



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

**Public Hearing**  
**Alternative Testing Requirements for Small Batch Manufacturers**  
**October 26, 2011**

**Opening Remarks**

**Staff Introduction**

**Presenters:**

**Panel 1**

Dan Marshall, Peapods Natural Toys, Handmade Toy Alliance

Jolie Fay, Skipping Hippos, Handmade Toy Alliance

Randall Hertzler, Eurosource, LLC, Handmade Toy Alliance

Adam Frost, President, The Wooden Wagon

**Panel 2**

Marideth J. Sandler, CEO, Sandler Trade, LLC

Michael Gray, Director of Business Development, Thermo Fisher Scientific

Quin D. Dodd, Esquire, Law Offices of Quin Dodd

Satbir Nayer, XOS, Product Manager, Consumer Products

**Adjourn**

Panel 1

Alternative Testing Requirement for  
Small Batch Manufacturers

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**Stevenson, Todd**

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**From:** dan marshall [dan@peapods.com]  
**Sent:** Friday, October 21, 2011 12:34 PM  
**To:** CPSC-OS,  
**Subject:** Alternative Testing Requirements for Small Batch Manufacturers Public Hearing  
**Attachments:** HTA small batch hearing Dan Marshall.pdf

Attached is my testimony which I will present at the Small Batch Manufacturers Public Hearing on October 26. I will also be sending a package of supplemental reference material later this afternoon.

Please let me know if you have any questions.

Thanks,  
Dan Marshall  
Handmade Toy Alliance



October 21, 2011

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
cpscos@cpsc.gov,

Re: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

My name is Dan Marshall. I am co-owner of Peapods Natural Toys & Baby Care in St. Paul, MN and the founder and president of the Handmade Toy Alliance. Thank you for the opportunity to discuss the small batch provisions of HR 2715, a needed reform of the CPSIA which we fought to pass through Congress. I hope that the Commission will choose to honor Congress's intent and provide meaningful relief for small batch manufacturers.

My colleagues will be discussing other provisions of HR 2715 as they relate to small batch manufacturers, importers, and retailers. I will focus my remarks on why we believe that full compliance with the third party testing requirements for lead in substrate and the ASTM F 963 toy safety standard is not necessary to protect public health and safety, including some of the factors already in effect which limit the risks posed by products made by small batch manufacturers. My understanding of these issues are based on my experience as a father, as a toy store owner, and as an activist who has been listening closely to the needs of hundreds of small businesses for the past three years.

### **Why exemptions for small batch manufacturers will not compromise public health or safety**

#### *In General*

For three years, we have been arguing that small batch manufacturers should be treated differently from larger businesses. In part, this is because the scale of their operations creates far less potential for harm than larger companies. While it is true that a product can be dangerous no matter how big or small its manufacturer, it is also true that a hazardous product made in batches of 50,000 poses a risk to the public which is 1,000 times greater than a hazardous product made in batches of 50. Congress rightly addressed this issue of scale in HR 2715, making the CPSIA more in line with other landmark consumer safety laws such as the 2010 Food Safety Act and California's Proposition 65, which sets the definition of a small business much higher at less than 10 employees.

Congress also mandated that small batch manufacturers must register with the CPSC in order to take advantage of relief under HR 2715. This registration requirement offers the CPSC the opportunity to monitor the products being produced via spot checking and to communicate information about product

safety directly to small batch manufacturers. In many ways, this is an opportunity to promote product safety which is far greater than what exists for larger manufacturers who are not required to register. We hope that the CPSC will take advantage of this opportunity to perform effective outreach and education for small batch manufactures. After all, an ounce of prevention is worth a pound of cure.

Imagine the following scenario: the CPSC discovers through spot checking that a metal zipper pull made by the XYZ Company which is commonly used in children's clothing violates the lead content standard and poses a risk to children. With an effective small batch registry system, the CPSC can easily contact via email all registered small businesses and warn them to avoid the violative component. Imagine the injuries to children and the costs to small businesses which would be avoided.

Or, suppose the ASTM F 963 Toy Safety Standard is updated and new requirements are put in place for the use of rare earth magnets in toys. The CPSC can easily broadcast this news to small batch manufacturers via the registry and help ensure that they meet the new standards.

The opportunity to create these avenues of communication are somewhat fleeting. If the Commission chooses at this time to require onerous testing requirements on small batch manufacturers, or if it delays creating an easy registration system, we fear that a great many small businesses will simply go out of business or, worse yet, relocate operations to the black market. They know that the CPSC lacks the capability to monitor tens of thousands of crafters selling at thousands of venues across the country without a registration system. Offering exemptions from testing requirements right now is the best and only way to encourage registration from the beginning. Exempting small batch as allowed by HR 2715 is the *only* way to build a lasting and meaningful relationship with thousands of small batch manufacturers.

As we have previously attested, small batch manufacturers rely more heavily on stock components manufactured by other companies than do mass market manufactures. These components are usually purchased through retailers such as Michaels or JoAnn Fabrics. Component testing rules implemented in the past two years continue to serve the purpose of pushing compliance further and further up the supply chain. The result has been an overall increase in compliance among component parts, many of which are the same parts which are sold to retail crafts stores and used by small batch manufacturers. We believe that component testing will continue to improve the compliance of component parts for all manufacturers as CPSIA implementation moves forward.

Almost all small batch manufacturers begin by selling directly to consumers, either through local craft fairs or, more and more, through ecommerce websites. Etsy.com, for example, currently lists 624,337 handmade children's products and 25,057 handmade toys. The vast majority of these are one-of-a-kind items. In these marketplaces, small batch manufacturers maintain a direct relationship with the consumer, which often includes the email address of the purchaser. Not only does this provide small batch manufacturers with an opportunity to receive direct feedback about their products, but it also provides a channel to contact the consumer directly if a problem is later identified. These unique relationships substantially mitigate safety risks.

Retailers such as myself also play an important role in educating manufacturers and assuring compliance. As a small batch manufacturer grows her business, the focus naturally turns from direct to consumer sales to wholesale sales to retailers. Our store buys from dozens of manufacturers who have moved through this transition.

As experienced retailers, we carefully evaluate every product we sell. We often educate potential

suppliers about the CPSIA and their compliance requirements. Indeed, my discussions with our vendors gave me the impetus to form the Handmade Toy Alliance in the first place. From my discussions with other retailers, this type of diligence is very common. Retailers serve as a check on small batch manufacturers which naturally serves to reduce risks as a manufacturer grows. Even if the CPSC grants exemptions from testing requirements, many small batch manufacturers will continue to conduct third party testing in order to meet the demands of their wholesale customers.

Finally, the manufacturing process for small batch manufacturers is very different from larger manufacturers. Products are often designed and tested on the business owner's own children. The business owner often plays a direct role in the entire production process, from acquiring component parts to shaping and sewing, packaging and marketing. Small batch manufacturers are not generally big enough to outsource these tasks and are able to keep tight control of their entire process. We have stated this many times before, but it bears repeating. Small batch manufacturers were *not* the cause of the 2007 toy recall crises. Multinational mass market manufactures were.

I will now examine more closely two testing requirements which are of greatest concern to our members.

#### *Lead in Substrate*

The Congressional intent of HR 2715 is clear. Congress specifically excluded from relief for small batch manufacturers those tests which it determined to be necessary for public health. These include the lead in paint standard, the small parts standard, lead in children's metal jewelry, etc. Together, these requirements ensure that products which have historically posed the greatest potential for harm will continue to require third party testing, no matter how large or small the manufacturer.

The lead in substrate test was specifically not included Congress's list of priorities, which we believe is appropriate. An analysis of toy recalls since passage of the CPSIA in August of 2008 strongly supports this position.

Since August 15, 2008, the CPSC has issued 107 recalls of children's toys. Of those 107 recalls, 27 were for violations of a lead content standard. Of those 27 violations, 100% were violations of the lead in paint standard. Notably, lead in paint recalls are skewed more toward smaller total units recalled than ASTM toy safety standard violations, most likely because they often reflect a small number of batches recalled due to poor supply chain management in foreign factories rather than poor product design issues which would affect all batches produced of a given toy. A full 94.50% of lead in paint recalls since August 15, 2008 originated in China and *zero* were from the U.S., Canada, or Europe.

<b>Lead in Paint Violations</b>	
Units recalled by country of origin	
China	266,534
Indonesia	9,200
Taiwan	3,000
Trinidad	2,800
Japan	300
India	200

As for the lead in substrate standard, the CPSC has issued *zero* recalls of toys since enactment of the CPSIA for violations of the lead in substrate standard. From this data, we conclude that violations of the lead in substrate standard are extremely rare and/or the CPSC does not consider lead in substrate

violations to be a threat to public health. Indeed, we have been told anecdotally by former CPSC staffers that the CPSC has chosen to concentrate its enforcement efforts on lead in paint and has not pursued recalls based on lead in substrate violations. In either case, it is clear that there is no need to deny relief for small batch manufacturers from the costs of lead in substrate testing due to the necessity to protect public health. Zero products would have avoided recall if small batch exemptions to lead in substrate testing had been in place since the beginning of the CPSIA.

<b>Overview</b>	
<b>Lead Content Recall 8/15/08 – 10/19/11</b>	
Total recalls lead in paint	28
Total recalls lead in substrate	0
Total units recall lead in paint	28,2034
Total units recalled lead in substrate	0
Range # of units lead in paint	50 - 90,000
Mean # units per lead in paint recall	10,342
Median # units per lead in paint recall	2,200
Total units recalled which might have qualified for HR2715 small batch relief	0

Furthermore, as we have asserted many times before, we also believe that the lead in substrate standard itself is problematic. Because it measures total lead content without respect to bioavailability, many materials which pose no hazard to public health are nonetheless rendered violative under the 100ppm total lead content limit. We understand Congress's intent to create a “bright line” standard which can be easily measured and understood by both manufacturers and the public. However, this same rationale also argues against the need to require third party testing for the lead in substrate standard for small batch manufacturers. The fact that many materials which may technically violate the 100ppm standard would pose no harm to children if ingested clearly argues for less strict testing requirements.

It is clear that denying exemptions for small batch manufacturers from lead in substrate testing is not necessary to protect the public health.

#### *ASTM F 963 Toy Safety*

Prior to enactment of the CPSIA, testing to the ASTM F 963 standard was voluntary. Testing usually occurred once a businesses had grown to the point where it seeks to sell to wholesale accounts which require safety testing. This is an automatic check provided by the marketplace which will require many small batch manufactures to test even if they are otherwise exempted from doing so by the CPSC.

We believe that the CPSC can and should proactively educate small batch toymakers about the F 963 standard. Simply by interpreting the document and helping businesses to understand its application, the CPSC can build trust and cooperation with small businesses while also increasing compliance. As my colleagues are testifying, small batch manufacturers want to understand the ASTM F 963 standard, but find its technical language and multiple references to other non-public technical documents to be all but impenetrable. Its 39 specific safety requirements and 25 different testing procedures are described without any context which would help a non-engineer to figure out which standards and tests would apply to any given toy. Third party testing labs often offer little help and simply invoice fees for testing without bothering to educate the business owner. The result is a product safety standard which many manufacturers both large and small simply do not understand.

It is not necessary to violate ASTM's copyright in order to provide businesses with a simplified description of the requirements. What we need is a Cliffs Notes version of the standard which would be allowable as a fair use of a copyrighted text. Such a document, if produced and disseminated by the CPSC, would provide a foundation for compliance which would benefit all manufacturers.

In the end, however, it is important to keep in mind that most of the ASTM F 963 standard is simply common sense. A toy should not break if dropped from a countertop onto a hard floor. It should not have sharp edges. It should not break if twisted or pulled. Small batch manufacturers can and do understand these precepts.

An examination of toy recall statistics since enactment of the CPSIA in August of 2008 demonstrates that small batch manufacturers do create safe toys and are not a source of recalls or injuries.

Since enactment of the CPSIA, 19,204,815 units of toys have been recalled in 79 separate recalls for violations of the toy safety standard not involving lead content. Of those 19.2 million, the average units per recall was 243,099 and the median number was 22,000. These are well above the small batch limit of 7,500 units per year set by HR 2715.

Of those 79 recalls, only 22 involved units less than 7,500. Sixteen of those 22 recalls can be attributed to companies which exceed the \$1M annual revenue cap set by HR 2715, leaving only 6 recalls which may have been manufactured by a small batch manufacturer. Of those 6 potential small batch recalls, 5 were for choking hazard (small parts) violations on a toy designed for a child less than 3 years old, a standard which is specifically excluded from small batch relief in HR 2715. Only one recall, a ride on horse toy which posed a strangulation hazard, would have been subject to a small batch exemption from the ASTM toy safety standard. Only 1,200 units of this toy were manufactured and they were associated with only one reported incident and no injuries. This toy represents 0.0062% of the total units of toys recalled for non-lead violations of the ASTM toy safety standard from August 15, 2008 until the present.

<b>Toy Recalls 8/15/08 through 10/19/11</b>	
<b>Non-Lead Violations of ASTM F 963 Standards</b>	
Total recalls	79
Total units recalled	19,204,815
Range # of units	40 – 2,925,000
Mean # units per recall	243,099
Median # units per recall	22,000
Total units recalled which would have qualified for HR2715 small batch relief	1,200 0.0062%

Personally, I have heard of only one HTA member manufacturer who has ever not passed an ASTM F 963 test since enactment of the CPSIA. This happened because the manufacturer had written their "ADULT ASSEMBLY REQUIRED" warning in a serif font. The standard stipulates in section 5.3.1 that it must be written in a *sans serif* font. The manufacturer corrected their label, was required to pay for a retest, and passed. It is hard to see how this added expense improved public safety. It is also hard to see how this could be presented as an example of a cost being shifted onto a manufacturer which had previously been offloaded on innocent, vulnerable children.

What small batch manufacturers need is information and education, not testing requirements. It is clear



from the Commission's own recall data that small batch manufactures should be exempted from ASTM F 963 testing requirements and that it would not serve the interests of public health to deny this exemption.

*Conclusion*

When we examine small batch manufacturers—their tight control of production, their design process, and their personal interest in creating safe products—we see that they have many strengths which multinational manufacturers lack. And, when we examine recall statistics, we see that small batch manufacturers are not a part of the product safety problem. These same statistics demonstrate the wisdom of Congress, which acted prudently and fairly when it wrote HR 2715. Areas of greatest concern such as lead in paint and small parts standards are not subject to small batch testing exemptions. Congress appropriately allowed exemptions for Lead in substrate testing and ASTM F 963 toy safety testing. We urge you to fulfill Congress's intent and affirm exemptions for small batch manufactures from these two testing standards. On behalf of the nearly 700 members of Handmade Toy Alliance, I thank you for your consideration.

Respectfully,

Dan Marshall,

President,  
Handmade Toy Alliance  
[www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)  
Co-Owner,  
Peapods Natural Toys and Baby Care  
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The HTA Board:  
Randy Hertzler, Vice President  
Jolie Fay, Secretary  
Mary Newell, Treasurer  
Jill Chuckas  
Marianne Mullen  
Adam Frost  
Rob Wilson



**Supplemental Information**

**Alternative Testing Requirements for Small Batch Manufacturers Public Hearing**

**October 21, 2011**

**Letters and Recent Testing Quotes from HTA Members**

RE: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

Hello Office of the Secretary, Consumer Product Safety Commission,

I am the sole owner of a small business catering to children under 12. I am writing you today to urge you to act with common resolve and provide as much relief as possible to small batch manufacturers. I'd strongly recommend that the commission determine reasonable methods for alternative tests based on capabilities of small batch manufacturers and NOT on the capability of testing labs. The commission should interpret economically practicable in the context of businesses operating with narrow profit margins. The limitation clause should not be invoked on the premise of reasonably necessary as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA.

The CPSIA law was created mainly as a response to the numerous 2007 China-made toy recalls. But those hurt most by the passing of this law had nothing to do with the making of lead toys. If the CPSIA stays as is, families will have a greatly reduced merchandise selection and will be forced to shop for their kids at generic, mainstream retailers. Do families want this? No! Plus, these huge retailers and major toy manufacturers are responsible for the illegal, China-made lead toys in the first place. This legislation just doesn't make sense.

To date, I have spent \$270 on 3rd party lab testing of one style of zipper, and \$125 in XRF laser testing. The hours I have invested complying with this law amounts to about 30 hours/year since 2007. Let me remind you that I am a tiny microbusiness and my sales are quite low. These costs dip considerably into my already narrow profit margins, and during these trying times, it is hard enough for small businesses to survive.

I have thought about coming out with another style of baby sleep sack, but the thought of testing other trim items like snaps or buttons have discouraged me. If this law didn't exist, I could come out with at least 3 new products/year. But I have opted to keep it simple and style with the same exact trim item.

**Micro-businesses deserve to stay alive! PLEASE approve alternative Testing Requirements for Small Batch Manufacturers.**

Thanks for your time,

Lennore Merz, Owner & Founder

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October 21, 2011

Dear Honorable Commissioners:

**Re: Alternative Testing Requirements for Small Batch Manufacturers**

My husband and I began making wooden toys, puzzles, doll cradles, teddy bear furniture, and miniature puzzles over 15 years ago. We were a very small, home-based operation. We hand cut, painted, sanded and finished each product lovingly and with extreme pride. Products were sold at local craft shows. Our products were hand-painted with a water-based, non-toxic acrylic craft paint, and applied a water-based urethane. After a 15 year hiatus from this hobby/small business, and trying to supplement our Social Security income, we resurrected our business. One week after we renting a vendor booth at a local public market, obtaining business licenses, State Tax ID's, and supplies necessary to sustain this business, we stumbled upon an article about CPSA and CPSIA guidelines on The Handmade Toy Alliance's website. Our mouths dropped open. Yes, we had heard several years ago on the news that the government was regulating the toy industry and protecting our children from violations of high lead content (imports from China). We had no idea that law applied to handmade in America, hand-crafted children's products! After countless hours of reading and discussing the laws, it was evident that making those beautiful, hand-crafted wooden puzzles and toys was no longer a reality. In the course of one week, our hopes and dreams were annihilated. Kidz Corner and More (category of micro business) died a very sudden death. We joined The Handmade Toy Alliance approximately one month ago. We knew we could no longer continue our very small business, but we wanted to make our voice heard and support the thousands of Americans who want to continue the work they do--making handmade children's products!

**REASONS FOR CLOSING OUR MICRO-BUSINESS:**

**1. APPROACH:** Changes could be made to our product, however, the more we read, the more confusing it became. Products used, testing requirements, record-keeping, tracking, certificates of conformity, labeling, etc became overwhelming. We became painfully aware that this business we once loved was no longer worth it. The law is so vast, difficult to read, testing is cost-prohibitive, labeling is unclear, and overall, compliance would be difficult for a multitude of reasons.

