UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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VOTE SHEET

DATE: NOV - 3 2009

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Maruta Budetti, Executive Director MB

FROM: Cheryl A. Falvey, General Counsel CAF

SUBJECT: Guidance Document: Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008

Attached is draft statement of policy providing guidance on the testing and certification requirements under section 102 of the Consumer Product Safety Improvement Act ("CPSIA") of 2008.

Please indicate your vote on the following options.

I. Approve the draft Guidance Document and the issuance of the draft *Federal Register* Notice of Availability as drafted.

_____ _____
Signature Date

II Approve the draft Guidance Document and the issuance of the draft *Federal Register* Notice of Availability with the following changes (please specify):

_____

_____

_____

_____ _____
Signature Date

CPSA 6(b)(1) CLEARED for PUBLIC
NO MFRS/PRVTLBLRS/PRIVATE LABELERS
PRODUCTS IDENTIFIED
1/3/09

EXCEPTED BY: PETITION
RULEMAKING ADMIN. PRCDG

Note: This document has not been reviewed or accepted by the Commission.
Initials RH Date 11/3/09

III. Do not approve the draft Guidance Document or the issuance of the draft *Federal Register* Notice of Availability.

_____ _____

Signature Date

IV. Take other action. (Please specify.)

_____

_____

_____

_____ _____

Signature Date

Attachments - Draft Statement of Policy: Testing and Certification of Lead in Children's Products; Draft *Federal Register* Notice of Availability

Guidance Document: Testing and Certification Requirements Under The Consumer Product Safety Improvement Act of 2008

I. Introduction

This guidance document is issued by the U.S. Consumer Product Safety Commission ("Commission") regarding the testing and certification requirements in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). This document provides guidance on the Commission's interpretation of the requirements of section 102 of the CPSIA. Specifically, it describes the Commission's position on a reasonable testing program and how to certify that a product complies with all rules, bans, standards, or other regulations applicable to the product under the laws enforced by the Commission. This document also explains when and how component testing to certain specific requirements will be allowed.

In the present statement of policy, the Commission describes its current position on testing and certification with respect to section 102 of the CPSIA. It does not create or confer any rights for, or on, any person, and does not operate to bind CPSC or the public beyond the existing statutory requirements of the CPSIA. The Commission intends to develop regulations that will implement section 102 of the CPSIA. This guidance document is intended to provide manufacturers with guidance regarding the testing requirements of section 102 in the interim.

Manufacturers are responsible for ensuring that their consumer products comply with all applicable product safety standards. For purposes of certification, the Commission has limited the term "manufacturer" to include only a domestic manufacturer or importer. This description is available on our Web site at http://www.cpsc.gov/businfo/frnotices/fr09/certification.pdf. This is not a change in law or policy. All manufacturers are expected to be familiar with the product safety rules that apply to their products and to have procedures in place to ensure that their products comply with these rules.

Section 102 of the CPSIA amended the Consumer Product Safety Act (CPSA) to require manufacturers to certify their products to demonstrate compliance with the Commission's rules, standards, or bans. This guidance document explains the two types of certification of compliance required by the CPSIA: (1) a general conformity certificate for consumer products; and (2) certification based on CPSC-recognized third-party conformity assessment body testing of children's products.[1]

II. General Conformity Certification for Consumer Products

A. What Products Require a General Conformity Certificate?

[1] Section 3(a)(2) of the CPSA defines a children's product as any product intended primarily for children 12 years old and younger.

Section 102 of the CPSIA requires conformity certification for all products, other than children's products, subject to a consumer safety rule under the CPSA or similar rule, standard, ban, or regulation under any other Act enforced by the Commission. This general certification requirement is sometimes called a "supplier's declaration of conformity." The certificate is to be based on a test of each product or upon a reasonable testing program.

For children's products, the certificates are to be based on testing done by a CPSC-recognized third-party conformity assessment body (also often referred to as a testing laboratory or third party laboratory). Children's product testing is discussed in detail in section III below. General conformity certifications do not need to be based on testing done by a CPSC-recognized third-party conformity assessment body.

In the Federal Register of February 9, 2009, the Commission issued a stay of enforcement pertaining to most testing and certification requirements under section 14 of the CPSA, as amended by section 102 of the CPSIA (74 FR 6396). In brief, the Commission indicated that it would not require general conformity certificates for products in inventory. After the stay of enforcement has been lifted by Commission vote, the requirements for testing and certification will apply to newly-manufactured products subject to Commission rules, standards and bans. Further details on what the certificate should say and how it should be transmitted with the products are also available in response to frequently asked questions at http://www.cpsc.gov/about/cpsia/faq/102faq.html#electronic. A list of the various standards, bans and rules applicable to non-children's products for which products would need a general conformity certificate is attached in Appendix A.

B. What Is a Reasonable Testing Program?

All non-children's products subject to a consumer product safety rule or a similar rule, ban, or standard enforced by the Commission, must have a certificate issued by the manufacturer. A reasonable testing program for non-children's products serves as the basis for issuing the general conformity certificate. A reasonable testing program is one that demonstrates with reasonable certainty that all consumer products certified to comply with the applicable standards will meet all the requirements of those standards. Certain standards issued by the Commission already contain unique testing programs that were developed by the Commission at the time the standard was issued and for which certification has been required. For the remaining rules, standards and bans, testing will vary depending on the product and the performance characteristics being tested. Manufacturers should use their best judgment to develop a reasonable testing program that demonstrates that their products comply with the applicable rules, standards or bans. For non-children's products subject to a rule, ban, or standard that do not already have a specified testing program, the Commission believes that a reasonable testing program should contain, at a minimum, the following essential elements:

(1) Product specifications that describe the consumer product and list the safety rules, standards, etc., with which the product must comply;

(2) Certification tests, which are performed on samples of the manufacturer's consumer product to demonstrate that the product is capable of passing the tests prescribed by the standards;
(3) A production testing plan, which describes the tests that must be performed and at what intervals as long as the consumer product is being manufactured to provide reasonable assurance that the products as produced continue to meet all applicable safety rules;
(4) Remedial action plans, which must be employed whenever samples of the consumer product or results from any other tests used to assess compliance yield unacceptable or failing test results; and
(5) Documentation of the reasonable testing program and how it was implemented.

