

## Public Submissions

Review of Commission's Regulations;  
Request for Comments and Information

CPSC Docket No: CPSC-2011-0078

Comments Due By: December 19, 2011

---

<b>As of:</b> January 13, 2012
<b>Received:</b> October 24, 2011
<b>Status:</b> Posted
<b>Posted:</b> October 27, 2011
<b>Tracking No.</b> 80f5ac67
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0002

Comment from Sharon Flynn

---

## Submitter Information

**Name:** Sharon Flynn

**Address:**

5053 Brown Drive

Kailua, HI, 96734

**Email:** sharonaflynn@hotmail.com

---

## General Comment

I would like to comment on the regulation concerning the Electronic Cigarette ban on aircrafts. I am definitely for this ban, I do not believe that people should smoke these on any aircraft. In 2000 there was a smoking ban on aircrafts and I believe that the e-cigarette should follow under that ban. The e-cigarette uses heat to vaporize and a propylene-glycol based liquid solution comes out through an aerosol mist. This is unsafe and could have adverse effects on the crew and the passengers on board. There have been inconclusive results on this e-cigarette and how safe it actually is. According to the Science-Based Medicine publication the e-cigarette holds adverse side effects and risks to one's health. There are chemical contaminants in the vapor that contain some carcinogens as in tobacco smoke so there can be second hand smoke as an effect to the passengers as well as the crew on board an airplane. I do believe that e-cigarettes should be treated as well as regular cigarettes and should be banned from all aircrafts. The e-cigarette also contains nicotine so should be treated as a regular cigarette. When the FDA did testing on the cartridges they found that they leak and could be harmful to children. When I go on an airplane I like to breathe fresh air, not someone's vapor from an electronic cigarette. Thank you!

<b>As of:</b> January 13, 2012
<b>Received:</b> December 02, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 02, 2011
<b>Category:</b> Trade Association
<b>Tracking No.</b> 80f7a7c3
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Paper

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0003

Comment from The Spa and Pool Chemical Manufacturers Association (SPCMA)

---

## Submitter Information

**Name:** George Verbryck

**Address:** United States,

**Submitter's Representative:** George Verbryck

**Organization:** The Spa and Pool Chemical Manufacturers Association (SPCMA)

---

## General Comment

See Attached

---

## Attachments

The Spa and Pool Chemical Manufacturers Association Comments

**The Spa and Pool Chemical Manufacturers' Association  
6444 East Spring Street #286; Long Beach, California 90815; 562/431-6233**

April 25, 2011

Ms. Inez Tenenbaum  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Ms. Tenenbaum,

Re: 16 *CFR* §1500.129  
Substances Named in the *Federal Caustic POISON Act*

Received CPSC  
2011 MAY 24 P 1:33  
Office of the Secretary  
FOI

SPCMA - the Spa and Pool Chemical Manufacturers' Association - a trade association, proposes deletion of 16 *CFR* §1500.129, "Substances Named in the *Federal Caustic Poison Act*" in its entirety without substitution. With the possible exceptions of nitric acid and sodium hydroxide, none of the compounds listed in 16 *CFR* §1500.129 is "HIGHLY TOXIC" as defined in the regulations, and by definition do not meet the definition of the term "POISON" as that term is also defined in the Act.

~~1500.129 Substances named in the Federal Caustic POISON Act. The Commission finds that for those substances covered by the Federal Caustic POISON Act (44 Stat. 1406), the requirements of section 2(p)(1) of the Federal Hazardous Substances Act (repeated in § 1500.3(b)(14)(i)) are not adequate for the protection of the public health. Labeling for these substances, in the concentrations listed in the Federal Caustic POISON Act, were required to bear the signal word "POISON." The Commission concludes that the lack of the designation "POISON" would indicate to the consumer a lesser hazard and that such would not be in the interest of the public health. Under the authority granted in section 3(b) of the act, the Commission therefore finds that for the following substances, and at the following concentrations, the word "POISON" is necessary instead of any signal word:~~

~~(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more.~~

~~(b) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of 10 percent or more.~~

~~(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of 5 percent or more~~

~~(d) Carboic acid (C<sub>6</sub>H<sub>5</sub>OH), also known as phenol, and any preparation containing carboic acid in a concentration of 5 percent or more.~~

~~(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of 10 percent or more.~~

~~(f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of percent or more.~~

~~(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ( $\text{HC}_2\text{H}_3\text{O}_2$ ) in a concentration of 20 percent or more.~~

~~(h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration that will yield 10 percent or more by weight of available chlorine. (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide~~

~~(KOH), including caustic potash and vienna paste (vienna caustic), in a concentration of 10 percent or more.~~

~~(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye in a concentration of 10 percent or more.~~

~~(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ( $\text{AgNO}_3$ ) in a concentration of 5 percent or more~~

~~(l) Ammonia water and any preparation containing free or chemically uncombined ammonia ( $\text{NH}_3$ ), including ammonium hydroxide and "hartshorn," in a concentration of 5 percent or more.~~

The term "POISON" is defined at 16 *CFR* §1500.3 (a)(14)(i)(H) as follows. "The word "POISON" for any hazardous substance which is defined as "HIGHLY TOXIC" by section 2(h) of the act (restated in paragraph (b)(6) of this section." The term "HIGHLY TOXIC" is defined at 16 *CFR* §1500.3(a)(6)(i)(A), (B), (C) as follows:

"The term "HIGHLY TOXIC" means any substance which falls within any of the following categories:

(A) Produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or

(B) Produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of 1 hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(C) Produces death within 14 days in half or more than half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less."

According to the definition of "POISON" in the regulations, a material must be HIGHLY TOXIC to be classified as a "POISON." The chemical substances listed, the  $\text{LD}_{50}$  and/or

the LC<sub>50t</sub> values and the classification at § 1600 129 are as follows:

(a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more.

900 mg/kg [rat] Not HIGHLY TOXIC

(b) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H<sub>2</sub> SO<sub>4</sub>) in a concentration of 10 percent or more.

Oral rat LD<sub>50</sub>: 2140 mg/kg Not HIGHLY TOXIC

(c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of 5 percent or more.

LD<sub>50</sub> Not available. Assume HIGHLY TOXIC

(d) Carboic acid (C<sub>6</sub> H<sub>5</sub> OH), also known as phenol, and any preparation containing carboic acid in a concentration more

LD<sub>50</sub> = 270 mg/kg (mouse) Not of 5% or Not HIGHLY TOXIC

(e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub> C<sub>2</sub> O<sub>4</sub>) in a concentration of 10 percent or more.

LD<sub>50</sub> = 7500 mg/kg (rat) Not HIGHLY TOXIC

(f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of 10 percent or more.

LD<sub>50</sub> = 7500 mg/kg (rat) Not HIGHLY TOXIC

/

(g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ( $\text{HC}_2\text{H}_2\text{O}_2$ ) in a concentration of 20 percent or more.

$\text{LD}_{50}$  = 270 mg/kg (mouse) Not HIGHLY TOXIC

(h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration that will yield 10 percent or more by weight of available chlorine.

$\text{LD}_{50}$  = 3310 mg/kg Not HIGHLY TOXIC

(i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and vienna paste (vienna caustic), in a concentration of 10 percent or more.

$\text{LD}_{50}$  = 273 mg/kg (rat) Not HIGHLY TOXIC

(j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye in a concentration of 10 percent or more.

IPR-MUS  $\text{LD}_{50}$  40 mg/kg

(k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ( $\text{AgNO}_3$ ) in a concentration of 5 percent or more.

$\text{LD}_{50}$  = 1173 mg/kg (rat) Not Toxic

(l) Ammonia water and any preparation uncombined ammonia ( $\text{NH}_3$ ), including ammonium hydroxide and "hartshorn," containing free or chemically

$\text{LD}_{50}$  = 2000 ppm (rat) Not HIGHLY TOXIC

With the exception of nitric acid and sodium hydroxide, none of the materials listed is a "POISON" as that term is defined in the regulations, because these materials are not classified as "HIGHLY TOXIC". Unfortunately, we have been unable to locate oral  $\text{LD}_{50}$  for nitric acid and sodium hydroxide. They may - or may not - be classified as "HIGHLY TOXIC." SPCMA proposes deletion of 16 *CFR* §1500.129, "Substances Named in the *Federal Caustic POISON Act*" in its entirety without substitution. As an aside, we note that

Ms. Inez Tenenbaum  
U.S. Consumer Product Safety Commission  
April 25, 2011  
Page 5

Labeling specified at 16 *CFR* §1500.129 will also be inconsistent with labeling under GHS. The LD<sub>50</sub> values have been obtained from literature available in the public domain. We will be happy to provide copies of that literature on request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "George Verbruyck". The signature is written in a cursive style with a large initial "G".

