UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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This document has been electronically approved and signed.

BALLOT VOTE SHEET

Date: April 25, 2012

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Kenneth R. Hinson, Executive Director
Cheryl A. Falvey, General Counsel

FROM : Hyun S. Kim, Acting Assistant General Counsel, RAD
Patricia M. Pollitzer, Attorney

SUBJECT : Draft Plan for Retrospective Review of Existing Rules

BALLOT VOTE DATE: May 1, 2012

Staff is forwarding to the Commission a draft Plan for Retrospective Review of Existing Rules. The draft plan responds to direction from Executive Order 13579, "Regulation and Independent Regulatory Agencies."

Please indicate your vote on the following options:

I. Approve the draft Plan for Retrospective Review of Existing Rules, without change.

_____ _____
Signature Date

II. Approve the draft Plan for Retrospective Review of Existing Rules, with changes (please specify changes):

_____

_____

_____

_____ _____
Signature Date

III. Do not approve the draft Plan for Retrospective Review of Existing Rules.

_____ _____

Signature Date

IV. Take other action (please specify):

_____

_____

_____

_____ _____

Signature Date

Attachment: Draft Plan for Retrospective Review of Existing Rules

DRAFT PLAN FOR

RETROSPECTIVE REVIEW OF EXISTING RULES

April 25, 2012

For further information contact:

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U.S. Consumer Product Safety Commission
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The U.S. Consumer Product Safety Commission's

Plan for

Retrospective Review of Existing Rules

April 2012

I. Executive Summary of the Plan and Compliance with Executive Orders 13563 and 13579

The U.S. Consumer Product Safety Commission's (CPSC) mission is to protect the public against unreasonable risks of injury from consumer products through education, safety standards activities, regulation, and enforcement. Our vision is to be the recognized global leader in consumer product safety. We have jurisdiction over thousands of diverse types of consumer products used in and around the home, outdoors, in the workplace, and in schools—including everything from children's toys to portable generators and toasters to swimming pools.

To enable our mission and vision, in 2010, the Commission developed five strategic goals to guide the activities and outcomes CPSC delivers to the American public.[1] These goals combine well-established successes in our existing operations with new initiatives that enhance our ability to meet challenges and advance consumer product safety in an increasingly globalized and networked world. The CPSC's five strategic goals are:

- Goal 1: Leadership in Safety. Take a leadership role in identifying and addressing the most pressing consumer product safety priorities and mobilizing action by our partners.
- Goal 2: Commitment to Prevention. Engage public and private sector stakeholders to build safety into consumer products.
- Goal 3: Rigorous Hazard Identification. Ensure timely and accurate detection of consumer product safety risks to inform agency priorities.
- Goal 4: Decisive Response. Use our full range of authorities to quickly remove hazards from the marketplace.
- Goal 5: Raising Awareness. Promote a public understanding of product risks and CPSC capabilities.

[1] 2011-2016 U.S. Consumer Product Safety Commission Strategic Plan. http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2011strategic.pdf

Our Plan for Retrospective Review of Existing Rules (the Plan) supports several of these goals. In the course of reviewing existing rules, we will engage public and private sector stakeholders to improve regulations by making them more efficient and effective. Reviewing existing rules is consistent with our priorities and will further those priorities as we streamline and modify rules. Making sure that our rules are targeted to address consumer product hazards in a cost-effective and appropriate manner will enhance our ability to take decisive action to remove hazards.

Executive Orders (E.O.) 13579 and 13563 recognize the importance of maintaining a culture of retrospective review and analysis throughout the federal government. Before a rule has been tested through experience, it is difficult to know all of its effects, including its costs and benefits. Our Plan is designed to create a defined method and schedule for identifying and reconsidering certain rules that are obsolete, unnecessary, unjustified, excessively burdensome, counterproductive, or ineffective, or that otherwise require modification. The Plan's review processes are intended to facilitate the identification of rules that warrant repeal or modification, including those that require strengthening, complementing, or modernizing. Consistent with E.O. 13579, we will conduct reviews consistent with the laws governing the CPSC and that reflect our resources and regulatory priorities and processes.