The Commission expects that any general conformity certificate will be based upon a testing program that, at a minimum, includes these five elements. The Commission intends to solicit further input into these five basic criteria at a public workshop to be held with stakeholders and Commission staff on December 10 and 11, 2009 at the Commission headquarters in Bethesda, Maryland.

To provide additional protection for children, section 14(a)(2) of the CPSA requires that all manufacturers of children's products certify that the children's product conforms to all applicable children's product safety rules and that this certification be based on the results of testing by a CPSC-recognized third-party conformity assessment body. Section 14(d)(2)(B) further mandates that children's products be subject to additional third-party testing periodically and whenever there is a material change in the product's design or manufacturing process, including the sourcing of component parts.

C. What Types of CPSC Rules Under the "Other Acts" Are "Similar" to Consumer Product Safety Rules?

Each CPSA standard or ban addresses a defined class of products that present an identified risk of injury. Thus, regulations concerning reporting, recordkeeping, inspections, guaranties, certification, or tracking labels are not "similar" and do not require a general conformity certificate. CPSA standards can include warnings and instructions and any requirement of a rule, standard or ban under another act enforced by the Commission other than the CPSA that requires a warning or instruction, or specifies the form thereof, is similar to a consumer product safety rule and thus a certification is necessary. To help companies determine what rules, standards and bans enforced by the Commission are applicable to consumer products, and require a general conformity certificate to accompany the product, the Commission lists such rules in Appendix A.

D. Will the Commission Require General Conformity Certification that a Product is Not Subject to a Ban?

The Commission recognizes that while section 14(a) of the CPSA requires general conformity certificates with regard to bans, testing a product to prove that it has not been banned presents certain issues and challenges. For example, the Commission has a regulation that bans lawn darts. It does not seem reasonable to require tent pegs to be tested and certified to prove that the tent pegs are not lawn darts. On the other hand, testing products to ensure they are not banned may be reasonable where the ban applies only to products in the class that fail to meet certain requirements. Dive sticks are an example of where a reasonable testing program would be appropriate in the context of a ban. If the dive sticks do not meet certain requirements, they are banned. In that case, the ban is in effect a standard. If the Commission is expecting a general conformity certificate for one of its bans, that ban has been included in Appendix A.

III. Certification Based on Third-Party Testing of Children's Products

A. General Requirements for Initial Certification of Children's Products Prior to Introduction into Commerce

Section 102 of the CPSIA requires that children's products be tested by a CPSC-recognized third-party conformity assessment body before they are introduced into commerce. This requirement is already in force for lead in paint, small parts, cribs, pacifiers, and children's metal jewelry. All children's products to which the above regulations are applicable are already required to be tested for conformity by a CPSC-recognized third-party conformity assessment body.

Section 102(a)(2) of the CPSIA requires certification of children's products based on CPSC-recognized third-party conformity assessment body testing. Generally, this requirement goes into effect for products manufactured more than 90 days after the Commission publishes a notice of requirements pertaining to the accreditation of testing laboratories to test for a particular standard. For example, the Commission published such a notice of requirements for testing to the lead paint ban of 16 CFR part 1303 on September 22, 2008. The third-party testing requirement for lead paint became effective on December 22, 2008 for children's products manufactured on and after that date. If you manufacture a children's product bearing paint after that date you must have your children's product tested by a CPSC-recognized third-party conformity assessment body and then certify that that product complies to the lead paint standard. A list of all children's product safety rules potentially applicable to children's products is attached at Appendix B.

Additionally, over the next several months, the Commission will issue notices of requirements relating to accreditation of testing laboratories to test for compliance to other product safety rules applicable to children's products. These may include flammable fabrics act regulations, children's sleepwear regulations, and youth all terrain vehicle regulations. Until the Commission issues the notices of requirements for CPSC-recognized third-party conformity assessment bodies to assess conformity with these regulations, manufacturers should ensure their product conforms to the regulations, but

they do not have to issue a certificate of compliance based on the results of testing by a CPSC-recognized third-party conformity assessment body. In the meantime, manufacturers will be required to issue a general conformity certificate based on a reasonable testing program. Currently, the Commission has issued a stay of enforcement pertaining to testing and certification requirements, (http://www.cpsc.gov/BUSINFO/frnotices/fr09/stayenforce.pdf) and, regardless of whether the Commission votes to lift the stay, the Commission does not intend to require third-party certification where CPSC-recognized third-party conformity assessment bodies have not yet been accredited to test to certain requirements.

Table 1 lists the timeline for testing children's products requiring CPSC-recognized third-party conformity assessment body testing for certification.

Table 1: Certification and Testing Requirements for Children's Products

Certificate of Compliance Based on CPSC-Recognized Third-Party Testing Required Now
Lead in Paint and Similar Surface Coatings – 16 CFR Part 1303
Full-Size Cribs – 16 CFR Parts 1508, 1500.18(a)(13), and 1500.18(a)(14)
Non Full-Size Cribs – 16 CFR Parts 1509, 1500.18(a)(13), and 1500.18(a)(14)
Pacifiers – 16 CFR Parts 1511 and 1500.18(a)(8)
Small Parts – 16 CFR Part 1500.19
Lead in Children's Metal Jewelry – CPSIA Section 101

Certificate of Compliance Based on CPSC-Recognized Third-Party Testing Will Be Required Upon Commission Vote to Lift Stay of Certification and Testing Requirement
Youth Bicycles – 16 CFR Part 1512
Youth Bicycle Helmets – 16 CFR Part 1203
Bunk Beds – 16 CFR Part 1213
Rattles – 16 CFR Parts 1510, 1500.18(a)(15), and 1500.86(a)(1)
Dive Sticks – 16 CFR Parts 1500.18(a)(9), 1500.86(a)(7), and 1500.86(a)(8)
Lead Content of any Component of a Children's Product – CPSIA Section 101

Certificate of Compliance Based on CPSC-Recognized Third-Party Testing Will Be Required Upon Commission Vote to Lift Stay of Certification and Even Then Only Required 90 Days After Publication of Federal Register Notice of Laboratory Accreditation Requirements
Youth All Terrain Vehicles – CPSIA Section 232
Baby Walkers and Bouncers – 16 CFR Parts 1500.18(a)(6) and 1500.86(a)(4)
Caps and Toy Guns – 16 CFR Part 1500.18(a)(5)
Youth Carpets and Rugs – 16 CFR Parts 1630 and 1631
Clacker Balls - 16 CFR Parts 1500.18(a)(7) and 1500.86(a)(5)
Children's Sleepwear - 16 CFR Parts 1615 and 1616
Durable Nursery Products – CPSIA Section 104