SPCMA by George Verbruyck

b b

**As of:** January 13, 2012  
**Received:** December 19, 2011  
**Status:** Posted  
**Posted:** December 26, 2011  
**Category:** Consumer Advocacy Organization  
**Tracking No.** 80f85b59  
**Comments Due:** December 19, 2011  
**Submission Type:** Web

# **PUBLIC SUBMISSION**

**Docket:** CPSC-2011-0078  
Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001  
Review of Commission's Regulations

**Document:** CPSC-2011-0078-0004  
Comment from Ioana Rusu

---

## **Submitter Information**

**Name:** Ioana Rusu  
**Organization:** Consumers Union, Consumer Federation of America, Kids In Danger

---

## **General Comment**

Comments attached.

---

## **Attachments**

Comments - CPSC Reg Review Plan - 12.19.11

**Consumers Union \* Consumer Federation of America \* Kids In Danger**

December 19, 2011

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

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

**Comments of Consumers Union, Consumer Federation of America, and Kids In Danger to  
the U.S. Consumer Product Safety Commission on**

**“Review of Commission’s Regulations; Request for Comments and Information”**

Docket No. CPSC–2011–0078

Consumers Union, Consumer Federation of America, and Kids In Danger (“we”) submit these comments to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) regarding its plan to conduct a review of existing CPSC regulations. As noted in the Federal Register request, the Commission seeks to formulate a plan under which the agency will conduct periodic reviews of existing regulations. The plan is intended to build on CPSC’s past review efforts while incorporating the principles outlined in Executive Order 13579.

We wish to start out by noting that nothing in the language or the spirit of the Executive Order requires a lessening or weakening of current rules. Promulgating product safety rules is necessary and appropriate because they protect the public from potential hazards. For example, the small parts rule has been in effect for 35 years and has protected countless children from choking and asphyxiation hazards posed by toys with small parts. The rule requires that a small

parts cylinder be used to ensure that a part will not lodge in a child's wind pipe and choke them. However, some experts believe a *larger* cylinder measurement might be necessary to better protect children. This example demonstrates that the Commission's regulatory review should not be synonymous with a weakening of the rules. The CPSC should consider whether current rules are sufficiently protective of public health, and if not, it should strengthen them.

Further, the CPSC is already somewhat limited in its ability to enact rules quickly, even in the face of clear and significant hazards to consumers. This is largely due to Section 9 of the Consumer Product Safety Act, which requires that the Commission first allow voluntary standard-setting bodies to develop standards to address product safety hazards before it can act to promulgate mandatory standards. The CPSC can promulgate a rule only if the voluntary standard is not adequate to eliminate or substantially reduce the hazard or if there is substantial non-compliance with the voluntary standard. The practical result of this requirement has been that, in the past, the Commission has rarely proposed mandatory standards. Button cell batteries and window blinds are just two current examples of the consequences of Section 9. Congress passed the Consumer Product Safety Improvement Act in 2008 to allow the Commission to more quickly address emerging hazards. The CPSIA requires the agency to promulgate rules for durable nursery goods and to make the voluntary toy standards mandatory. The CPSIA notwithstanding, however, the application of Section 9 has caused the Commission to promulgate rules only after a long delay, and after unnecessary injuries and deaths have occurred. Given that the CPSC is already constrained in its ability to address existing and emerging public safety problems, we again urge the agency not to use the regulatory review process to weaken or eliminate hard-won safety standards for consumers.

We also note that public opinion supports a strong federal role in product safety. A

February 2011 poll conducted by Consumers Union<sup>1</sup> found that the overwhelming majority of respondents – 98 percent – agreed that the federal government should play a prominent role in improving product safety. Eighty-two percent strongly agreed the federal government should require testing by manufacturers of children's products like jewelry, pacifiers, and toys to ensure they do not contain any harmful substances. Eighty percent strongly agreed the federal government should require testing by manufacturers of products like baby carriers or slings, cribs and strollers to ensure their safety, and 73 percent strongly agreed the federal government should take steps to keep unsafe consumer products out of the marketplace.

In addition, a survey conducted by Consumer Federation of America, released in October of 2011, found that when the parents were told about a new safety protection that makes it easier for consumers to register infant products with the manufacturers so that they can be directly informed about recalls, almost all of them strongly supported it. Ninety-six percent thought the safety protection was a “good idea,” while 63 percent thought it was a “very good idea.” Among all adults, 91 percent thought the protection was a “good idea.” Moreover, a large majority of the parents (85%) said that “if they purchased a product with a registration card,” they would be likely to “complete and mail it back, or submit the same information on the Internet.”

In this context, we offer the following comments and suggestions concerning the agency’s plan to conduct periodic reviews of existing regulations.

### *Criteria*

The Commission already implemented a systematic rule review program from 2004 to 2007. Under this review program, the agency sought to determine whether its rules were consistent with the agency’s goals, consistent with other CPSC rules, current with respect to

---

<sup>1</sup> See [http://www.consumersunion.org/pub/core\\_product\\_safety/017415.html](http://www.consumersunion.org/pub/core_product_safety/017415.html).

technology and market conditions, and in need of revision in order to reduce regulatory burdens. The agency selected which rules to review by employing the following criteria: (1) the rule had been in effect at least 10 years; (2) at least one of the rules selected had multiple requirements; (3) the rules addressed different hazard areas to ensure the review process was not overly burdensome to any one internal discipline; and (4) the rules were issued under different statutes.

These criteria for selecting rules implemented from 2004 to 2007 continue to provide a useful template for the agency's current rule review plan. In particular, we encourage the CPSC to retain the requirement that only rules which have been in effect at least 10 years should be considered for review. Regulations must be given time to work and sufficient time needs to pass between implementation and review in order to allow for appropriate data collection regarding the efficiency of the rule. Some rules may impose greater financial burdens on industry at the very beginning, which would then be reduced through the passage of time. Data about public safety benefits may also take several years to accumulate. Selecting recent rules may not yield an accurate picture of a rule's true impacts on industry and on public safety.

### *Public Participation*

Public participation in agency rulemaking is a key component to the development of an effective rule review plan that will have a positive impact on public health and safety. While businesses who comply with regulations are aware of the Commission hearings and proceedings and are probably eager to comment during the review process, the consumers who are protected by these regulations will be harder to reach. Most are unaware of the existence of the rule, let alone its review. However, their input is just as valuable in weighing the effectiveness of the rule and constitutes an important factor in the cost-benefit analysis. And the stories that parents and

caregivers have to tell about the real-life impact of product hazards upon them and their loved ones should be a part of the public record.

As a result, we strongly urge the agency to develop new and innovative ways to engage not only businesses affected by regulations, but also the public at large. It is not sufficient to simply post the rule review plan on [regulations.gov](https://www.regulations.gov). The Commission must consider innovative ways to reach out to consumers and invite more input from the end-users of the regulated products. Consumer groups, state agencies, public safety advocates, and others can help with outreach, but it also behooves the Commission to reach out to the larger public on its own as well.

#### *Coordination*

We welcome the CPSC's interest in better coordinating with other agencies in order to harmonize regulatory requirements. Voluntary standards committees already have begun work in some areas and CPSC should join those efforts where available. However, we caution the agency not to diminish important consumer safety protections simply in the interest of harmonization. The harmonization process should not result in the implementation of a regulation that represents the lowest common denominator among several agencies or countries. Rather, the harmonization process should encompass the standard that is most protective of public health. Consumers should not lose hard-won protections through this rule review process.

#### *Prioritization*

CPSC should first review rules that are outdated and are too weak to protect public safety. Some current rules may not sufficiently protect consumers from dangerous products. For

example, in spite of a longtime safety standard for pacifiers, there are numerous recalls and reports on [saferproducts.gov](http://saferproducts.gov) of non-recalled pacifiers which present a choking or aspiration hazard. Further, as we mentioned previously, the small parts rule should be evaluated to determine whether the small parts cylinder or choke test tube should be modified in order to address choking hazards posed by larger toys.

### *Substance of Review*

Under the 2004-2007 rule review plan, once a rule was selected, CPSC staff would evaluate the rule, looking for inconsistencies within the rule or with other rules, references to obsolete standards or technology, as well as the potential to streamline the requirements of a certain rule.

This type of review would also be appropriate for the new regulatory review process, particularly given the speed with which technology has recently advanced. Every year, technological innovations offer our society simpler, more streamlined solutions to difficult problems. We encourage the CPSC to look at new technologies that could both reduce the burden on the companies complying with the regulation as well as impart vital safety information to the consumers affected by the rules. Cell phone availability is more widespread and reaches more communities than access to computers, thus ways in which smart phones or texting can be utilized should be examined.

