" (cheaters) over "good guys" (the fools who bankrupt themselves trying to please you) until you catch the "bad guys". That's the flip side to your regulatory innovation - companies intent on compliance like ours will be tied up in knots trying (and failing) to comply with your rules whatever the cost . . . or will exit the market. Bad guys will be unaffected.

So what is accomplished by the rules on representative samples? I believe it is a subversion of Congress' intent. You have made something simple and easy to understand into something requiring lawyers. You created novel regulatory risk for manufacturers when Congress intended to make compliance easier, and even made enforcement more difficult by making it harder to distinguish between companies trying (and failing) to comply and those who never try at all.

The agency seems to be stuck on the perceived need to "ensure" that the samples are always representative. I believe that the CPSC interprets the need to "ensure" compliance to mean that no exercise of judgment or good faith can be allowed. "Ensuring" has been interpreted to mean that we regulated companies must always be able to prove compliance in the parlance of this rule. The authors of the rule apparently rule out reliance on process or even the absence of contrary indicators to support a conclusion that samples are "representative". Building a rule on this

basis will ensure something, indeed – that no one will be able to comply, and that costs will always be excessive. Crafting a rule dependent on proving compliance at every step is also likely to so substantially distort the devotion of resources by manufacturers toward paperwork that safety will be forgotten as the ultimate objective. Parents, teachers and schools should revolt over your distortion of incentives.

As long as the paperwork lines up, we're good I hope it never gets to that point, but your rules will have that effect.

Can't Give It Up, Can You?

Your rule asserts: "Haphazard methods of sample selection cannot provide a basis for inferring the compliance of the untested units without additional information indicating that the samples are representative." In other words, you are not prepared to use the common meaning of the word "representative", that the sample stands for the body of product being tested. Your new rule speaks more in terms of random samples, despite Congress' clear intent to move to a different standard. The assertion that so-called haphazard methods of sample selection (i.e., go out to the warehouse and pick a sample from a lot in your inventory) cannot provide a basis for representative samples is opinion, NOT fact.

Consider how you describe the method for a bicycle handlebar to be deemed "representative": "For example, if a bicycle handlebar sample is manufactured from the same grade of steel and with the same dimensions (*e.g.*, wall thickness, length, shape, placement of holes for attaching brake levers) as other handlebars produced, that handlebar sample can be considered representative of the population of handlebars for the purpose of the complying with the handlebar stem test". In other words, the only way to determine if the handlebar is "representative" is to do a statistical sampling and measure all aspects of the tested handlebar. Is this what Congress intended when it changed the reference from "random" to "representative"?

Is there any reason why "representative" can't have its common meaning? I would suggest that a sample is "representative" when it is (a) produced in a manufacturing lot not known to be produced in a materially different manner than other production lots of the same item, (b) produced according to the usual, typical manufacturing procedures, (c) selected without attempting to "game" the testing protocol, and (d) is not otherwise known by the manufacturer to be unrepresentative in any material way which might result in misleading testing results.

The object of this rule should be to produce meaningful test results, not to perfect testing samples. No one cares if the samples are *perfectly* representative – the goal is to obtain test results that speak meaningfully about safety. That's all.

The rule emphasizes the purported importance of PROVING that samples are "representative": "Other methods that may be used to **establish** that samples

selected for periodic testing are representative" [Emphasis added] This is regrettably not the law as actually written and passed by Congress. Prior to acceptance of any rule resembling this one, I think it is incumbent on the agency to prove that (a) Congress wanted all manufacturers to ESTABLISH that each and every sample was "representative", (b) the required recordkeeping for proof that each testing sample is "representative" bears a rational relationship to the agency's mandate to keep the citizenry safe, (c) the devotion of resources to the activities described in the rule actually makes anyone safer, and (d) the benefits of the new rule outweigh its costs. I think rules of this nature are a perversion of the agency's mission, turning the pursuit of an orderly and appropriately "safe" marketplace into a bureaucrat's triumph, rules for no reason other than to have more rules.

The rule goes on to outline the extreme efforts we are encouraged to undertake to PROVE that samples are "representative": "Incoming inspection of raw materials or component parts; process control data generated during product manufacture; and use of manufacturing techniques with intrinsic manufacturing uniformity, such as die casting." Apparently not satisfied with this laundry list of unreasonable demand, the agency goes on to offer up the old formulation - RANDOM SAMPLES: "Random sampling is another means of selecting representative samples that provide a basis for inferring the compliance of untested product units from the tested product units. The conditions that allow for the inference of compliance concerning untested units versus tested units may be met by a range of probability-based sampling designs, including, but not limited to, simple random sampling, cluster sampling, systematic sampling, stratified sampling, and multistage sampling."