The Plan is designed and intended to be sufficiently flexible to permit changes to the schedule, allow senior management to assess the extent of resources needed, identify procedures to expedite the process, and ensure that critical hazard reduction work—our core function—is not hindered.

II. Scope of the Plan

The Plan is more comprehensive than the reviews contemplated by the Regulatory Flexibility Act (RFA) and E.O. 13579 and 13563 because we are not limiting our evaluation to regulations that have a significant economic impact on a substantial number of small entities; nor are we limiting it to significant regulatory actions, as defined by E.O. 12866.[2] The review contemplated by this Plan includes CPSC rules that have a significant economic impact on a substantial number of small entities, as required by section 610 of the RFA, as well as significant rules (as defined by E.O. 12866.) However, the Plan also includes as potential candidates for review all of the agency's existing regulations issued under the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), which updated and expanded the original CPSA, as well as rules issued under the CPSA and its other statutory authorities (the Federal Hazardous

[2] 58 Federal Register 190 (October 4, 1993). The President. Executive Order 12866 of September 30, 1993. Regulatory Review and Planning. A "significant regulatory action" means any regulatory action that is likely to result in a rule that may: (1) 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Substances Act, the Poison Prevention Packaging Act, and the Flammable Fabrics Act). Unlike our previous Systematic Review Program, we are not excluding from potential review requirements that are administrative or procedural; exemptions; labeling; test methods; or definitions. Candidates for review are not limited to regulations, but also may include guidance documents and unfinished proposed rules. The review process can also be used by the Commission to streamline and update the regulatory agenda which has some items that are dated and may need to be withdrawn or completed.

On August 12, 2011, the President signed H.R. 2715 into law (Public Law 112-28 (P.L. 112-28)). Among other things, this new law allows the CPSC to provide some relief to businesses, particularly small businesses, from the cost burdens associated with the new testing requirements. It added a provision, now codified in section 14(i)(3)(A) of the CPSA, requiring the CPSC to seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with an applicable consumer product safety rule, ban, standard, or regulation. On November 8, 2011, we published a *Federal Register* notice,[3] inviting comment generally consistent with the statute; the statute specifically requires us to seek comments on the following issues:

> *Issue 1.* The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.
>
> *Issue 2.* The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of a product that is substantially similar or identical in all material respects.
>
> *Issue 3.* The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.
>
> *Issue 4.* The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.
>
> *Issue 5.* The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under the CPSA.

[3] 76 Federal Register 69596 (November 8, 2011). Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens; Proposed Rule.

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

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

The goals of E.O. 13579 and 13563 are generally consistent with section 14(i)(3)(A) of the CPSA. The Executive Orders and this statutory provision emphasize reducing regulatory burdens, including significant, quantifiable cost savings and significant, quantifiable reductions in paperwork burdens, as well as regulatory harmonization, without compromising public safety. The Executive Orders also allow agencies to strengthen and expand their regulations, including, if relevant, undertaking new rulemaking. Rather than operate parallel regulatory reviews with nearly identical goals, this Plan acknowledges the interdependencies of these efforts and includes the assessment of the impact of third party testing as part of the review covered by this Plan.

III. Rules for Retrospective Review

a. Initial List of Candidates for Review Over the Next Two Years

We are committed to assessing our existing rules in order to modify or eliminate those that are outmoded, ineffective, excessively burdensome, or insufficiently protective of public health and safety. We intend to modify, streamline, repeal, or expand such rules, as appropriate, and as consistent with CPSC's authority, mission, and resources. We are basing our initial selection of rules on our assessment of staff resources available for the balance of this fiscal year.

In Fiscal Year 2012, we are reviewing:

1. *Toy Caps Rule***.** The CPSC's method for determining the sound pressure level produced by toy caps, 16 C.F.R. § 1500.47, was originally issued in 1973. It establishes a sound limit for caps used with toy guns. As directed by the CPSIA, we have adopted the ASTM's Standard Consumer Safety Specifications for Toy Safety (ASTM F 963). The ASTM F 963 requirements for sound-producing toys are more protective than our current regulatory standard for toy caps. Moreover, the existing CPSC toy caps standard refers to obsolete equipment. In FY 2012, we are reviewing the Toy Caps Rule, and we anticipate based on that review to issue a proposed rule to revoke the toy cap rule and related regulations.

