



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

September 26, 2014

The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, DC 20510-6125

Dear Ranking Member Thune:

During our April 8, 2014 confirmation hearing before the U.S. Senate Committee on Commerce, Science, and Transportation, you asked us to submit to you a plan to continue to seek effective ways to reduce the costs of third party testing of children's products consistent with assuring compliance with all applicable consumer product safety rules, bans, standards and regulations ("burden reduction/assuring compliance"). The following letter outlines our joint commitment to, and support for, these efforts.

Plan Submitted By Then-Acting Chairman Adler

On July 17, 2014, Commissioner Robert S. Adler, who was then-Acting Chairman of the Consumer Product Safety Commission (CPSC or the Commission), wrote you a letter outlining the Commission's completed and ongoing approved burden reduction/assuring compliance activities. In addition, he provided you with a comprehensive chart detailing the Commission's plan to implement all to-date, approved related projects. We support the plan as outlined by then-Acting Chairman Adler, who continues to demonstrate tremendous leadership on this issue.

As then-Acting Chairman Adler mentioned in his letter, however, the CPSC has limited resources and our burden reduction/assuring compliance projects are competing with safety projects for available resources. In recognition of the difficult resource-related choices the Commission faces, we strongly supported (along with our fellow Commissioners) a recommendation to include \$1 million in the upcoming FY 2016 budget process to help the Commission better fund burden reduction/assuring compliance activities. This recommendation, should it ultimately be forwarded to Congress next year, would fund activities currently planned as well as new and promising ideas that may arise in the course of the agency's analysis of this issue.

Commitment to Pursue and Propose as Warranted Additional Projects

We are also committed in joint fashion to explore, as expeditiously as possible, and, if proven feasible, to propose for Commission approval the following three policies. By issuing any guidance consistent with all statutory requirements and authorities, including assuring compliance with any applicable safety rules, bans, standards or regulations, we believe these policies would provide a substantial amount of third party testing relief:

1. The mandatory ASTM F963-11 toy standard specifies limits on the concentration of eight heavy elements (including lead) in paints and accessible substrate materials for children's toys. The CPSC has by regulation found that certain materials, by their nature, will never contain levels of lead in excess of the lead content limit. Thus, products manufactured solely out of these materials do not need to be third party tested and do not need children's product certificates to show that they comply with the lead content limits. Consistent with this approach, significant third party testing burdens could be reduced, especially for the smallest businesses, if the CPSC could make similar determinations with respect to seven of the eight heavy elements (not including lead because it is already covered by our determinations regulation) currently regulated in ASTM F963-11. Providing additional meaningful assistance to small businesses is our top burden reduction/assuring compliance project.
2. If the Commission could find that compliance with the internationally recognized toy standards, ISO 8124 and EN-71, is equivalent from a safety perspective to the ASTM F963-11 toy standard such that third party testing to those standards assures compliance to the ASTM standard, regulated parties might be relieved of duplicative testing to both standards. An ability to recognize these international standards as equivalent would allow children's product certifiers to avoid repeating redundant third party tests while still assuring compliance to applicable statutory requirements.
3. Currently, regulated entities must test very small amounts of materials (amounts less than 10 mg) for compliance with applicable statutory requirements. These entities would benefit from testing relief if the Commission could provide a de minimis third party testing exemption for materials in children's products where the total amount of material in or on the children's product is less than 10 mg. This would not exempt regulated entities from complying with applicable statutory requirements. It would provide them only with an exemption from mandatory third party testing on mass weight of less than 10 mg (noting that some materials like siliceous materials may be suitable for a testing exemption up to 10 mg while others like metals might have a lower de minimis threshold). Before issuing any such guidance, the Commission would need to confirm that a de minimis testing exemption for materials less than 10 mg would not cause any measurable adverse health effects for children.

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Thank you, again, for the opportunity to share our thoughts with you regarding this important matter. Should you or your staff have any questions, please do not hesitate to contact our staff, Jana Fong-Swamidoss at 301-504-7881 or Bryce Dustman at 301-504-7739.

Sincerely,



Elliot F. Kaye
Chairman



Joseph P. Mohorovic
Commissioner

CC: Chairman John D. Rockefeller IV