We also caution the CPSC in its use of cost-benefit analysis to determine the effectiveness of rules. Cost-benefit analysis is subjective and can lead to biased and misleading results by discounting the benefits of saving lives and avoiding injuries over time. Further, there are substantial costs to *not* promulgating a product safety rule that must be considered in any

such analysis. Included in the consideration of a rule should be the benefit accrued to a family that does *not* have to suffer the loss of a child, or the benefits to a child whose IQ is *not* affected by lead in toys. The agency must ensure that sufficient weight is given to the benefits of various public safety rules, and that there is an evaluation of the public health costs of regulation vis-à-vis the costs of doing nothing at all.

*Conclusion*

In conclusion, we emphasize that the proposed regulatory review process must not be synonymous with a weakening of rules that protect public safety. The CPSC should consider whether rules are adequate to protect the public health, and strengthen them if necessary. We also encourage the CPSC to find innovative ways to reach out to consumers and encourage more public input in this regulatory review process.

Respectfully submitted,

Ami Gadhia  
Senior Policy Counsel  
Consumers Union

Nancy Cowles  
Executive Director  
Kids In Danger

Ioana Rusu  
Regulatory Counsel  
Consumers Union

Rachel Weintraub  
Director of Product Safety and Senior Counsel  
Consumer Federation of America

<b>As of:</b> January 13, 2012
<b>Received:</b> December 19, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 26, 2011
<b>Category:</b> Trade Association
<b>Tracking No.</b> 80f85dd7
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0005

Comment from Timothy Brown

---

## Submitter Information

**Name:** Timothy Brown

**Address:**

1667 K St., NW

Ste. 300

Washington, DC, 20006

**Email:** [tbrown@cspa.org](mailto:tbrown@cspa.org)

**Phone:** 202-833-7303

**Organization:** Consumer Specialty Products Association

---

## General Comment

Please see attached document

---

## Attachments

CSPA Dec 2011 Comments on CPSC Regulatory Review



Representing Household & Institutional Products

Aerosol - Air Care - Cleaners - Polishes  
Automotive Care - Antimicrobial - Pest Management

December 19, 2011

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

**Re: Docket ID Number CPSC-2011-0078; 16 CFR Chapter II; Review of  
Commission's Regulations; Request for Comments and Information**

The Consumer Specialty Products Association (CSPA) is submitting comments in response to the Consumer Product Safety Commission's (CPSC) request for comments and information in the October 19, 2011 *Federal Register* (76 *Fed. Reg.* 64865) on its regulatory review process.

CSPA is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$80 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Accordingly, the CPSC regulatory review process is of interest to, and will affect many CSPA members.

**I. Regulatory Review Plan**

CSPA supports the general framework of rules that were adopted for the 2004 pilot project for CPSC's Systematic Rule Review Program, including the requirement that the rule has been in effect for at least 10 years; at least one of the rules selected for review has multiple requirements; the rules address different hazard areas; and the rules were issued under different statutes.<sup>1</sup> CSPA

---

<sup>1</sup> Consumer Product Safety Commission, 76 *Fed. Reg.* 64866 (October 19, 2011).

also supports the CPSC's current plan for a more broad review and not limiting evaluations to only regulations that have a significant economic impact on a substantial number of small entities, or to significant regulations as defined in Executive Order 12866.<sup>2</sup> In addition, CSPA also supports the criteria from the 2004 pilot project that the rule review focused on determining whether CPSC's regulations were: 1) consistent with CPSC's program goals; 2) consistent with other CPSC regulations; 3) current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards; and 4) subject to revision to reduce regulatory burdens, particularly burdens on small entities.<sup>3</sup>

Among the issues on which comments are invited is this one: "How should [the Commission] identify rules that may be in need of strengthening, complementing, modernizing, or, if relevant, undertaking new rulemaking?"<sup>4</sup> Undertaking new rulemaking is a weighty decision, but in the case of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS), CSPA encourages the CPSC to follow through on previously expressed support for GHS. Such a decision is completely consistent with the above criteria from the Commission's pilot review program in 2004. Efficient and timely implementation of the GHS for consumer products regulated by CPSC and upgrading the Federal Hazardous Substances Act (FHSA) regulations and packaging rules to reflect GHS standards would have far-reaching effect on U.S. international commerce. Although the CPSC has not formally issued a rule regarding GHS, its impact on consumer products would be consistent with the 2004 regulatory review criteria; specifically, GHS implementation would be in line with program goals, current with the growing trend in global economic and market conditions, and would ultimately harmonize some of the regulatory burdens that companies marketing goods internationally face.

With regard to CPSC program goals, given the Commission's prior involvement with this issue, CSPA believes that recommending a review of this issue should not be overly burdensome since a fair amount of the preparatory work has already been done. According to the United Nations Economic Commission for Europe website, "In 2007, CPSC compared selected portions of the Federal Hazardous Substances Act (FHSA) regulatory requirements to the Globally Harmonized System (GHS) for classification and labeling. This comparison identified some of the technical differences between the FHSA and GHS. A preliminary legal feasibility assessment was also conducted to assess what, if any, changes would be needed to the FHSA should certain provisions of the GHS be adopted and implemented. The staff work indicated that a more complete technical comparison is needed."<sup>5</sup> It further states that "In 2008, CPSC initiated a contract to complete a side-by-side comparison of the FHSA and the GHS. This review will

---

<sup>2</sup> Id.

<sup>3</sup> 76 Fed. Reg. at 64865.

<sup>4</sup> 76 Fed. Reg. at 64867.

<sup>5</sup> UNECE, GHS Implementation: United States of America *available at* [http://www.unece.org/trans/danger/publi/ghs/implementation\\_e.html](http://www.unece.org/trans/danger/publi/ghs/implementation_e.html).

determine which sections of the GHS might be considered for implementation, as well as whether statutory or regulatory changes would be necessary for eventual implementation.”<sup>6</sup>

CSPA has been an ardent supporter of the objectives of GHS, and has participated in its development as a member of the Coordinating Committee on International Harmonization (CCIH). CSPA recognizes the many anticipated benefits of harmonization that will result from implementation of the GHS including enhanced protection of human health and the environment; sound management of chemicals; reduced need for testing and evaluation of chemicals; and trade facilitation. If and when CPSC moves forward toward implementation, consultation with industry must be an integrated part of the process, because some issues and choices could have unintended consequences on industry unless CPSC and industry collaborate on the elements of implementation.

## II. Conclusion

CSPA appreciates the opportunity to comment on CPSC’s regulatory review process. We hope that you will take our comments regarding GHS into consideration as you deliberate on the next phase. It is critical that the Commission, industry and other stakeholders work closely together as the regulatory review plan is created and implemented. CSPA is committed to working closely with the CPSC in this effort. If you have any questions regarding these comments, please do not hesitate to contact me at 202-833-7303 or at [tbrown@cspa.org](mailto:tbrown@cspa.org).

Very truly yours,



Timothy A. Brown  
Regulatory Counsel  
Consumer Specialty Products Association

---

<sup>6</sup> Id.

# PUBLIC SUBMISSION

<b>As of:</b> January 13, 2012
<b>Received:</b> December 19, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 26, 2011
<b>Category:</b> Consumer Advocacy Organization
<b>Tracking No.</b> 80f85e1e
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0006

Comment from Christine Hines

---

## Submitter Information

**Name:** Christine Hines

**Address:**

Public Citizen

215 Pennsylvania Ave. SE

Washington, DC, 20003

**Email:** [chines@citizen.org](mailto:chines@citizen.org)

**Phone:** (202) 546-4996

**Submitter's Representative:** Christine Hines

**Organization:** Public Citizen

---

## General Comment

See attached file(s)

---

## Attachments

PC Comments Retrospective Review Final



215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4996 • [www.citizen.org](http://www.citizen.org)

December 19, 2011

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

Via: <http://www.regulations.gov>

Re: Docket No. CPSC-2011-0078, Comments Regarding the Review of the Commission's Regulations

### **Introduction**

Public Citizen, a national nonprofit consumer advocacy organization with over 225,000 members and supporters, appreciates the opportunity to offer comments concerning the review of the Commission's regulations. Public Citizen believes that the Commission has a number of existing methods for rule review and that the process for reviewing its rules should not be modified to provide for more frequent reviews. However, we ask the Commission to consider the recommendations below as it undertakes the process suggested in Executive Order 13579.

### **Background**

On July 14, 2011, President Obama issued Executive Order 13579 "Regulation and Independent Regulatory Agencies," which, among other suggestions, states that independent agencies should develop a plan to periodically review existing regulations. The Office of Management and Budget issued a guidance memorandum suggesting that the plans should provide for review of unnecessary or excessively burdensome rules as well as consideration of whether to strengthen, complement modernize rules through new rulemakings.<sup>1</sup>

The Commission already reviews its regulations:

---

<sup>1</sup> Office of Management and Budget, Memorandum to the Heads of Independent Regulatory Agencies, July 22, 2011, at <http://1.usa.gov/u0bpve>.