So I have to ask, what's the point of this request for comments? The CPSC knows that the law was changed to representative samples, but wrote a rule explaining how to select samples randomly. Is the CPSC trying to see if we actually read the new rule? Congress eliminated the need for random samples and statistical sampling, yet here it is again. Gosh, I can't wait to implement cluster sampling!!!

Recordkeeping Requirements are Excessive, Uneconomic and Unreasonable.

Under the draft rule, we will be required to maintain the following records: ". . . the number of representative samples selected and the procedure used to select representative samples. Records also must include the basis for inferring compliance of the product manufactured during the periodic testing interval from the results of the tested samples."

We currently offer about 1500 products produced in thousands of lots each year. Do you have any sense of what you are asking us to do?

This recordkeeping requirement will cost us a great deal of money if we are to fully comply with your rules, but will yield ZERO benefit to consumers, our company or any party in interest other than YOU. **There is absolutely no safety benefit to**

this recordkeeping, nor will the records maintain help the agency figure out if there is a safety issue with the affected product.

Mandating this recordkeeping is simply an effort to force us to preserve evidence for enforcement purposes. You want these records so you can fine us. Is this why we have a Consumer Product Safety Commission?

The required recordkeeping is useful for only one purpose: to give the CPSC a way to determine whether it approves of how samples were selected for testing, nothing else. Yet the agency creates the drama of a crisis in its recordkeeping requirements: "The records must be maintained for five years. The records can be maintained electronically or in hardcopy. The manufacturer must make the records available for inspection by the CPSC upon request. The records may be maintained in languages other than English—if they can be provided immediately to the CPSC upon request, and provided that the manufacturer can translate them accurately into English within 48 hours—or any longer period negotiated with CPSC staff, upon a request by the CPSC to translate the records." The records must be IMMEDIATELY available to the CPSC and must be translated WITHIN 48 HOURS. No problem – we'll have our in-house statistician stop what he's doing to translate a foot high stack of Chinese factory reports for you overnight! And this will achieve what, precisely?

It's a bureaucrat's dream – a full employment plan for regulators to check up on compliance for no reason than to check a box or issue a fine. Gotta keep those kids safe!

The Rule's Regulatory Flexibility Analysis is a Sham.

It is telling that the rule devotes approximately two-thirds of its length to a CYA analysis of the "impact" of these rules. Were the agency actually interested in the impact of these rules, a simple reading of the rule would reveal how excruciatingly expensive it will be – and it wouldn't take six pages in the Federal Register to make it clear. The regulatory cost analysis is a whitewash, not a true arm's length analysis. In fact, no company will be able to keep up with these rules, big or small. Ironically, the biggest recalls the CPSC has imposed in the children's market have been caused by big companies. The new rules cannot be afforded by any but the biggest companies – and yet, it's the big companies that have caused the most notorious and dangerous recalls of Children's Products. Who will bear the brunt of the suffocating new rule? The kill-off will affect everyone else, small companies like ours. We're toast.

Having devoted pages to toting up how many companies would be affected by the rule and meaningless and inaccurate data on revenues of those companies, the authors then punt on the impact of the law on the pathetic victims of this over-regulation:

"There will be some costs associated with developing and implementing sampling procedures that will result in the selection of representative samples. Some

knowledge of subjects such as statistics and quality control techniques may be necessary to develop the procedure even though the Commission has not mandated the use of statistical sampling techniques. Some manufacturers may have these skills inhouse (sic); others may need to hire outside consultants with these skills. There also may be some ongoing costs associated with selecting the representative samples once the procedures have been developed. There also would be some costs associated with documenting the procedure and maintaining the records that would be required by the proposed rule."

The agency's later estimate that it might take four hours to prepare a sample plan for each item is probably accurate, and the proxy cost of \$50 per hour is probably low. I would estimate \$75 per hour, given the likely involvement of lawyers and other professionals in this tedious process. Regardless, given that the rule is entirely subjective and results will always be judged in arrears by the agency, I think it is unrealistic to assume that we will reuse plans for families of items. Each item has different components, different dimensions and characteristics. We are entitled to use the component testing rule (however inadvisable that might be), so the complexity of dealing with components and the related issues of lot traceability, recordkeeping and a blizzard of component test reports means that each sampling plan must be carefully reviewed for each item and for each sample selection. I think it is much more likely that the cost will be four hours per item to prepare the initial plan and a like amount of time for each test sample selected. This means not less than eight hours per item in the first year, and four hours per item in succeeding years. This assumes one test per item per year, which may not be an adequate estimate.