There are several areas that are difficult to understand, but the one we have the greatest problem with is this:

**2. PRODUCTS USED:** Paints: We had always used Acrylic Craft Paint on our products. Sold in any major retail store in the USA. Labels show seals from "ACMI; AP; Art and Creative Materials Institute Certified". Same Label shows: "C E" Same Label: Conforms to ASTM D 4236. Made in the USA. Now we read of ATSM F963. We do not fully understand what that is and due to the obvious difficulty obtaining those documents because of cost and limited availability, it leaves one wondering "how am I going to do achieve compliance?" Why is this not available free of charge to those it affects? Small business owners should not have to have their Master's degree in Chemistry in order to understand what these abbreviations/requirements mean.

--The paint products used are readily available to any consumer in any store in the USA. These products are sold on "Teacher Supply" websites in 64oz bottles for use by children in their arts and crafts for school use!

--Parents can purchase "unfinished" wood shapes, plaques, letters, shelves, wall decor, and toys at any craft/retail store or from an independent woodworker, then purchase the same "acrylic paint" as mentioned above, and apply the same product (s) that we are forbidden to use or must have tested!

--We believe the ownership of responsibility to insure these paints/products meet CPSIA standards be the burden of the paint or product manufacturer and not the crafter, parent, or teacher? Parents and teachers are certainly not submitting their children's craft projects for testing prior to letting the child handle the paint or create their beautiful art work. This makes no sense! The only thing our business did was offer a service--we made the toy from far superior wood, we did the painting so others didn't have to, we finished it with a water-based, soap and water clean up product and sold a beautiful, ready made product. We offered the convenience of buying the product finished and of superior quality! Hand-crafted items were never part of the original problem.

**3. CERTIFICATE OF CONFORMITY:** These should be easily and readily available from any manufacturer on their corporate website. Obtaining such documentation is a time-consuming task. Record-keeping of each product used is not feasible for micro-businesses. These documents should be readily available from

manufacturer's websites and in a downloadable format. Manufacturers are aware of the law and should provide documentation to insure products comply with government regulations. Shouldn't the manufacturer be responsible for testing of all their products like we are required to do? The financial burden would be shifted appropriately to those who can most afford it. Consumers, small business owners should have access to all manufacturers testing prior to use on children's products. If the government is going to mandate that my products comply with the law, we feel we should know upfront from every paint, urethane, button, bead, fabric manufacturer if their product is safe for use on any child's product. We feel the burden of proof is being placed on individual Americans rather than the large manufacturers of these products. Make them financially responsible for labeling and compliance.

**4. TESTING:** The additional time and cost-prohibitive nature of this requirement is absolutely one of the biggest reasons we closed our business. Submitting each product for lead testing is cost-prohibitive. As mentioned above, this would not be necessary if major manufacturers were required to disclose the lead content (and all government regulated contents) of their products before the consumer used them. We firmly believe this would eliminate the need for small, independent, barely solvent businesses to prove anything. We would only have access to products that fall within safe guidelines for all human beings...not just children. The major manufacturers/suppliers of products know what the legal requirements are for all products and should be made to disclose this to the consumer. They should bear the responsibility of making sure the products (s) comply with the law.

**Small parts testing.** Another expense. Very confusing, time-consuming, frustrating proposition to go through when you consider our highest priced product is \$40.00. Small parts definition to most Americans means parts that are a choking hazard. They do not equate flammability, drop tests, seam durability, etc. with small parts testing.

For the small, home-based business, small parts testing is truly heartbreaking! Our understanding is that the finished product has to be submitted, labeled (using the correct font on a label in order to pass the test), and subjected to a destructive type of testing. Hand-crafted, hand-made items take an extremely long time to make. Several hours, days, sometimes weeks go into the production of ONE item. Cost of materials and time invested is a total loss. A wooden toy truck sells for \$15.00 and takes us two solid work days to complete ONE. Wooden puzzles sell for \$20.00 and takes three days (full days) of hand-cutting, rounding edges, hand-sanding all pieces, painting, decorating with paint, applying finishes. All to be destroyed and hope it meets the standards of large toy manufacturers who mass-produce and then have the nerve to label them hand-made? The very small toy manufacturer cannot afford or compete with the mass produced industry. When a major manufacturer submits one puzzle or product for testing out of thousands, there is no big financial loss to their company. We simply cannot afford to do this for each product we create. The profit margin is very slim as it is. All of these requirements just cut deeper into whatever profit there is to be made from a TRULY hand-crafted, hand-made piece of work regardless of what it is!

**5. ENFORCEMENT:** According to the HTA website, there are currently over half a million children's items for sale at [etsy.com](http://etsy.com) alone. Facebook has a multitude of home-based businesses, too. eBay, Payment, local churches, craft shows, flea market vendors, small public market vendors. Many of them may not even know that their products are in jeopardy or that they are in violation of U.S. Laws! The penalty of \$100,000 per violation is not worth the risk to a very small business owner. For corporations that are making millions of dollars manufacturing children's products (and finding loopholes to avoid compliance), this fine is a slap on the wrist for them. To a home-based business owner, retired senior, work-at-home Mom, these fines (or even the threat of being fined) have been enough to stop honest, hard-working American citizens from attempting to earn a living the old-fashioned American way....It has shut down thousands of very small businesses that catered to our children!

**10. SUMMARY:** Putting micro-businesses in the same competitive arena as mass-market manufacturers is certainly unreasonable. Our children in the future, unfortunately, will only have toys, clothing, dolls, furniture, etc. that are imported from the very country that violated their safety in the beginning. Is this what we want? Shouldn't we be enforcing the law at the border where the violations continually occur? Let's hold the major corporations that violate our laws accountable. Enforce tighter regulations on major corporations that provide children's products. Imports from China need stricter regulations and enforcement of our laws. Nothing would make us happier than to hear that our government is going to enforce the law with the manufacturers and

importers who created this problem, and to be quite honest, still do. American craftsmanship is paying a very dear price for the sins committed by foreign countries.

We agree that no child or human being should be subject to any product that has known health or safety issues. As Americans, we should all be free from chemicals that produce disease. We are not. For the parents and groups who are in favor of this law and further testing requirements, they do not know how this affects the small, home-based business in America. People do not understand that the very products they adore and purchase for their children today will soon be nothing more than a memory. It hurts all those work-at-home Moms, husbands and wives who enjoy a hobby and sell what they love; it hurts America as we all struggle to get by week to week in a downed economy. President Obama needs us to strengthen this country. Say, YES, to Handmade in America! Let's make America strong and proud when we see that label "Made In America"!

**We were a micro-business: children's product crafter – retailer--single owner or small group, no employees, making toys or children's products in very small batches. In the future, our business name will change, and our focus will veer away from anything related to children products. We decided it would just be easier to avoid children's products altogether.**

- The CPSIA makes no provision for micro-businesses to be able to operate – they are treated equivalently to mass market manufacturers.
- Cost of 3<sup>rd</sup> party testing for lead and ASTM F963 not economically feasible and not readily available.
- **Tracking, labeling and recordkeeping requirements burdensome. Provide an exemption from all 3<sup>rd</sup> party testing, certification and from labeling**
- **The law and its requirements are too complex to interpret, apply and attempt compliance.**
- **Media blitz is necessary to inform Americans that this law pertains, not just major manufacturers of children's products, but to anyone who creates and sells hand-crafted items in America. This is not well known information and the American people have the right to know how this impacts them as individuals.**
- **Major toy manufacturers must comply with educational guidelines to insure their labeling conforms to acceptable educational toy safety standards. Labeling a toy for ages 3 and over in order to avoid small parts testing is not acceptable. Circumventing the law shows ultimate disregard for the law and an overall blatant lack of concern for our children's safety.**

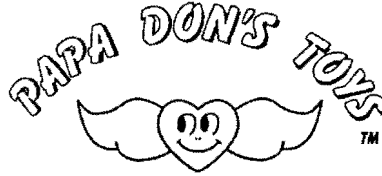
Promote Hand-made crafts made in America! Support our Freedoms! Support Small Business. Support the future of our children! Hold the companies/countries that violated our trust accountable. Shift the burden of safety and compliance back on them! Americans are relying on you to get this right Thank you for the time you have invested in addressing these issues and for the time spent considering our pleas.

Respectfully submitted,

Ruth & Hersh Hershey

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**MADE FRESH DAILY  
SINCE 1973**

Office of the Secretary, Consumer Product Safety Commission  
4330 East West Highway  
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October 21, 2011

Dear Commissioners:

My husband and I are second generation owners and operators of Papa Don's Toys, Inc., a small wooden toy manufacturing company that my parents started 38 years ago and that supported our family until their retirement. Our company has an exemplary safety record. We have always prided ourselves in providing handmade toys that are non-toxic and made in the United States. My husband and I make all of the toys ourselves in small batches using locally harvested hardwood as well as non-toxic custom manufactured and painted wooden components that are made for us in the United States.

We had some trepidation when we decided to leave well-paying jobs in Alaska to pursue our dream to continue my family's legacy and operate the family toy business in Oregon. Our chief concern was that the new testing requirements would put us out of business before we even had the chance to begin. After nearly a year of operating the business, we see that we were right to worry. Our profit margins are narrow, leaving little or no room to absorb the burdensome costs of the CPSIA. **That is why we urge the commission to provide as much relief as possible for small batch manufacturers.** We recommend that the commission determine "reasonable methods" for alternative tests based on capabilities of small batch manufacturers and not on the capability of testing labs.

Furthermore, it is critical that the commission interpret "economically practicable" in the context of businesses, like ours, that operate with narrow profit margins. In addition, the limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA.

We're counting on the commission to address the unintended consequences of the CPSIA through meaningful reform that will aid small businesses and preserve the tradition of small batch specialty toys.

Sincerely,

Diana DeFazio, Owner/ Toymaker  
Garth Hitchings, Owner/ Toymaker

CPSC,

I'm a retired person that makes wooden toys for children and sells them on the Internet. I derive a great deal of joy in doing this along with the wonderful feedback I get from my customers. I sell about 70 toys per year and the income I receive is used to supplement my social security. Should the CPSIA be implemented as it now stands I will be forced out of business due to the cost of testing requirements. I'm requesting that you provide small batch manufacturers such as myself with as much relief as possible. I understand that "reasonably necessary regulations" are needed, but small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA. I'm recommending that you determine "reasonable methods" for alternative tests based on capabilities of small batch manufacturers and not on the capability of testing labs. Whatever relief you decide on must be economically practical to small batch manufacturers since we work on an extremely small profit margin.

Thank you for your consideration.

Robert Makey

E-Mail - [Robert@WoodcraftingByRobert.com](mailto:Robert@WoodcraftingByRobert.com)

Web - [WoodcraftingByRobert.com](http://WoodcraftingByRobert.com)



To the Secretary of the Consumer Product Safety Commission,

I am writing to you today as a small business owner who will not survive unless CPSIA is ammended. With hundreds of other small business owners like me facing the reality of going out of business due to unfair and uncessary testing requirements, I implore you to issue some common sense when it comes to the matter of small batch testing for manufacturers with a small profit margin. We are not the reason the CPSIA was mandated to keep our children safe, and we are not the repeat offenders.

I ask that you apply the following during your upcoming hearing:

~Please act with common resolve to provide as much relief as possible for small batch manufacturers.

~Please determine "reasonable methods" for alternative tests based on capabilities of small batch manufacturers,  
and NOT on the capability of testing labs.

~You must interpret "economically practicable" in the context of businesses operating with narrow profit margins.

I cannot stress to you enough the limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA. We were not the reason for the need for the CPSIA.

Sincerely,  
Melissa Wardy

**Melissa Wardy**

PigtailPals,LLC

[www.pigtailpals.com](http://www.pigtailpals.com)

[melissa.wardy@pigtailpals.com](mailto:melissa.wardy@pigtailpals.com)

**608.201.3311**

Facebook = Pigtail Pals - Redefine Girly

twitter = @pigtailpals

<http://blog.pigtailpals.com>

To the CPSA.

Those of us at Grandpa's House would like to make our collective voices heard. Grandpa's House is a family run gift shop on our family farm. We carry the work of local artists and craftsmen from upper middle Tennessee in the tradition of the rural programs of the '30s.

First, let us address the issue of the CPSIA and micro batch creators. Most of our craftsmen make their products one at a time. It is the rare crafter that will even make a batch of 20 items. The CPSIA was NOT written with these people in mind BUT the law expects them to be liable to this law. This effectively puts them out of business. For example, if I create a doll that has to be tested, the testing process will destroy my doll and I have nothing to sell. (This does not bring into account the cost of testing the doll) Testing for the micro batch creator is an impossibility. Remember that micro businesses and mom and pop businesses run on an incredibly small profit margin. Even for small businesses testing is not economically reasonable.

Second, we would like to point out that the very people who have been making safe toys and clothing and educational supplies (grandmas, grandpas, moms and dads) for generations are NOT the people who have put our children in harms way and caused the CPSIA to be created. Yet the very people who have produced safe products that will actually last our children through their lives and their children's lives are being put out of business, NOT by a poor economy BUT by a poorly crafted law. It is now your time to rectify this. This limitation clause should not be invoked on a premise of being "reasonably necessary".

Thank you for your time. We pray that you will use common sense in your deliberations for the sake of our nation.

rita watson  
Grandpa's House  
Red Boiling Springs, TN 37150  
615-388-3046

Dear Members:

Halo Toys is a small business based out of Cincinnati, Ohio. It is a family owned business that employs 3 members of our family and a few friends that help us out with sewing hand made Dingies™ dolls. The dolls are made with new materials purchased from US manufacturers or distributors. The clothing is oftentimes made from old clothes that we purchase from rummage sales, garage sales or second hand shops. We make a few dollars and if we only did it for the money we would have been out of business a long time ago.

We are urging you to consider how the "one size fits all" testing approach required by the CPSIA negatively impacts small batch manufacturers and businesses like us. In short, the current rule will put us permanently out of business. It is unreasonable to think that small businesses and individual crafters of "homemade" goods could survive in America if we are required to comply with this law as is currently written. We are not adverse to safety—especially when it comes to children. However, we should not be punished for the neglect of big batch manufacturers that imported goods filled with lead and the like.

Small business is dying out here in the U.S.A. The CPSIA is a final lethal shot that will kill a piece of Americana. We are law-abiding citizens and to think that if we were to make a doll and give it away or sell it without every component of it being tested by a laboratory in accordance with the CPSIA that we would be criminals. Please use a great deal of common sense when it comes to small batch manufacturers as it relates to the CPSIA.

Sincerely,

David and Patricia Hendy Bowling  
"HeBo"  
7574 Eagle Creek Road  
Cincinnati, Ohio 45247  
[513.477.0007](tel:513.477.0007)  
[www.halotoys.com](http://www.halotoys.com)  
[www.muddybuddypals.com](http://www.muddybuddypals.com)

From: Joanne Bagshaw, 50 Market St, Amesbury, MA 01913

Re: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

Dear Congressman Tierney,

The economic crisis in our country is distressing to millions of Americans. That is why it concerns me that under the CPSIA, many small business owners will be driven out of business, deepening the crisis. The premise of self reliance and entrepreneurship on which this country was founded is in jeopardy.

Like many people, I was deeply concerned by the dangerous and poisonous toys that large Chinese toy manufacturers have been selling to our families. And, I was pleased that Congress acted quickly to protect America's children by enacting the CPSIA.

However, I am very concerned that the CPSIA's mandates for third party testing and labeling will have a dramatic and negative effect on small businesses whose safety record has always been exemplary. It will devastate small manufacturers and home businesses who create children's products such as clothes, handmade goods and toys for children, children's books, adaptive products for children with disabilities, and classroom and homeschool materials. These small businesses simply cannot afford the price tag per product that Third Party testers are charging.

With the economic crisis we find ourselves in, fewer families will be able to afford the higher costs of the goods that remain available. Any company that is able to remain in business will undoubtedly raise prices due to increased compliance costs. Everyone will have to pay more for the remaining available goods, deepening the effects of the economic crisis for millions of families.

We want to continue creating unique handmade clothes made in our little local shoppe so we urge the commission to provide as much relief as possible for small batch manufacturers. We hope that you will allow "reasonable methods" for alternative tests based on capabilities of small batch manufacturers and NOT on the capability of testing labs.

We believe that this clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA.

Toy makers, crafters, publishers and small home based businesses have earned and kept the public's trust and have provided jobs for thousands and quality playthings and educational products for hundreds of thousands. All of our unique businesses should be protected.

Thank you for your attention to this matter.

Sincerely,

Joanne Bagshaw  
[www.think-kookie.com](http://www.think-kookie.com)



Dear Members of the CPSC -

We are writing to ask for your consideration of the following concerns when making decisions in regards to the CPSIA. My husband and I are woodworkers who have been handcrafting wood baby rattles for over 25 years. We began as a small vendor at the Eugene, Oregon Saturday Market and now wholesale our rattles to stores around the globe.

While we agree with the intent of the CPSIA and are committed to children's safety in producing our baby rattles, we are deeply concerned with the impact some of your decisions are having in regards to micro-businesses who make small batches of toys like ourselves. The following are the issues we believe need more serious consideration.

We recommend that the commission determine "reasonable methods" for alternative tests based on capabilities of small batch manufacturers and NOT on the capability of testing labs. If our materials were not exempt, the batch testing requirements would simply put us out of business!

We ask that the commission interpret "economically practicable" in the context of businesses operating with narrow profit margins. Although we have a successful micro-business our profit margin does not allow for the costs of these tests.

The limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the inception of CPSIA.

We appreciate your efforts and your time in considering our concerns.

Take care, be good & kind, and don't forget to laugh,

Rick & Heather Hinton

Earnest Efforts natural woodworking

[www.earnestefforts.com](http://www.earnestefforts.com)

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

October 20, 2011

To whom it may concern,

I am writing as a former producer of handmade baby and kid items. I am a small-batch producer of screenprinted apparel for adults, and formerly for babies and kids. I became wary of continuing my popular baby hats and kids t-shirts when the CSPIA was announced, and I dropped the line because it was too confusing and time-consuming to figure out how to adhere to the new requirements. I am asking the Commission to act with common resolve to provide as much relief as possible for small batch manufacturers like me so that we can resume production of our goods for kids.

At the time the CSPIA was passed, I was a stay-at-home mom creating screenprinted and sewn products in my basement studio. I sold them at craft fairs, local shops and online. I carefully researched and selected the screenprinting inks I used to be sure they were waterbased, non-toxic, PVC- and phthalate-free. I use plain laundry detergent if needed to clean the screens. I did not want any chemicals in my home, of course, nor did I want to pass these on to my customers. I consider my studio a very safe production environment.

I would have liked to source organic fabrics, too, but finding and buying fabric in small quantities is very difficult in my region, the upper Midwest. I travelled to Chicago's fabric show, and was unable to find a supplier that could provide fabrics ongoing to me in the quantities I required. In Minneapolis, I have access only to a few fabric outlets that buy ends of bolts and resell them at reasonable prices. These fabrics are plain cotton knits, possibly with some amount of lycra or polyester in them, though their fiber content is officially described as "unknown." I source my t-shirts from an American factory.