- Under Section 610(a) of the Regulatory Flexibility Act, the Commission is required to review after ten years each new rule it promulgates that has or will have a significant economic impact on a substantial number of small entities. As the agency describes in its notice, it published a review plan in 1981, and since then has conducted a review of the economic impact on small entities of each rule as it is proposed and finalized.
- In addition, between 2004 and 2007, the agency initiated a pilot program to review existing regulations as a result of a recommendation from the Office of Management and Budget. Subsequently, the Commission suspended the regulatory review to direct its resources to the newly passed Consumer Product Safety Improvement Act of 2008 (CPSIA). Congress passed the CPSIA in response to the presence of a record number of unsafe consumer products on the market which had caused an unnecessary number of injuries and deaths to adults and children. The new law required the promulgation of substantive new rules to protect consumers from unreasonable risks of injury or deaths caused by hazardous products.

### **Recommendations**

**(1) The Commission must focus on carrying out its vast mission with its limited resources:** The Commission's top priority must remain to protect consumers from the unreasonable risk of harm caused by hazardous products. As part of its mission to protect consumers, the Commission's time is justifiably very focused on the efficient and effective implementation of strong regulations. The agency is tasked with overseeing more than 15,000 types of products. It is also charged with enforcing a number of consumer protection laws, including the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Virginia Graeme Baker Pool and Spa Safety Act, and the recent Consumer Product Safety Improvement Act of 2008. The enforcement and promulgation of new rules under these laws are critical to protecting consumers from unreasonable risk of harm.

Given its responsibilities, the agency is operating with deeply inadequate resources. Over the past 30 years, the number of Commission employees fell from a high of 1,000 in 1980 to 385 in 2007, and the agency now operates with approximately 550 employees.<sup>2</sup> In 2008, the CPSIA presented the agency with additional resources and authority to carry out its mission. Although merely three years have passed since the CPSIA became law, the agency's resources have been threatened again and its budget will likely decline in the near future.<sup>3</sup> More frequent rule reviews, without a corresponding increase in the agency's budget, may not only waste valuable resources that would be better spent on strengthening the country's product safety system, but could result in less thorough and ultimately less informed Commission decisions.

---

<sup>2</sup> *Statement of Inez Tenenbaum, Chairman, U.S. Consumer Product Safety Commission.* Before the House Committee on Appropriations, Subcommittee on Financial Services and General Government, March 31, 2011, <http://www.cpsc.gov/pr/tenenbaum03312011.pdf>.

<sup>3</sup> U.S. House Committee on Appropriations. *Report on Financial Services and General Government Appropriations Bill, 2012*, 112<sup>th</sup> Cong., 1<sup>st</sup> Session. [http://appropriations.house.gov/UploadedFiles/FY\\_2012\\_FIN-SERVICES\\_FULL\\_COMMITTEE\\_REPORT.pdf](http://appropriations.house.gov/UploadedFiles/FY_2012_FIN-SERVICES_FULL_COMMITTEE_REPORT.pdf)

Thus, the Commission should prioritize its limited staff time and resources to first carry out its mission to protect consumers before indulging in the call for duplicative rule reviews, which are, at best, a matter of secondary concern. Although identifying and removing outdated and inefficient regulations is sensible in theory, in practice the results from retrospective reviews recently conducted by executive agencies have been modest and underwhelming.<sup>4</sup> Meanwhile the annual net benefits of major federal regulations have been significant, ranging from \$70 billion to \$593 billion over the past 10 years, according to a report to Congress by the Office and Management and Budget.<sup>5</sup> These facts suggest that even for agencies that do not face resource challenges similar to the Commission's, resources would be better spent on promulgating and enforcing new protections rather than conducting duplicative reviews of existing rules.

(2) Review regulations once every ten years as required by the Regulatory Flexibility Act, not more frequently. The ten-year timeframe allows the Commission to assess more thoroughly both the benefits and costs of a regulation as well as stakeholder compliance. Allowing for a shorter period of review, for example every five years, could potentially distort the Commission's assessment of compliance with a regulation, since compliance costs are typically greater in the initial years after a regulation is introduced as industry adapts to the new regulation, then often fall sharply.

(3) Avoid examination of rules under Executive Order 13579 that were (a) recently reviewed, (b) are nonsubstantive, or (c) are already subject to review due to statutory requirements.

a. In accordance with the ten-year review recommendation, the Commission should refrain from revisiting recently reviewed rules. For example, the Commission should not examine rules previously reviewed under the Systematic Review Program, which ran between 2004 and 2007. The agency should also refrain from reviewing rules promulgated under the Consumer Product Safety Improvement Act of 2008. These rules need time to be implemented properly as well as time for the regulated industry to comply with, and become accustomed to, their requirements.

b. We agree with the Commission's previous decision to exclude non-substantive rules from review, such as those that were administrative or procedural, exemptions, labeling,

---

<sup>4</sup>*Eliminating Job-Sapping Federal Rules through Retrospective Reviews – Oversight of the President's Efforts.*, 112<sup>th</sup> Cong. (2011) (Statement of Cass Sunstein) available at [http://smbiz.house.gov/UploadedFiles/Sunstein\\_Testimony.pdf](http://smbiz.house.gov/UploadedFiles/Sunstein_Testimony.pdf). According to Cass Sunstein, Administrator of the Office of Information and Regulatory Affairs, the elimination of regulations identified by the retrospective review process will yield up to \$10 billion in savings across all executive agencies over the next five years.

<sup>5</sup> OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, DRAFT 2011 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES available at [http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/Draft\\_2011\\_CBA\\_Report\\_AllSections.pdf](http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/Draft_2011_CBA_Report_AllSections.pdf).

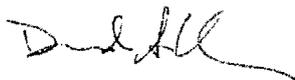
test methods, or definitions. Review of these rules most likely would not elicit any substantial savings or benefits, and instead would waste the agency's resources.

c. The requirement to review and strengthen rules has been a longstanding and continuous obligation, mandated by numerous provisions in the relevant statutes. Many provisions also require reports of rule reviews to the relevant Congressional committees. For example, under Section 104 of the CPSIA, which implements the Danny Keysar Child Product Safety Notification Act, the Commission must "periodically review and revise the standards . . . to ensure that such standards provide the highest level of safety for such products that is feasible." The statutory provisions also encourage public participation, in that stakeholders and voluntary standard-setting organizations may petition the agency to revise and update regulations, as well as to consider exceptions.<sup>6</sup> Attached Appendix A provides examples of statutory review requirements placed on the Commission. The agency should refrain from excessively reviewing these rules because repetitive efforts would unduly burden the Commission. The Commission should treat any review it conducts as simultaneously satisfying all relevant review requirements or recommendations, whether they stem from the CPSIA, the Regulatory Flexibility Act, executive orders, or any other source.

(4) Focus on strengthening rules. The OMB memorandum addressing the Executive Order suggests that the Commission should consider whether to strengthen and modernize rules. In addition, many of the periodic reviews mandated in the relevant statutes, including the review of safety standards, require that the reviews be conducted with a view towards strengthening and maximizing product safety.<sup>7</sup> We agree with these recommendations and requirements. We urge the Commission to treat each rule-review period as an opportunity to consider stronger regulations to protect the public from unreasonable risks of harm.

Sincerely,

Public Citizen, Congress Watch Division:



David Arkush, Director



Christine Hines, Consumer and Civil Justice Counsel



Amit Narang, Regulatory Policy Advocate

---

<sup>6</sup> E.g. Sec. 101(b), CPSIA, as amended by Public Law 112-28 (August 2011), regarding Alternative Limits and Exceptions to Limitation of Lead in Children's Products.

<sup>7</sup> See, Appendix A.

## **Appendix A**

### **Examples of Statutory Provisions That Mandate Regulatory Reviews**

Sec. 101(a)(E) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016, 15 USC 1278a, regarding Children's Products Containing Lead; Lead Paint: "(E) PERIODIC REVIEW AND FURTHER REDUCTIONS.—The Commission shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth in this subsection, no less frequently than every 5 years after promulgation of the limit under subparagraph (C) or (D) to require the lowest amount of lead that the Commission determines is technologically feasible to achieve."

Sec. 101(b), CPSIA as amended by Public Law 112-28 (August 2011), regarding Alternative Limits and Exceptions to Limitation of Lead in Children's Products: "(A) IN GENERAL.—The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part..."