2. *Revising Rules for Animal Testing* (16 CFR §§ 1500.3 and 1500.40 through 1500.42). The CPSC's animal testing policy has not been updated formally since 1984. Since that time, there have been significant innovations in hazard testing that can reduce or replace the use of animals in testing. Revising our animal

testing policy will modernize testing and will increase consistency with other federal agencies' policies.

3. *Assessment of Burdens Related to Third Party Testing*. The CPSIA requires manufacturers and private labelers of any children's product that is subject to a children's product safety rule to submit samples of such products to an accredited third party conformity assessment body to test for compliance to the rule. The manufacturer or private labeler must certify, based on that testing, that the children's product complies with the applicable CPSC rule(s). 15 U.S.C. § 2063(a)(2). As noted above, P.L 112-28 directed us to assess how to reduce the burdens of third party testing. We began that assessment by publishing a notice in the Federal Register, requesting comments on opportunities to reduce the cost of third party testing requirements. As directed by P.L 112-28, we are reviewing those comments and will consider potential opportunities to reduce third party testing costs that are consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, and regulations. Consistent with the relevant provisions of CPSA § 14(d)(3), staff will prepare a briefing package for Commission consideration summarizing and responding to the public comments, and identifying opportunities for reducing the costs of third-party testing consistent with assuring compliance with any applicable consumer product safety rules, bans, standards, or regulations and indicating whether the Commission lacks authority to implement any such opportunities. The briefing package will include recommendations for any legislation to permit such implementation.

Beginning in Fiscal Year 2013, based on our evaluation of the assessment of burden reduction related to third party testing, we are planning, through the development of the FY2013 Operating Plan, to consider:

1. New or revised third party testing regulations that could reduce the costs of such testing. We will continue the assessment of testing burdens and will pursue regulatory actions that the review indicates are appropriate.

2. *Exemptions for Small Batch Manufacturers*. In accordance with P.L. 112-28, the Commission will consider alternative third party testing requirements for manufacturers who meet the statutory definition of "small batch manufacturers." The CPSC held a public hearing on October 26, 2011, to receive input from the public about such alternative testing requirements.

3. *Clarifying size definitions under the carpet and rug flammability standards (16 CFR parts 1630 and 1631).* The flammability standards for carpets and rugs were reviewed in 2005. During this review, we identified portions of the standards that were in need of revision, including a problem with coverage between the two carpet and rug flammability standards. Under §1630.1(c), a "carpet" is defined as having one dimension greater than 1.83 m (6 ft.) and a surface area greater than 2.23 m^2 (24 sq. ft.). Under §1631.1(c) a "small carpet" is defined as one having "*no dimension greater than 1.83 m. (6 ft.) and an area*

not greater than 2.23 m.^{2} (24 sq. ft.)." Neither of these definitions captures a carpet having one dimension greater than 6 ft. but whose area is less than 24 sq. ft. With the requirement under the CPSIA that children's products, including children's carpets and rugs, need a children's product certificate issued by a CPSC-approved third party laboratory, the definition needs to be clarified so that no carpet or rug is inadvertently excluded from both standards. This clarification of the size definitions, as well as other potential revisions to the standards, could be accomplished through rulemaking.

4. *Eliminating requirements related to the Federal Caustic Poison Act.* Currently, regulations under the FHSA require that certain substances under the Federal Caustic Poison Act bear the word "poison." However, if these substances do not meet the FHSA definition of the term "highly toxic" they would not require labeling with the word "poison."

IV. Public Access and Participation

a. Plan Development

Our Plan is designed to encourage public input and participation. On October 19, 2011, we published a notice in the *Federal Register,* informing the public of our intent to formulate a Regulatory Review Plan that builds on our past review efforts, while incorporating the principles outlined in E.O. 13579.[4] We invited public comments and sought information to help develop a plan for review of existing rules, to be consistent with (and not duplicate) previous and ongoing reviews, and to fulfill the spirit of E.O. 13579.

In the *Federal Register* notice, we sought public comment on all aspects of the review process, and in particular, on the: (1) selection of rules for review, including criteria and possible exclusions; (2) process of review, including timing, public participation, coordination with other mandates and agencies, and prioritization; and (3) substance of reviews.