As you can see, it is difficult enough to find materials to create a small-batch line of products at all. In addition, the limited availability of fabrics means my product line has a lot of variability, which is also what makes it unique and desirable. In addition, I often make something one day and sell it the next. I could not fathom having time to research and pay for testing for the tiny number of items I would hand-make and sell in the best case scenario at this level of business. I have only recently revisited the idea of making the hats again, but I feel discouraged that all of my materials are exempt except the screenprinting ink. Is there not some more reasonable method to determine and certify the content of the inks at the manufacturer's level? It seems an industry standard for ink producers would be realistic, but testing individually made cotton screenprinted kids hats is not. I could not make that worth my time financially.

Please consider the viewpoint and challenges of the small batch producer. We are individuals with creative ideas that feed the individual cultures of our cities and regions. We work on shoestring budgets and always have far more to do than is realistic with our time. Adding the jobs of understanding complex legalese and following expensive and time-consuming testing protocols makes it impossible to do business as a small producer. The cost of adhering to the CSPIA for me is not just the testing, it's the time to understand what I need to do, the legal support to verify that, and the turnaround time I must wait for a test to come back. I can't afford to create a long production calendar that accommodates testing every color print I might want to make. I use trend research to select my colors, and these are available for free close to season, after all of the large manufacturers have finished their production for that season. I need my goods to look current and rely on current data, but I can't afford to pay thousands of dollars for trend and color research in order to get it 5 months sooner.

I believe it is important to have strong safety controls on children's products, but it seems that it is large companies that require this regulation because of the scale of their businesses. I am always amazed at the number of product recalls from well-know children's brands. I am much more inclined to trust a small batch producer I can meet in person and talk to about the materials and methods they use. I respectfully request that the Commission determine reasonable methods for alternative tests based on capabilities of small batch manufacturers and NOT on the capability of testing labs. Please work at an industry level to meet the CSPIA goals and create a marketplace of screenprinting inks and fabrics and notions (zips and buttons) that are certified lead-free. Please don't put the burden on me to test an ink manufacturer's product that is used nationwide to screenprint items, many of which will

be used by people under the age of 12. The SGIA would be a wonderful agency to work with to establish standards for inks.

Please understand that I have no budget or time to pay for outside safety testing of my product. I can follow clear directions, I can source safe materials and components, but my profit margins will not accommodate the time and money required to test each color batch of printed products I make. You must understand that it is simply not "economically practicable" for a business of my scale. My business is just myself, and my sales were under \$20,000 per year at the time of the CSPIA enactment.

Finally, the limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA. We are the moms and pops, daughters and sons who need a chance to try out our ideas without undue burden. We are individuals hand-inspecting our goods for perfection and safety. Our personal reputations rely on the quality of our products! We are in close contact with our customers, often members of our communities. The same is not true of the companies that caused the CSPIA to be enacted. We deserve to be separated from the large manufacturers in administering the CSPIA. We are eager to be educated about best practices and the latest research, so consider providing clear resources online to help us keep up with the CSPIA recommendations. But please, give us the attention and relief required so that we can confidently resume making and selling our handmade work to kids of all ages.

The Handmade Toy Association (HTA) has made it possible for me to track CSPIA changes and reserve hope that I may once again make products for children. I gratefully acknowledge their work to help members like me stay in business.

Thank you for your consideration.

Sarah Nassif  
Owner and Designer  
HTA Member

Rectangle Designs  
3644 44th Ave S  
Minneapolis, MN 55406

web: [rectangledesigns.com](http://rectangledesigns.com)  
phone: [612-207-8751](tel:612-207-8751)



I am a (very) small-batch-manufacturer of children's products. I am writing to urge you to please consider relieving some of the burden and problems of recent CPSIA rulings by:

- Providing as much relief as possible for small batch manufacturers
- Provide reasonable methods for alternative testing that are economically feasible for small batch manufactures
- Allow certification through certified component testing from our suppliers

Thank you,

Benjamin Mace  
1160 Brattleboro Arch  
Virginia Beach, VA 23464



My name is Lisa Hill and I am the owner of Lehla Shop. I currently manufacture a product known as Magneblooms and market them to teens and adults. Earlier this year I was painting children's sneakers and selling them online. When I learned that my products would require third party testing I panicked! I had only been in business a little over a year and would not be able to afford the fees to have my products tested! So I closed down my shop until I could figure out what to do. That was when I started designing Magneblooms and concentrated on a clientele of teens and adults. I am still a member of the HTA - Handmade Toy Alliance and am still pursuing the fight for relief for small batch manufacturers. While I fully understand that safety that is needed when it comes to a child's product, such strict regulations have become a hardship on very small companies, like my own.

I would like to market my product to children under the age of 12 someday, but right now the concern and urgency for maximum relief is for all of the other small batch manufacturers who need to remain in business. Every small batch manufacturer is eagerly awaiting for the commission to determine what the "reasonable methods" for alternative testing will be.

Lastly, the limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA.  
Thank you.

Sincerely,

Lisa Hill  
Lehla Shop  
*owner \* designer\* creator*

Sirs,

As a very small occasional manufacturer of toys we understand the need for providing our children safe and educational toys.

Please consider as "reasonable methods" testing that do not require use of outside testing laboratories. We do consider testing as a reasonable option, but we need an option that we can provide that is economically practical for a one or two person shop that does not do this full time.

If the testing can be done in-house, is economic for small batches of just a few toys at a time, and costs only a few cents per toy (say a batch of 20, costs \$1, would add \$.05/toy, this I would consider reasonable, but \$0.50/toy is not for a \$2 toy!).

Thank you for your consideration.

><> ... Jack Coats

Dear Commissioners,

I urge you to act with common resolve to provide as much relief as possible for small batch manufacturers. I hope you can recommend that the commission determine "reasonable methods" for alternative tests based on capabilities of small batch manufacturers and NOT on the capability of testing labs. We are a small sized company both manufacturing handmade toys in very small quantities (sometimes only 5-10 in a batch) and selling children's toys made by other small US businesses, also in small batch sizes. It is not economically practicable to test each small batch. We are extremely careful about the materials we use and the final product produced. The limitation clause should not be invoked on the premise of "reasonably necessary" as small batch children's products have an exemplary safety record and were not the reason for the birth of CPSIA.

Since CPSIA about 5 of our major German manufacturers have stopped exporting to the US. These were quality toys made by small German companies. The toys all met the highest European standards but the companies were discouraged by the complexity and duplicity of testing requirements in CPSIA and decided to stop exporting to the US.

About 10 of my US small businesses have also gone out of business - unable to justify the cost of testing and compliance.

We hope, with the efforts of the Handmade Toy Alliance, that reasonable changes can be made to the CPSIA so that American children can continue to play with toys made by American crafters. Let's keep a few of our jobs here and keep offering the highest quality toys to our children!

Thank you for your efforts to address this challenging issue.

Sincerely,  
Sonya Bingaman  
A Toy Garden  
Fair Oaks, CA 95628

To the Commission and Lawmaking Officials of CPSC,

I am a new toy creator, inventor and proud member of the Handmade Toy Alliance and confounded regarding the laws and regulations you are implementing on Small Batch Manufacturers. As an American and Consumer I applaud some of the efforts you have achieved. However, it is egregious and erroneous to set the same testing standards for Small Batch Manufacturers as the large corporations. It is not affordable, practical or warranted.

I recall correctly that the problems we (USA) had with the recent surge of lead or any other poisonous material came from China. Yet, you will still trust them to test their own products while we as Small Batch Manufacturers are being run out of business because of the expensive testing systems. If the materials we are already purchasing for our toys, clothes or books is deemed safe, why then would we need to have our materials tested again?

With the incredibly poor economy you are setting us up to fall even farther in debt by taking away what this Country needs; local crafters and artisans who may one day bring manufacturing back to the United States of America.

As for direct response to the upcoming hearing, the testing labs have more of a freedom and my concern is that they will abuse their power and it is at the cost of our Small Businesses. The "reasonable methods" should not be at the discretion of the testing labs but should be based on the capabilities of the business.

As for the price for testing being "economical," this should take into consideration the Small Business's profit margin. Practical is too vague of a word and if price is at the discretion of the testing labs, I believe most Small Handmade Toy Makers will be forced to stop making and selling toys.

Please take our voice very serious and without contempt. We as a group and individuals want only safe products for our customers, friends, family and children. We as the Handmade Toy Alliance and those represented have an impeccable record for safe toys. We as a nation will fail more and more with staunch regulations that ignore the differences between Corporations and Small Batch Manufacturers.

--  
John Davis  
Creator/Owner  
[www.QBLops.com](http://www.QBLops.com)  
[512.799.1477](tel:512.799.1477)  
416 Bellaire Oaks Dr  
Pflugerville, TX 78660

I am a member of The Handmade Toy Alliance and thank you for the information you have made available and for your activism on behalf of all small manufacturers of children's toys. I have spent some time this morning researching and trying to figure out the best information that I can submit for the October 26 hearing. I do not have facts and figures because when the law was passed I stopped producing the dolls that I was uncertain would be in compliance with the law. I found that there were too many questions and not enough answers for me to safely move forward. I will give you my story. If you feel it is worth repeating in a direct e-mail to the commission before the hearing I will be happy to do so.

I am a doll maker. All my dolls are made exclusively by me. I make some dolls that are clearly collectible art objects as they are expensive reproductions of bisque antique dolls. I also make portrait toddler dolls that are soft sculpted from cloth, stuffed with Fiberfil and needle sculpted to look like a specific child. They are always one-of-a-kind. They are sell for approximately \$200 and could be considered art objects, but they also have a soft shape and construction that would make them desirable to play with. I use acrylic paints and colored pencils for the features, this is what gives them a realistic look. Their joints are the two part plastic joints sold by craft suppliers and are not exposed or too small, but may fall under the phthalate testing rules. I have also designed and made other jointed cloth dolls that could be enjoyed by children above the age of three. These are generally one-of-a-kind or reproduced at the most a dozen times. They also use acrylic paint, colored pencils and colored inks for the features, I coat the cloth faces with an acrylic compound to make the inks permanent. I use button joints on these, sometimes covered metal buttons (which really raises the issue of lead testing). They also fall in a higher price range starting at \$100. The only solution I see for continuing to produce and sell these dolls is to clearly label them as collectibles and not intended for children under the age of 12, but I have read that this is would not be considered acceptable if someone in authority determined that they could be play objects.

Just prior to the passing of the law, I had an opportunity to design a set of anatomically correct cloth dolls to be used by psychologists and forensic psychologists. They are not toys, but would be used with young children. The dolls that are currently available from other manufacturers have embroidered faces that are unsatisfactory and my attempts to improve the faces in an embroidered form have not been satisfactory. Painted faces are more appealing. I have successfully completed the complicated body designs, but stopped the project until the law and possible exemptions were clarified. I believe my only alternative in order to use all exempt materials, as the law stands, would be to have the faces printed on the fabric using CMYK process. Even though this would leave all materials used exempt from lead testing, it is unclear as to whether these dolls would still need to be tested for durability because of the seams. (They do not use the plastic joints). This also leaves me with the dilemma of determining what would be considered a batch. Would the testing of one doll from a family group be sufficient because the construction materials are the same or would the entire family need to be tested because of anatomical differences? Would the test of one doll or doll group be sufficient to certify any future groups made as long as the materials used remain the same?

If the questions of compliance remain unclear or difficult to interpret and the testing of these items makes an already slim profit margin fall to zero, or worse, create a deficit, I will of necessity turn my creative efforts in another direction. This of course means the playing field

is not level and is biased in favor of large batch manufacturers who can afford the testing requirements and the legal advice necessary to be confident of compliance. Certainly Raggedy Ann and Andy would not have passed the current requirements!

Thanks again for your efforts,

Sincerely,

Joan Strong



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Date: 10/14/11

Subject: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

Dear CPSC:

As you formulate testing rules that will impact small businesses, I am asking that you consider the economic practicality of the impact of any rules on makers of small batches of children's products (particularly toys). Please provide as much relief as possible for small batch manufacturers. These are family based businesses that struggle to make ends meet.

For a small batch manufacturer that will sell anywhere from (for example) 6 – 500 pieces, ***some type of alternative testing should be available***. These small production runs are already very expensive but when you add stringent 3<sup>rd</sup> party testing, they can become ***economically infeasible***. These alternative tests should be based on the capabilities of the individual manufacturer (or maker) and would be consistent with the degree of consumer risk that a small batch manufacturer would present. For that reason, the limitation clause should not be based on whether it's perceived as "reasonably necessary".

Sincerely,

Michael Lee  
Co-owner



We are a new start up this year. We sell wooden toy blocks in a bucket. We decided when we started our business we wanted to do it right and comply with the regulations. We know many other vendors we have met that choose not to comply or really don't even know about the regulations.

I haven't had the time to really probably calculate all that it has cost us. But here's a pretty good guess.

Our total testing costs have been around \$3500. This amounts to between 12-15% of our total business start up costs.

Other costs associated with compliance.

We had to purchase a branding iron to mark our blocks-\$450.  
Extra labeling required when we sell in California-\$100.  
Cost of shipping products for testing-\$150.00.  
Product that was destroyed in testing-\$350.

We chose to limit the color of our buckets because of the cost of testing each separate color.

We have limited our bucket manufacturers because of the need to test different manufacturers. We have tried to work with the bucket manufacturers to get us their testing docs. But they haven't been too helpful. And what we have received does not apply to a children's product so we have had to repeat testing anyway.

We have chosen to not add some shapes of blocks because we would have to have them tested.

We have a building board we sell only at fairs in our home state. We tested it. The testing lab wanted to do more testing to make it compliant in California. We chose not to do this because of cost and the limited #s of this product we sell only locally. The testing we had done on this product was \$75.00. The other testing they wanted to do was another \$250.00. We only sell about 50 of these per year at \$6 a piece. That would have exceeded our total sales on this product.

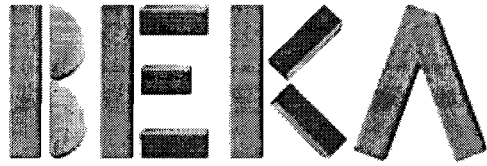
We have had to make labeling changes. Cost of this has probably been a couple hundred dollars.

Hours spent on compliance. I would have to guess at least 100 hrs. Researching, preparing product, back and forth communication with testing labs, shipping, product, making changes. Even looking up information to send this email to you has taken me quite a bit of time.

I realize we are probably affected less than others. Because our product is wood and we don't have as many component changes as other products. We are really not sure what the requirements are with our product for periodic retesting. Testing labs have given us a lot of different answers. For right now we are satisfied our product is safe and unless we have a major change we won't be wanting to do any more testing.

Thanks for your help. Hope this information is useful to you. I sent my testing quotes to Mary.

Thanks,  
Miriam Sheffield  
Back To Blocks  
[backtoblocks@gmail.com](mailto:backtoblocks@gmail.com)  
[801-644-5443](tel:801-644-5443)



To Whom it May Concern,

As a small batch manufacturer, I want to encourage the commission to develop a clear and easy way a domestic manufacturer like us (Beka, Inc - [www.bekainc.com](http://www.bekainc.com) -) can request to be exempt for the current expensive and burdensome testing requirements under the CPSIA.

Beka, Inc. (the company I co-own and operate with my extended family) is a small wood product company in Saint Paul, MN. We have been producing high quality wood products that we sell through small independent retailers all around the US. We have been in business since 1973 and are very proud of the number of children who have used our products to support their creative play opportunities. We have survived as a domestic vendor, making high quality products (which often translates into "more expensive than imported options") largely because of our ability to produce small quantities of specific products with features not found in the products of our usually Asian-sourced competitors. We have developed modular products that provide consumers a range of options (features and price points), giving us a competitive edge in addition to the general quality of material and workmanship we provide.

Even though we have always used CPSC guidelines in our product development, we only sent products out for third party testing when specific customers requested documentation , which was seldom. When the CPSIA was passed, we began the process of having all our products tested to insure we were in compliance with the new law. One of the results of our experience, has been a decision to reduce the number of items we offer....discontinuing products with volumes that make the cost of testing unrealistic. Another result has been a significant slowing in how long it takes us to bring new products to market, and a reduction in the number of versions of new products we offer. An other result has been the simple fact that we have spent a lot of money and really have not changed how we do anything ... meaning the public has not gained from the additional investments we have had to make it continuing to produce our products.

I hate to sound like I am moaning and groaning, but the simple truth is that as a small family owned woodshop who has always voluntarily followed CPSC guidelines, the CPSIA has been a real burden to our ability to remain in business, and it has not resulted in any improvements in our products. We sell natural wood products that we carefully design and produce in a manner that we are confident insures the safety of the public, which we always done. What we have done is to stop making some of the great creative play products we used to make, often items we only made 50 - 100 units of a year.

I encourage you to re-consider the benefits provided to the public in dealing with small batch manufacturers like Beka, Inc. much the same as larger companies who use contractors and sub-contractors to product products. Simplifying our world would allow us to provide a wider array of products to specialty retailers whose own survival often leans on their ability to provide products not available in big box stores they have to compete with. We would love to see some relief, and hope to be given an exemption from third party testing in a way that allows us to continue operating as we have in the past.

Thank you for your hard work on behalf of the public and on our behalf as well.

Sincerely,  
Jamie Seeley Kreisman  
President Beka, Inc.  
Saint Paul, MN

member HTA (Handmade Toy Alliance)  
member ASTRA (American Specialty Toy Retailing Association)

Beka, Inc. St. Paul, MN

toll free ph. [888-999-2352](tel:888-999-2352)

fax [651-222-3965](tel:651-222-3965)

[info@bekainc.com](mailto:info@bekainc.com)

[www.bekainc.com](http://www.bekainc.com)

**Family owned and operated since 1973, Beka's woodshop uses regional hardwoods, providing a domestic natural wood product option in the global marketplace.**

Emily Ivey: Yarn Miracle, Handmade Companion Animals  
2410 Hand Avenue  
Bay Minette, Alabama 36507

I am a micro-batch toy maker. I hand knit soft toys from natural materials one at a time, often tailoring the animal to my customers' requests as far as color, fiber type and choice of natural filling. It is a slow process: each toy takes an average 6 hours from start to finish. I have a three year old of my own, so in my precious little knitting time, I produce less than 200 stuffed animals a year. My yarn and filling choices (cotton, wool, cashmere, angora, alpaca) are typically organic and often purchased directly from the farmer.

My standard Organic Cotton Companions are available as eleven different types of animal. Each type of animal is produced with the same techniques and solid construction. Each is produced with my own hands so there is no question about variation in quality or in craftsmanship.

In order to be in compliance with mandatory ASTM F963 testing, I am required to submit each animal design (model) for individual testing. If just one copy of each model is required for ASTM F963 testing, I would need to make and send eleven toys. That represents 66 hours of work and about \$45 in materials, roughly \$705 total. Add to that testing fees of \$500 per toy (\$5,500 in testing fees for the eleven Cotton Companions), the total for testing with just one copy of each model reaches \$6,205. My total profit for 2010 was \$4,271. If more than one copy of each model is required for testing, the cost in my time alone would be overwhelming. Some labs require as many as ten copies of a model. For the Cotton Companions that would be 110 toys - more than half my total production for a year!