Sec. 101(b)(5), CPSIA, regarding Exclusion of Certain Materials or Products and Inaccessible Component Parts: "(5) PERIODIC REVIEW.—The Commission shall, based on the best available scientific and technical information, periodically review and revise the regulations promulgated pursuant to this subsection no less frequently than every 5 years after the first promulgation of a regulation under this subsection to make them more stringent and to require the lowest amount of lead the Commission determines is technologically feasible to achieve."

Sec. 101(f), CPSIA, regarding More Stringent Lead Paint Ban: "(2) PERIODIC REVIEW AND REDUCTION.—The Commission shall, no less frequently than every 5 years after the date on which the Commission modifies the regulations pursuant to paragraph (1), review the limit for lead in paint set forth in section 1303.1 of title 16, Code of Federal Regulations (as revised by paragraph (1)), and shall by regulation revise downward the limit to require the lowest amount of lead that the Commission determines is technologically feasible to achieve."

Sec. 101(f), CPSIA, regarding More Stringent Lead Paint Ban: "(5) PERIODIC REVIEW.—The Commission shall, no less frequently than every 5 years after the Commission completes the study required by paragraph (4)(A), review and revise any methods for measurement utilized by the Commission pursuant to paragraph (3) or pursuant to any regulations promulgated under paragraph (4) to ensure that such methods are the most effective methods available to protect children's health."

Sec. 102(a)(3), CPSIA regarding Mandatory Third Party Testing For Certain Children's Products: "(D) PERIODIC REVIEW.—The Commission shall periodically review and revise the accreditation requirements established under subparagraph (B) to ensure that the requirements assure the highest conformity assessment body quality that is feasible."

Sec. 104(b)(2), CPSIA, regarding the Standards and Consumer Registration of Durable Nursery Products: "The Commission shall periodically review and revise the standards set forth under this subsection to ensure that such standards provide the highest level of safety for such products that is feasible."

Sec. 104(e)(1)(A) & (B), CPSIA, regarding Requirements for Consumer Registration of Durable Infant or Toddler Products: "(A) beginning 2 years after a rule is promulgated under subsection (d), regularly review recall notification technology and assess the effectiveness of such technology in facilitating recalls of durable infant or toddler products; and (B) not later than 3 years after the date of enactment of this Act and periodically thereafter as the Commission considers appropriate, transmit a report on such assessments to the appropriate Congressional committees."

Sec. 106(c), CPSIA, regarding Mandatory Toy Safety Standards: "(c) PERIODIC REVIEW.-- The Commission shall periodically review and revise the rules set forth under this section to ensure that such rules provide the highest level of safety for such products that is feasible."

Sec. 205, CPSIA, regarding Inspector General Audits and Reports: "The Inspector General of the Commission shall conduct reviews and audits to assess..."

Sec. 1404, Virginia Graeme Baker Pool and Spa Safety Act, Public Law 110-140, regarding the Federal Swimming Pool And Spa Drain Cover Standard:  
"(b) Drain Cover Standard.--Effective 1 year after the date of enactment of this title, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover. If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public."

<b>As of:</b> January 13, 2012
<b>Received:</b> December 19, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 26, 2011
<b>Category:</b> Trade Association
<b>Tracking No.</b> 80f85ced
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0007

Comment from Stephen Lamar

---

## Submitter Information

**Name:** Stephen Lamar

**Address:**

1601 N. Kent Street, 12th Floor

Arlington, VA, 22209

**Email:** slamar@wewear.org

**Phone:** 703-797-9041

**Fax:** 703-522-6741

**Submitter's Representative:** Steve Lamar

**Organization:** AAFA

---

## General Comment

Please find attached comments from AAFA, FASA, and TGA.

---

## Attachments

Comments to CPSC on Retrospective Review 121911



December 19, 2011

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

**REF: Seeking public comments and information to help the Consumer Product Safety Commission develop a plan for review of existing rules that will be appropriate to the agency, be consistent with (and not duplicate) previous and ongoing reviews, and fulfill the spirit of Executive Order (EO) 13579**

**Docket No. CPSC-2011-0078**

On behalf of the undersigned associations we are writing in response to the request for comments by the Consumer Product Safety Commission (CPSC) on the above captioned issue.

By way of background, American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industry and its suppliers. Travel Goods Association (TGA) is the national organization for the travel goods industry. Fashion Accessories Shippers Association (FASA) is the national trade association for the fashion accessories industry.

As you know, our industries and associations take our product safety obligations seriously. We have long worked towards a predictable and science-based regulatory regime that appropriately and effectively mitigates risks while allowing companies to produce safe and compliant garments, shoes, travel goods, and other fashion accessories.

We have always appreciated the opportunity to work with the CPSC in the creation and implementation of their rulings, and we are excited to continue our relationship with the CPSC in reviewing existing regulations. With this in mind, we believe that there are three important aspects that are fundamental to the success of this regulatory review process.

First, the review must examine regulations to make sure they are not hindering the ability of the private sector to create jobs or otherwise contribute to economic growth. President Barack Obama laid out this principle in Executive Order 13563 and Executive Order 13579 by directing independent agencies to

review regulations in a way that “*must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.*” [emphasis added]

Second, we believe the mandate of this review must encompass regulations emerging from, or affected by, the *Consumer Product Safety Improvement Act (CPSIA)*. While we recognize that the CPSIA is a statute, Congress has given the agency the power through H.R. 2715 to review ways that improve the regulations and reduce the burden the CPSIA has caused without any negative effect on safety. We believe the implicit and explicit goals of H.R. 2715 are consistent with EO 13579.

Third, on-going industry input to this process is vital. We cannot stress enough the importance of including industry input in all regulatory reviews and rule changes in order to ensure that regulations are correctly developed, implemented, understood, followed, and enforced. The industry is on the front lines of the effort to make sure that only safe clothes, shoes, travel goods, and other fashion accessories are designed, produced, and sold. If the rule does not make sense to our product safety and compliance personnel, it is likely that they will be hard to implement, enforce, or understand.

When the president issued EOs 13563 and 13579, he made a clear statement that there are regulations that are “*outmoded, ineffective, insufficient or excessively burdensome.*” [emphasis added] We agree with the president. As part of those efforts, we work with the CPSC on a continual and consistent basis to address industry concerns and promote the most effective and safe implementations of regulations possible. We feel that the criteria laid out by the president in these EOs should be the starting point when selecting candidate rules for review instead of the criteria used in the CPSC Systematic Rule Review Program. The CPSC Systematic Rule Review’s requirement that a rule must have been in effect for at least ten years before being reviewed would exclude the regulations that are in the greatest need of review.

The president correctly recognizes that some benefits and costs are hard to determine, but states that “In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” Our associations agree that items such as equity and human dignity are difficult to quantify. We believe that they were included in the president’s Executive Order to start an open dialogue for all parties involved and to look at all the parties and situations impacted by a regulation in a logical and meaningful manner.

At the same time, we do not want the prospect of difficult or rigorous cost benefit analysis to undermine fulsome reviews. Cost-benefit analysis is a basic tool that many organizations use to determine proper courses of action. Product safety regulations – which need to be tailored to address and mitigate specific risks – are no different. In fact, proper cost benefit analysis strengthens regulations by ensuring that they are properly targeted. Such analysis helps by providing the best protection for consumers while protecting the livelihood and jobs of American workers from being lost to burdensome and costly regulations that far overreach the risk they aim to mitigate.

We have long worked with the CPSC on interpreting and implementing the CPSIA. Our experience has taught us that the CPSIA is complicated, overly prescriptive, and relies upon a one size fits all methodology that allocates scarce resources on inherently safe products and components. In some respects the CPSC has had an impossible job in implementing this measure while meeting strict timelines set by Congress.

Unfortunately, solid cost benefit analysis for many decisions was a casualty of this process. We believe the CPSC now has an opportunity through the mandate provided by H.R. 2715, and the EOs, to review previous decisions and determine where additional flexibility can be incorporated without any adverse impact on product safety or public health. The first steps in these processes are the comments requested on opportunities to reduce the cost of third party testing requirements. We very much appreciate the opportunity presented by the CPSC to be involved in this process and will be submitting separate comments to help the CPSC move forward in creating a logical, feasible, transparent, and safe testing regime.

The process, however, does not stop there. A continued collaboration between the CPSC and the regulated community is necessary to ensure that all regulations, past, present and future are created to promote understanding, compliance, and, most importantly, safety. We will continue to work with the CPSC in any way possible to promote such a collaborative effort as it is vital to the success of any regulation.