In response to the *Federal Register* notice, we received comments from trade associations and consumer groups and from a testing and certification organization. Some commenters suggested that when reviewing existing rules, we should seek to reduce some of the burdens of the CPSIA, which the commenters felt imposed overly prescriptive and burdensome requirements. Other commenters suggested that we should strengthen our existing rules to protect the public better.

Regarding the timing of review, some commenters felt that we should review rules only after they have been in effect for at least 10 years in order to allow time to assess how

[4] 76 Federal Register 64864 (October 19, 2011). Review of Commission's Regulations; Request for Comments and Information.

the rules have worked. Other commenters felt that waiting 10 years for review could exclude the rules most in need of review.

As far as public participation, some commenters suggested that we develop innovative ways to engage the public at large (in addition to the usual stakeholders) in the rule review process. Others suggested that there be industry input for all reviews.

Commenters offered numerous ideas for prioritizing rules for review. These suggestions included: (1) use of the same criteria as in our 2004 pilot review program; (2) use of the criteria specified for reviews under section 610 of the RFA; (3) emphasis on rules that are outdated and not sufficient to protect the public; (4) emphasis on rules that the public/stakeholders suggest for review; (5) targeting rules that need simplification or clarification; (6) targeting rules that have overlapping or burdensome requirements; (7) emphasis on rules where there have been changes in technology or economic conditions; and (8) use of the criteria stated in E.O. 13563 and 13579.

Some commenters suggested particular candidates for review. These included: (1) implementing the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) for products under our jurisdiction; (2) strengthening the small parts rule; (3) reducing the costs of testing and certification; (4) reviewing the system of guarantees for rules issued under the Flammable Fabrics Act; and (5) eliminating the labeling requirement for substances listed in the Federal Caustic Poison Act.

b. Transparency, Participation and Collaboration

We are engaged in an aggressive plan to put forth our data, deliberations, decisions, determinations, collaborations and actions in an open, accessible manner to consumers, stakeholders, and the general public in accordance with our Open Government Plan.[5]

Online efforts currently include live webcasts of meetings, hearings, workshops and interactive training. Staff memos, technical analyses, *Federal Register* notices, Commissioner's statements, and public comments are posted online during the course of the CPSC's decisional processes.

To increase transparency, public understanding, and participation in our regulatory review process, we will provide information about our Plan and rules under review on the cpsc.gov website. This will bring together, in one place, information on the regulatory review program and provide the public with access to the schedule of reviews, links to comments on rules under review, a link for direct feedback on the CPSC's regulatory review program, and other pertinent information. Each fiscal year, our Operating Plan will describe the Plan, including the rules scheduled for review.

[5] U.S. Consumer Product Safety Commission Open Government Plan, April 12, 2010. http://www.cpsc.gov/open/open.pdf

c. Role of the Office of Education, Global Outreach, and Small Business Ombudsman and the Office of Communications.

In 2011, we created the Office of Education, Global Outreach, and Small Business Ombudsman to coordinate and carry out education and outreach activities to domestic and international stakeholders, including manufacturers, retailers, resellers, small businesses, and foreign governments. As part of its broad mission, this new office works with manufacturers in building safety into their products; works to address the questions and concerns of the regulated community; and facilitates the transfer of information on regulatory requirements and best manufacturing practices across industries. The Small Business Ombudsman (SBO) advances the cause of safety by serving as the dedicated CPSC contact for the nation's many small businesses. In this role, the SBO is charged, in part, with developing and providing information and guidance specifically tailored to small businesses and small batch manufacturers, as well as actively sharing within the agency, information gained from manufacturers, retailers, and distributors. The SBO's Web page is dedicated to providing compliance guidance to small businesses (http://www.cpsc.gov/BUSINFO/smbus.html).

Finally, the Office of Education, Global Outreach, and Small Business Ombudsman serves as a coordinated business unit, charged with carrying out and enhancing the CPSC's outreach to the international community. By working with foreign regulatory bodies, we can help them develop effective product surveillance strategies, product testing methods, and voluntary and mandatory product safety standards.