And that is just the standard Organic Cotton Companions. I also have six designs for larger toys, make eleven styles of Itty Bitty Animals and at least a dozen varieties of Itty Bitty Birdies. To test every design in my shop would cost a total of \$19,500 in testing fees and 160 hours of knitting time to submit a single copy of each toy design.

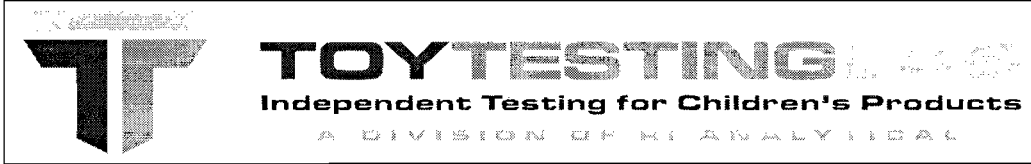
For my 'luxury' companions, I choose handspun yarns, hand dyed yarns, special blends of fiber and U.S. raised cashmere. If each fiber type needs to be tested, that's more than a dozen additional toys and a staggering materials cost that I would have to absorb. Many of the luxury toys are one of a kind. To send a one of a kind toy in for ASTM F963 testing would leave me with no toy to sell!

Not only would ASTM F963 testing be overburdensome, it would be impossible for me both financially and physically. I would have no choice but to close up shop and sacrifice the little income that has helped my family make ends meet and allowed me to stay home with my daughter.

Emily Ivey

<http://yarnmiracle.com>

<http://yarnmiracle.etsy.com>



Art Thingys  
Paul Ocepek

**Art Thingys Quotation for CPSIA Compliance Testing**

Dear Paul,

ToyTestingLab is pleased to submit the following price quotation to perform Analytical Compliance Testing in accordance with CPSIA Toy & Children's Product Regulations.

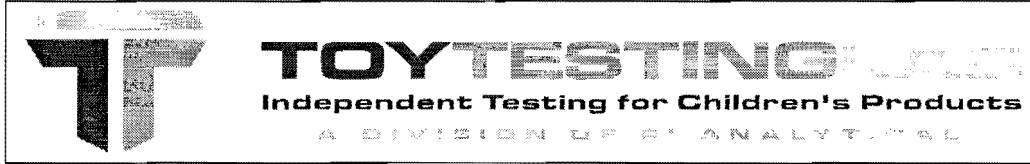
Services To Be Performed and Parameters To Be Measured	Your Cost	Total Cost
<b>CPSIA Compliance Testing of: Art Thingys</b>		
<b>CPSIA Lead Analysis of Non Metal Substrates - Test Method: CPSC-CH-E1002-08</b>  ❖ <b>Standard Operating Procedure to Achieve Below 40 PPM Detection Limits for Illinois Lead Prevention Act</b>  1. Unfinished Baltic Birch Plywood	\$60.00	\$60.00
<b>CPSIA Phthalate Analysis - Test Method: CPSC-CH-C1001-09.3</b>  1. Unfinished Baltic Birch Plywood Composite  ❖ <b>California Proposition 65 Included</b>	\$250.00	\$250.00
<b>Total Cost for CPSIA Compliance Testing:</b>		<b>\$310.00</b>

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
ToyTestingLab

*Paul Perrotti*  
Director

ToyTestingLab  
41 Illinois Avenue  
Warwick RI, 02888  
800-937-2580 • 888-228-3334  
October 20, 2011 14:34 A10/P10



Kendama, Inc.  
Mr. Mark Schrimsher

**Testing Quotation for CPSIA Lead in Surface Coat**

Dear Mark,

Toy Testing Lab is pleased to submit the following price quotation to perform analytical services in accordance with the new CPSIA Regulations.

<b>Services To Be Performed and Parameters To Be Measured</b>	<b>Unit Cost</b>	<b>% Discount</b>	<b>Your Cost</b>
<b>CPSIA Compliance Lead in Surface Coat:</b>			
CPSIA Lead Analysis of Lead in Surface Coats	\$70.00	15	\$59.50

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from Toy Testing Lab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
Toy Testing Lab

*Paul Perrotti*  
Director of Product Development

Toy Testing Lab  
Warwick RI • Hudson MA  
401-562-1323 • 888-228-3334  
October 20, 2011 14:36 A10/P10



Kendama, Inc.  
 Mr. Mark Schrimsher  
 375 N. Stephanie Street, Suite 1411  
 Henderson, NV 89014-8909

**Testing Quotation for CPSIA Lead in Surface Coat**

Dear Mark,

ToyTestingLab is pleased to submit the following price quotation to perform analytical services in accordance with the new CPSIA Regulations.

Services To Be Performed and Parameters To Be Measured	Unit Cost	% Discount	Total Cost
<b>CPSIA Compliance Lead in Surface Coat:</b>			
CPSIA Lead Analysis of Lead in Surface Coats:  1. Shin Fuji Kendamas: Red (SKU: shinfuji-red) – Red Surface Coat 2. Oozora Kendamas – Red (SKU: oozora-red) – Red Surface Coat 3. Oozora Kendamas – Green (SKU: oozora-green) – Green Surface Coat 4. Enjoy and/or Smile Models – Red Surface Coat 5. Enjoy and/or Smile Models – Green Surface Coat 6. Enjoy and/or Smile Models – Blue Surface Coat	\$70.00 ea	15	\$357.00

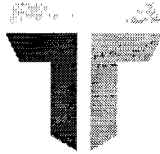
The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
 ToyTestingLab

*Paul Perrotti*  
 Director



Toy Testing Lab  
Warwick RI • Hudson MA  
401-562-1323 • 888-228-3334  
October 20, 2011 14:37 A10/P10



**TOYTESTINGLAB**  
Independent Testing for Your Products  
A DIVISION OF ANALYTICAL

Back To Blocks  
Ms. Miriam Sheffield

**CPSIA Compliance Testing of Back to Blocks Storage Buckets**

Dear Miriam,

ToyTestingLab is pleased to submit the following price quotation to perform Analytical Compliance Testing in accordance with CPSIA Toy & Children's Product Regulations.

<b>Services To Be Performed and Parameters To Be Measured</b>	<b>Your Cost</b>	<b>Total Cost</b>
<b>CPSIA Lead Analysis of Non Metal Substrates - Test Method: CPSC-CH-E1002-08 (Cryogenic Milling with Microwave Digestion or Hydrofluoric Acid Digestion May Be Required)</b>  ❖ <b>Standard Operating Procedure to Achieve Below 40 PPM Detection Limits for Illinois Lead Prevention Act</b>  1. Color Plastic Bucket 2. White Plastic Handle from Bucket	\$80.00	\$160.00
<b>CPSIA Lead Analysis of Metal Substrates - Test Method: CPSC-CH-E1001-08</b>  ❖ <b>Standard Operating Procedure to Achieve Below 40 PPM Detection Limits for Illinois Lead Prevention Act</b>  1. Metal Substrate from Bucket Handle	\$60.00	\$60.00
<b>CPSIA Phthalate Analysis - Test Method: CPSC-CH-C1001-09.3</b>  ❖ <b>Includes Proposition 65 Extra Phthalates</b>  1. Color Plastics & White Plastic Composite	\$250.00	\$250.00
<b>Total Cost for CPSIA Compliance Testing:</b>		<b>\$470.00</b>

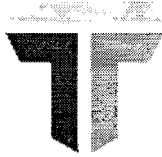
**CPSIA Compliance Testing of Back to Blocks Storage Buckets**

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
ToyTestingLab

*Paul Perrotti*  
Director

ToyTestingLab  
41 Illinois Avenue  
Warwick RI, 02888  
800-937-2580 • 888-228-3334  
October 20, 2011 14:39 A10/P10



**TOYTESTINGLAB**  
Independent Testing for Your Products  
A DIVISION OF RI ANALYTICAL

Back To Blocks  
Ms. Miriam Sheffield  
6 South 760 East  
Kaysville, UT 84037

**CPSIA & ASTM Compliance Testing Quotation for Building Board (Hardboard)**

Dear Miriam,

ToyTestingLab is pleased to submit the following price quotation to perform analytical services in accordance with CPSIA & ASTM Regulations for Toys and Children's Products.

<b>Services To Be Performed and Parameters To Be Measured</b>	<b>Your Cost</b>	<b>Total Cost</b>
<b>CPSIA &amp; ASTM Compliance Testing of Building Board (Hardboard):</b>		
<b>CPSIA Lead Analysis of Non Metal Substrates - Test Method: CPSC-CH-E1002-08</b>  ❖ Standard Operating Procedure to Achieve Below 40 PPM Detection Limits for Illinois Lead Prevention Act  1. Building Board (Hardboard)	\$60.00	\$60.00
<b>CPSIA Phthalate Analysis - Test Method: CPSC-CH-C1001-09.3</b>  1. Building Board (Hardboard)  ❖ State of California Proposition 65 Phthalate Included	\$250.00	\$250.00

<b>ASTM F963-08 Flammability of Hard &amp; Soft Goods (A4)</b> 1. Building Board (Hardboard)	\$50.00	\$50.00
<b>ASTM F963-08 Physical / Mechanical</b>		\$75.00
<b>Total Formaldehyde (State of California CARB Requirement):</b> 1. Building Board (Hardboard)	\$250.00	\$250.00
<b>Total Cost for CPSIA &amp; ASTM Compliance Testing:</b>		<b>\$685.00</b>

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
ToyTestingLab

*Paul Perrotti*  
Director

ToyTestingLab  
41 Illinois Avenue  
Warwick RI, 02888  
800-937-2580 • 888-228-3334  
October 20, 2011 14:40 A10/P10



**VHG Labs, Inc.**

276 Abby Road  
Manchester NH 03103  
(603) 622-7660  
www.vhglabs.com

**Quotation**

**Date** 4/11/2011  
**Quote No.** QU111921  
**Acct. No.** 9736  
**Valid through** 5/11/2011  
**Shipped ARO** 2 weeks  
**Terms** Credit Card  
**Ship Via**  
**FOB**

**Bill To**

Miriam Sheffield  
Back to Blocks  
6 South 760 East  
Kaysville UT 84037  
United States

**Ship To**

Miriam Sheffield  
Back to Blocks  
6 South 760 East  
Kaysville UT 84037  
United States

Product No.	Description	Size	Matrix	Qty	Rate	Amount	Haz/Shipper
Total Lead Analysis-CPSIA ...	Total lead (Pb) analysis in children's products (substrates & paints/surface coatings) for CPSIA Section 101. Price is per component.			6	20.00	120.00	
Phthalate Analysis-CPSIA ...	Analysis of children's toys & child care articles for 6 phthalates (DEHP, DBP, BBP, DINP, DIDP, and DnOP) for CPSIA Section 108. Price is per component.			5	125.00	625.00	

4 buckets for lead 1 handle with plastic  
% Phthalates

**Total** \$745.00



QU111921



**TOYTESTINGLAB**  
Independent Testing for Your Products  
A DIVISION OF CE ANALYTICAL

Back To Blocks  
Ms. Miriam Sheffield  
6 South 760 East  
Kaysville, UT 84037

**ASTM Compliance Testing of Back to Blocks Product Line**

Dear Miriam,

ToyTestingLab is pleased to submit the following price quotation to perform Analytical Compliance Testing in accordance with ASTM Toy & Children's Product Regulations.

<b>Services To Be Performed and Parameters To Be Measured</b>	<b>Your Cost</b>	<b>Total Cost</b>
<b>ASTM F963-08 Physical / Mechanical</b>  ❖ Includes ASTM Labeling Review  1. Wooden Building Blocks 2. White Bucket 3. Blue Bucket 4. Yellow Bucket 5. Red Bucket	\$125.00	\$625.00
<b>ASTM F963-08 Flammability of Hard &amp; Soft Goods (A4)</b>  1. Wooden Building Blocks 2. White Bucket 3. Blue Bucket 4. Yellow Bucket 5. Red Bucket	\$75.00	\$375.00
<b>Total Cost for ASTM Compliance Testing:</b>		<b>\$1000.00</b>

**ASTM Compliance Testing of Back to Blocks Product Line**

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
ToyTestingLab

*Paul Perrotti*  
Director

ToyTestingLab  
41 Illinois Avenue  
Warwick RI, 02888  
800-937-2580 • 888-228-3334  
October 20, 2011 14:58 A10/P10





**TOYTESTINGLAB**  
Independent Testing for Your Products  
A DIVISION OF SY ANALYTICAL

Back To Blocks  
Ms. Miriam Sheffield  
6 South 760 East  
Kaysville, UT 84037

**CPSIA & ASTM Testing Quotation for 2' x 3' Wooden Board**

Dear Miriam,

ToyTestingLab is pleased to submit the following price quotation to perform analytical services in accordance with CPSIA & ASTM Regulations for Toys and Children's Products.

<b>Services To Be Performed and Parameters To Be Measured</b>	<b>Your Cost</b>	<b>Total Cost</b>
<b>CPSIA &amp; ASTM Testing of 2' x 3' Wooden Board:</b>		
<b>CPSIA Lead Analysis of Non Metal Substrates - Test Method: CPSC-CH-E1002-08</b>  ❖ Standard Operating Procedure to Achieve Below 40 PPM Detection Limits for Illinois Lead Prevention Act  1. 2' x 3' Wooden Board	\$60.00	\$60.00
<b>ASTM F963-08 Physical / Mechanical</b>		\$100.00
<b>Total Cost for CPSIA &amp; ASTM Testing:</b>		<b>\$160.00</b>

The above quoted prices are based upon a 7-10 business-day turnaround. If you need further assistance or information regarding the services available from ToyTestingLab, please call Paul at 401- 562-1323. We appreciate the opportunity to serve your needs, and look forward to your business.

Sincerely,  
ToyTestingLab

*Paul Perrotti*  
Director

ToyTestingLab  
41 Illinois Avenue  
Warwick RI, 02888  
800-937-2580 • 888-228-3334  
October 20, 2011 14:59 A10/P10





**VHG Labs, Inc.**

276 Abby Road  
Manchester NH 03103  
(603) 622-7660  
www.vhglabs.com

**Quotation**

Date 9/20/2010  
Quote No. QU103157  
Acct. No. 9148  
Valid through 10/20/2010  
Shipped ARO 2 weeks  
Terms  
Ship Via  
FOB

**Bill To**

Litle Alouette Toys  
33 E south Rd  
Columbus OH 43085  
United States

**Ship To**

Litle Alouette Toys  
33 E south Rd  
Columbus OH 43085  
United States

Order No.	Description	Size	Matx	Qty	Rate	Amount	Ship
	Total Lead Analysis-CPSIA ... Total lead (Pb) analysis in children's products (substrates & paints/surface coatings) for CPSIA Section 101. Price is per component.			3	20.00	60.00	

Hi Amy

**Total** \$60.00



QU103157



**VHG Labs, Inc.**

276 Abby Road  
Manchester NH 03103  
(603) 622-7660  
www.vhglabs.com

**Quotation**

**Date** 1/25/2010  
**Quote No.** QU101189  
**Acct. No.** 8614  
**Valid through** 2/24/2010  
**Shipped ARO** 2 weeks  
**Terms**  
**Ship Via**  
**FOB**

**Bill To**  
The Wooden Wagon  
89 Elm St  
New Salem MA 01355  
United States

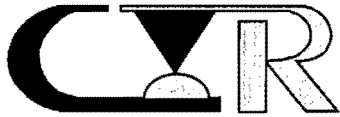
**Ship To**  
The Wooden Wagon  
89 Elm St  
New Salem MA 01355  
United States

Product No.	Description	Qty	Rate	Amount	Unit/Ship
Total Lead Analysis-CPSIA ...	Total lead (Pb) analysis in children's products (substrates & paints/surface coatings) for CPSIA Section 101. Price is per component.	16	20.00	320.00	
Heavy Metals Analysis-F96...	Analysis of paints/surface coatings of toys for soluble migrated Sb, As, Ba, Cd, Cr, Hg, and Se (by ASTM F963 Sec. 4.3.5 & 8.3), and total Pb (for 16 CFR 1303). Price is for the first component.	1	203.00	203.00	
Heavy Metals Analysis-F96...	Analysis of paints/surface coatings of toys for soluble migrated Sb, As, Ba, Cd, Cr, Hg, and Se (by ASTM F963 Sec. 4.3.5 & 8.3), and total Pb (for 16 CFR 1303). Price is for additional components sent at the same time.	15	185.00	2,775.00	
NOTES	Lead is included in F963- We would need at least two of each item to get enough material for each sample.	1	0.00	0.00	

**Total** \$3,298.00



QU101189



**Contech Research, Inc.**

An Independent Test and Research Laboratory

67 Mechanic Street, Attleboro, MA 02703

Telephone 508-226-4800 Fax 508-226-6869

January 27, 2010

Adam Frost  
The Wooden Wagon  
Afrost@thewoodenwagon.com

Re: Quotation Number 210043

Dear Adam,

The following is our quotation for performing Consumer Product Safety testing in accordance with 16 CFR Part 1500.48, 1500.49, 1501 and applicable tests in 1500.50 through 1500.53.

The quotation is based on the following assumptions or exceptions:

- a) The quotation is contingent upon review of the test samples.
- b) Six part numbers shall be tested simultaneously.
- c) All 6 part numbers require Accessibility, Small Parts and Impact testing.
- d) Three of the parts require torque and tension testing in addition to the tests listed above.
- e) Twelve pieces of each part number are required for testing.
- f) The following part numbers shall be tested: BGS995, BGS935, BGS982, BHW22, BHW26 and BHW28.
- g) The Test Report cost is for data from all part numbers in 1 document. If separate documents are required or desired add \$200.00 for each additional report.
- h) The quotation does not include testing for lead or phthalates in the finish.

The following is a summary of the program costs:

Testing of 6 Part Numbers	\$ 4,810.00
Test Report (Electronic copy)	\$ 250.00
TOTAL	\$ 5,060.00

TERMS AND CONDITIONS

1. Test Duration: 1 to 2 weeks. Testing will commence within two weeks after receipt of test samples and purchase order.

2. If this program is to move forward, the test sponsor shall submit a purchase order for the total dollar (U.S. dollars) indicated above. At that time Contech Research shall issue an invoice for 50% of the total cost. The test sponsor shall transfer the 50% sum (in U.S. dollars) to Contech Research's bank prior to the start of testing or developing the test schedule. Once confirmation of the transfer has been obtained, testing shall be scheduled. The balance due shall be transferred prior to processing the final test reports. Once confirmation is obtained the final test reports shall be processed. Our bank information is:

Citizens Bank  
377 Chauncy Street  
Mansfield, MA 02048

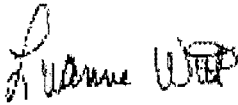
Routing Number: 011500120  
Account Number: 1300052640  
Swift Code : CTZIUS33

3. Test reports and/or data files may be transmitted electronically upon request of the test sponsor at the test sponsors risk. Contech Research does not assume or guarantee the security of said transmission.
4. The delivery of the test report (Electronic Copy) is not included in Item #1. Said test report (Electronic Copy) shall be issued 1-2 weeks following the completion of testing. If a hard copy of the test report is desired, add \$100.00 to the above total.
5. Shipping charges incurred by Contech Research for return of samples, test reports and/or purchased materials required for the program shall be the responsibility of the test sponsor. An account number for the appropriate carrier is required.
6. Contech Research's quotation number shall be referenced on the packing slip and purchase order (verbal and/or written) or unnecessary delays may result.
7. In the event re-testing is required, the cost to perform said re-test will be added to the program cost after receiving approval from the test sponsor and prior to performing the test.