As many of the Commissioners have come to understand through interaction with our members at meetings, seminars and hearings, there is an overwhelming desire to put consumer safety first when it comes to product design and innovation. No one ever wants to create an unsafe product that could harm a customer, ruin a brand's reputation, or potentially destroy a company. It is with this enthusiastic mindset that our association and our industry approach all new product safety concerns even before the CPSC starts the regulatory process. Because of this, the apparel, footwear, travel goods, and fashion accessory industries are a valuable resource that needs to be used by the CPSC, and is more than willing to help in any way possible to make products safer.

When asked for the ways to involve the public in the review process, the answer is simple. We suggest that more and more timely consultations are always better. Whether through comments, hearings or public meetings, the more direct involvement that the public has in the review process and the more that their input is included, the more robust, comprehensive and accepted a regulation will become. It is also through this process that the CPSC can work towards coordination and harmonization. As some of the most globalized industries, our industries reach to every country in the world and with it, the knowledge of those countries' regulatory regimes. Our members would be more than willing to share their own individual harmonization tactics as well as their suggestions for harmonization strategies for the CPSC.

We would again like to thank the CPSC for taking the president's and Congress's instructions seriously. In a time when America's workers need help the most, we are excited to work with the CPSC toward putting consumer safety first. This can be done while keeping unnecessary and wasteful costs as low as possible so that those expenses can be used to promote innovation and job creation to keep American consumers' quality of life as high as possible.

Sincerely,



Kevin Burke  
President and CEO  
American Apparel & Footwear Association (AAFA)



Sara Mayes  
President  
Fashion Accessories Shippers Association (FASA)



Michele Marini Pittenger  
President  
Travel Goods Association (TGA)

<b>As of:</b> January 13, 2012
<b>Received:</b> December 19, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 26, 2011
<b>Tracking No.</b> 80f86124
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0008

Comment from Ignacio Cundin

---

## Submitter Information

**Name:** Ignacio Cundin

**Organization:** UL

---

## General Comment

See attached file(s)

---

## Attachments

11.12.19 UL Comments on CPSC Regulatory Review



December 19, 2011

Submitted Electronically to Docket No. CPSC-2011-0078

Robert J. Howell  
Deputy Executive Director for Safety Operations  
US Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, MD 20814

Dear Mr. Howell:

Underwriters Laboratories (UL) is pleased to submit these comments in response to the recently published Federal Register Notice on October 19, 2011 regarding the Consumer Product Safety Commission's (CPSC) Request for Information and Comments for the Review of Commission's Regulation.

UL and CPSC share a common mission – promoting safe living environments for people. UL is an internationally recognized product safety testing and certification organization. Founded in 1894, UL has earned a reputation as a leader in product safety standards development, testing and certification. UL evaluates nearly 20,000 types of products, components, materials and systems for compliance to specific requirements. UL's time-tested system complements government product safety regulations and initiatives in the United States and abroad, while at the same time helping manufacturers bring compliant products to markets everywhere in a timely fashion.

#### ***The Importance of Private Sector Consensus-based Standards Development***

The principles of the National Technology Transfer and Advancement Act (NTTAA), enacted more than 15 years ago, state that federal agencies should utilize standards developed by private sector voluntary consensus standards bodies in lieu of unique technical regulations, and to consult with them, including participating in their standards development work. Such consensus standards reflect the interest of diverse stakeholder interests, including government, and serve as a compliance tool. To sustain the ability of the private sector SDOs to meet evolving regulator needs, UL believes that all regulators must continue to engage, and to enhance the engagement of, private sector SDOs.

UL appreciates CPSC's long-standing cooperation with private sector SDOs to advance the mission of the Commission and asks that such public-private partnerships be enhanced. As CPSC considers the appropriate process and criteria for reviewing existing CPSC regulations under direction of Executive Order 13579, UL encourages CPSC to think about how ongoing dialogues with SDOs can further help their efforts to develop, to review, and to modify regulations. Where feasible and appropriate, CPSC should also seek the views of those who are likely to be affected by regulation in advance of rulemaking. In this case, SDOs such as UL can provide CPSC with trend analysis on emerging and new hazards and technology. Continuing to dedicate CPSC technical experts to SDOs' standards development panels likewise is critical to ensuring that private sector consensus standards not only adapt to current market dynamics and technologies in a timely fashion, but also reflect the needs of the Commission. Because SDOs like UL also participate in the alignment of standards across regions and internationally, they are uniquely positioned to provide counsel to CPSC on requirements that foster regulatory alignment globally, and by extension, can reduce the economic burdens of government and manufacturers in administering compliance programs.

### ***Ongoing Regulatory Review and Relevant Criteria***

UL appreciates Chairman Tenenbaum's decision to reinstate CPSC's retrospective Systematic Review Program for the fiscal year 2012. We agree that CPSC regulations should be consistent with CPSC program goals and other regulations, trends in the global marketplace and in product innovation cycles, and strive to minimize regulatory burden on industry. While the review process for CPSC regulations addresses factors such as market conditions, relevant mandatory or voluntary standards, and current technology, these factors are not formal criteria in selecting rules that CPSC will review. These criteria, along with a mechanism to accommodate out-of-cycle or annual regulatory review submission process from stakeholders would address breakthroughs in technology, trends in injuries, quickly emerging hazards, and unintended consequences that may have developed on recently adopted regulations. All rules, regardless of effectiveness date, should be open for consideration for this review program.

In line with the Regulatory Flexibility Act of 1980 (RFA), UL supports a review of rules not more than 10 years from their dates of enactment. This should be a minimum starting point. UL would further recommend out-of-cycle mechanisms to ensure that rules remain aligned with changing market dynamics. One such mechanism would permit interested stakeholders to petition CPSC to undertake such a review and to provide data supporting such a petition. This parallels mechanisms that SDOs provide. Another mechanism would be a public annual solicitation for comments, in much the same way that the Office of the US Trade Representative seeks annual public comment to inform its Section 1377 Review or the National Trade Estimate reports. This public comment solicitation could provide insights that might substantively impact the commission's agenda, though presumes a mechanism for evaluating the merits of such input.

One additional regulatory review parameter should be assessing if and how CPSC rules might overlap, duplicate or conflict with those of other regulatory agencies. Such assessments should include evaluating whether CPSC interests would be compromised by streamlining requirements in order to minimize the economic burden on manufacturers. One such example exists through marks of recognized product certification bodies, like those accredited under the OSHA Nationally Recognized Testing Laboratory (NRTL) program for applicable product scopes, in lieu of paper certificates of conformity, as is currently interpreted to be the requirement under the CPSA. Manufacturers have used recognized product certification bodies for decades to test and certify many products, including refrigerators, freezers, garage door operators, and mattresses to safety standards and, specifically, the CPSC requirements. The certification Marks provide evidence of a demonstration of conformity (including ongoing surveillance) to the applicable product safety standard and CPSC requirements. These Marks also offer traceability to the manufacturer and testing data, a recognized key objective of the certificate of conformity requirements. In two specific instances, the standard itself has been recognized as the CPSC rule (i.e. garage door operators, UL 325) or the requirements of the rule have been incorporated into the standard (i.e. refrigerators, UL 250); therefore, a certification Mark indicates a product's compliance to CPSC requirements. Other governmental agencies have also recognized certification Marks as a means of validating a consumer product's compliance with safety standards or requirements, including the Occupational Safety and Health Administration (OSHA) and the US Customs and Border Patrol (CBP).

Our recommendations are grounded in the principle that public-private partnerships provide economic efficiencies for all while upholding the regulatory mandate of such agencies as CPSC. They, moreover, reflect some of the best practices observed with UL's experience with other US agencies. Together, we believe that such considerations would elevate CPSC's own best practices. We would welcome further discussion on our recommendations. Please contact me or Khoi Do, Global Government Affairs Senior Specialist for Product Safety with any questions. (khai.do@ul.com 202-530-6163).

Sincerely,

A handwritten signature in black ink, appearing to read "Ann M. Weeks". The signature is fluid and cursive, with the first name "Ann" and last name "Weeks" clearly legible, and "M." in the middle.

Ann M. Weeks  
Vice President of Global Government Affairs  
Underwriters Laboratories Inc.

<b>As of:</b> January 13, 2012
<b>Received:</b> December 19, 2011
<b>Status:</b> Posted
<b>Posted:</b> December 26, 2011
<b>Tracking No.</b> 80f85f49
<b>Comments Due:</b> December 19, 2011
<b>Submission Type:</b> Web

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078

Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001

Review of Commission's Regulations

**Document:** CPSC-2011-0078-0009

Comment from Frederick Locker

---

## Submitter Information

**Name:** Frederick Locker

**Address:**

420 Fifth Avenue

New York, NY, 10018

**Email:** fblocker@lockerlaw.com

---

## General Comment

See attached file(s)

---

## Attachments

Re.CPSC EO13579 Comments



**Toy Industry Association, Inc.**

[www.toyassociation.org](http://www.toyassociation.org)

December 19, 2011

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

**Re: Comments Need for CPSC Plans to Implement EO 13579  
(CPSC Docket Number: CPSC- 2011-0078)**

Toy Industry Association, Inc. 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 to support the development by the Consumer Product Safety Commission ("CPSC") of a plan of review that also satisfies the express direction from President Obama, set forth in Executive Order 13579, "Regulation and Independent Regulatory Agencies" (76 FR 41587 (July 14, 2011)), which states that independent regulatory agencies should follow certain key principles when developing new regulations and should review existing significant regulations.<sup>1</sup> We thank the Commission for the opportunity to comment on this issue.