The Office of Communications is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office of Communications also is responsible for implementing the Commission's media relations and social media programs nationwide. The Office of Communications serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's news releases, and organizes safety campaigns with agency partners.

These offices will facilitate public involvement in our review of existing rules.

V. Previous and Current Efforts Under Way Consistent with EO 13579

As discussed in this section, we have encouraged and tried to maintain a culture of retrospective review through previous and current regulatory review efforts, with an emphasis on reviewing the effectiveness of regulations.

a. Previous Review Programs

The Systematic Review Program (2004 to 2007). In 2004, we began a program to review existing regulations. 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. OMB recommended that we develop a plan to systematically review our regulations to ensure consistency among them in accomplishing program goals. In FY 2004, we conducted a pilot review program as the initial step in implementing that recommendation. The notice announcing the pilot program appeared in the *Federal Register* on January 28, 2004 (69 FR 4095), and we continued the program for several years thereafter.

The rule review focused on determining whether the CPSC's regulations were:

- Consistent with our program goals;
- Consistent with other CPSC regulations;
- Current with respect to technology, economic or market conditions, and other mandatory or voluntary standards; and
- Subject to revision to reduce regulatory burdens, particularly burdens on small entities.

When choosing which rules to review, we decided to exclude from review any rules that we considered nonsubstantive (*i.e*., those with requirements that were administrative or procedural; exemptions; labeling; test methods; or definitions).

We used the following criteria to select rules for the 2004 pilot program: (1) the rule had been in effect for at least 10 years; (2) at least one of the rules selected for review 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. Once the rules were chosen, we reviewed each rule to look for: inconsistencies within the rule or with other CPSC rules; references to, or use of, obsolete standards, technology, procedures, or requirements; and the potential to streamline requirements of the rule. Following that analysis, we prepared a memorandum for Commission consideration, discussing these issues and noting areas where staff recommended changes to the rule. We followed this approach from 2004 through 2007.

In 2008, the enactment of CPSIA required us to assign resources to implement the new law. Consequently, we have not pursued additional systematic rule reviews since 2007.

Periodic Review under the Regulatory Flexibility Act (RFA). In addition to the Systematic Review Program discussed in the previous section, we must conduct reviews of rules in accordance with the RFA, which requires agencies to review rules within 10 years of publication of the rule that have or will have a significant economic impact on a substantial number of small entities. (5 U.S.C. 610(c)).

The review is to "determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities." The review must consider:

- The continued need for the rule;
- The nature of complaints or comments received from the public concerning the rule;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the *Federal Register* on September 14, 1981,[6] we published a plan for review under the RFA, along with a list of rules the Commission had issued prior to January 1981. We reviewed the rules we had issued before the RFA took effect in 1981, and we found that none had a significant economic impact on a substantial number of small entities. Since the RFA took effect, we have issued two rules that could have a significant economic impact on some, although not a substantial number of, small entities—the standards specifying requirements for child resistance for cigarette lighters (16 CFR part 1210) and for multipurpose lighters (16 CFR part 1212). We have not conducted RFA reviews of these two rules. In addition, we have issued the following rules that could have a significant economic effect on a substantial number of small entities:

- The Standard for the Flammability (Open-Flame) of Mattress Sets, 16 CFR part 1633, published in 2006;
- The Safety Standards for Full-Size and Non-Full-Size Cribs, 16 CFR parts 1219 and 1220, published in 2010; and,
- The Testing and Labeling Pertaining to Product Certification Rule, 16 CFR part 1107, published in 2011.

We intend to review these rules within 10 years of their issuance, consistent with the RFA.

b. Reducing Burdens, Streamlining Requirements, and Modernizing Operations

We consider the reviews anticipated in this Plan as part of an ongoing effort to improve the efficiency of our regulatory and other actions. As our statutes and resources allow, we have revisited older rules to streamline requirements, reduce burdens, and increase efficiencies. For example, in 2008, we completed a review and update of 16 CFR part 1610, *Standard for the Flammability of Clothing Textiles*, a rule that was originally issued in 1953. We revised the regulation to reflect current consumer practices and technologies better and to clarify several aspects of the standard.

[6] 46 Federal Register 45621 (September 14, 1981). Regulatory Flexibility Act: Plan for Periodic Review of Rules.