8. The receipt of a purchase order indicates acceptance of the above terms and conditions contained herein unless otherwise agree to by Contech Research, Inc. and the test sponsor.
9. Terms: See item 2 above.
10. Price valid for 90 days.

If you desire further clarification or modification, please feel free to contact us at any time.

Best regards,

A handwritten signature in black ink, appearing to read "Luanne Witt". The signature is written in a cursive, somewhat stylized font.

Luanne Witt  
Director of Program Management  
Contech Research, Inc.

LW:lw  
cc: File



Cost of Services Estimate for: Skipping Hippos

Estimate # 11B-2225

**Wooden Car**

Test – <i>CHILDRENS' Toy</i>	Cost	Total Cost
CPSIA Total Lead in Surface Coatings	N/A	\$
Soluble 8 Heavy Metals in Surface Coatings	N/A	\$
Total 8 Heavy Metal Content in Surface Coatings	N/A	\$*
CPSIA Total Lead in Substrates	N/A	\$
CPSIA Phthalate Content	N/A	\$
CPSIA/ASTM F963-08 Mechanical Hazards & Labeling	1X @ \$ 230	\$ 230.00
ASTM F963-08 Flammability of Solids	1 X @ \$ 75	\$ 75.00
<b>Estimated Total:</b>		<b>\$ 305.00</b>

This Cost Estimate was prepared based on sample characteristics provided by the client and is subject to revision at the time of testing. Please indicate acceptance of this Estimate by signing and dating below.

Accepted by:

Date:

Print Name:

---

Please fax approved Cost Estimates to: **Client Services (716) 635-1188** or email your Client Service Representative at [jfaber@ansecogroup.com](mailto:jfaber@ansecogroup.com)

When submitting actual or additional samples for testing, please place a signed copy of this Cost Estimate in the carton of samples and ship to the following address:

**ANSECO Group, LLC**  
**4455 Genesee Street, Bldg. No. 6, Buffalo, New York 14225**  
**p: 716.635.1180 | f: 716.635.1188**



## Quotation

To: Tedde.Com  
Attn: Ben Flammang  
Tel.: 212-518-4005  
Fax:

Fr: May Wu  
Tel.: 852-2158 0109  
Fax: 852-2741 3606  
Date: 29/7/2009

Thanks for your kindly support to CTI's testing service. According to the samples description and provided pictures, the quotation is as following:

Item Number:						
Sample Description: Heart						
Test items	Description	Unit price (USD)	Quantity	Service Type	Price (USD)	Remark
ASTM F963-Physical & Mechanical	Heart	35	1	REGULAR	35	
ASTM F963-Flammability	Heart	20	1	REGULAR	20	
ASTM F963-Heavy Metals	Heart	0	0	REGULAR	0	
ASTM F963-Cleanliness Test for Stuffing Materials	Heart	72	1	REGULAR	72	
EN71-1	Heart	35	1	REGULAR	35	
EN71-2	Heart	20	1	REGULAR	20	
EN71-3	Heart	35	3	REGULAR	105	
CPSIA-Lead on substrates	Heart	18	3	REGULAR	54	
CPSIA-Phthalate	Heart	100	3	REGULAR	300	
<b>Total (USD)</b>	<b>641</b>					
<b>Remark:</b>						
This quotation is based on the description and provided picture, The final quotation will be based on the submitted samples.						

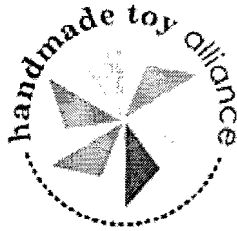
**Stevenson, Todd**

---

**From:** jolie fay [joliefay2003@gmail.com]  
**Sent:** Friday, October 21, 2011 4:50 PM  
**To:** CPSC-OS,  
**Subject:** alternative testing requirements for small batch manufacturers public hearing  
**Attachments:** testimony of jolie fay.pdf

--

Jolie Fay  
Skipping Hippos  
Board of Directors of the Handmade Toy Alliance



October 21, 2011  
Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814  
[cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov)

Re: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

My name is Jolie Fay. I am the owner of Skipping Hippos in Portland, Oregon. I am also on the board of directors of the Handmade Toy Alliance. Thank you for the opportunity to discuss the small batch provisions of HR 2715 and for the chance to demonstrate that a testing exemption of small batch manufacturers will have no adverse effects on public health and safety.

I am here representing an industry of people trying to comply with the new regulations brought on by the CPSIA. We are not looking for loopholes in the law that will allow us to sneak unsafe products into the market place. We are trying to comply with the law. We are a group of people whose livelihoods are being crushed by the burdens of this law.

I am a life long crafter, daughter of a life long crafter, great granddaughter of a life long crafter. Handmade is in my blood – this is an industry that I have been immersed in for as long as I can remember. Today, it is an industry threatened by the testing requirements brought on by the CPSIA.

After three very long years of working with the Commission, consumer groups and legislators, the Handmade Toy Alliance was given a chance to save handmade with the passing of HR 2715. This fate is now in the hands of the commission. Congress intended this amendment to bring much needed relief to the small batch industry. The Commission worked alongside lawmakers to guide them in writing meaningful reform that will allow the small batch industry to continue without compromising public health and safety. In August, 2011, an amendment passed both the House and Senate, nearly unanimously, in one of the most tumultuous times in our government's history, a feat that could not have been achieved without the support and work from this Commission.

I am focusing my remarks on the accessibility of alternative testing methods for small batch producers and the opportunity the commission has to create a solution to bring the small batch industry into a safer, more informed way of producing goods.

### ***1. The cost of alternative testing methods on small businesses***

Small batch is a vague description of companies, intended to encompass those producing one of a kind items, up to 7500 units, and under one million dollars in revenue, according to the definition agreed to in HR 2715. Often these businesses are single person companies--crafters-- making up over 60% of our membership. Since the passing of the CPSIA, we have found that testing costs for lead content has lowered from an average of \$125 per component to \$45 per component. For many crafters producing under the definition of small batch, this cost is still often more than gross annual sales of their items.

Congress intentionally required the commission to provide “economically practical” alternative tests. The laboratory system is simply not able to provide this financial relief to the majority of our membership. Testing for the required ASTM F963 tests is still hundreds of dollars, minimum, per item.

For example, this wooden truck, made by a senior citizen in Portland, is one of three made each year. The price tag of this toy is \$7.50. Testing lab ANSECO group, certified by the CPSC, has quoted \$305 to have the toy car tested to meet ASTM requirements, and have not offered any reduced costs for alternative testing methods. Bill has been making wooden toys for over 30 years, and has never had a recall or reported injury for his products. (1-lab quote attached)

The company Tedde makes small batch plush toys. There are 30 items shown on their web site. They have received a quote for \$641 per toy from the lab CTI (submission 2). This is a testing cost total of \$19,230, for toys made one at a time and often to order. Clearly, this is not economically practical.

Rocking Frog, a woodcrafter from Cary, NC, received a quote of \$2,010 (submission 3) for the Kangaroo rocking toy, priced at \$365. He currently has 7 different, unique toys posted on his web site, making his testing costs for his 7 products, \$14,070. Again, we stipulate that these testing costs are not economically practical.

I received this quote from Andy Steude, the creator of Rocking Frog:

*One of the problems many of us face with CPSIA testing is that every model needs to be tested and the sample of this model is destroyed during testing. Considering that the toys are bordering on one-of-a-kind, the testing requirements are very hard to stomach.*

Another HTA member, Emily Ivey, wrote:

*I spend 2-7 hours (depends on size) to create each of my stuffed animals and produce less than 200 toys a year. Even if I only have to send one example of each design to be tested (39 toys right now), that's 40% of what I produce in a year. If I also have to send one of each design in only one of the fibers I use,*

*that's dozens of animals! And if a lab requires multiple copies...that's my entire production for a year! Many of the yarns I use are one of a kind. If I send a toy to be tested in those yarns, I have no toy to sell when it is over. Figure in that just the testing for 39 models would be around \$19,500, and I only made slightly more than \$4,000 in 2010, the whole thing just makes me kind of sick. My toys are not stamped out in dozens by a machine, they are created individually. Even if testing were free, the me-hours alone to create toys (roughly 160 hours) that are then destroyed is just heart-breaking.*

One of my products is a doll poncho that I make from all fabric materials. I contacted several labs from the CPSC approved list, and received quotes. (submissions 4 and 5). I also received a range of testing methods, one lab even quoted me for XRF testing, on a product that I do not need to test according to section 106 4.0 and 4.2. Each of the testing quotes, ranging from \$230 to \$815, is more than I have ever made from selling this product. In fact, I would have to sell every ponchito that I have, to even make back the costs to have the alternative XRF tests suggested by Consumer Testing Laboratories.

When people are met with expenses like these, they simply will not continue in business.

HTA member Ian Wallace of Wallycraft concurs:

*Unfortunately, this has become a situation where I feel I am being taken advantage of due to my unfamiliarity with the law and my necessity of being in CPSIA compliance. I feel like the labs realize that we small business (and probably large as well) are at their mercy - pay up or else! But while Matel has lawyers and plenty of cash to throw at this, Wallycraft does not. I just keep researching on my own and coming back to the labs with more questions, slowly peeling at the onion until I reach the truth (which will still be unaffordable).*

CPSC approved labs are not focusing on finding alternative testing methods, or providing information to small batch producers on exactly how or what they need to test. This results in high costs, market place confusion and the elimination of many safe products because these crafters find the costs and confusion more than a single person business is able to bear.

## ***2. The availability of alternative testing methods.***

In early 2010, lawmakers introduced the concept of alternative testing methods as a solution to small batch in the "Waxman amendment". At the time, I was told by members of this commission and commission staff that there are NO alternative testing methods available, nor will there be any in the foreseeable future.

After three long years of the commission staff working on this issue, there continue to be no alternative testing methods, or surely the commission staff would have identified them.

The market place for component parts, accessible to small batch manufactures, has already turned to a safer, more compliant market place. Allowing small batch an exemption from testing will not be a threat to public health and safety.

In quoting chairman Tenenbaum from her testimony on July 13, 2011:

*The Commission has before it an extensive record of testimony and data points indicate that most of the market already has achieved lead levels in children's products significantly below .01 percent [lead content]. This information includes data from SGS North America, Inc. that presented their results of testing conducted on thousands of toy samples. The testing data they provided to the Commission showed that between 96 and 99 percent of the products or materials tested complied with the .01 percent limit. In addition, the Hong Kong American Chamber of Commerce indicated that in its more than 13,000 tests of metallic parts used in the toy industry, 99.54 percent of samples contained less than .01 percent lead.*

This fact that the marketplace has already made the turn, combined with the opportunity for small batch producers to use component part certification and the Small Batch registration with the CPSC, a strong and effective safety system is in place to protect public health without requiring small batch producers to pay for testing. We have provided extensive documentation that third party testing is not economically practicable to small batch. Therefore, we request the Commission to exempt small batch from third party testing.

We trust and rely on the CPSC to guide us forward, as you have over the last 3 years, to a new way of producing consumer goods, in a safer, more educated world.

Sincerely,

Jolie Fay  
Secretary, Handmade Toy Alliance  
Owner, Shipping Hippos

## **Submission 1**





Date: 10/21/11

Cost of Services Estimate for: Skipping Hippos

Estimate # 11B-2225

**Wooden Car**

Test - <i>CHILDRENS' Toy</i>	Cost	Total Cost
CPSIA Total Lead in Surface Coatings	N/A	\$
Soluble 8 Heavy Metals in Surface Coatings	N/A	\$
Total 8 Heavy Metal Content in Surface Coatings	N/A	\$*
CPSIA Total Lead in Substrates	N/A	\$
CPSIA Phthalate Content	N/A	\$
CPSIA/ASTM F963-08 Mechanical Hazards & Labeling	1X @ \$ 230	\$ 230.00
ASTM F963-08 Flammability of Solids	1 X @ \$ 75	\$ 75.00
<b>Estimated Total:</b>		<b>\$ 305.00</b>

This Cost Estimate was prepared based on sample characteristics provided by the client and is subject to revision at the time of testing. Please indicate acceptance of this Estimate by signing and dating below.

Accepted by:

Date:

Print Name:

Please fax approved Cost Estimates to: **Client Services (716) 635-1188** or email your Client Service Representative at [jfaber@ansecogroup.com](mailto:jfaber@ansecogroup.com)

When submitting actual or additional samples for testing, please place a signed copy of this Cost Estimate in the carton of samples and ship to the following address:

**ANSECO Group, LLC**  
**4455 Genesee Street, Bldg. No. 6, Buffalo, New York 14225**  
**p: 716.635.1180 | f: 716.635.1188**

## **Submission 2**



## Quotation

To: Tedde.Com  
Attn: Ben Flammang  
Tel.: 212-518-4005  
Fax:

Fr: May Wu  
Tel.: 852-2158 0109  
Fax: 852-2741 3606  
Date: 29/7/2009

Thanks for your kindly support to CTI's testing service. According to the samples description and provided pictures, the quotation is as following:

Item Number:						
Sample Description: Heart						
Test items	Description	Unit price (USD)	Quantity	Service Type	Price (USD)	Remark
ASTM F963- Physical & Mechanical	Heart	35	1	REGULAR	35	
ASTM F963- Flammability	Heart	20	1	REGULAR	20	
ASTM F963-Heavy Metals	Heart	0	0	REGULAR	0	
ASTM F963- Cleanliness Test for Stuffing Materials	Heart	72	1	REGULAR	72	
EN71-1	Heart	35	1	REGULAR	35	
EN71-2	Heart	20	1	REGULAR	20	
EN71-3	Heart	35	3	REGULAR	105	
CPSIA-Lead on substrates	Heart	18	3	REGULAR	54	
CPSIA-Phthalate	Heart	100	3	REGULAR	300	
<b>Total (USD)</b>	<b>641</b>					
<b>Remark:</b>						
This quotation is based on the description and provided picture, The final quotation will be based on the submitted samples.						

### **Submission 3**



## **Submission 4**

From: Jamie Fink <jamie.fink@consumertesting.com

Subject: RE: IMG-20111010-00014.jpg

To: joliefay2003@yahoo.com

Date: Thursday, October 13, 2011, 12:01 PM

Jolie,

I apologize for the delay. This item would be tested at our Hardlines lab, under toy regulations. The testing that would need to be done is XRF for lead, which is \$10 per color and Small Parts ASTM F963, I which is \$30. I have attached an application if you would like to proceed with testing.

Thank you,

Jamie Fink

Sr. Projects Analyst  
Consumer Testing Laboratories  
2601 SE Otis Corley Dr.  
P.O. Box 300  
Bentonville, AR 72712  
(479) 286-2314  
jamie.fink@consumertesting.com



# CONSUMER TESTING LABORATORIES, INC.

SOFTLINES LABORATORY • 2601 SE OTIS CORLEY DRIVE • BENTONVILLE, AR 72712  
479-273-8028 • FAX 479-204-8514 • arkansas@consumertesting.com

## HARDLINES TESTING APPLICATION FORM

TERMS OF PAYMENT: PREPAYMENT REQUIRED UNLESS PRIOR ARRANGMENT IS MADE

**Applicant Information:** (Billing information, please complete electronically, or fill in BLOCK LETTERS)

**Company Name:** \_\_\_\_\_ **Contact Person:** \_\_\_\_\_  
**Address:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_  
\_\_\_\_\_  
**Additional Contacts:** \_\_\_\_\_  
**Name** **Email Address**

**Telephone No.:** \_\_\_\_\_

**Client :** \_\_\_\_\_  
(if different from above) (only contacts listed on this form are authorized to receive test results)

**Instructions:** Please complete a separate testing application form for each body style submitted. Not all requested information may be applicable and/or available; however, to avoid unnecessary delay please provide as much requested information as possible. Please attach the manufacturer's size specification where applicable and available.

**Item Description:** \_\_\_\_\_  
**Style/Model No.:** \_\_\_\_\_ **UPC No.:** \_\_\_\_\_  
**Manufacturer:** \_\_\_\_\_ **PO No.:** \_\_\_\_\_  
**Country of Origin:** \_\_\_\_\_ **Intended Market:** \_\_\_\_\_  
**Retailer Name** (if applicable) \_\_\_\_\_ **\*Note:** Please provide retailer's specifications/ requirements if available.

Unless specified below, samples submitted for testing will be scrapped at the discretion of CTL upon completion of testing. Sample return is available at the applicant's expense.

Please Return Samples Courier and Courier Account No.:

**Testing Options:** (please check all appropriate boxes and fill in information as applicable)

- Full Test
- Mechanical Hazards- ASTM F963
- Toxics in Packaging
- CPSIA 2008**
- Mechanical Hazards- 16 CFR 1500
- Dinnerware Specific
- Total Lead in Surface Coating
- Mechanical Hazards- CHPA
- California Health and Safety Code 25249.5 (Prop 65 Lead & Cadmium)
- Total Lead in Substrate
- CPSC Children's Metal Jewelry
- California Extractable Lead and Cadmium by Total Immersion
- Use XRF Pre-Screening (non-metal substrates only)
- Canada Total Lead in Children's Jewelry
- California Extractable Lead and Cadmium by Total Immersion
- Phthalates (BBP/DBP/DEHP/DNOP/DINP/DIDP)
- Canada Migration Lead in Children's Jewelry
- FDA Extractable Lead and Cadmium
- CPSIA Package (applicable tests)
- Lead Content in Surface Coating- 16 CFR 1303
- California Prop 65 Lead and Cadmium,
- Draft General Conformity Certificate
- Total Mercury in Surface Coating
- SGCD Extractable Lead & Cadmium, Lip and Rim
- Flammability- 16 CFR 1500.44 (solids)
- Soluble Heavy Metals in Surface Coatings- ASTM F963
- Flammability- 16 CFR 1610 (clothing textiles)
- Heavy Metals- CHPA
- US PL 104-142 Mercury in Batteries
- Nickel Release- EN 12472/EN 1811

- Other (test method or test request) \_\_\_\_\_
- Customer Complaint (details) \_\_\_\_\_
- Retest (previous report no.) \_\_\_\_\_

Normal Service **If no service type is selected, testing will be carried out under Normal Service.**  Express Service [2 working days excluding date payment is confirmed received at double the testing charge. Subject to confirmation of availability.]