Electrically Operated Toys, Video Games, and Other Children's Articles – 16 CFR Parts 1500.18(b) and 1505
Youth Mattresses – 16 CFR Parts 1632 and 1633
Phthalates in Toys that can be Placed in a Child's Mouth and Child Care Articles – CPSIA Section 108
Small Balls and Marbles – 16 CFR Part 1500.19
Youth Swimming Pool Slides – 16 CFR Part 1207
Toys – ASTM F-963
Vinyl Plastic Film – 16 CFR Part 1611
Youth Wearing Apparel – 16 CFR Part 1610

B. What Additional Third-Party Testing Is Required for Children's Products After the Initial Testing for Certification?

Section 102 of the CPSIA requires additional third-party testing of children's products periodically and when there is a material change in the product's design or manufacturing process, including the sourcing of component parts. For convenience, this document will refer to such testing as continued compliance testing. Section 102 of the CPSIA requires the Commission to issue a regulation establishing the standards and protocols by which such continued compliance testing will be necessary. The Commission is considering whether to require a reasonable testing program to children's products in addition to third-party testing requirements. The Commission will engage all stakeholders, including both large and small businesses, domestic and foreign manufacturers, importers and retailers, when it promulgates those standards and protocols. Pending completion of the rule, this guidance document provides the Commission's expectations with respect to continued testing of children's products.

1. What Is a Material Change in the Product's Design or Manufacturing Process?

A material change can be any change that could affect a product's ability to conform to a product safety rule, including a product design change, a change in the manufacturing process, or a change in the supplier of a component part. For example, changing the color of paint used on a product would be a material change since the new paint might have a different lead content. However, changing the fabric used in a pair of children's jeans from blue denim to black denim would not be a material change because, insofar as the lead content requirements are concerned, both fabrics are exempted from the requirement to test for lead content.

When testing because a material change has occurred, manufacturers should only need to assess the product's conformity with the requirements that might have been impacted by the change. For example, if the material change to a children's product was only in the color paint used, manufacturers would have to obtain fresh third-party testing results assessing conformity with the lead in paint regulations, but would not have to obtain third-party tests for conformity with the small parts regulations since a change in

paint color would not affect the product's ability to conform with the small parts regulations.

On the other hand, a change in the plastic used in the housing of a product for young children might require retesting to the small parts requirements since the change in the polymer might affect the way the product withstands use and abuse testing.

2. What Is the Commission's Current Recommendation with Regard to the Periodic Testing of Children's Products?

Section 102 of the CPSIA requires that children's products be subject to testing periodically. Periodic testing can provide reasonable assurance that current production continues to meet all the requirements of the rules, bans, or standards even where there is no intentional or material change in manufacturing or supply. The Commission believes that periodic testing should be performed by a CPSC-recognized third-party conformity assessment body. The manufacturer does not need to use the same conformity assessment body that did the initial tests to support the product's certification, but can use any CPSC-recognized conformity assessment body accredited to test for the product safety rules applicable to the particular product.

Section 102 of the CPSIA does not define the term "periodically." Until the Commission promulgates the implementing regulations, the Commission strongly encourages periodically testing at least once a year. Manufacturers may test products more often, and are encouraged to do so especially when non-compliance poses a substantial product hazard. Manufacturers should make such decisions based on knowledge of their product, the manufacturing process, the components from suppliers, possible product misuse by children, the likelihood of non-compliant products entering commerce and other factors. The appropriate periods for assuring compliance with multiple standards on the same product may differ for each standard. For example, depending on the manufacturing processes used, periodic testing for small parts may be more frequent than periodic testing for lead in paint.

Even without periodic testing, knowledge of production and supply chains, and process quality control testing can alert manufacturers to the possibility of producing non-compliant products; a situation that calls for immediate investigation (including testing, if appropriate). For example, it is known that machine die wear out over time, production variations may occur with new assembly staff, installation of new machinery, and other such events, may result in changes in production that should result in inspection and testing of products. Manufacturers should know what events are likely to result in changes in the product and how those changes may affect the product. Even if no intentional changes occur, periodic testing can alert manufacturers to unanticipated and unexpected changes in the product that affect its ability to comply with the applicable product safety requirements. These changes may also include changes in components that suppliers have not realized require new certifications.

When a product has been tested by a CPSC-recognized third-party conformity assessment body because of a material change, that test also can serve as a periodic test for that component and the product safety rule(s) tested. The next periodic test of that component can be after the next regular interval for periodic testing. For example, suppose a manufacturer of a children's toy contains a plastic part and a painted surface. The manufacturer normally submits samples to a third-party laboratory to measure the lead content of the plastic part and the lead concentration of the paint once per year. However, five months after the last tests, the manufacturer decides to purchase the paint from a different supplier. Once the new paint is tested by a CPSC-recognized third-party conformity assessment body and is determined to be compliant, the manufacturer can test the paint again after one year (rather than after seven months). The periodic testing interval for the plastic part is not affected by the change in paint suppliers.

Because there may be many rules applicable to a product, a manufacturer may conduct its periodic testing for all rules applicable to a product at the period determined by the shortest interval as a means of simplifying cost, administrative burdens, or other factors.

3. Will the Same Frequency of Periodic Testing Be Required for Small Volume Producers of Children's Products?

Small businesses may operate in an environment that differs significantly from that of large manufacturers. To reduce the third-party testing burden on businesses that produce low-volume products, the Commission will not expect manufacturers to conduct additional periodic testing on products until at least 10,000 units of that product have been produced since the last third-party testing of that product. This does not relieve the manufacturer of the requirement to obtain CPSC-recognized third-party conformity assessment body test results for the initial certification tests and when there has been a material change in the product.

4. How Many Samples of a Children's Product or a Component of a Children's Product should be Tested?

The determination of how many samples of a product should be selected for periodic testing depends on specific aspects of the product, testing costs, whether testing is destructive or non-destructive, similarities to other products, assumptions about the likelihood of non-compliance, the lot size, the number of products ultimately to be produced and many other factors. Because these considerations can vary greatly from product to product, the Commission cannot prescribe any specific sample size. Manufacturers are encouraged to consider these factors and to produce a rationale for a product's specific sample size for periodic testing. Manufacturers also should consult with CPSC-recognized third-party conformity assessment bodies that will be doing the testing.

