



Staff Quarterly Report

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

September 2016

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1 Introduction

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

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

This document is the required September 2016 quarterly report.

2 CPSC Fiscal Year 2016 Operating Plan

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

25727 - Burden Reduction/Assure Compliance

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

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

² Available at: https://www.cpsc.gov/s3fs-public/pdfs/blk_pdf_2016OpPlan.pdf.

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

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

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

The two final rules (heavy metals in toys and lead) were finalized earlier in FY 2016.^{3,4} The status of the remaining items is presented below.

3 Status of Effort

3.1 Determinations Expansion – Specific Plastics

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

The Commission approved for publication in the *Federal Register*, a notice of proposed rulemaking (NPR), determining that the four specified plastics do not contain phthalates above the limit specified in section 108 of the CPSIA (0.1 percent, or 1,000 parts per million (ppm)), and thus, do not require third party testing for use in children’s toys and child care articles. The NPR was published in the Federal Register on August 17, 2016 (81 FR 54754). The Docket number for the NPR is CPSC-2016-0017. Comments can be submitted on www.regulations.gov by October 31, 2016. The Toy Industry Association responded to the NPR publication with a letter commending the CPSC for its recent efforts to reduce third party testing costs.

In addition, CPSC has engaged a contractor to study the presence of phthalates in additional specified plastics. CPSC has received the contractor’s final report and has posted it on the CPSC website.⁶ The contractor was also engaged to study the presence of lead, phthalates, and the elements in Table 1 of ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (the Toy Standard) in specified manufactured fibers. The contractor’s report is due to CPSC in the fourth quarter of FY 2016, and will be posted on the CPSC website in early FY 2017.

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

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

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

⁶ The report can be found at: <https://www.cpsc.gov/s3fs-public/ThePotentialforPhthalatesinSelectedPlastics.pdf>.

3.2 FTIR Study Expansion – Phthalates Testing

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

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

During the last quarter, CPSC staff has modified the contract to add a Performance Assessment Plan to improve the analyzer's accuracy and repeatability for Phase 2 work, clarify intellectual property rights, and provide additional funding. The modifications added two option periods to the base contract in order to make government costs more predictable. Phase 2 (option period 1) includes successful phthalate detection in polyurethane plastics and continued product development. Phase 3 (option period 2) will be the development of a portable prototype instrument that meets the required performance specifications, for delivery to CPSC. To date CPSC has executed \$515,000 of the \$1,000,000 appropriated by Congress. CPSC plans to spend the remainder of the appropriation in FY 2017.

3.3 Determinations Expansion – Lead

A contractor's report on the potential presence of lead, phthalates, and the elements listed in Table 1 of the Toy Standard, in manufactured woods, was posted on the CPSC website in April, 2016.⁷

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

⁷ The report can be found at: https://www.cpsc.gov/s3fs-public/ManufacturedWoodsTERATask14Report_0.pdf.