**Comments and Special Instructions:**

The CTL report is governed by, and incorporates by reference, the Terms and Conditions of Testing appearing on our website <http://www.consumertesting.com/> and is intended for your exclusive use. Any copying or replication of the CTL report or disclosure of test results to or for any other person or entity, and any use of our name and/or seal is strictly prohibited without our prior written authorization. The CTL report sets forth our findings with respect to the individual sample(s) tested only. CTL's liability shall not exceed the fees paid for the testing reflected on this report.

**Authorized Signature of Applicant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

*For Laboratory Use Only*

Testing Charge: \_\_\_\_\_ Log in Date: \_\_\_\_\_

Comments: \_\_\_\_\_



**Submission 5**



# APPLIED TECHNICAL SERVICES, INCORPORATED

1049 Triad Court  
Marietta, Georgia 30062  
Office # (770) 423-1400 Fax # (770) 514-3299  
www.atslab.com

## Service Offer Agreement

To: Jolie Fay  
Company:  
Address:  
E-mail: [japhillips50@live.com](mailto:japhillips50@live.com)  
Telephone: 415-819-4950

Date: 10/11/11

Subject: CPSIA & ASTM F963-08

<u>Service Requested</u>	<u>Method</u>	<u>Price</u>	<u>Total # of components</u>	<u>Total Price</u>
Total Lead Content Analysis Substrate/Paints/Coatings (metal jewelry/metal products/non-metal products)	CPSC-CH-E1001-08 CPSC-CH-E1002-08 CPSC-CH-E1003-09 16 CFR Part 1303	\$65/Sample/ Material/ Color	1	\$65
Flammability Testing	16 CFR 1610	\$750 for the 1 <sup>st</sup> sample & \$350 for each additional	1	\$750
<b>Total for Project</b>				<b>\$815</b>

Prices are not final until a review of the product has been conducted. Samples are retained for 90 days unless otherwise instructed to be returned. Standard turnaround time typically does not exceed 7 business days from the time we receive the samples and a signed purchase order/credit card number. Authorized signature must be completed and e-mailed or faxed to the ATS contact shown below:

Crystal L. Johnson  
Consumer Product Testing  
Applied Technical Services, Inc.  
1049 Triad Court  
Marietta, GA 30062  
E-mail: [cjohnson@atslab.com](mailto:cjohnson@atslab.com)  
Direct Line: 678-444-2965

We appreciate the opportunity to provide your testing/calibration/inspection needs and look forward to being of service to you. Services provided will be governed by the Applied Technical Services, Inc. (ATS) Sales Order Acknowledgement available at <http://www.atslab.com/salesorderacknowledgment.pdf> or attached herewith. Services performed outside the scope of Applied Technical Services, Inc. (ATS) accreditation are certified to ISO 9001 requirements only.

Quotation Accepted:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

## Stevenson, Todd

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**From:** Randall Hertzler [rhertzler@eurotoyshop.com]  
**Sent:** Friday, October 21, 2011 3:16 PM  
**To:** CPSC-OS,  
**Subject:** RE: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing  
**Attachments:** JRH Small Batch Hearing Remarks.pdf; EnLtr Glückskäfer.pdf; EnLtr Fagus.pdf; EnLtr Grimms.pdf; EnLtr KK Produktions.pdf; EnLtr-Selecta.pdf

Please see attached my hearing remarks and the supplemental material.

Regards,  
Randy Hertzler – euroSource LLC – Handmade Toy Alliance

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**From:** CPSC-OS, [mailto:CPSC-OS@cpsc.gov]  
**Sent:** Wednesday, October 19, 2011 3:45 PM  
**To:** Randall Hertzler  
**Cc:** Howsare, Matt; Woodard, Dean; Cohen, Neal  
**Subject:** RE: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

We have received your request to make a presentation at the Oct. 26 hearing. We have added you to the agenda. Please provide the written testimony by Oct. 21. and keep your presentation to 15 minutes. Thank you.

Todd Stevenson  
Director, The Secretariat  
(Office of the Secretary)  
Office of the General Counsel  
US Consumer Product Safety Commission  
(301) 504-6836, Fax (301) 504-0127

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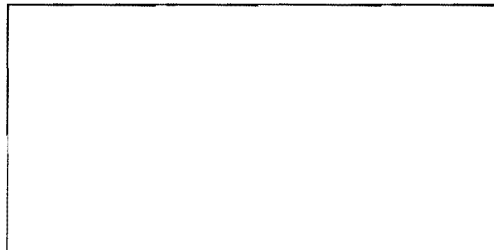
**From:** Randall Hertzler [mailto:rhertzler@eurotoyshop.com]  
**Sent:** Friday, October 14, 2011 1:01 PM  
**To:** CPSC-OS,  
**Subject:** Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

Hello,

I will be attending the hearing on the 26<sup>th</sup> of October and am preparing an oral presentation. I'm the President and Owner of euroSource LLC and also Vice President of the Handmade Toy Alliance. I'll be concentrating on (4)(A)(iii) CERTIFICATION portion of HR2715. Complete presentation materials will be forwarded to this address by 10/21, 5 pm.

Regards,  
Randy Hertzler

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25.05.2011

**fagus**<sup>®</sup>

SPIELZEUG AUS HOLZ · WOODEN TOYS · JOUETS EN BOIS

fagus has produced the highest quality of wooden trucks and cars by hand for 30 years. The company is founded on basis that only the highest quality of materials, workmanship and quality control are to be used in making children's toys: we believe passionately that children should play with the best!

Our wood is certified German forested wood, all of our parts are independently certified and all vehicles for the past 20 years have been tested to EU EN71 by the independent Testing Company TÜV Nord. Since this is not a certified CPSC testing facility (of which they are only very few in Germany) we would have to undertake a retesting to CPSIA standards which would be completely impossible financially for us and would make it impossible to serve the US Market. We produce 57 SKU's in batches of less than 1000 per piece

We have over the past years found a demand in the US market for our toys, as parents turn from mass produced to handmade and high quality. They have confidence in the high standards demanded by law in Europe and the natural materials used to build our trucks and cars.

We urge you to consider the EN71 as an alternate and complementary standard. This will ensure that consumers continue to have access to a wide variety of special toys and not just those of the mass produced variety.

Warmest regards

**Büngern Technik**

Mr. Detlef Schülingkamp  
Sales manager





October 21, 2011

Office of the Secretary  
United States Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

## **Alternative Testing Requirements for Small Batch Manufacturers**

### **Overview**

The Consumer Product Safety Improvement Act (CPSIA) drastically changed the landscape for retailing specialty toys and children's products in the United States. What was once a rewarding business to own and operate has become an arduous journey through a morass of regulations and a fight to survive. Instead of plentiful options for filling store shelves, supplies of unique specialty products are withering away.

At the same time, there is a growing group of consumers who prefer durable toys that cater to a child's imagination and creative ability. Rather than entertain, handmade specialty toys encourage exploration, stimulate creativity and problem solving, promote playing together with others and allow growing confident at the child's own pace. But these types of toys are not readily available in the aisles of Walmart, Target and Toys R Us. You must seek them out in specialty toy shops.

Specialty toys are sold at several hundred independently owned toy stores all across America. Generally, the inventory for these stores comes from three sources;

1. domestically manufactured toys produced in small quantities,
2. toys from Europe and Canada produced in small quantities,
3. and to a lesser extent – toys produced in large quantities both in the US and abroad.

Because the CPSIA has negatively affected two of the three supply sources for specialty retailers, the market for children's products in the US has been tilted to favor mass-produced products. This market tilt causes many specialty toy stores to close or alter and rescale their businesses<sup>1</sup>. In turn, consumers are thwarted when choosing to encourage play, and children are more likely to be entertained by a toy that soon loses its value.

Independently owned specialty toy stores are economically viable because they differentiate themselves from mass market retailers selling children's products mass produced in the Far East. Providing unique and distinctive children's products affords them opportunity as well as a reason to exist. Without this distinction there is no practical way to compete with mass market retailers, no business opportunity, and no reason to exist.

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<sup>1</sup> See listings in Appendix



The Handmade Toy Alliance (HTA) represents these specialty retail stores and they comprise 25% of our membership. We also represent the domestic small batch producers and those who import and produce European and Canadian small batch items. These are the heart of specialty toy culture in America. It has an enriching and positive influence on our children and it deserves to grow and thrive.

### The EU and Canadian Predicament

Today, I'm focusing on the small batch supply chain from Europe and Canada, while my colleagues concentrate on domestic small batch manufacturers. Certainly there are small batch toy manufacturers all over the world, but by-and-large, those that supply specialty toy stores in the US are concentrated in Canada, and the European Union (EU). Canada and the countries that make up the European Union already have stringent toy regulations in place.

**Canada** – Hazardous Products Act (HPA) and the new Canada Consumer Product Safety Act (CCPSA).

**European Union** – EN-71 European Toy Safety Standard and the recent Directive 2009/48/EC.

Each of these toy safety standards shares some commonality with the US CPSIA and ASTM F963 standard. But because there is no harmonization and the standards are not identical, small batch manufacturers in Europe and Canada are forced to perform multiple additional tests. The economic burden of additional tests required by the CPSIA makes it extremely difficult to economically bring these products to market in the US. Many small batch toy suppliers from the EU have been forced to cease exports to the US or limit the number of products they export<sup>2</sup>. It is not that the products these companies produce are not safe, but that the economics of compliance with the CPSIA are unaffordable when added to the already existing compliance costs.

Typical testing costs for compliance and certification to EN-71, the European Union toy safety standard, range from \$1,000 to \$3,000 per product. The additional costs for third party testing for certification to the CPSIA range from \$750 to \$2,500. When manufacturing batch quantities that are typically less than 500, the amortization of these costs results in price increases that cannot be borne by the manufacturer, the importer, nor the consumer. It's an easy to understand equation:

$$\text{Additional cost to manufacture each product} = \text{batch testing cost} / \text{batch size}.$$

Yet these small batch toys and these countries have not been the source of unsafe products in the past. The safety record of small batch toys produced in Europe and Canada is exemplary. CPSC's own recall data show no recall activity from these jurisdictions or from any small batch manufacturer in 2011. In the past four years, out of 155 recalls for toys, only 2 have been from the European Union or Canada and neither of those from a small batch manufacturer. We must go all the way back to 1999 to find a recall from a small batch manufacturer in the EU or Canada. A simple analysis indicates that the vast majority of recalls are of toys and children's products mass-produced in the Far East.

Commissioner Adler in his recent New York Times op-ed commented about focused and rational regulation. If ever there was a place for focused, rational regulation, it is here. The broad swath that is the CPSIA did not focus on the root cause of toy safety issues but forced a one size fits all approach on the smallest crafter, the largest multinational corporation, and every business in between.

### The H.R.2715 Solution

For three years, the Handmade Toy Alliance worked on Capitol Hill for a legislative fix for these unintended consequences from the CPSIA. In fact the CPSIA was the motivation for the formation of the Handmade Toy Alliance. There was wide agreement within Congress that relief should be provided for

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<sup>2</sup> See listings in Appendix



bicycle and ATV manufacturers, printers and thrift stores, and businesses represented by the HTA. We wrote letters, worked on language, testified before Congress, attended hearings and markups, visited Senators and Representatives, all to have our collective voice heard. This culminated in the passing of H.R.2715 in August which has provisions that are a direct outgrowth of our work.

Specifically, attempts at legislative relief for the international small batch supply chain appear in two sections of the Consumer Product Safety Act (CPSA) as amended by H.R.2715.

- First, section 14(d)(3)(A)(v) under REDUCING THIRD PARTY TESTING BURDENS,
- and second, 14(d)(4)(A)(iii) under SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.

The driving force behind this language was the lobbying effort of the HTA for the restoration of small batch supply from Europe and Canada. Today in this hearing I am examining subsection (iii) of the later section, SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.

This subsection indicates that the CPSC may accept compliance with an international standard as an alternative test when you determine it is “the same or more stringent” than what is required by the CPSA. The intent being that if a small batch product is already undergoing third party tests to ensure safety and if those tests prove to be adequate, then that small batch product should be allowed entry to the specialty toy market in the US.

It is instructive to see the progression of the language chosen to provide relief for international small batch producers on the legislative side. The working bill preceding H.R.2715 was H.R.1939, also known as ECADA. That bill included no language referencing international toy standards. Full markup of that bill was cancelled the morning of its scheduled date, but, Congressman Pitts was prepared to offer an amendment to H.R.1939 that allowed for the use of an international toy safety standard for compliance. It included language that read “substantially equivalent or more stringent.”<sup>3</sup> This amendment never had opportunity to be offered.

Then on August first, the confluence of three forces caused movement of a CPSIA fix.

1. The retroactive 100 ppm lead limit approved by the CPSC two weeks earlier,
2. The need to increase the debt ceiling to avoid a default a day later,
3. and Congress’ desire to start August recess.

H.R.2715 was created, passed through the House under suspension of rules and then through the Senate by unanimous consent because the collision of these circumstances created a necessity to move quickly without the usual due process. So it is even remarkable that the Pitts amendment, which was never offered, was split into two and included in H.R.2715. This indicates the importance of providing relief for this branch of the specialty children’s product supply chain.

Unfortunately, the degree of equivalency for toy safety standards was tightened to be “same” rather than “substantially equivalent.” Perhaps this language is so tightly focused that it provides relief for no-one and is useless. If that is the case we implore the Commission to let Congress know that the language in H.R.2715 section SPECIAL RULES FOR SMALL BATCH MANUFACTURERS, subsection (iii) does not achieve the desired result.

#### Routes for Relief

We are left to sort out the details and what possibilities are available for relief from this predicament. This boils down to the following possibilities:

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<sup>3</sup> See text in Appendix

## **Handmade Toy Alliance**



1. Recognize European Union and Canadian toy safety standards as an adequate alternate test for certification of product – as a “reasonable method” for a small batch manufacturer.
2. Provide exemptions for small batch products coming from the European Union and Canada in place of an alternate test for a small batch manufacturer.
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At this juncture, we ask you to recognize the toy safety standards of Canada and the European Union as a “reasonable method” for small batch manufacturers to ensure safety and allow these manufacturers to certify based on evidence of these existing tests. In addition, after the public comment period required by section 14(d)(3)(A)(v) under REDUCING THIRD PARTY TESTING BURDENS, make every effort to also provide relief in that space as well.

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### **Conclusion**

Independently owned specialty toy stores help to ensure diversity and enhance consumer choice in the children’s product marketplace. Toys sold by these retailers encourage and stimulate a child’s imagination and provide alternatives to mass produced toys that simply entertain. Since August of 2008 when the CPSIA was signed into law, the number of specialty toy stores in America has been decreasing, and safe small batch products from Canada and the EU have gradually left the US market.

Requiring these manufacturers who already test to tight standards, to do it all over again, and absorb the costs, just to enter our market causes economic hardship for retailers, importers, and manufacturers and does little to improve safety. The end result is fewer toy shops, less jobs, and limited choice for consumers in the US looking for specialty children’s products. In effect, the CPSIA compels these consumers to choose mass produced products, which ironically, is the birthplace of the CPSIA.

You can make an impact on the plight of many small businesses in children’s products – providing opportunity rather than misfortune – by ruling to provide relief. Thank you for your consideration.

Respectfully,

Randy Hertzler,

Vice President of Handmade Toy Alliance Board of Directors – [www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)

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Lora's Closet – Berkley, CA	Wonderment – Minneapolis, MN
Magical Moon Toys – Logan, UT	Wooden You Know – Maplewood, NJ

### **Partial List of Businesses within EU Limiting or Ceasing Export to the USA due to the CPSIA**

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Brio – Sweden	Kathe Kruse – Germany
Castorland – Poland	Kinderkram – Germany
Detoea – Czech Republic	Margarete Ostheimer – Germany
Eichorn – Germany	Saling – Germany
Finkbeiner – Germany	Selecta Spielzeug – Germany
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Amendment to be Offered to H.R.1939

**AMENDMENT TO THE AMENDMENT IN THE  
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3           any product described in subparagraph (A)(iii)  
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6           ing an international standard or requirement,  
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## **Supplemental Materials**

European Manufacturer Letters

**Andrea-Kathrin Christenson**, Managing Director, **KK Produktions - und Vertriebs GmbH** (Käthe Kruse), Donauwörth, Germany

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**Detlef Schülkamp**, Sales Manager, **Büngern-Technik - fagus Holzspielwaren**, Borken, Germany

**Sven Grimm**, Managing Owner, **Grimm's GmbH**, Hochdorf, Germany



October 21, 2011

Office of the Secretary  
United States Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

## **Alternative Testing Requirements for Small Batch Manufacturers**

### **Overview**

The Consumer Product Safety Improvement Act (CPSIA) drastically changed the landscape for retailing specialty toys and children's products in the United States. What was once a rewarding business to own and operate has become an arduous journey through a morass of regulations and a fight to survive. Instead of plentiful options for filling store shelves, supplies of unique specialty products are withering away.

At the same time, there is a growing group of consumers who prefer durable toys that cater to a child's imagination and creative ability. Rather than entertain, handmade specialty toys encourage exploration, stimulate creativity and problem solving, promote playing together with others and allow growing confident at the child's own pace. But these types of toys are not readily available in the aisles of Walmart, Target and Toys R Us. You must seek them out in specialty toy shops.

Specialty toys are sold at several hundred independently owned toy stores all across America. Generally, the inventory for these stores comes from three sources;

1. domestically manufactured toys produced in small quantities,
2. toys from Europe and Canada produced in small quantities,
3. and to a lesser extent – toys produced in large quantities both in the US and abroad.

Because the CPSIA has negatively affected two of the three supply sources for specialty retailers, the market for children's products in the US has been tilted to favor mass-produced products. This market tilt causes many specialty toy stores to close or alter and rescale their businesses<sup>1</sup>. In turn, consumers are thwarted when choosing to encourage play, and children are more likely to be entertained by a toy that soon loses its value.

Independently owned specialty toy stores are economically viable because they differentiate themselves from mass market retailers selling children's products mass produced in the Far East. Providing unique and distinctive children's products affords them opportunity as well as a reason to exist. Without this distinction there is no practical way to compete with mass market retailers, no business opportunity, and no reason to exist.

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<sup>1</sup> See listings in Appendix



The Handmade Toy Alliance (HTA) represents these specialty retail stores and they comprise 25% of our membership. We also represent the domestic small batch producers and those who import and produce European and Canadian small batch items. These are the heart of specialty toy culture in America. It has an enriching and positive influence on our children and it deserves to grow and thrive.

### The EU and Canadian Predicament

Today, I'm focusing on the small batch supply chain from Europe and Canada, while my colleagues concentrate on domestic small batch manufacturers. Certainly there are small batch toy manufacturers all over the world, but by-and-large, those that supply specialty toy stores in the US are concentrated in Canada, and the European Union (EU). Canada and the countries that make up the European Union already have stringent toy regulations in place.