We have about 1500 items in the Learning Resources product line. Using my math, we would incur a cost per item of $8 \times \$75 \times 1500$ in year one, and $4 \times \$75 \times 1500$ in succeeding years. Thus, I estimate first year incremental costs for our company of \$900,000 and annual costs of \$450,000 thereafter. Our affiliates will incur additional costs. The capital penalty for incurring these costs will be not less than \$5 million. That's an additional \$5 million reduction in the value of our company incurred simply to PROVE to you that we have always chosen representative samples. This expense has nothing to do with safety, just bureaucracy, and if our efforts are judged to be improperly implemented, will expose our company to sanctions and costs.

The rule does not offer or consider alternate means to achieve the same end, again all because of a neurotic fear of "golden samples". Well, it's just money

How Do I Feel About This Rule?: This rule will produce the following emotions in companies and professionals attempting, vainly, to comply with it: fear, loathing, disdain, helplessness, hatred, cynicism, dread, resignation to fate, depression. And as noted, some people will choose to cheat and take their chances, all to avoid the certain losses compliance will bring the company. Good job, guys!

Is this how we should run a country?

Sincerely,

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

Document: CPSC-2011-0082-0003

China WTO/TBT National Notification & Enquiry Center

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Submitter's Representative: Wang LiZhou, Deputy Director General

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Government Agency Type: Foreign

Government Agency: WTO/TBT

General Comment

See Attached

Attachments

China WTO/TBT National Notification & Enquiry Center

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Subject: Comments from the P.R. China on USA Notifications G/TBT/N/USA/658-660 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.

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

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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

As of: January 27, 2012
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Category: Manufacturer
Tracking No.: 80f9cad8
Comments Due: January 23, 2012
Submission Type: Web

Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0004

Comment from Tkahiro Shirai

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Submitter's Representative: Teiichi Nishimura

Organization: Sakura Color Products Corp.

Redacted Comment

Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products (Document ID CPSC-2011-0082-0001)

We feel that if the manufacturing process is managed properly, we should regard the first customs clearance article as the "Representative Samples" .

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Submission Type: Web

Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0005

Comment from Jon Lloyd

Submitter Information

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Phone: 44 (0)208 424 43224

Organization: ColArt International Holdings Ltd

General Comment

See attached file(s)

Attachments

CPSC letter re proposed changes to CPSIA Jan 2012

PROPOSAL FOR CONFORMITY TO CPSIA

Dear Sir

I thank the commission for allowing us the opportunity to comment on the proposal for changes to the Consumer Product Safety Improvement Act (Federal Register/ vol 76, No. 216/ Tuesday, November 8 2011/ Proposal). CPSIA has proved a challenge, both for administration and financial burden as a consequence of increased testing. We believe that the proposal for component testing gives some relief to the testing costs and welcome this additional consideration.

With respect to the questions posed by CPSC, I illustrate the disciplines undertaken by ColArt to ensure (worldwide) compliance with product safety for our Face Paint Kits made under the brand Snazaroo, with particular reference to CPSIA.



The product illustrated above is assembled in Minehead, UK, with the colour manufactured from raw material (cosmetic) ingredients. It is sold as a toy (used by children in play). This product must be tested to ASTM F963, for phthalates and for total lead in order for it to be in conformity to CPSIA. The components of the kit are:

- The colour tablets;
- The brush handle and ferrule;
- A plastic holder for the face paints;
- A plastic covering on the face paints;
- The black plastic tray (because it comes in to intimate contact with the product).
- Sponge

All other items are disposable (so packaging) or instructional material, so will not be tested.

Comments on the proposals made by CPSIA

All the components that are used in the set above are used in other product lines. Up to a hundred similar kits are made under the same brand name. To test each set for ASTM F963, phthalates and total lead will prove prohibitive for sale, so safe products may become obsolescent in the US market. Testing common components reduces this financial burden, although as discussed below, the testing regime does not consider other factors, such as product make-up and supplier relationships that are important for ensuring product compliance.

In consideration of the components in the set above, the following comments are made:

1. Face Paints

The Face Paints are regulated by the EC Cosmetics Directive and FDA. The colours do not contain phthalates so phthalate testing is not required.