**Comment on Previous Review Programs**

From 2004-2007, CPSC began a program to review existing regulations<sup>2</sup>. This review resulted from an initiative by the Office of Management and Budget ("OMB"), the Program Assessment Rating Tool ("PART"), which was intended to provide a consistent approach to rating programs across the federal government. The rule review focused on determining whether the CPSC's regulations were:

- Consistent with CPSC's program goals;
- Consistent with other CPSC regulations;
- Current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards; and

---

<sup>1</sup> See the Chairman's statement posted on the CPSC's Web site: (<http://www.cpsc.gov/pr/regreform07112011.html>)

<sup>2</sup> See 69 FR 4096; 70 FR 18338; 71 FR 32882; 72 FR 40265

Subject to revision to reduce regulatory burdens, on small entities.

Following analysis, CPSC staff reviewed rules included the safety standard for walk-behind mowers; requirements for electrically operated toys; the standard for the flammability of vinyl plastic film; and the child-resistant packaging requirements for aspirin and methyl salicylate, cigarette lighters and multipurpose lighters; the requirements for bicycles; the standards for surface flammability of carpets and rugs; the regulations requiring child-resistant packaging for oral prescription drugs subject to the Comprehensive Drug Abuse Prevention and Control Act, the safety standard for matchbooks; the requirements for toy rattles; the requirements for baby bouncers, walker-jumpers, pacifiers, baby walkers, and the ban of unstable refuse bins. The staff has not pursued additional systematic rule reviews since 2007, nor adopted substantive changes to the reviewed rules.

### **Periodic Review per the Regulatory Flexibility Act**

In addition, the CPSC conducts reviews of rules in accordance with the Regulatory Flexibility Act ("RFA"). The RFA directs agencies to publish in the Federal Register, a "plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities (5 U.S.C. 610(c). The plan must "provide for the review of all such agency rules existing on the effective date of [the RFA] within ten years" of that date and for the review of such rules adopted after the RFA's effective date within 10 years of the publication of such rules.

### **Retrospective Analysis of Existing Regulations under Executive Orders 13563 and 13579**

On January 18, 2011, President Barack Obama issued Executive Order ("EO") 13563<sup>3</sup>, "Improving Regulation and Regulatory Review" (76 FR 3821 (January 21, 2011)), which articulated certain principles of regulation and directed agencies to take certain actions to promote those principles, including a retrospective analysis of existing regulations and on July 11, 2011, the President issued E.O. 13579, which applies to independent agencies such as the CPSC. Combined both EO's call for review of "significant regulations". Although not explicitly defined, CPSC staff contends that most of its regulations fall outside the scope of "any regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities."<sup>4</sup>

### **Criteria**

CPSC staff has questioned as to what criteria should be use to select candidate rules for review? As noted below, given the rapid changes in the regulatory landscape since the passage of the Consumer Product Safety Improvement Act of 2008 and the HR 2715 Amendments thereto, we do not believe a ten year review condition is appropriate as this emphasizes form over substantive impact. We believe

---

<sup>3</sup> 76 FR 3821 (January 21, 2011)

<sup>4</sup> FR 51375, 51378 (October 4, 1993)

hazard analysis from existing consumer product safety data bases may provide a reasonable basis to amend existing rules with an eye towards reducing redundancy and needlessly burdensome regulations<sup>5</sup>. Similarly CPSC under HR 2715 amendments to CPSIA now has discretionary authority on its own accord to better define accessibility as related to actual hazardous exposure to a lead with a commensurate health risk established by modality of exposure. Thus although just recently enacted there remains room for improved definitions of inaccessibility, related to real world health hazards, that have yet to be incorporated into such rule.

As to the question of whether CPSC staff should exclude rules that were excluded under the CPSC's Systematic Rule Review Program (rules that are administrative or procedural; exemptions; labeling; test methods; or definitions), we believe that exclusion is inappropriate. Often these rules create chaotic imposition of needless testing that unduly burdens manufacturers without commensurate benefit. Similarly enforcement policies and guidance documents that clarify such requirements but which are not incorporated into the rule itself, further lead to inefficient under testing or misapplication of standards. For example the requirements of 16 CFR 1500.44, although only a test method of limited applicability have been misinterpreted to require flammability testing of solids for which it was never intended and such test method has often been confused, as a banning regulation under the FHSA. There exist many such test methods with limited applicability that are misused as banning criteria, in the name of testing to verify conformance to FHSA standards. Often rules defined as interpretive can in fact be substantive. Public comment should be sought as a way to ameliorate such misapplication of test methods and as a means of clarifying enforcement policies. Generally, factors in determining the need for retrospective reviews; should include but not be limited to: The nature and extent of public complaints or suggestions (e.g., petitions for rulemaking); The need to simplify or clarify regulatory language (e.g., based on requests for interpretation or clarification from the agency files); The need to eliminate overlapping or duplicative regulations and permit the least burdensome alternative; the need to eliminate conflicts or inconsistencies among Rules; The importance or relevance of the problem originally addressed; The degree to which technology, economic conditions, or other involved factors have changed; and the number of requests for exemption or enforcement flexibility and the number granted.

CPSC should, upon public input develop an initial list of regulations that are expected to be reviewed annually. Consistent with the commitment to periodic review and to public participation, the agency should welcome public suggestions about appropriate reforms and modifications to rules by soliciting input from each industry affected by categories of existing regulations. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, the agency

---

<sup>5</sup> For example the paucity of burn data resulted in previous modification of 16 CFR 1615 and 1616, et seq, to permit alternate cotton garments sought by consumers. However the criteria used to define tight fitting pajamas was based upon old, as opposed to current anthropometric data and was not aligned with similar requirements in effect in Canada or the UK; Although just recently imposed under Section 101 of the CPSIA, lead limit testing may benefit from use of XRF as a formally recognized screening tool as is already required under CPSIA, but not yet implemented in a manner to reduce chemical test costs.

should commit to provide careful consideration of each sector suggestion. The target should be one rule per year in each regulated sector.

CPSC should seek input from subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in CPSC regulations.

We believe the plan of review review should include any or all of the considerations in RFA reviews (i.e., continued need for the rule; nature of complaints or comments concerning the rule; complexity of the rule; extent of overlap or conflicts with other federal and CPSC regulations. Substance as opposed to length of time length of time since the rule has been evaluated<sup>6</sup>; or and changes in technology, economic conditions, and marketplace burdens imposed as a result of intervening legislation requiring manufacturer or verified third party laboratory consideration should have a bearing on any plan of review and criteria for review. A cost-benefit analyses including ways in which burdensome testing, certification and the cost thereof should be considered and for children’s products is required by HR2715 and therefore should be incorporated in any such plan of review. In addition a risk benefit analysis should consider trend data and complaint data in relation to occurrence in the user population. Finally where possible global alignment of similar standards addressing similar hazards should likewise be considered and given substantive weight, regardless of the original enactment date of the rule.

**As the President noted in executing EO 13563:**

*“[Rules] must be based on the best available science. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.”*

The CPSC should commit to use empirical data to adjust regulation at the rate of a minimum of one rule per year in each regulated industry, regardless of the last amendment to such regulation or other required rulemaking under CPSIA.

Sincerely,

*Frederick Locker*

Frederick Locker, General Counsel

---

<sup>6</sup> For example, although recently enacted, the referenced amendment under proviso of H.R. 2715, renders CPSC’s regulation at 16 CFR 1500.90 inapplicable to the extent it is inconsistent the recently amended CPSIA; Similarly Continuing Guarantees permitted under the FFA, may be deemed certification of compliance under CPSIA, if accepted by rule, as a means of reducing test and recordkeeping burdens.

**As of:** January 13, 2012  
**Received:** December 19, 2011  
**Status:** Posted  
**Posted:** January 13, 2012  
**Category:** Trade Association  
**Tracking No.** 80f9646c  
**Comments Due:** December 19, 2011  
**Submission Type:** Paper

# PUBLIC SUBMISSION

**Docket:** CPSC-2011-0078  
Review of Commission's Regulations; Request for Comments and Information

**Comment On:** CPSC-2011-0078-0001  
Review of Commission's Regulations

**Document:** CPSC-2011-0078-0010  
Comment from Robert Waller, Jr.

---

## Submitter Information

**Name:** Robert Waller, Jr.  
**Address:** United States,  
**Submitter's Representative:** Robert Waller, Jr.  
**Organization:** Juvenile Products Manufacturers Association, Inc.