Recently, we published a final rule clarifying requirements that manufacturers of durable infant and toddler products establish and maintain programs for consumers to register products so that the manufacturer can contact them if a product is the subject of a safety alert or recall. After publication of the initial rule, some manufacturers and others had questions about the requirements. To address the apparent confusion, we amended the rule to streamline and clarify the requirements.

The CPSIA dramatically increased our regulatory obligations. We are aware of the burden these requirements may present for some businesses, particularly smaller ones. To the extent allowed by our statutes, resources, and our mission to protect consumers, we have attempted to minimize unnecessary regulatory burdens resulting from some of the CPSIA's mandates.

For example, on October 19, 2011, we published a rule specifying the conditions and requirements for testing the component parts of consumer products. Component testing allows firms to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations to support a General Conformity Certificate or a certificate for a children's product, pursuant to section 14(a)(2) of the CPSA; as part of a reasonable testing program, pursuant to section 14(a)(1) of the CPSA; and/or as part of the standards and protocols for continued testing of children's products, pursuant to section 14(i)(2) of the CPSA. Companies can reduce their testing costs by relying on component part testing.

As mentioned above, we consider the assessment of third party testing burdens and consideration of alternative third party testing requirements for manufacturers who meet the statutory definition of "small batch manufacturers" to be a part of this review plan.

The CPSIA directs the CPSC to expedite efforts to upgrade and improve information technology (IT) systems. The IT infrastructure update and renewal is improving the CPSC's efficiency, by connecting stove-piped data systems, reducing manual processing, and eliminating redundant and inefficient steps involved in coding and information-sharing with businesses. The public-facing consumer product safety information database required by the CPSIA and launched by the CPSC in March 2011, enables consumers to determine quickly whether products they already own or are considering buying are associated with safety hazards or recalls, and it allows them to play a crucial role in safety by reporting potential hazards. The CPSC's website, www.CPSC.gov, also is being enhanced to improve public access to important safety information through more rapid publication of the CPSC's many existing education and information-sharing campaigns and links to the CPSC's social media sites, recall widgets, information centers, and extensive information on the CPSIA.

VI. Elements of the Plan

a. Development of a Strong, Ongoing Culture of Retrospective Analysis

We are resuming the review of rules interrupted by the additional workload implementing the CPSIA; and we will strengthen and update the reviews that were

conducted previously under the Systematic Review Program initiated in 2004. We will do this by evaluating rules for their consistency with program goals and the criteria emphasized in E.O. 13579. To the extent permitted by CPSC's legal authorities and our resources, we will change or remove aspects of our rules that impose excessive cost or paperwork burdens, are outdated or otherwise inefficient, or are insufficiently protective of consumer safety.

Review of existing rules will be systematic and continuing. To encourage and maintain an ongoing culture of retrospective analysis, we will use interdisciplinary teams made up of staff from the Office of Hazard Identification and Reduction; the Office of Education, Global Outreach, and Small Business Ombudsman; the Office of Compliance and Field Operations; the Office of General Counsel; and the Office of Import Surveillance and Inspection to conduct retrospective reviews. To strengthen the culture of retrospective analysis of existing rules, we will consider the priorities of retrospective review of existing rules in development of our yearly Operating Plan and Performance Budget Request. They will also be included in the CPSC's Semiannual Regulatory Agenda, which will include candidates for review under section 610 of the RFA.

b. Prioritization: Selection Criteria and Processes Used in Setting Priorities

We are a small agency with a big mission. We will consider our resources carefully when we decide the order in which we will review our regulations. We considered public comments on the development of the Regulatory Review Plan, as well as comments on section 14(d)(3)(A) of the CPSA as amended by P.L. 112-28, in determining selection criteria and priorities for regulatory review.[7]

To prioritize candidates for regulatory review, we will consider a variety of factors, listed here in no particular order of importance, including:

- *Effect on deaths and injuries*. Our overriding focus is on the prevention and reduction of deaths and injuries related to the unreasonable risk of consumer products. Therefore, when determining which existing rules should be reviewed, we will consider whether the rule is fulfilling its intent: preventing or reducing deaths and injuries related to that product.