The testing costs are approximately $\$74 \times 8 = \592 for total lead; $\$50 \times 8 = \400 for heavy metal analysis in conformance with ASTM F963; (USP 51 is a one-off test and USP 61 testing is routinely carried out at our factory in Minehead) and no phthalate testing is required. This gives a total bill of \$1000 for testing colours in this kit.

2. The brush handle and ferrule

The main concern for the brush is the potential for heavy metals in the coating and plasticizer (phthalate) in the resin.

The cost of testing a brush for total lead and ASTM F963 was approximately \$520 and the cost of testing for phthalates was approximately \$490. This gives a total bill of approximately \$1000.

3. A plastic holder for the Face Paints

The plastic used for the covering should be tested whenever there is a batch change- otherwise, annually for ASTM F963, total lead and phthalates.

The cost of testing for heavy metals re ASTM F963, total lead and phthalates is approximately \$620.

4. A plastic covering on the Face Paints

The plastic used for the covering should be tested for compliance to ASTM F963, total lead and phthalates.

The cost of testing for heavy metals re ASTM F963, total lead and phthalates is approximately \$620.

5. The black plastic tray

The black plastic tray used for the covering should be tested for compliance with ASTM F963, total lead and phthalates.

The cost of testing for heavy metals re ASTM F963, total lead and phthalates is approximately \$620.

6. Sponge

The Sponge used for the covering should be tested for compliance with ASTM F963, total lead and phthalates.

The cost of testing for heavy metals re ASTM F963, total lead and phthalates is approximately \$620.

The cost of testing this set on it's own is approximately \$4,500. To ensure product conformity by each set in our range is prohibitively expensive and leads to safe products being withdrawn from the market.

The proposal for testing representative samples has advantage for this product type. The representative sample can be assembled from common components across the product lines and each component tested according to the relevant safety concerns under CPSIA.

We suggest that the frequency of testing components needs to be considered with respect to the level of control exerted over the product safety from other regulations and the relationship we may have with our suppliers. The Face Paints use cosmetic ingredients with limits for heavy metal content far stricter than ASTM F963 or CPSIA. We consider it is sufficient to test for conformity to ASTM F963 and total lead once every 2 years as a consequence of the high specification on raw materials used.

The ordering pattern for packaging components is such that there may be as many as 10 deliveries per annum. This is to be expected because inventory costs at manufacturing sites must be controlled in order not to tie up working capital. ColArt have a strong relationship with suppliers of packaging components and factored items. We insist that the supplier conforms to the technical specification for the packaging they supply. We consider a certificate of conformity for each delivery of packaging supports an initial test report showing conformity and a bi-yearly certificate confirming compliance. This requirement is reviewed when there is a change in supplier or material used.

ColArt Proposals

With respect to the CPSC proposal we should retain documents for up to five years on component testing that demonstrate compliance with CPSIA. These documents would demonstrate strong working relationships with our suppliers, initial test certificates and bi-yearly certificates on component testing.

We propose that ColArt provide a Certificate of Conformity for each finished product placed on to the US market that requires certification under CPSIA. The certificate would include reference to component testing.

We ask that the CPSC evaluate the finished product in conformance with the required standards appropriate to this product type. The records supporting compliance would be made available to

CPSC to determine whether ColArt acted with due diligence with respect to any product safety concerns.

We respectfully ask that you consider these proposals.

ColArt are proud of our safety record and fully support the intentions of CPSIA. The breadth of the concern for CPSIA, from teddy bears to art materials to bicycles, leads to a difficult implementation of the regulations. We need to dissuade unsafe products from reaching consumers, but also not place too great a burden on responsible manufacturers. We greatly respect that this is your intention in requesting consultation on the proposed rules and thank you for giving us the opportunity to comment.

Yours truly,

Jon Lloyd
Group Regulatory Affairs Manager

PUBLIC SUBMISSION

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Posted: January 23, 2012
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Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0006

Comment from Thomas Spengler

Submitter Information

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Heroldsberg, Germany, 90562

Organization: STABILO International

Redacted Comment

Dir Sirs,

especially for the producers of fibre pens or coloured pencils it will be very difficulty to have "representative samples" for periodic testing.

In usal wallets for our products are often 20 or more different colors - each of them was produced at a different date. Sometimes the production dates of the single pencils differ more than one year.

So we cannot define one wallet as a "representative sample". Because of this we would have to test all production lots of all color pencils in the wallet. This would be a huge amount of samples.

For example: To select a representative sample of a wallet with 20 colors we have to check by hand each wallet to know what production codes were used to fill the wallet. Mostly we will find, that at least three to four different production dates per color were used.e have to test 60 to 80 samples. This would increase the costs of the product dramatically, especially if the shipment consists only of a small number of wallets.