**Canada** – Hazardous Products Act (HPA) and the new Canada Consumer Product Safety Act (CCPSA).

**European Union** – EN-71 European Toy Safety Standard and the recent Directive 2009/48/EC.

Each of these toy safety standards shares some commonality with the US CPSIA and ASTM F963 standard. But because there is no harmonization and the standards are not identical, small batch manufacturers in Europe and Canada are forced to perform multiple additional tests. The economic burden of additional tests required by the CPSIA makes it extremely difficult to economically bring these products to market in the US. Many small batch toy suppliers from the EU have been forced to cease exports to the US or limit the number of products they export<sup>2</sup>. It is not that the products these companies produce are not safe, but that the economics of compliance with the CPSIA are unaffordable when added to the already existing compliance costs.

Typical testing costs for compliance and certification to EN-71, the European Union toy safety standard, range from \$1,000 to \$3,000 per product. The additional costs for third party testing for certification to the CPSIA range from \$750 to \$2,500. When manufacturing batch quantities that are typically less than 500, the amortization of these costs results in price increases that cannot be borne by the manufacturer, the importer, nor the consumer. It's an easy to understand equation:

$$\text{Additional cost to manufacture each product} = \text{batch testing cost} / \text{batch size.}$$

Yet these small batch toys and these countries have not been the source of unsafe products in the past. The safety record of small batch toys produced in Europe and Canada is exemplary. CPSC's own recall data show no recall activity from these jurisdictions or from any small batch manufacturer in 2011. In the past four years, out of 155 recalls for toys, only 2 have been from the European Union or Canada and neither of those from a small batch manufacturer. We must go all the way back to 1999 to find a recall from a small batch manufacturer in the EU or Canada. A simple analysis indicates that the vast majority of recalls are of toys and children's products mass-produced in the Far East.

Commissioner Adler in his recent New York Times op-ed commented about focused and rational regulation. If ever there was a place for focused, rational regulation, it is here. The broad swath that is the CPSIA did not focus on the root cause of toy safety issues but forced a one size fits all approach on the smallest crafter, the largest multinational corporation, and every business in between.

### The H.R.2715 Solution

For three years, the Handmade Toy Alliance worked on Capitol Hill for a legislative fix for these unintended consequences from the CPSIA. In fact the CPSIA was the motivation for the formation of the Handmade Toy Alliance. There was wide agreement within Congress that relief should be provided for

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<sup>2</sup> See listings in Appendix



bicycle and ATV manufacturers, printers and thrift stores, and businesses represented by the HTA. We wrote letters, worked on language, testified before Congress, attended hearings and markups, visited Senators and Representatives, all to have our collective voice heard. This culminated in the passing of H.R.2715 in August which has provisions that are a direct outgrowth of our work.

Specifically, attempts at legislative relief for the international small batch supply chain appear in two sections of the Consumer Product Safety Act (CPSA) as amended by H.R.2715.

- First, section 14(d)(3)(A)(v) under REDUCING THIRD PARTY TESTING BURDENS,
- and second, 14(d)(4)(A)(iii) under SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.

The driving force behind this language was the lobbying effort of the HTA for the restoration of small batch supply from Europe and Canada. Today in this hearing I am examining subsection (iii) of the later section, SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.

This subsection indicates that the CPSC may accept compliance with an international standard as an alternative test when you determine it is “the same or more stringent” than what is required by the CPSA. The intent being that if a small batch product is already undergoing third party tests to ensure safety and if those tests prove to be adequate, then that small batch product should be allowed entry to the specialty toy market in the US.

It is instructive to see the progression of the language chosen to provide relief for international small batch producers on the legislative side. The working bill preceding H.R.2715 was H.R.1939, also known as ECADA. That bill included no language referencing international toy standards. Full markup of that bill was cancelled the morning of its scheduled date, but, Congressman Pitts was prepared to offer an amendment to H.R.1939 that allowed for the use of an international toy safety standard for compliance. It included language that read “substantially equivalent or more stringent.”<sup>3</sup> This amendment never had opportunity to be offered.

Then on August first, the confluence of three forces caused movement of a CPSIA fix.

1. The retroactive 100 ppm lead limit approved by the CPSC two weeks earlier,
2. The need to increase the debt ceiling to avoid a default a day later,
3. and Congress’ desire to start August recess.

H.R.2715 was created, passed through the House under suspension of rules and then through the Senate by unanimous consent because the collision of these circumstances created a necessity to move quickly without the usual due process. So it is even remarkable that the Pitts amendment, which was never offered, was split into two and included in H.R.2715. This indicates the importance of providing relief for this branch of the specialty children’s product supply chain.

Unfortunately, the degree of equivalency for toy safety standards was tightened to be “same” rather than “substantially equivalent.” Perhaps this language is so tightly focused that it provides relief for no-one and is useless. If that is the case we implore the Commission to let Congress know that the language in H.R.2715 section SPECIAL RULES FOR SMALL BATCH MANUFACTURERS, subsection (iii) does not achieve the desired result.

#### **Routes for Relief**

We are left to sort out the details and what possibilities are available for relief from this predicament. This boils down to the following possibilities:

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<sup>3</sup> See text in Appendix



1. Recognize European Union and Canadian toy safety standards as an adequate alternate test for certification of product – as a “reasonable method” for a small batch manufacturer.
2. Provide exemptions for small batch products coming from the European Union and Canada in place of an alternate test for a small batch manufacturer.
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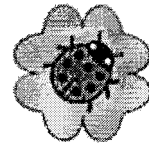
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**Detlef Schülingkamp**, Sales Manager, **Büngern-Technik - fagus Holzspielwaren**, Borken, Germany

**Sven Grimm**, Managing Owner, **Grimm's GmbH**, Hochdorf, Germany

WISSEN  
SPIELEN  
LERNEN  
HANDARBEITEN



Glückskäfer

25 May 2011

To whom it may concern

The heirloom quality toys from Glückskäfer have been carefully designed and manufactured for use by children for generations since its founding over 60 years ago. The toys purchased from Glückskäfer will support a child as it grows through the developmental stages. They are found in classrooms and playrooms throughout the world, many have been awarded the coveted German "Spiel Gut" (Good Toy) award.

Our dedication to the highest quality goes beyond design and manufacturing to safety and the use of the finest materials sourced in Europe and other reliable sources. Our materials and production procedures meet or exceed the European safety and quality standard for baby and child products. All items are XRF tested and certified.

Because of the special high range character of our toys we produce SKU's in batches of 50 to 1,000 pieces. Such conditions of manufacturing will make any type of third party testing prohibitive and impossible.

Over the past years the demand in the US market for our products has greatly increased. There is a new understanding from the consumers that there are alternatives to mass produced disposable toys just designed to make extended and fast financial profits instead of focusing on giving children maximum value for their healthy holistic development.

If the CPSIA continues unamended the consequences for children will be that these specialized toys with high playing value will disappear from the US market, with all consequences for the individual growth and impacts on the further development of our civilization.

The European Union has also recently tightened their regulations in terms of banned toxins and production line oversight, traceability that easily meets or exceeds the CPSIA standards.

If you have any further questions we would be happy to answer them.

Sincerely yours

KÄFER & PARTNER GMBH

Manfred Käfer

# Käthe Kruse

KK Produktions - und Vertriebs GmbH  
Alte Augsburgstr. 9  
86609 Donauwörth  
Deutschland

May 24<sup>th</sup>, 2011

Käthe Kruse - a company founded 100 years ago has been known for making handmade dolls and baby toys around the world. Our Vision is to offer handmade toys to babies and children that are made with the love and care to detail as every mother would love to make them. Tradition in the making means for us to carry safety, trust, lifestyle and values into the future.

Our toys are tested according to the current regulations from the EU – EN 71 respectively. The EU has stringent toy regulations in place and thus already means a significant economic burden for a small company. The additional testing required by the regulations in the USA makes it extremely difficult to economically bring these products produced in small quantities to the market in the USA. This has already resulted in limiting the export of toys to the USA even though the products are safe.

Käthe Kruse toys encourage children's imagination, fantasy and creativity. We put all our love and experience into the elaborate making of our dolls and toys. Käthe Kruse offers over 1000 SKUs, of which many are only produced in small batches as low as 200 pieces.

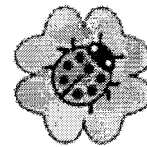
Käthe Kruse toys is one of the manufacturers providing these kind of toys necessary to the independent specialty retailer. Ever since August 2008 we have seen this group of retailers struggle to find the appropriate toys, as many of the foreign toy makers have been forced to cease exports due to the mentioned reasons.

We therefore suggest accepting the current regulations from the EU, and thus allow companies that make handmade toys in small quantities to export to the USA. It will result in diversity for both consumers and retailers.

In case of any further questions we are happy to support more details.

Sincerely yours,  
Andrea Christenson  
Owner and Managing Director

SPIELEN  
LEBEN  
HANDARBEITEN



Glückskäfer

25 May 2011

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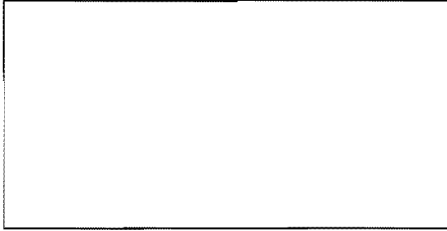
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Sincerely yours

KÄFER & PARTNER GMBH

Manfred Käfer 

Anerkannte Werkstatt für Menschen  
mit Behinderungen gemäß § 142 SGB IX



25.05.2011

**fagus**<sup>®</sup>

SPIELZEUG AUS HOLZ · WOODEN TOYS · JOUETS EN BOIS

fagus has produced the highest quality of wooden trucks and cars by hand for 30 years. The company is founded on basis that only the highest quality of materials, workmanship and quality control are to be used in making children's toys: we believe passionately that children should play with the best!

Our wood is certified German forested wood, all of our parts are independently certified and all vehicles for the past 20 years have been tested to EU EN71 by the independent Testing Company TÜV Nord. Since this is not a certified CPSC testing facility (of which they are only very few in Germany) we would have to undertake a retesting to CPSIA standards which would be completely impossibly financially for us and would make it impossible to serve the US Market. We produce 57 SKU's in batches of less than 1000 per piece

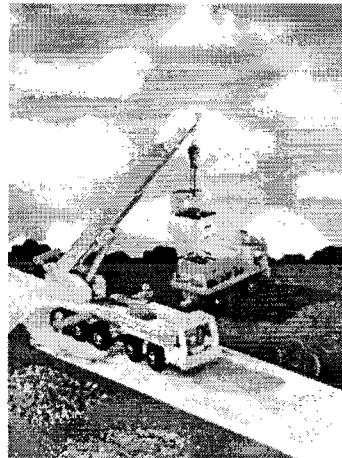
We have over the past years found a demand in the US market for our toys, as parents turn from mass produced to handmade and high quality. They have confidence in the high standards demanded by law in Europe and the natural materials used to build our trucks and cars.

We urge you to consider the EN71 as an alternate and complementary standard. This will ensure that consumers continue to have access to a wide variety of special toys and not just those of the mass produced variety.

Warmest regards

**Büngern Technik**

Mr. Detlef Schülingkamp  
Sales manager



Träger: Caritasverband für das Dekanat Bocholt e. V.  
Nordwall 44-46 · 46399 Bocholt · Tel.: 02871/25130  
Fax: 02871/251323 · info@caritas-bocholt.de · www.caritas-bocholt.de  
Verkehrsregister VR 2276 · Amtsgericht Coesfeld



To whom it may concern

2<sup>nd</sup> of May, 2011

## **CPSIA requirement for small batch manufacturer**

Dear Sirs,

Grimm's is a small wooden toy manufacturer based in Germany. All our products are manufactured in Germany in small batches. We have 500 different SKUs and each one of them does not exceed 5.000 pieces manufactured and sold per annum.

All products are tested to EN 71 and our quality is constantly controlled throughout production to make sure, we do fulfil those requirements not only during certification, but throughout whole product life cycle.

It takes an enormous amount of time and money to comply with the European EN 71 regulation.

The CPSIA standards are a lot like the EN 71 requirements, which we already do fulfil. All the components we use are tested and certified to EN 71 and CPSIA standards.

But even though they, we are asked to test all our products again to CPSIA standards.

For a small wooden toy manufacturer like us, it is very hard to spend time and money for this double effort.

I am afraid, that if the CPSIA requirements stay as they are right now and if there will be no relief or simplification for small batch manufacturers like us, we need to consider whether we can still afford to sell our products in the US.

This really would be a shame and I am convinced that hundred and thousand US fans of our products would be totally disappointed and they would loose a source for good, creative toys made from sustainable resources.

Actually the CPSIA requirements, as they are today, do exactly the opposite of what the original intend was. They drive the small businesses, which always were able to control quality, because everything was local, out of business. Where on the other hand, bigger companies, who started those quality issues by importing from poor quality manufacturers in Asia, they can afford to have all this expensive testing done and they stay in business.

**I ask everyone involved in this, for the future of good and valuable toys for American children, to reconsider and change the CPSIA requirements for smaller businesses.**

Sincerely,

# Käthe Kruse

KK Produktions - und Vertriebs GmbH  
Alte Augsburgstr. 9  
86609 Donauwörth  
Deutschland

May 24<sup>th</sup>, 2011

Käthe Kruse - a company founded 100 years ago has been known for making handmade dolls and baby toys around the world. Our Vision is to offer handmade toys to babies and children that are made with the love and care to detail as every mother would love to make them. Tradition in the making means for us to carry safety, trust, lifestyle and values into the future.

Our toys are tested according to the current regulations from the EU – EN 71 respectively. The EU has stringent toy regulations in place and thus already means a significant economic burden for a small company. The additional testing required by the regulations in the USA makes it extremely difficult to economically bring these products produced in small quantities to the market in the USA. This has already resulted in limiting the export of toys to the USA even though the products are safe.

Käthe Kruse toys encourage children's imagination, fantasy and creativity. We put all our love and experience into the elaborate making of our dolls and toys. Käthe Kruse offers over 1000 SKUs, of which many are only produced in small batches as low as 200 pieces.

Käthe Kruse toys is one of the manufacturers providing these kind of toys necessary to the independent specialty retailer. Ever since August 2008 we have seen this group of retailers struggle to find the appropriate toys, as many of the foreign toy makers have been forced to cease exports due to the mentioned reasons.

We therefore suggest accepting the current regulations from the EU, and thus allow companies that make handmade toys in small quantities to export to the USA. It will result in diversity for both consumers and retailers.

In case of any further questions we are happy to support more details.

Sincerely yours,  
Andrea Christenson  
Owner and Managing Director





Selecta Spielzeug AG  
Römerstraße 1  
83533 Edling

Telefon (0 80 71) 10 06-0  
Telefax (0 80 71) 10 06-40

MenzelM@selecta.ag  
<http://www.selecta-spielzeug.de>

Handmade Toy Alliance

Ihre Zeichen/Ihre Nachricht vom	Unsere Zeichen/Unsere Nachricht vom	Durchwahl	Datum
	Vorstand Matthias Menzel	+ 49 (0) 80 71-10 06-79	25.05.2011

### CPSCIA and possible changes

Dear Members of the Handmade Toy Alliance,

We really appreciate your efforts to give us as a small manufacturer from Europe a voice in the discussion around CPSCIA.

We were selling our toys, around 200 different items for babies and children between 0 and 5 year for more than 10 years into the US. Each individual item was sold with a total year quantity of around maximum 2.000 units per item (a lot of items with less than 500 units per year) in the US. Our total export volume with specialty toy stores was around 250.000 \$ - since the CPSCIA we stopped our export to the US market.

We are very sorry with the retail stores, who are losing that business, especially because there is no obvious safety issue with our decision involved.

Our toys fulfill the European safety standards, which are sufficient enough to ensure child's safety but they are different in several testing methods and therefore using different maximum allowed levels for example for lead.

As our toys are voluntarily tested from an European accredited laboratory in Germany (there is no law in Europe which forces third party testing) according to the European safety standards, we cannot also effort to spend testing cost for another third party, which is allowed to do CPSCIA.

Also due to our small batch production, which is done in our own plant here in Germany, we cannot track the production date for each single component produced to be used in our toys. So the necessary marking of products with the production date is impossible. We are not a mass market producer, who produces and exports within one container thousands of toys of one production batch.

The cost for testing for us is now around 50.000 Euro for testing according to the EN 71, and we would have to spend another 30.000 Euro for the US-regulation testing – and we cannot afford that.

So any change, which allows us to export our products with third party testing according to the European EN71, done by a test lab who is accredited within Europe, and we would be back on your market.

We wish you all the best and success for your way,

Best regards

Selecta Spielzeug AG

Matthias Menzel  
Vorstand  
Managing Director

## Stevenson, Todd

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**From:** A. Frost | The Wooden Wagon [afrost@thewoodenwagon.com]  
**Sent:** Friday, October 21, 2011 4:42 PM  
**To:** CPSC-OS,  
**Subject:** Alternative Testing Requirements for Small Batch Manufacturers Public Hearing  
**Attachments:** woodenwagontestimony1021.pdf

I would like to make an oral presentation at the public hearing on October 26, 2011. I attach a written copy of my testimony to this email.

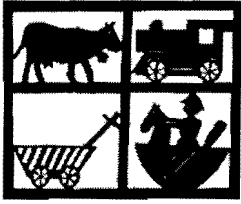
Respectfully yours,

Adam Frost  
President

**The Wooden Wagon**  
89 Elm St  
New Salem, MA 01355

[afrost@thewoodenwagon.com](mailto:afrost@thewoodenwagon.com)  
<http://www.thewoodenwagon.com>  
Toll-free: 1.877.885.7502  
International calls: 1.978.544.6482

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## The Wooden Wagon

89 Elm Street  
New Salem, MA 01355  
U.S.A.

Tel & Fax: 978.544.6482  
E-mail: [afrost@thewoodenwagon.com](mailto:afrost@thewoodenwagon.com)  
Internet Shop: [www.thewoodenwagon.com](http://www.thewoodenwagon.com)

21 October 2011

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Re: Alternative Testing Requirements for Small Batch Manufacturers Public Hearing

My name is Adam Frost, and I am president and owner of The Wooden Wagon, Inc.—on whose behalf I speak—as well as a founding member of the Handmade Toy Alliance (HTA) and a recent addition to the HTA's board of directors. I thank the commissioners for taking this time to consider how best to put into effect Congress's request to consider relief for small batch manufacturers and for importers of children's products from regions with standards or safety requirements determined to be equal to or more stringent than our own.

As a retailer and wholesaler, The Wooden Wagon's specialty is handcrafted toys and other products from Europe, which we both import directly from our small manufacturers (primarily in Germany and Switzerland) and purchase from distributors in the United States. Although we do sell some toys made by the very same workshops and crafters who make up the membership of the HTA, the vast majority of our goods are produced according to the toy safety standards of Europe, for even now there are few domestic companies that can meet the level of craftsmanship of handmade European toys. My remarks therefore will focus on the harmonization of standards with those of the European Union.

Since 2008, a great portion of my job has been to help our European manufacturers understand the requirements of the new American toy safety laws, and to ensure that the items we import continue to meet these standards. The high caliber of manufacturing methods, the quality of materials used and the stringent record-keeping required under European law has made this process relatively straightforward, though time-consuming, but the economic toll of third-party testing will drive many of these toys from the market unless the EU's standards are recognized as an alternate to these tests.