- *Age of the regulation (date promulgated)*. In general, allowing time for a rule to be in place will provide for a more productive and comprehensive review. The burdens and limitations of a rule may not be readily apparent when a regulation is first implemented. Some burdens may decrease over time, and some inefficiencies or gaps may surface. Moreover, older regulations may rely on outdated technology or test methods that should be replaced. For these

[7] On November 8, 2011 we published a *Federal Register* notice inviting public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with an applicable consumer product safety rule, ban, standard, or regulations. The *Federal Register* notice identified seven specific issues pursuant to section 14(i)(3)(A) of the CPSA as amended by P.L.112-28, and provided additional questions to refine the issues further or focus comments on particular questions or concerns.

reasons, we will consider the age of a regulation as a factor when we evaluate candidates for review.

- *Overlapping regulatory requirements*. Overlapping (and sometimes conflicting) requirements can impose burdens without providing much benefit to consumer safety. To the extent allowed by our laws, we will consider, as candidates for review, rules with duplicative or overlapping requirements.

- *Input from stakeholders.* We have multiple and varied stakeholders. These consumers, companies, testing organizations, and others are the ones who experience first-hand the effect of the CPSC's rules. They are in a good position to know if particular rules are excessively burdensome or insufficiently protective. The *Federal Register* notice of October 19, 2011, seeking comments on our formulation of its Plan, was one activity to get input on review of CPSC rules. In addition, we will use our website to obtain suggestions from the public for rules that should be reviewed.

- *Impact on small business.* We recognize that small businesses can face particular challenges when complying with regulatory requirements. As we consider candidates for review, we will consider the monetary, paperwork, or other impacts that a rule may have on small businesses. The RFA requires us to review rules that have a significant impact on a substantial number of small entities. However, in further consideration of the impact on small business, we will consider impacts that do not reach that threshold.

- *Evidence of noncompliance*. If we see continued noncompliance with a rule, such noncompliance could be an indication that the rule is confusing, overly costly, or burdensome to comply with, or otherwise is not addressing the intended hazard effectively. Thus, noncompliance with a regulation could be a signal that reassessment of the regulation is needed. On the other hand, if we see very few violations of a particular rule, the absence of violations could indicate that the rule is no longer needed.

- *Costs associated with the regulation*. We recognize that the cost impact of a rule may change over time. Many of the CPSC's rules were issued under the direction that they impose the least burdensome requirement that prevents or adequately reduces the risk of injury associated with the product being regulated. When choosing candidates for review, we will consider whether the costs imposed by the rule are out of balance with the rule's impact on product safety.

- *Paperwork burden associated with the regulation*. We are aware that paperwork and recordkeeping requirements can impose significant time and monetary burdens on companies trying to comply with regulations. Clearly, a certain amount of paperwork is necessary for companies to demonstrate compliance with regulations. However, overly burdensome or unnecessary paperwork is not

in anyone's interest. When choosing candidates for review, we will consider whether a rule requires unnecessary paperwork or whether there are ways to reduce the paperwork burden.

- *Technological advances*. The CPSC was established in 1972, and some of our regulations were written by other agencies long before that time. Obviously, the technology available today is far more advanced, compared to what existed when some of our regulations were originally issued. We have revised some rules to remove requirements for obsolete testing equipment that is no longer available. We will continue to consider the availability of better technology or similar modernizations as a factor for reviewing rules.

- *Transparency and clarity*. Regulations that are unclear impose meaningless burdens on companies trying to comply with them, and such rules are not protecting consumers as they should. We have, for example, revised our textile flammability standard and the consumer registration rule to improve their clarity. Whether a rule can be revised to improve its transparency and clarity is a factor we will consider.

c. Structure and Staffing

The Office of the Executive Director is responsible for the regulatory review process. Our Plan resides with the Deputy Executive Director for Safety Operations; inquiries on the Plan may be submitted via email to: rulereview@cpsc.gov. In addition, our Program Area Teams (PATs) are responsible for proposing regulatory priorities, including selection of regulations for regulatory review, for presentation to the Deputy Executive Director for Safety Operations, for development of our Operating Plan. As described in section VI, we use interdisciplinary teams, including subject matter experts (SMEs), to review our regulations and, if needed, to develop a project to modify, revoke, amend, or otherwise change the regulation in accordance with the results of the review, our resources, and our legal authorities.