At this time we have no idea how to handle with this problem.

Best regards

Thomas Spengler

PUBLIC SUBMISSION

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Category: Trade Association
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Submission Type: Web

Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0007

Comment from Marcia Kinter

Submitter Information

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Submitter's Representative: Marcia Y Kinter

Organization: SGIA

General Comment

See attached file(s)

Attachments

Comment on Testing and Labeling Pertaining to Product Certification



January 23, 2012

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

RE: Docket No. CPSC-2011-0082

To whom it may concern:

The Specialty Graphic Imaging Association (SGIA) respectfully submits the following comments on the Consumer Product Safety Commission's (CPSC) notice of proposed rulemaking on Testing and Labeling Pertaining to Product Certification published in the November 8, 2011, *Federal Register*. SGIA represents companies engaged in the production of children's products, including wearing apparel, via the screen and digital print technologies, including the associated supplier base.

SGIA understands the need for a testing program to ensure that all children's products meet both the lead and phthalate content limits as set by the Consumer Product Safety Improvement Act (CPSIA). However, we do believe that the proposed rule does contain provisions that will be difficult for the small business community to comply with, both in terms of cost as well as understanding the provisions as currently stated. We offer the following comments on the proposed language.

Section 1107.21, Periodic Testing

While the proposal accepts the use of component testing for certification purposes, it remains strangely silent regarding its use for periodic testing. The CPSC requests information regarding possible avenues that can be used to maintain and substantiate compliance while reducing the costs associated with compliance testing. Use of component testing, especially for those products where the test does not need to be conducted on the entire product, i.e., those products containing an element that has been specifically exempted pursuant to Section 1500.91. The use of component testing as an element of a periodic testing program by manufacturers of children's products will create a much more manageable system. We recommend that Section 1107.21 (c) (1) be amended to include language allowing for the use of a component testing program to meet the periodic testing requirements. Specific regulatory language needs to be inserted into the text. SGIA can foresee customers requiring the development of a periodic testing program as a contractual requirement. The use of component testing to satisfy this requirement may not be allowed if specific language is not included in the final rule. It is our goal to provide as much flexibility as possible to the manufacturer of the children's product to meet its compliance obligations.

In fact, the use of component part testing as a means to accomplish periodic testing would establish a much stronger compliance program as the requirement to undertake component part testing is a much more rigorous approach than the use of representative sampling. Component part testing ensures that all products manufactured with compliant component parts meet the statutory limitations thereby establishing a stronger compliance platform.

Impact on Small Entities

The Commission continues to underestimate the number and type of small businesses that will be impacted by these provisions. Within the impact analysis, staff neglected to include the printing industry as a manufacturing sector. 323113, screen printing, and 323115, digital printing are two manufacturing industries that are directly impacted by this proposal. Currently there are 60,000 facilities operating in North America that utilize screen and/or digital printing to manufacture their products. Due to the diversity of product offerings, it is difficult to estimate the number of firms actively engaged in the production of children's products. The average firm represented by SGIA employs 15 to 20 people. This is well below the Small Business Administration's criteria of 500 employees.

SGIA firmly believes that this rule will have a tremendous negative economic impact on a substantial number of small entities. The proposal states that "There will be some costs associated with developing and implementing sampling procedures that will result in the selection of representative samples... Some may have these skills in-house; others may need to hire outside consultants with these skills. There also may be ongoing costs associated with selecting the representative samples once the procedures have been developed. There also would be costs associated with documenting the procedure and maintaining the records that would be required by the proposed rule."¹ Generally, when agencies request information regarding economic impact on small entities cost and time estimates are provided.

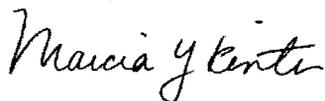
We agree that there will be costs associated with compliance. We also believe that these costs will outweigh the paperwork and necessity of testing products that are well within the limits based on component part testing. As stated, the Commission needs to consider alternative testing strategies that allow the small business to incorporate and use current testing protocols that meet the same end goal: ensuring that all products meet both the lead and phthalate content limits, as applicable.

Conclusion

All proposed elements in this rulemaking will impact the small business community. SGIA has recommended that the use of component part testing be allowed in lieu of a periodic testing program. SGIA remains convinced that the key element of component testing needs to be further integrated into the requirements for representative sampling as well as periodic testing. Incorporation of component testing will provide a burden reduction to a small manufacturer.