Manufacturers should consider the following factors that are likely to increase the frequency of testing, the sample sizes (number of samples tested during periodic testing) or both:

- Non-compliance may result in serious injury or death
- The number of products produced annually is very large
- The product has considerable test variability in tests related to applicable product safety rules
- Product samples test close to the specified safety limit on the chemical, force or other measurement as required by the applicable product safety rule
- Testing is non-destructive, or otherwise inexpensive
- Products are dissimilar from other products tested and/or have many different components than other products
- Non-compliance cannot be determined easily, such as by visual inspection
- There have been recent consumer complaints, warranty claims or product returns that are related to compliance with applicable product safety rules

On the other hand, less frequent tests and/or smaller test sample quantities would be associated with non-compliance that is unlikely to result in serious injury, few units of the product sold, close similarity to other products, etc. Also, if a product's design does not change materially over time, manufacturers may be able to use previous test results to determine test frequency and sample quantity.

The Commission encourages manufacturers to select the samples for periodic testing on a random basis. Randomized sampling of products during a production interval is more likely to detect unknown factors that could affect a product's ability to comply with the applicable rules. There is a tradeoff between how frequently to test and how many items to sample in a single test. Everything else held constant, testing fewer samples at more frequent intervals provides less certainty for each test, but provides more immediate test results, especially if non-complying products are discovered during the test. However, there may be fixed costs expended at any test that are unrelated to the quantity of items tested. Manufacturers may want to take these costs into account in working with third-party conformity assessment bodies to develop the most appropriate sample size and test frequency.

Regardless of the results of the third-party testing, manufacturers are required to ensure that their product introduced into commerce complies with all applicable safety rules. Moreover, nothing in the testing requirements of section 102 of the CPSIA relieves manufacturers of the duty to notify the Commission under section 15 of the CPSA if they have reason to believe that they have introduced non-conforming product into commerce.

C. Will the Commission Accept Certifications Based on Test of Component Parts of Children's Products or Does Testing Need to be Done on the Final Product?

The Commission has under consideration a separate enforcement policy to address testing of components to demonstrate compliance with lead paint and lead content limits. The Commission will update the policy to address other types of requirements, such as phthalates limits, in the future. However, conformity with many safety rules can only be assessed on the finished product. For example, conformity with the crib regulations can only be assessed on an assembled crib.

If a children's product manufacturer is relying upon third-party testing obtained by a component manufacturer or supplier, those tests must meet the same requirements as tests executed by the manufacturer, including using a CPSC-recognized third-party conformity assessment body, and that there has been no material change in the component since that test. The manufacturer can rely upon the test results provided by the supplier, but the manufacturer remains responsible for assuring the compliance of their products with all applicable rules, bans, and standards. In the case of lead in paint, a manufacturer could rely on the paint manufcaturer's third-party test results but must also assure that their product production process does not introduce lead into the paint itself.

1. What Is a Component Part for Purposes of Component-Level Testing?

A component part is a part of a product that may be tested separate from the product for compliance to a specific rule, ban, or standard. The remainder of the product may not need to be tested to assess conformance to the particular rule being assessed. For example, to determine whether a plastic part contains lead in excess of the allowable amount, one can test the plastic part without requiring the presence of the remainder of the product of which the plastic part is a constituent. A component defined with respect to one test may not satisfy the definition of a component for a different test.

D. Specific Laboratory Testing Practices with Regard to Component Part Testing

The Commission has received questions about certain specific laboratory techniques for testing and whether a manufacturer can use those techniques for certifying products for compliance with the lead content limits.

For example, certain children's products use tiny amounts of paint that requires CPSC-recognized third-party testing for lead. In such circumstances, many samples will have to be destroyed to collect enough paint chips to be able to test for conformity. The Commission is willing to accept certificates based on alternatives to final product testing in such circumstances so long as test methods are employed such that the test results accurately reflect the actual lead content of the paint as used on the product. Thus, it may be possible to use component testing to test the paint in this circumstance. The

Commission will accept certificates based upon the paint manufacturer's test results so long as those tests have been conducted by a CPSC-recognized third-party conformity assessment body. A manufacturer certifying on the basis on the paint manufacturer's test results should obtain a copy of the results of the testing and ensure that the paint used on the product is the same in all material respects to the paint tested by the CPSC-recognized third-party assessment body and, importantly, does not contain additives such as dryers that may change the lead content of the paint. Alternatively, the manufacturer could take a sample of the paint and submit it to a CPSC-recognized third-party conformity assessment body and obtain the results directly. Either way, the key to such a certification is an acknowledgement that control processes are in place to ensure that the only paint used on the product is paint that is identical to the paint tested in all material respects.

Manufacturers who chose to rely on certifications of the paint, and not the paint as applied to the product, should keep detailed records with regard to the paint purchases and lot and batch records linking paint purchases to particular factory runs to guard against inadvertent use of paint that is not the same in all material respects. Likewise, they should perform some production testing to ensure the integrity of the manufacturing process, supply chain testing and possible contamination during manufacture or assembly. To minimize the expense and number of samples destroyed to generate a sufficient number of samples for testing, manufacturers may want to arrange to intentionally over apply the paint to a fixed number of samples as the product is being produced (a process known as "spray sampling"). Then, the "spray-samples" could be separated from production units and supplied to the CPSC-recognized third-party conformity assessment body, where the more abundant paint application will render sufficient paint for analysis without the destruction of a large number of production products. Similarly, if a stamp is used to apply the paint, designated samples could be repeatedly stamped during production, also creating special samples (created alongside normal production units) for analysis. These techniques, using production tooling during the normal manufacturing process, will help minimize any known or unknown factors that would tend to make the testing samples different from normal production units.

In the case of multiple colors applied to a very small area such as eye details on a doll or multiple colored sprays to create realistic skin effects, the individual paints can be certified or a composite of the paints certified using knowledge of the volumes and masses of the paints used to appropriately limit the lead content of any one paint color.

IV. Questions and Answers

1. I produce one-of-a-kind items. Must I obtain third-party tests on each product?

Subjecting a one-of-a-kind product to the full range of testing required by the applicable product safety rules would be impractical. For destructive tests, it would be necessary to make at least several units of the products so that one could be tested. The Commission intends to address this topic in greater detail through rulemaking. Until then, manufacturers can use the following guidelines to reduce their costs.