d. Agency mechanism for ensuring the independence of regulatory review process from the offices responsible for writing and implementing regulations

CPSC staff will suggest candidates for review, but the ultimate decision of which rules will be reviewed will rest with the CPSC's Commissioners. The Commission will vote on the candidates for review as part of its vote on the annual Operating Plan. Any action to modify, revoke, amend, or otherwise change an existing rule would occur through regulatory action that would require a vote of the Commission.

e. Plans for retrospective analysis over the next two years, and beyond

We will include retrospective analysis of rules as a part of our operations over the next two years and continuing into the future. We will integrate these reviews with our

related work addressing the requirements of P.L. 112-28 and consider how to reduce testing and related burdens while fulfilling our statutory requirements.

f. How we will decide what to do with the analysis

We will use the analysis from the rule review to develop a project to modify, revoke, amend, or otherwise change the regulation in accordance with the results of the review, our resources, and our legal authorities. Following Commission direction, we will include the project in our Operating Plan as our resources and priorities permit.

g. Coordination with other federal agencies that have overlapping jurisdiction or expertise

We coordinate our activities with other federal agencies through various working groups and partnerships on an ongoing basis. Some of the agencies with whom we regularly work are the U.S. Food and Drug Administration (FDA), the U.S. Environmental Protection Agency (EPA), the National Institute for Standards and Technology (NIST), and U.S. Customs and Border Protection (CBP). For example, we rely on data from the FDA to assess the need for new child-resistant packaging standards. As another example, we are currently engaged with NIST, EPA, the National Institutes of Health (NIH), and the National Institute for Occupational Safety and Health (NIOSH) to assess the potential for release of nanoparticles from selected consumer products and to determine the potential health effects from such exposure. We will use these same strong relationships with other federal agencies when there is a need to coordinate concerning review of existing rules.

Because we are part of an interconnected global economy, we will also consider international standards when we evaluate existing rules. To the extent permitted by our laws, we will look toward harmonizing CPSC's requirements with international requirements as one aspect of our rule review.

h. The use of peer review in rule reviews

As appropriate to the particular review, we will follow guidance issued by the Office of Management and Budget on the use of peer review.[8]

VII. Components of Retrospective Cost-Benefit Analysis

a. Metrics used to evaluate regulations after they have been implemented

We will use the metrics appropriate to the particular regulation being reviewed in order to evaluate the effectiveness of the regulation. Such metrics may include: reductions in deaths, injuries, and property loss; recordkeeping burdens; testing costs; and other costs related to the rule. Some of our rules implement specific statutory requirements. With these rules, our discretion to adjust the rule based on cost-benefit analysis may be limited. Thus, our use of cost benefit analysis may vary from one regulation to another.

[8] http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf.

We will continue to measure the impact of regulations on small entities as required by the Regulatory Flexibility Act.

b. Data collection techniques

The CPSC is a data-driven agency, and we rely on data when developing regulations. Similarly, we will rely on our extensive databases when reviewing existing rules. Our information on injuries, deaths, and other consumer product safety incidents comes from a wide range of sources, including consumers and consumer groups, hospitals and clinics, and industry. Each year, we collect more than 360,000 National Electronic Injury Surveillance System (NEISS) reports, 8,000 death certificates, and more than 23,000 manufacturer and retailer reports on product safety concerns. We also receive incident reports through our hotline and the CPSC.gov and saferproducts.gov websites. We continue to improve our technology systems to support the data collection that is essential to our mission. We will use our extensive databases to determine appropriate candidates for rule review, to evaluate their effectiveness, and to determine ways to modify them to improve their effectiveness and efficiency.

c. Use of experimental designs for retrospective analysis

To the extent necessary and practicable, we will use experimental design techniques when reviewing and revising test methods in existing regulations.

VIII. Publishing the Agency's Plan Online

We will publish our Plan on our website at: www.cpsc.gov, under a page dedicated to rules, regulations, and standards. When the Plan is available online, we will also publish a notice in the *Federal Register* seeking comments on the Plan.