SGIA welcomes the opportunity to provide comments on this important proposed regulation. This is a critical regulatory action as it will set the protocols for the certification of children's products. If you have any questions regarding our comments, please contact me at marcik@sgia.org or 703-359-1313.

Respectfully submitted,



Marcia Y. Kinter
Vice President – Government & Business Information

¹ *Federal Register*, Vol 76, No. 216, Tuesday, November 8, 2011, page 69591-69592.

PUBLIC SUBMISSION

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Submission Type: Web

Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0008

Comment from Deborah Fanning

Submitter Information

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

Redacted Comment

Please accept these comments on Representative Samples for Period Testing of Children's Products (Docket # CPSC-2011-0082).

Sincerely,

Deborah M. Fanning, CAE

Executive Vice President

The Art & Creative Materials Institute, Inc.

Attachments

ACMI Comments on CPSIA Rep Samples for Periodic Testing_final



**THE ART & CREATIVE
MATERIALS INSTITUTE, INC.**

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Tel. (781) 293-4100 Fax (781) 294-0808

Website: www.acminet.org

January 23, 2012

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

**Re: Representative Samples for Periodic Testing of Children's Products,
Docket Number – CPSC – 2011 – 0082**

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 as requested in the Commission's Notice of Proposed Rulemaking (76 FR 69586).

As stated in the Commission's Notice, on August 12, 2011, the President signed H.R. 2715 into law, which replaced the CPSIA's requirement for the testing of "random samples" of children's products with a requirement for the testing of "representative samples". The proposed rule would add paragraph (f) to Section 1107.21 to read as follows:

“Section 1107.21 Periodic Testing

(f) A manufacturer must select representative samples to be submitted to the third party conformity assessment body for periodic samples....”

The draft rule goes on to require that the procedures used in the selection process must provide a basis for inferring compliance about the rest of the untested products produced during the periodic testing interval , the manufacturer must document the procedure used for selection and the basis for inferring compliance. In addition, the proposed rule includes Section 1107.26(a)(4) on Recordkeeping to require records documenting the testing of representative samples.

LOOK FOR THESE SEALS.....

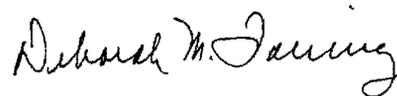


The Commission's analysis that states that the new broader "representative" sampling, in contrast to the prior "random" sampling, includes a variety of methods to assure compliance is a welcome interpretation for our industry. While the Commission has included some helpful examples of representative testing, e.g. a sample of paint from a well-mixed container, and others, we recommend that the Commission have a series of public meetings to review the concept with regard to the enormous range of children's products subject to the rule. Companies subject to the rule include some large ones, with in-house resources to comply, and many small companies with limited resources. Art material products used by children include a wide range of products, such as crayons, clay, markers, chalk, glue and many others. If possible, Commission guidance on an industry basis, over the range of products, should materially assist our member companies to comply. We note that Table 2 describes Lead Pencil and Art Good Manufacturing to be composed of 124 small firms of 129 domestic firms total.

One of our members has advised us that the representative sample proposed rule is "a good one, particularly if component testing is allowed." The company also stated, "testing every delivery of a component is prohibitively expensive." In short, the company believes the proposed rule presents a "practical and realistic option".

Documentation, as proposed, also is satisfactory.

Respectfully submitted,

A handwritten signature in cursive script that reads "Deborah M. Fanning".

Deborah M. Fanning
Executive Vice President

PUBLIC SUBMISSION

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Posted: January 23, 2012
Category: Trade Association
Tracking No.: 80fa188e
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Submission Type: Web

Docket: CPSC-2011-0082

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0009

Comment from Michael McDonald

Submitter Information

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Organization: American Apparel & Footwear Association

General Comment

See attached file(s)

Attachments

012312cpscrepresentative



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

Docket No. CPSC-2011-0082

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, as a supporter of H.R. 2715 including the change from "random" to "representative" sampling, appreciates the willingness and diligence shown by the CPSC in implementing this change into their testing and certification ruling. We agree with the direction that the CPSC is going in regard to the change from "random" to "representative" and would only like to emphasize two key points that our members feel are vital to ensuring the understanding and compliance of the representative determination.

First is that representative samples can be defined based on what they are not. As long as a sample is not a "golden sample", meaning that it was not manufactured to be different in any way from the rest of the produced samples, then it should be considered to be representative. In the *Federal Register* notice the CPSC states that

"Representative samples of a children's product selected for testing are comparable to the unselected portion of the children's product population with respect to compliance to the applicable children's product safety rule(s). To be representative, the manufacturer must have a basis for inferring that, had other samples been chosen for testing, test results from those samples would have indicated the same compliance or noncompliance to the applicable children's product safety rule as the representative samples."