First, the manufacturer may use component testing where possible. It is likely that many of the same materials are common to many products. These materials would only need to be tested once for the presence of substances such as lead or phthalates, rather than tested each time they are used in a different product.

Secondly, the manufacturer may want to consider how unique the products actually are. Many seemingly one-of-a-kind products are just variations of the same product and do not differ in ways that materially affect their ability to conform to the applicable product safety rules. For purposes of obtaining the required third-party testing, such one-of-a-kind products might be considered to be the same product. If the same components and manufacturing processes are used to produce children's products with only superficial differences (such as spelling different names on a product using the same materials), the superficial differences are not considered to be a material change that would require repeated third-party testing.

For example, assume that a manufacturer hand crafts dolls for individual customers. The dolls are likely to have many common materials (such as a wooden body, glass eyes, and paint), which could be subjected to component testing. It is also likely that the same processes are used to attach the different components to the dolls. Thus, if one doll is tested by a CPSC-recognized third-party conformity assessment body and passes, and the manufacturer is confident that other dolls would also pass the test because the manufacturer uses the same materials and manufacturing processes on the other dolls, the manufacturer could certify that the other dolls conform to the product safety rules based on the third-party testing results of the first doll.

Another example would be a manufacturer who builds custom doll houses for children. Again it is likely that the same materials (wood, paint, nails or glue) are used in all doll houses that the manufacturer builds, and it is also likely that the same techniques are used to build the doll houses. In this case, the only additional testing that would be required for subsequent doll houses would be if a difference could materially affect the conformance with a product safety rule such as a change in paint colors or paint suppliers.

Manufacturers might also reduce their testing costs by ensuring that they obtain third-party testing only for those rules that actually apply to their product. For example, a toy that is intended for a child 6 years of age or older is not required to be certified to the small parts standard because the regulation does not cover items specifically intended only for use by children older than three years.

2. I produce a shirt in several sizes, must I test each size?

No. Shirts that differ only in size will be considered to be the same product for purposes of testing.

3. If I change from an epoxy paint on my children's product to a polyurethane paint, but the color is the same, is that a material change?

Paint is a product that has been associated with lead content. The Commission would consider any change in paint, including any change in the formulation, the color, or the supplier to be a material change in the product's design or manufacture such that the change should be tested. The test results may be from a CPSC-recognized third-party conformity assessment body selected by the paint manufacturer or by the children's product manufacturer.

4. I am a home based manufacturer of children's clothing. The fabric I use is exempt from the lead content testing. However the buttons I use are not. Can I require my button supplier to provide third-party testing results?

You may rely upon those results if the manufacturer voluntarily supplies them. However the button supplier might not be required to conduct third-party testing if its buttons are not children's products. If the button supplier does not supply third-party test results or a certificate, you may either attempt to find a button supplier who will give you such test results or a certificate, or submit a sample of buttons yourself to a CPSC-recognized third-party conformity assessment body for testing.

5. What is a reasonable testing program?

A reasonable testing program is a set of procedures that are employed to provide reasonable certainty that products made are in compliance with all applicable rules, bans, and standards. The minimum essential elements are described above in section II.B.

6. I am a low-volume producer of a children's product. My production is only 7,000 units per year. Do I have to undergo periodic sampling once per year even though my production is less than 10,000 units?

Answer: Assuming there are no material changes to your product, you do not have to periodically test until your production reaches 10,000 units (maximum). The Commission's guidance provides some relief to low-volume producers so that they do not have to test their products yearly if they make fewer than 10,000 units per year. You can wait longer than a year to test your product but you will need to do some testing at the point once you have produced 10,000 units. If your manufacturing is constant (i.e., remains at 7,000 units per year), that will occur in the second year of production. The next periodic test would be required when your production hits 20,000 units, or just before the end of the third year of production.

The maximum periodic test interval for low-volume manufacturing is not calendar-based, but is production quantity-based. The Commission reaffirms that more frequent periodic testing may be required to assure with reasonable certainty that all production units continue to comply with all applicable safety rules. For example, if there is significant variation in one of a product's components, and that variation could

affect compliance to a rule, more frequent periodic testing may be needed to ensure continuing compliance.

7. Can I put a telephone number on my product so that a retailer can call to obtain my certificate?

If you include a telephone number for retailers to use in obtaining a certificate, that number has to be answerable at all times.

8. Who must certify a children's product?

CPSC regulations at 16 CFR part 1119, state that domestic manufacturers or importers are the only entities required to certify a children's product as compliant with the applicable rules, bans, and standards. The statute permits the Commission to require certification by foreign manufacturers and if it decides to do so, the Commission will provide sufficient notice of this change in policy and an opportunity for comment.

9. Can the importer's certification be based on third-party tests conducted by the foreign manufacturer so long as they use a CPSC-recognized third-party conformity assessment body?

Yes. Third-party tests from a CPSC-recognized third-party conformity assessment body can serve as the basis for issuing the certificate.

10. What does my certification need to be based upon?

For children's products, the certificate needs to be based on the results of tests performed by a CPSC-recognized third-party conformity assessment body that shows compliance with all applicable rules, bans, standards, etc. For non-children's products, the certificate needs to be based on the results of tests performed as part of a reasonable testing program that show compliance with all applicable rules, bans, standards, etc. CPSC-recognized third-party conformity assessment body testing is not required for non-children's products. If a third-party conformity assessment body is used, the body does not have to be a CPSC-recognized third-party conformity assessment body.

11. I am an importer of children's products made abroad. I plan to rely on third-party tests conducted by my overseas manufacturer. Can the overseas manufacturer certify the product for me?

No. Under current regulations, the overseas manufacturer cannot certify the product for the importer. The overseas manufacturer can arrange for the third-party testing by a CPSC-recognized third-party conformity assessment body and supply those tests results to you so you can certify the product.

12. Are small crafters and/or small volume manufacturers subject to the same conditions and requirements for relying on supplier testing as large volume manufacturers?

All manufacturers, regardless of production volume, are required to make products in compliance with all applicable rules, bans, and standards. Other than the exemption for periodic testing if a product's production volume is below a limit, the requirements for certification and third-party testing, if the children's products are involved, are the same.

13. I am a small crafter and I make toys here in the United States. You have not yet accredited labs for testing to ASTM F963. What am I supposed to do?