---

## General Comment

See Attached

---

## Attachments

Comment from Robert Waller, Jr.

December 19, 2011

Received CPSC

2011 DEC 22 P 3: 36



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

Office of the Secretary  
FOI

**Re: Comments Need for CPSC Plans to Implement EO 13579  
(CPSC Docket Number: CPSC- 2011-0078)**

The Juvenile Product Manufacturers Association, Inc. ("JPMA") is the national trade association representing more than 250 manufacturers of nursery products that provide parents with convenient ways to care for their babies and to keep babies safe. JPMA has been a leader in promoting such products and safety for more than 50 years. We are writing to support the development by the Consumer Product Safety Commission ("CPSC") of a plan of review that also satisfies the express direction from President Obama, set forth in Executive Order 13579, "Regulation and Independent Regulatory Agencies," which provides that regulatory agencies should follow key principles when developing new regulations and should review existing significant regulations.<sup>1</sup>

**Comment on Previous Review Programs**

From 2004-2007, CPSC began a program to review existing regulations<sup>2</sup>. This review resulted from an initiative by the Office of Management and Budget ("OMB"), the Program Assessment Rating Tool ("PART"), which was intended to provide a consistent approach to rating programs across the federal government.

Following analysis, CPSC staff reviewed some juvenile product safety rules including, but not limited to, the safety standard for the flammability of vinyl plastic film; the requirements for toy rattles; the requirements for baby bouncers, walker-jumpers, pacifiers, and baby walkers. The staff has not, however, pursued additional substantive changes to such rules, unless required pursuant to Section 104 of the Consumer Product Safety Act of 2008 ("CPSIA") or systematic rule reviews since 2007, nor adopted substantive changes to the reviewed rules.

**The Regulatory Flexibility Act**

<sup>1</sup> See the Chairman's statement posted on the CPSC's Web site:  
(<http://www.cpsc.gov/pr/regreform07112011.html>)

<sup>2</sup> See 69 FR 4096; 70 FR 18338; 71 FR 32882; 72 FR 40265



**JPMA**

In addition, the CPSC conducts reviews of rules in accordance with the Regulatory Flexibility Act ("RFA"). The RFA directs agencies to publish in the Federal Register, a "plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities..." (5 U.S.C. 610(c)). The plan must "*provide for the review of all such agency rules existing on the effective date of [the RFA] within ten years*" of that date and for the review of such rules adopted after the RFA's effective date within 10 years of the publication of such rules.

### **Retrospective Analysis of Existing Regulations under Executive Orders 13563 and 13579**

On January 18, 2011, President Barack Obama issued Executive Order ("EO") 13563, "Improving Regulation and Regulatory Review" (76 FR 3821 (January 21, 2011)), which articulated certain principles of regulation and directed agencies to take certain actions to promote those principles, including a retrospective analysis of existing regulations and on July 11, 2011, the President issued E.O. 13579, which applies to independent agencies such as the CPSC. Combined, both EOs call for review of "*significant regulations.*" Although not explicitly defined, CPSC staff contends that most of its regulations fall outside the scope of "*any regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.*" JPMA believes that such reviews should not be limited in time and should include impact analysis to product categories, even if such categories are not impacted in excess of \$100 million dollars.

### **Criteria**

CPSC staff has questioned as to what criteria should be used to select candidate rules for review. Given the rapid changes in the regulatory landscape since the passage of the CPSIA and the HR 2715 Amendments thereto, we do not believe a ten year review condition is appropriate. We believe hazard analysis from existing consumer product safety data bases may provide a reasonable basis to amend existing rules in order to reduce redundancy and burdensome regulations. Similarly, CPSC, via HR 2715 amendments to CPSIA, has discretionary authority to better define accessibility as related to actual hazardous exposure to lead with a commensurate health risk established based upon real world exposure scenarios. Although just recently enacted, rule changes should be considered predicated upon real world health hazards based upon hazardous exposure to lead.

---

**Juvenile Products Manufacturers Association, Inc.**

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525

E-mail: [jpma@ahint.com](mailto:jpma@ahint.com) • Website: [www.jpma.org](http://www.jpma.org)



As to the question of whether CPSC staff should exclude rules that were excluded under the CPSC's Systematic Rule Review Program (rules that are administrative or procedural; exemptions; labeling; test methods; or definitions), we believe that the agency should continue to consider changes to such rules. Misapplied or obtuse rules can result in needless testing that unduly burdens manufacturers without commensurate safety benefits. Enforcement policies and guidance documents that clarify such requirements but which are not incorporated into the rule itself, further lead to burdensome testing or misapplication of standards. For example, the requirements of 16 CFR 1500.44, although only a test method of limited applicability, have been misinterpreted to require flammability testing of solids for which it was never intended, and such test method has often been confused as a banning regulation under the FHSA. There exist many such test methods with limited applicability that are misused as banning criteria in the name of testing to verify conformance to FHSA standards. Often, rules defined as interpretive can, in fact, be substantive. Similarly the paucity of burn data resulted in previous modification of 16 CFR 1615 and 1616, et seq, to permit alternate cotton garments sought by consumers. However, the criteria used to define tight fitting pajamas were based upon old, as opposed to current, anthropometric data and was not aligned with similar requirements in effect in Canada or the UK.

Although just recently imposed under Section 101 of the CPSIA, lead limit testing may benefit from use of XRF as a formally recognized screening tool as is already required under CPSIA, but not yet implemented in a manner to reduce chemical test costs.

Public comment should be sought as a way to ameliorate such misapplication of test methods and as a means of clarifying enforcement policies. Factors in determining the need for retrospective reviews should include, but not be limited to: The nature and extent of public complaints or suggestions (e.g., petitions for rulemaking); the need to simplify or clarify regulatory language (e.g., based on requests for interpretation or clarification from the agency files); the need to eliminate overlapping or duplicative regulations and permit the least burdensome alternative; the need to eliminate conflicts or inconsistencies among rules; the importance or relevance of the problem originally addressed; the degree to which technology, economic conditions, or other involved factors have changed; and the number of requests for exemption or enforcement flexibility and the number granted. For example, complaint data on the CPSC database demonstrate a need to revise even the recently adopted crib standard to possibly permit greater slat spacing dimensions to avoid limb entrapments and better alignment with EU tensile strength requirements (250N in lieu of 80lbs). Pacifier side insertion complaints might be eliminated with greater allowance for protrusions under 16 CFR 1611, et seq. Finally greater effort should be made to defer to effective ASTM juvenile product standards.

---

**Juvenile Products Manufacturers Association, Inc.**

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525

E-mail: [jpma@ahint.com](mailto:jpma@ahint.com) • Website: [www.jpma.org](http://www.jpma.org)



Consistent with the commitment to periodic review and to public participation, the agency should welcome public suggestions about appropriate reforms and modifications to rules by soliciting input from each industry affected by categories of existing regulations. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, the agency should commit to provide careful consideration of each sector suggestion. CPSC should also seek input from subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in CPSC regulations.

We believe the plan of review should include any or all of the considerations in RFA reviews (i.e., continued need for the rule; nature of complaints or comments concerning the rule; complexity of the rule; extent of overlap or conflicts with other federal and CPSC regulations). Data meriting change, rather than a fixed length of time of rule evaluations, should be considered in a plan of review and establishment of criteria for review. A cost-benefit analyses including ways in which burdensome testing, certification and the cost thereof should be considered and for children's products is required by HR2715 and therefore should be incorporated in any such plan of review. Changes in technology, economic conditions, and marketplace burdens imposed should also be considered in the context of risk benefit analysis based upon complaint data in relation to occurrence in the user population. Finally as we previously noted, where possible, global alignment of similar standards addressing similar hazards should likewise be considered and given substantive weight, regardless of the original enactment date of the rule.

The CPSC should commit to use empirical scientific data and sound scientific analysis to adjust regulations upon review. This should be considered, regardless of recent rulemakings. Data derived after such rulemaking can provide a reasonable basis for improvements to regulatory schemes in ways that reduce burdensome test requirements.

We greatly appreciate the Commission's consideration of these comments.

Sincerely,

Robert Waller, Jr., CAE  
President

---

**Juvenile Products Manufacturers Association, Inc.**

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525

E-mail: [jpma@ahint.com](mailto:jpma@ahint.com) • Website: [www.jpma.org](http://www.jpma.org)