We fully agree with this statement but also believe that as long as the manufacturer can prove that the sample was not intended to achieve different test results they meet the CPSC's criteria of a representative sample.

The reasoning for this is that outliers may exist even in the most homogenous of manufacturing practices, and manufacturers may not be able to prove why a single test result was an outlier. However, it is much easier to prove that they performed the due diligence to ensure they did everything possible to prevent that outlier from being created. This clarification will in no way change the CPSC definition of a representative

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sample. All manufacturers will still have to be able to prove that a test result is representative of their entire product line. Moreover, such a clarification will give manufactures the assurance needed to rely on their individual remedial action plans if a failure occurs due to an outlier that does not represent the entire product line. This will protect manufacturers from having to destroy many more products that may still be compliant.

Secondly, we would like to emphasis the importance of the CPSC continuing to consider random sampling to be a subset of representative sampling. The CPSC gives solid assurance by stating that "Random sampling is another means of selecting representative samples that provide a basis for inferring the compliance of untested product units from the tested product units. The conditions that allow for the inference of compliance concerning untested units versus tested units may be met by a range of probability-based sampling designs, including, but not limited to, simple random sampling, cluster sampling, systematic sampling, stratified sampling, and multistage sampling. These methods allow the manufacturer the flexibility to select a random sampling procedure that is most appropriate for the manufacturer's product production setting but still allow for the inference about the compliance of the population of product units." Many companies proactively were implementing random testing program when the CPSC first proposed and supported it in December , 2008, and we are confident that the CPSC will continue to recognize this as an acceptable means of representative sampling.

We again would like to thank the CPSC for using the instructions set out by Congress in H.R. 2715 and applying them in a way that will truly bring relief and clarity to any testing program while still assuring the safety and quality of all regulated children's products.

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 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

As of: January 30, 2012
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Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0010

Comment from Lauren Pfeiffer

Submitter Information

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Submitter's Representative: Assistant Executive Director

Organization: JPMA

General Comment

See attached file(s)

Attachments

JPMA Comments Regarding Testing and Labeling 1.23.12

January 23, 2012

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



Re: JPMA Comments Regarding Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products (Docket No. CPSC-2011-0082)

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-2011-0082). 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

The language proposed in § 1107.21(f) related to “representative sampling” requirements grants manufacturers flexibility to determine what is “representative” based on knowledge of the product, the applicable product safety standard and the manufacturing processes that go into making the product. The proposed rules sets forth a variety of examples by which manufacturers may assure themselves that samples are representative of their inventory or production. The Consumer Product Safety Commission (CPSC) should preserve flexibility in defining a “representative sample.” Congressional concern that use of a “random sampling” requirement could be unduly burdensome for manufacturers and create supply chain inefficiencies should be carefully heeded. Manufacturers should retain the responsibility for determining a reasonable basis for assuring that representative sample selection and review reasonably assure compliance of the population of untested units. We are mindful that there exists an enormous variety of materials, component parts and finished production process depending upon products involved. A one size approach does not work for all. Congress clearly intended a more flexible approach with wider discretion afforded manufacturers, based upon customary industry practice, when it specified that representative as opposed to random samples be deemed suitable.

We believe this is consistent with the discretion afforded to suppliers voluntarily conducting third party testing in accordance with 16 CFR 1109, “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 approach there provides the testing party the discretion in defining the appropriate population and character of “representative sample” as defined by § 1109.4(k).

Clarifying that the “testing party”, which includes manufacturers as permissible, must conduct representative sampling will prevent confusion in the marketplace and enable appropriate decisions regarding the test program that is suitable for their particular product, component part or material. Such language can be integrated into 16 CFR § 1107. According to § 1110.7(a), when products are manufactured outside of the United States, the importer must issue a certification of conformity. Any regulation must be clear that a “representative sampling” procedure must be determined by the supplier manufacturer, in lieu of importers. This is simply the most practicable way to approach this issue since only manufacturers with plant based quality assurance processes are situated to perform representative production line sampling and testing.