Manufacturers must ensure their product conforms to all applicable regulations, but they do not have to issue a certificate of compliance based on the results of testing by a CPSC-recognized third-party conformity assessment body if the Commission has not yet issued a notice of requirement for a particular Commission standard, rule, regulation or ban. Therefore, you would not need to conduct such testing until 90 days after the Commission issues the notice of requirements for ASTM F963.

14. Can component part testing be used as the basis for a general conformity certificate or a certificate for children's products based on third-party testing by an accredited laboratory?

Component part testing by a CPSC-recognized third-party conformity assessment body can sometime be used as part of the basis for issuing a certificate for a children's product. Component tests can show compliance with requirements for which the entire product is not required, such as lead content for that component. However, testing of the entire product and not just a component may be required to show compliance for specific requirements. If the product is a children's product, the tests must be performed by a CPSC-recognized third-party conformity assessment body.

15. Can the importer's certification be based on third-party tests conducted by the manufacturer or supplier of component parts used by a foreign manufacturer?

In part, yes. Third-party component tests for compliance to rules for which the entire product is not required, from a CPSC-recognized third-party conformity assessment body, can serve as part of the basis for issuing the certificate. Other requirements may require third-party testing of the entire product. Component testing is not sufficient in those cases to serve as the full basis for issuing a certificate.

For example, assume that the product at issue is a children's doll with button eyes. The button manufacturer or supplier can provide third-party testing results that show compliance with chemical requirements, but cannot show compliance with small parts

requirements. For the small parts requirement, the entire doll with the button attached must be tested to show that is can withstand use and abuse testing.

16. Can the component material be tested at the raw materials stage, after it has been manufactured into a component, or after final manufacture and then separated from the final product?

Component testing is used to demonstrate that the component, separate from the remainder of the product complies with some rules, bans, and standards. Only if there is no possibility of a material change into or onto the component during processing, is raw material testing considered. Generally, a component does not have to be assembled into the final product and then separated for component-level testing. Testing before assembly into the final product is acceptable unless there is the possibility the assembly process itself may materially change the component.

17. How long does certification of a component part last?

If you are a certifier, you are responsible for ensuring that the components used by the manufacturer cannot become subject to a material change during the manufacturing process. It is unacceptable for an importer relying on test of component parts to certify its product to ignore the fact that components may age or be affected by other conditions that might adversely affect the component or product's ability to comply with the applicable rules.

18. What does Section 102 of the CPSIA mean when it states that samples submitted for testing must be "identical in all material respects to the product?"

"Identical in all material respects to the product" means that for the test to a rule, ban, or standard under consideration, the sample (that is, not the completed product itself) must behave identically to the product itself. "Identical in all material respects" refers both to the actual composition of the sample (with respect to chemical tests such as lead and phthalates), and its performance (with respect to performance tests). It is possible for testing samples of a product (not the finished product itself) to be different from each other, depending on the rule, ban, or standard associated with the sample. For example, a small decoration on a children's product affects compliance with two rules, lead content and small parts. It is possible to have a "sample" for lead composition testing that consists of a large, unattached piece of the material used in the decoration, and have another sample that is a portion of the product with the decoration attached (in the same manner as the decoration is attached to the finished product) for small parts testing. The manufacturer must provide a rationale for how they determined that the sample is identical in all material respects to the finished product.

19. Does a certificate of compliance to the ban on lead in paint need to be based on third-party tests done by a laboratory accredited as a third-party conformity assessment body by the Commission?

The ban on lead in paint covers both children's products and some non-children's products likely to be used in the home around children. CPSC-recognized third-party conformity assessment body testing applies only to children's products, so only children's products need to have a certificate based on CPSC-recognized third-party conformity assessment body tests.

Painted non-children's products likely to be used in the home and around children, and wet paint in the can also must comply but can be accompanied by a general certificate of conformity. As always, a general conformity certificate can be based on third-party tests of either the final finished furniture or the paint if that is more convenient for the manufacturer. If certificates of conformity for compliance are based on tests of the paint as a component part, the manufacturer must ensure that the paint used on the furniture is identical in all material respects to the paint used on the furniture for which the certificate is issued. It is no defense to rely on a certificate that is based on tests of paint that is not the same in all material respects to the paint actually used on the product.

20. I have made a material change to my children's product that involves a new component (a button). Third-party testing is required for lead and small parts. Do I have to submit finished products for both tests?

For some tests (lead, lead in paint, phthalates, lead in jewelry, and the heavy metals requirements of ASTM F963), for example, the Commission will accept component testing. It is not necessary to attach the button (in this example) to the product and then take it off to determine the button's lead content. In general, if the assembly process does not materially change the component (for example, by changing its mechanical properties, or by potential contamination), the component does not have to be assembled onto the product in order to be tested for compliance to the lead limits. A CPSC-recognized third-party conformity assessment body must be used for all testing required on children's products and the manufacturer must ensure that the button is identical in all material respects to the buttons that will be used on the production line.

Some tests, such as the small-parts test, do require the complete product for proper evaluation. If the button is applied as the eye of a doll, for example, the entire product would need to be tested to evaluate whether the doll meets the small parts standard, *i.e.*, whether the button can be separated from the product during testing that simulates use and abuse by a child as specified in the small parts rule. While it is conceivable that a section of the material used in the product could have the button attached using a process identical to production units, thus creating a sample "identical in all material respects," such a process would require extra testing and documentation to confirm that it is indeed similar to production units.

Appendix A

Product Safety Rules to Which Domestic Manufacturers and Importers Must Provide General Conformity Certificates

16 CFR Part #	Description
1420*	***All Terrain Vehicles:*** The ANSI/SVIA voluntary standard is to be considered a mandatory product safety rule. The rule includes various mechanical, performance, and labeling requirements for ATVs.
1201*	***Architectural Glazing Materials:*** Applies to A glazing material in products such as storm or combination doors, bathtub/shower doors and enclosures, patio type sliding doors. The rule contains performance requirements for impact resistance.
1512*	***Bicycles:*** Establishes various mechanical safety requirements for bicycles. Rule also requires that bicycles be labeled so that the manufacturer can be identified and the month and year of manufacture can be determined. Provides requirements for an instruction manual to be provided to the consumer. Rule applies to all bicycles except one-of-a-kind bicycles and track bicycles.
1203*	***Bicycle Helmets:*** All bicycle helmets must meet performance requirements concerning such things as impact attenuation and positional stability.
1213	***Bunk Beds:*** Establishes requirements to reduce the risk of entrapment and suffocation in bunk beds. The rule also requires that the manufacturer and month and date of manufacture be identifiable from a product label and that instructions be provided to the consumer. Bunk beds intended for children are regulated in 16 CFR Part 1513.
1630* 1631*	***Carpets and rugs:*** The rules establish performance requirements to limit the flammability of carpets and rugs.
1204*	***CB Omnidirectional Base Station Antennas:*** Establishes performance standards to reduce the risk of electrocution resulting from contact with power lines while the antenna is being installed or taken down.
1209*	***Cellulose Insulation:*** The rule establishes performance requirements that limit the corrosiveness and combustibility of cellulose insulation.

1302	***Contact Adhesives:*** This rule establishes product characteristics intended to prevent the sale of extremely flammable contact adhesives.
1210* 1212*	***Cigarette and Multipurpose Lighters:*** These rules establish performance standards intended to make cigarette and multipurpose lighters difficult for children under the age of 5 years to operate.
1500.18(a)(9)* 1500.86(a)(7-8)	***Dive Sticks:*** Establishes requirements that dive sticks either not stand upright on the bottom of a pool or be made from non-rigid material so as to prevent puncture or penetration injuries to a person when used in shallow water.
1500.14(b)7)* 1500.17(a)(3) 1500.17(a)(8-9) 1500.17(a)(11-12) 1500.83(a)(27) 1500.85(a)(2) 1507	***Fireworks Devices:*** These rules establish various safety requirements fireworks devices including limits on the chemical composition, fuses, and requirements for stability of the device while in use. Some fireworks devices are banned.
1211*	***Garage Door Openers:*** The rule contains performance requirements to reduce the risk that a person could be injured by being entrapped when a garage door is closing.
1205*	***Lawnmowers:*** Establishes performance standards for power walk-behind lawnmowers intended to reduce the risk of injury due to contact with the blade of the mower.
1303	***Lead in paint:*** Lead content, by weight, of the dried paint film may not exceed 0.009%. Rule applies to consumer paints and paint used on non-metal furniture. Some applications are exempted including mirror back coatings, metal furniture, blinds, chandeliers, fixtures, appliances, manufactured windows, artist paints. Agricultural and industrial uses are also not covered. Touch up paints for the exempted applications that contain lead must be labeled.
1202*	***Matchbooks:*** Establishes requirements for matchbooks to reduce the risk of burn injuries.
1632* 1633*	***Mattresses:*** Rules contain performance requirements to demonstrate ignition resistance to both cigarettes (1632) ignition and open flames (1633).

1750	***Refrigerators:*** Establishes performance requirements that ensure that a refrigerator can be opened from the inside so as to reduce the risk that a child could become trapped in a refrigerator and suffocate.
1301	***Refuse Bins:*** Establishes product characteristics and performance tests to prevent the sale and distribution of unstable refuse bins.
1207*	***Swimming Pool Slides:*** Establishes requirements intended to reduce the risk of injury or death from the use of swimming pool slides.
1611*	***Vinyl Plastic Film:*** Establishes performance standards to limit the flammability of vinyl plastic film subject to the Flammable Fabrics Act.
1610*	***Wearing Apparel (except hats, gloves, and footwear):*** Establishes performance standards to limit the flammability of most wearing apparel.

*Existing rule contains requirements for testing, recordkeeping or both.

Appendix B

Children's Product Safety Rules

16 CFR Part #	Description
1420*	***All Terrain Vehicles:*** The ANSI/SVIA voluntary standard is to be considered a mandatory product safety rule. The rule includes various mechanical, performance, and labeling requirements for ATVs.
1500.18(a)(6) and 1500.86(a)(4)	***Baby Walkers and Baby Bouncers:*** The rules are designed to ensure that there are no mechanical, crushing, laceration, and other hazards to children from baby walkers and bouncers.
1512*	***Bicycles:*** Establishes various mechanical safety requirements for bicycles. Rule also requires that bicycles be labeled so that the manufacturer can be identified and the month and year of manufacture can be determined. Provides requirements for an instruction manual to be provided to the consumer. Rule applies to all bicycles except one-of-a-kind bicycles and track bicycles.
1203*	***Bicycle Helmets:*** All bicycle helmets must meet performance requirements concerning such things as impact attenuation and positional stability.
1213* 1513	***Bunk Beds:*** Establishes requirements to reduce the risk of entrapment and suffocation in bunk beds. The rule also requires that the manufacturer and month and date of manufacture be identifiable from a product label and that instructions be provided to the consumer.
1500.18(a)(5)	***Caps and Toy Guns:*** Banned if sound is greater than 138 decibels within 25 centimeters.
1630* 1631*	***Carpets and rugs:*** The rules establish performance requirements to limit the flammability of carpets and rugs.
1500.18(a)(7) 1500.86(a)(5)	***Clacker Balls:*** The rule establishes requirements for clacker balls, including for the cord, weight of the balls, and testing requirements
1615 1616	***Children's Sleepwear:*** Rule establishes performance standards to limit the flammability or risk of burn injuries associated with children's sleepwear.
1500.18(a)(13-14) 1508 - 1509	***Cribs:*** Must meet performance requirements to prevent entrapment and to decrease the risk of suffocation.
1500.18(a)(9) 1500.86(a)(7-8)	***Dive Sticks:*** Establishes requirements that dive sticks either not stand upright on the bottom of a pool or be made from non-rigid material so as to prevent puncture or penetration injuries to a person when used in shallow water.