In many cases, it simply does not make sense to require importers to determine what a “representative sample” is. Only upstream supply chain or Manufacturer determined processes can efficiently be adopted. As the CPSC recognized and accepted in permitting

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reliance on component part testing. Decisions such as whether a sample is representative, the appropriate testing interval, and the requisite sample size should therefore be made by the testing party that is submitting samples to be tested. This is generally achieved by specific industry recognized customary good manufacturing practices and/or ISO recognized manufacturing practices for factory production practices. While it is important that the finished product certifier exercise due care in its reliance on supplier certifications, this does not logically follow that the finished product certifier must dictate with specificity its particular suppliers' sampling procedures or that the requisite expertise is possessed by the finished product certifier, as opposed to the component part or material supplier. We believe it is appropriate to allow manufacturers to select the samples using any *reasonable* (emphasis supplied) method, provided that the method used would not purposively lead to the selection of samples that the manufacturers knows are more likely to comply with a standard or requirement than other samples, or select samples that are manufactured and chosen specifically to comply with a standard or requirement (often referred to as "golden samples")

JPMA's own Certification program incorporates a reasonable process for sample selection and testing, customary in our industry to demonstrate reasonable representative testing of production product, components or materials.

We also believe any record keeping requirements should be reasonable, not site specific and available as reasonably appropriate for the component part or material involved.

Thank you for the opportunity to comment
Sincerely,

Michael Dwyer, CAE
Executive Director

PUBLIC SUBMISSION

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

Comment On: CPSC-2011-0082-0001

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

Document: CPSC-2011-0082-0011

Comment from Rebecca Mond

Submitter Information

Name: Rebecca Mond

Organization: Toy Industry Association

General Comment

TIA's Comments Regarding, "Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products" (Document ID CPSC-2011-0082-0001) are attached.

Attachments

Representative Sample Final



Toy Industry Association, Inc.

www.toyassociation.org

January 23, 2012

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

Re: Comments Regarding Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products (Docket No. CPSC-2011-0082)

Toy Industry Association, Inc. (TIA) is the national trade association representing the North American toy industry with more than 550 manufacturers, retailers, and service providers, all working together to provide safe, high-quality playthings for America's children. TIA has been a leader in promoting toy safety since the 1930s, and continues to do so today. We are writing in response to the Commission's request for comments on the "Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products."

Overall, we are strongly supportive of the language proposed in § 1107.21(f). The proposed "representative sampling" requirements grants manufacturers flexibility to determine what is "representative" based on knowledge of the product, the applicable product safety standard and the manufacturing processes that go into making the product. However, going forward, we believe it is important for the Consumer Product Safety Commission (CPSC) to preserve this flexibility in defining a "representative sample." As we saw in the previous "random sampling" requirement, prescribing specific sampling procedures can be unduly burdensome for manufacturers and create supply chain inefficiencies without a corresponding improvement in safety. Other sampling methods may be better suited for the manufacturer and will still provide the manufacturer a reasonable basis for inferring compliance of the population of untested units. Congress clearly intended a more flexible approach with wider discretion afforded manufacturers, based upon customary industry practice, when it specified that representative as opposed to random samples be deemed suitable.

The CPSC clearly recognizes that the manufacturer of the children's product is in the best position to determine what a "representative sample" is because the manufacturer has the most knowledge of the product being tested. We argue that the same case could be made for any suppliers voluntarily conducting third party testing in accordance with 16 CFR 1109, "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." Therefore, we recommend that CPSC clarify that the responsibility of

determining that a sample is a “representative sample” lies with the “testing party” as defined by § 1109.4(k).

Clarifying that the “testing party” must conduct representative sampling will prevent confusion in the marketplace and enable those closest to the products (and who are responsible for issuing a valid certification for a component or finished item) to make important decisions regarding the test program that is right for their product. The proposed language will be integrated into 16 CFR 1107, “Testing and Labeling Pertaining to Product Certification.” § 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. This is simply not realistic, since only manufacturers with plant based quality assurance processes are situated to perform representative production line sampling and testing.

In many cases, 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 as the CPSC recognized and accepted in permitting reliance on component part testing. Decisions such as whether a sample is representative, the appropriate testing interval, and the requisite sample size should therefore be made by the testing party that is submitting samples to be tested. This is generally achieved by specific industry recognized customary good manufacturing practices and ISO recognized manufacturing practices for factory production practices. 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 exercise due care in its reliance on supplier certifications, this does not logically follow that the finished product certifier must dictate with specificity its particular suppliers’ sampling procedures or that the requisite expertise is possessed by the finished product certifier, as opposed to the component part or material supplier.

Thank you for the opportunity to comment on the proposed “representative sample” requirements. If you have any questions or comments, please contact Rebecca Mond at rmond@toyassociation.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Desmond". The signature is fluid and cursive, written in a professional style.

Ed Desmond
Executive Vice President, External Affairs