CPSIA Sec. 104	***Durable Nursery Products:*** The CPSC is mandated to promulgate standards for durable nursery products. These standards may be based on current voluntary standards. Durable nursery products include: toddler beds, high chairs, booster chairs, bath seats, gates and other enclosures for confining a child, play yards, stationary activity centers, infant carriers, strollers, swings, and bassinets and cradles.
1500.18(b) 1505	***Electrically Operated Toy, Video Games, and other Children's Articles:*** Establishes requirements to reduce the risk hazards that might be associated with electrically operated children's articles including the risk of burns and electrocution.
1500.14(b)7)* 1500.17(a)(3)* 1500.17(a)(8-9)* 1500.17(a)(11-12)* 1500.83(a)(27)* 1500.85(a)(2)* 1507*	***Fireworks Devices:*** These rules establish various safety requirements fireworks devices including limits on the chemical composition, fuses, and requirements for stability of the device while in use. Some fireworks devices are banned.
1500.18(a)(16)	***Infant Cushions:*** Cushions promoted for the use of children under 1 year of age are banned if they are loosely filled with granular material such as polystyrene beads, covered with a flexible fabric, and can be flattened.
CPSIA Sec 101	***Lead Content:*** The lead content of any component of a children's product may not exceed 300 ppm. Components that are not accessible are exempted as are some components of electrical products if lead is required for the part to function properly. (In August 2011, the allowable lead limit is reduced to 100 ppm where technologically feasible.)
1303	***Lead-in-Paint:*** The lead content of the dried paint film or similar surface coating on any children's product may not exceed 0.009% by weight.
1632* 1633*	***Mattresses:*** Rules contain performance requirements to demonstrate ignition resistance to both cigarettes (1632) ignition and open flames (1633).
1500.18(a)(8) 1511	***Pacifiers:*** Rules establish safety requirements for pacifiers, including tests for structural integrity and a prohibition of any cord, string or ribbon attachment.
CPSIA Sec. 108	***Phthalates (DEHP, DBD, and BBP):*** These phthalates are permanently banned in childcare articles and toys in concentrations greater than 0.1%.
CPSIA Sec. 108	***Phthalates (DINP, DIDP, DnOP):*** These phthalates are banned from childcare articles and toys that can be placed in a child's mouth. This is an interim ban pending a Commission consideration of the findings of the Chronic Health Advisory Panel and the promulgation of a final rule by the Commission.

1510 1500.18(a)(15) 1500.86(a)(1)	***Rattles:*** Rules require that any sharp edges or points in a rattle must be internal and establishes a performance requirement to ensure that the rattle will not present a suffocation hazard.
1500.19	***Small Balls and Marbles, Latex Balloons:*** Toys or games intended for children between the ages of 3 years and 6 years must bear a warning label, if they contain small parts. Balloons, small balls or marbles intended for children 3 years of age or older or any toy or game containing a balloon, small ball or marble must bear an appropriate choking hazard label. The warning for latex balloons and toys or games for children that contain balloons warns that children under 8 years of age can choke on balloons. There is no upper age limit for balloons, small balls and marbles.
1500.19	***Small Parts:*** Toys or games intended for children under the age of 3 years that contain small parts are banned. Toys or games intended for children between the ages of 3 years and 5 years must bear a warning label, if they contain small parts.
1207*	***Swimming Pool Slides:*** Establishes requirements intended to reduce the risk of injury or death from the use of swimming pool slides.
CPSIA Sec. 106	***Toys:*** Toys must meet the requirements of ASTM F-963, which includes comprehensive safety requirements.
1611*	***Vinyl Plastic Film:*** Establishes performance standards to limit the flammability of vinyl plastic film subject to the Flammable Fabrics Act.
1610*	***Wearing Apparel (except hats, gloves, and footwear):*** Establishes performance standards to limit the flammability of most wearing apparel.

* Regulations marked with an asterisk may be applicable as children's products safety rules to the extent a manufacturer's products are designed or intended ***primarily*** for children 12 years of age or younger (*e.g.*, crib mattresses, youth bicycles and ATVs, sparklers). When products are designed or intended primarily for children 12 years of agge or younger, the CPSIA requires third-party testing by a CPSC-recognized conformity assessment body.

[Billing Code 6355-01-P]
CONSUMER PRODUCT SAFETY COMMISSION

Notice of Availability of a Guidance Document: Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Availability.

SUMMARY: The Consumer Product Safety Commission ("Commission") is announcing the availability of a document titled, "Guidance Document: Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008" ("Guidance Document"). Section 102(a)(1) of the Consumer Product Safety Improvement Act ("CPSIA") requires manufacturers of non-children's products to certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission. Section 102(a)(2) of the CPSIA establishes certification requirements for children's products that are subject to a children's safety rule. For manufacturers of children's products, certification must be based on testing done by a CPSC-recognized third-party conformity assessment body. The Guidance Document clarifies the Commission's interpretation of the requirements of section 102 of the

CPSIA. Specifically, it describes the Commission's position on a reasonable testing program and how to certify that a product complies with all rules, bans standards, or other regulations applicable to the product under the laws enforced by the Commission.

DATES: Submit written or electronic comments on the Guidance Document by January 11, 2010.

ADDRESSES: The Guidance Document is available from the Commission's website at [**insert web link here**]. Copies also may be obtained from the Consumer Product Safety Commission, Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; 301-504-7923.

You may submit comments, identified by Docket No. [**insert CPSC docket number**], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through www.regulations.gov.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to http://www.regulations.gov. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Robert J. Howell, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7577 or e-mail at rhowell@cpsc.gov.

SUPPLEMENTARY INFORMATION:

On August 14, 2008, the CPSIA (Public Law 110-314) was enacted. Section 102 of the CPSIA, titled "Mandatory Third Party Testing for Certain Children's Products," establishes requirements for the testing and certification of products subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which are imported for consumption or warehousing or distributed in commerce. Under section 102(a)(1) of the CPSIA, manufacturers must issue a certificate which "shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission." Section 102(a)(2) of the CPSIA establishes testing requirements for children's products that are subject to a children's product safety rule. (Section 3(a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2052(a)(2)) defines a children's product as a consumer product designed or intended primarily for children 12 and younger.) Section 102(a)(2) also states that, before a children's product that is subject to a children's product safety rule is imported for consumption or warehousing or distributed in commerce, the manufacturer of such children's product must

submit sufficient samples of the children's product "or samples that are identical in all material respects to the product" to an accredited "third party conformity assessment body" to be tested for compliance with the children's product safety rule. Based on such testing, the manufacturer, under section 102(a)(2)(B) of the CPSIA, must issue a certificate that certifies that such children's product complied with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to perform such tests.

The Commission has prepared a document titled, "Guidance Document: Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008," which provides guidance on the Commission's interpretation of section 102 of the CPSIA. The Guidance Document is available on the Commission's website at [**insert web link here**] and from the Commission's Office of the Secretary at the location listed in the **ADDRESSES** section of this notice. The Commission invites comment on the Guidance Document. Comments should be submitted by January 11, 2010. Information on how to submit comments can be found in the **ADDRESSES** section of this notice.

Dated: _____

_____

Todd Stevenson, Secretary
Consumer Product Safety Commission