That the EU's production and safety standards are largely equivalent to those of America is perhaps best evidenced by my colleague Dan Marshall's statement elsewhere that since August 2008, none of the 27 violations of lead-in-paint had their manufacturing origins in either Europe or the US, and by my colleague Randall Hertzler's report that, of the 155 toy recalls issued over the past four years, none has been from an European small-batch manufacturer. I would contend that toys and children's products manufactured within the EU are produced to a safety standard equivalent to or more stringent than those made under the new American regulations, and ask that in considering any exemptions or alternate testing methods for small-

batch manufacturers, the CPSC expands its scope to include the importers of European-made children's goods.

## **A European Model for Conformity Assessment**

Europe, like the United States, was shocked by the lead-in-paint scandals of 2007, and a year after the Consumer Product Safety Improvement Act (CPSIA) was passed, the European Commission published its own Toy Safety Directive of 2009 (2009/48/EC), based in part on the CPSIA and giving consumers the assurance that toys sold within the EU would be produced to the highest safety requirements. But unlike the US, the EU—after much debate involving consumer groups, manufacturers, and legislators—came to the conclusion that third-party testing is not economically viable for all manufacturers, and that their system of self-assessment could continue to provide an alternative to testing without posing a risk to the children or other consumers.

Self-verification, as summarized by the European Commission, is a process whereby “the manufacturer applies the... standards and describes the means whereby conformity of production is ensured; the manufacturer draws up a technical documentation and the EC declaration of conformity (2009/48/EC). Then, he affixes the CE marking, his name and address and an identification element (traceability) before placing the toy on the market.” Our manufacturers maintain records of all the components used in the manufacturing of each product, records that must be kept for ten years after production. Even without testing, there remains oversight, for all manufacturers work knowing that representatives of the EU “shall make sample checks on the market, they shall have access to the place of manufacture and storage, and they may ask the manufacturer for documentation concerning the design and the manufacture.”<sup>1</sup>

With such a framework in place, accountability is necessary at all levels, from the suppliers of components to the manufacturer himself. It demands a greater understanding of all materials used and a greater responsibility in the design and execution of each and every product: safety becomes a daily consideration. And rather than allocating precious resources to unnecessary testing, the EU's system of self-verification allows small-batch manufacturers to invest in development and production without stinting on workmanship and materials.

## **Financial Burdens of Third-Party Testing on Importers and Small-Batch Manufacturers**

The prospect of third-party testing has already caused a number of small- to midsize European manufacturers of handcrafted toys to leave the American market or to reduce the selection of products offered here. This is not from fear of the testing results, but from the knowledge that such testing would create so great an economic burden as to make the export of goods already manufactured to European standards financially untenable for either manufacturer or importer.

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<sup>1</sup> *European Commission's Directorate General for Enterprise and Industry* website  
<http://ec.europa.eu/enterprise/sectors/toys/safety/>

For most small European manufacturers, American sales make up but one small portion of their business. Though total production numbers may reach the thousands, their toys frequently are imported in the hundreds, or more likely the tens, with gross sales of individual products falling far below the cost of testing. High manufacturing costs (due to specialized labor, domestically harvested wood, high-end paints and finishes, etc.), import costs to the US, and the ever-fluctuating exchange rate add up to make European toys the BMW or Mercedes of children's products once they reach the US: too expensive for many. The business model for the typical importer and retailer of specialty toys is consequently based on having a broad variety of numerous products in smaller quantities, rather than a narrow and deeper selection. Many of these companies are like mine, small family businesses, or shops employing but one or two people, and the loss of one or two lines will spell the end of the company.

To illustrate the preventative costs of third-party testing for such specialty toys, I offer an example from my own company, for a German-made toy that has been produced for more than 25 years without a recall.

#### *Burden of Testing Case*

In January, 2010, I sent out several German-made wooden grasping toys to an accredited laboratory for a testing quote (*see attached*). Because the lab (which offered reduced rates for HTA members) only performed chemical analysis, I contacted a second one for an additional quote on the physical tests. I was informed that together, the labs would require 14 samples, and the testing cost for one toy (the simplest) would be \$1,472.00 combined.

<b>Testing of Grasping Toy (Retailed)</b>	
Chemical analysis:	\$420.00
Physical analysis:	\$1,052.00
<b>Combined testing costs:</b>	<b>\$1,472.00</b>
Wholesale cost per unit:	\$7.70
Sales price per unit:	\$15.25
Number to be imported:	100 (+14 samples)
Combined wholesale & testing cost:	\$2349.80
Total anticipated sales:	\$1525.00
<b>Anticipated Loss:</b>	<b>-\$824.80</b>

Between 1,500 and 2,000 units would have to be sold retail just to *nearly* break even. And for a wholesaler—who has a much smaller profit margin—the number needed to import would far exceed a small manufacturer's capabilities and any projected sales.

It should come as no surprise that the testing was not done: the manufacturer chose instead to cease exporting to the United States. As a side note, an American company later licensed this design for the American market. In order to reduce costs, however, they outsourced production to China. Their modified toy design, made with cheaper materials under less stringent production standards, was voluntarily recalled soon after its introduction to the market. (I understand that any exemptions would not include small-parts testing for toys meant for children under 3, such as that above: the above is offered for illustrative purposes only.)

## **A Conclusion**

As a retailer, I have seen my customers become better educated and more discerning since the Lead Paint Scare of 2007. Many tell me that they will no longer buy products manufactured outside of the US, Canada or Europe, and that they prefer handcrafted items made of higher quality materials to the plentiful and cheaper mass-produced goods.

But unless some exemption or alternative to testing is made, these are the very goods that will disappear from our shelves. To continue selling, the small-batch manufacturer must either find a way to offset the testing costs (perhaps by moving production to a country with cheaper labor and manufacturing costs, or by using materials of lesser quality), or price her goods beyond what the market will bear. The obvious alternative will be to leave the market altogether, thereby depriving children of products that have a long history of safety, craftsmanship and play value.

I therefore strongly urge the Commission to support small-batch manufacturing and its responsible practices, to support high quality craftsmanship, and to support safe choice for consumers by allowing exemptions for items produced within such limits as put forth in HR 2715, and to recognize the EN71 standard as an alternative to the third-party testing for ASTM F963.

# Testing Quotes January 2010

Testing quotes requested by The Wooden Wagon (importer of record)  
89 Elm St  
New Salem, MA 01355

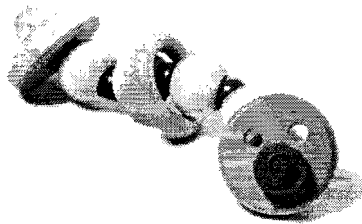
## Testing Laboratories:

VHG Labs, Inc.  
(Chemical Analysis)  
276 Abby Rd  
Manchester, NH 03103  
Contact: Roland St Germain  
Tel.: 603-206-0708

Contech Research, Inc  
(Accessibility, Small Parts and Impact)  
67 Mechanic St  
Attleboro, MA 02703  
Contact: Luanne Witt  
Tel.: 508-226-4800



**Dualo Grasping Rings** (1985) "Spiel Gut" designation  
Manufacturer: Gert Schaaf, Germany  
Art. 982  
2 rings Ø5.5cm unfinished wood with red and blue wood balls  
Cost: \$7.70  
Price: \$15.25  
Quantity imported per annum: 100  
Individual testing cost: \$420 (chemical)+\$1,052 (physical)=\$1,472  
Samples needed: **14** (2 chemical, 12 physical)



**Caterpillar Grasping Toy** (1998) "Spiel Gut" designation  
Manufacturer: Gert Schaaf, Germany  
Art. 995  
L 7cm  
Natural wood with 6 colored wood balls and colored cotton string  
Cost: \$8.88  
Price: \$17.75  
Quantity imported per annum: 100  
Individual testing cost: \$1,453 (chemical)+\$1,052 (physical)=\$2,505  
Samples needed: **14** (2 chemical, 12 physical)



**Ringelrangel Hanging Toy** "Spiel Gut" designation  
Manufacturer: Gert Schaaf, Germany  
Art 935  
L ca 20cm  
Natural wood ring with 6 colored wood balls and cotton string  
Cost: \$7.66  
Price: \$14.95  
Quantity imported per annum: 100  
Individual testing cost: \$1,453 (chemical) \$1,052 (physical)=\$2,505  
Samples needed: **14** (2 chemical, 12 physical)



**VHG Labs, Inc.**

276 Abby Road  
Manchester NH 03103  
(603) 622-7660  
www.vhglabs.com

**Quotation**

**Date** 1/25/2010  
**Quote No.** QU101189  
**Acct. No.** 8614  
**Valid through** 2/24/2010  
**Shipped ARO** 2 weeks  
**Terms**  
**Ship Via**  
**FOB**

**Bill To**

The Wooden Wagon  
89 Elm St  
New Salem MA 01355  
United States

**Ship To**

The Wooden Wagon  
89 Elm St  
New Salem MA 01355  
United States

Product Name	Description	Size	Matrix	QTY	Rate	Amount	Est Shipper
Total Lead Analysis-CPSIA ...	Total lead (Pb) analysis in children's products (substrates & paints/surface coatings) for CPSIA Section 101. Price is per component.			16	20.00	320.00	
Heavy Metals Analysis-F96...	Analysis of paints/surface coatings of toys for soluble migrated Sb, As, Ba, Cd, Cr, Hg, and Se (by ASTM F963 Sec. 4.3.5 & 8.3), and total Pb (for 16 CFR 1303). Price is for the first component.			1	203.00	203.00	
Heavy Metals Analysis-F96...	Analysis of paints/surface coatings of toys for soluble migrated Sb, As, Ba, Cd, Cr, Hg, and Se (by ASTM F963 Sec. 4.3.5 & 8.3), and total Pb (for 16 CFR 1303). Price is for additional components sent at the same time.			15	185.00	2,775.00	
NOTES	Lead is included in F963- We would need at least two of each item to get enough material for each sample.			1	0.00	0.00	

**Total** \$3,298.00



QU101189





**Contech Research, Inc.** 67 Mechanic Street, Attleboro, MA 02703  
An Independent Test and Research Laboratory Telephone 508-226-4800 Fax 508-226-6869

January 27, 2010

Adam Frost  
The Wooden Wagon  
Afrost@thewoodenwagon.com

Re: Quotation Number 210043

Dear Adam,

The following is our quotation for performing Consumer Product Safety testing in accordance with 16 CFR Part 1500.48, 1500.49, 1501 and applicable tests in 1500.50 through 1500.53.

The quotation is based on the following assumptions or exceptions:

- a) The quotation is contingent upon review of the test samples.
- b) Six part numbers shall be tested simultaneously.
- c) All 6 part numbers require Accessibility, Small Parts and Impact testing.
- d) Three of the parts require torque and tension testing in addition to the tests listed above.
- e) Twelve pieces of each part number are required for testing.
- f) The following part numbers shall be tested: BGS995, BGS935, BGS982, BHW22, BHW26 and BHW28.
- g) The Test Report cost is for data from all part numbers in 1 document. If separate documents are required or desired add \$200.00 for each additional report.
- h) The quotation does not include testing for lead or phthalates in the finish.

The following is a summary of the program costs:

Testing of 6 Part Numbers	\$ 4,810.00
Test Report (Electronic copy)	\$ 250.00
TOTAL	\$ 5,060.00

#### TERMS AND CONDITIONS

1. Test Duration: 1 to 2 weeks. Testing will commence within two weeks after receipt of test samples and purchase order.

2. If this program is to move forward, the test sponsor shall submit a purchase order for the total dollar (U.S. dollars) indicated above. At that time Contech Research shall issue an invoice for 50% of the total cost. The test sponsor shall transfer the 50% sum (in U.S. dollars) to Contech Research's bank prior to the start of testing or developing the test schedule. Once confirmation of the transfer has been obtained, testing shall be scheduled. The balance due shall be transferred prior to processing the final test reports. Once confirmation is obtained the final test reports shall be processed. Our bank information is:

Citizens Bank  
377 Chauncy Street  
Mansfield, MA 02048

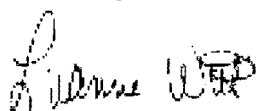
Routing Number: 011500120  
Account Number: 1300052640  
Swift Code : CTZIUS33

3. Test reports and/or data files may be transmitted electronically upon request of the test sponsor at the test sponsors risk. Contech Research does not assume or guarantee the security of said transmission.
4. The delivery of the test report (Electronic Copy) is not included in Item #1. Said test report (Electronic Copy) shall be issued 1-2 weeks following the completion of testing. If a hard copy of the test report is desired, add \$100.00 to the above total.
5. Shipping charges incurred by Contech Research for return of samples, test reports and/or purchased materials required for the program shall be the responsibility of the test sponsor. An account number for the appropriate carrier is required.
6. Contech Research's quotation number shall be referenced on the packing slip and purchase order (verbal and/or written) or unnecessary delays may result.
7. In the event re-testing is required, the cost to perform said re-test will be added to the program cost after receiving approval from the test sponsor and prior to performing the test.

8. The receipt of a purchase order indicates acceptance of the above terms and conditions contained herein unless otherwise agree to by Contech Research, Inc. and the test sponsor.
9. Terms: See item 2 above.
10. Price valid for 90 days.

If you desire further clarification or modification, please feel free to contact us at any time.

Best regards,

A handwritten signature in cursive script, appearing to read "Luanne Witt".

Luanne Witt  
Director of Program Management  
Contech Research, Inc.

LW:lw  
cc: File

Panel 2

Alternative Testing Requirement for  
Small Batch Manufacturers

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**Before the  
CONSUMER PRODUCT SAFETY COMMISSION  
Washington, DC**

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<b>In the Matter Of:</b>	]	
	]	<b>Docket No. CSPC-2011-0070</b>
<b>Alternative Testing Requirements for</b>	]	
<b>Small Batch Manufacturers Public Hearing</b>	]	
	]	

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**Comments and Hearing Submission**

**On Behalf of the  
Small Batch Importers Coalition**

October 21, 2011

*Submitted by:*

Marideth J. Sandler

Sandler Trade, LLC  
1050 17<sup>th</sup> Street NW, Suite 1000  
Washington, DC 20036  
202-776-0650

# **SMALL BATCH COALITION OF IMPORTERS**

October 21, 2011

Commissioner Inez Moore Tenenbaum  
Chairman  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Chairman Tenenbaum:

The Small Batch Importers' Coalition wishes to thank the Consumer Product Safety Commission for the opportunity to provide comments in Docket No. CPSC-2011-0070: Alternative Testing Requirements for Small Batch Manufacturers. This is the first time that this group of businesses or any representative group of Fair Trade, sustainable trade, and small batch importers of artisanal items have come together to express their comments. We hope that this pioneering action helps convey the enormity of the problems the businesses face as a result of the third-party certification requirements for children's products and the companies' sincere appreciation of the Commission's recognition and efforts to address the issue.

## **Executive Summary**

The Small Batch Coalition of Importers supports an exemption for small batch manufacturers and importers (as defined by HR 2715) from requirements for third-party testing and certification of children's products concerning:

- 1) lead content in children's metal products (Section 101 of CPSIA and Test Method CPSC-CH-E1001-08 or CPSC-CH-E1001-08.1);
- 2) lead in content in children's non-metal products (Section 101 of CPSIA (Test Method CPSC-CH-E1002-08 and/or CPSC-CH-E1002-08.1));
- 3) phthalate content of children's toys and child care articles (Section 108 of CPSIA (Test Method CPSC-CH-C1001-09.3); and
- 4) toys (ASTM F963).

The Coalition is seeking these exemptions because both the current requirements for testing by a certified third party and alternative testing mechanisms, if they exist, are not available or economically practicable for small batch importers.

## **SMALL BATCH COALITION OF IMPORTERS**

The Coalition's goals, pertinent to these comments, are to ensure that the artisanal items its members sell are safe both for producers and buyers and that the items meet the standards of the applicable laws as noted above. To achieve these paramount goals, the small batch importers and other members of the Coalition have adopted or are in the process of adopting compliance programs within their financial and administrative capabilities. The market (e.g., buyers), in some cases, may still require third-party testing of some batches. The Coalition also would support, comply with the decision, and seek to work with the Commission and its staff regarding registration and other mechanisms as part of exemption actions to ensure the public health and safety.

We understand that the CPSC just issued rules pertinent to periodic testing requirements, record-keeping, use of certified component parts, when initial testing is not enough, and other pertinent elements of the process. We have not been able to review these decisions thoroughly to ascertain their effect on these issues, before submission of these comments. We will do so before the October 26, 2011, public hearing and anticipate being able to address their impact on our concerns.

### **The Small Batch Coalition of Importers**

The Coalition is comprised of many Fair Trade Federation members that are small batch importers of handmade artisanal and personal care products from developing countries worldwide as well as larger importers of handmade goods and a member of the Fair Trade Federation vendor network.

Specifically, the Coalition companies that meet the small batch manufacturer/importer criteria and that import artisanal items subject to third-party requirements for children's products include: Terra Experience (Madison, WI); Jamtown USA (Seattle, WA), Lucuma Design (Sarasota, FL), One World Projects (Batavia, NY), Selyn Exporters PVT) Ltd (Kurunegala, Sri Lanka), Global Goods Partners (New York, NY), WorldCrafts™ (Birmingham, AL), Wanderlust Jewelry (Boulder, CO), Kingdom Ventures (Rochester, NY), Matur Suksema (Bothell, WA), Global Sistergoods (Portland, OR), Sarah's Silks (Forestville, CA), , Mondo Adventure Travel (Vancouver, BC), Aid Through Trade (Annapolis, MD), UPAVIM Crafts and Mayan Hands (Ijamsville, MD), Better Way Imports (Zeeland, MI), Cheppu Himal (Carmel Valley, CA), Tenfold Trade Collection (Harper's Ferry, VA), Unique Batik (Raleigh, NC), Yellow Label Kids (San Rafael, CA), and Zen Zen Garden Home, Inc (Bonsall, CA), Friends of Tilonia, Inc (LaCrosse, WI), and Global Mamas (Minneapolis, MN).

Other members of the Coalition include Tesoros Trading Co (Austin, TX); Charity USA (Seattle, WA); WorldFinds Fair Trade (Westmont, IL); Global Crafts (Edgewater, FL); Partners for Just Trade (St. Louis, MO); Tenfold Fair Trade Collection (Harper's Valley,

## **SMALL BATCH COALITION OF IMPORTERS**

WV), Aid to Artisans (West Hartford, CT); Duerst Lahti Global (Madison, WI); and Sandler Trade LLC (Washington, DC).

The small batch importers of the Coalition are also members of the national Fair Trade Federation or of regional fair trade organizations, such as Fair Trade Chicago. They are either for-profit or non-profit organizations whose goals are to help disadvantaged suppliers in developing nations earn sustainable incomes through the export of crafts to the United States, Canada, Japan, Australia, the European Union, and other developed-country markets. The importers also focus on women in vulnerable positions in their communities by helping them use the development and sale of handicrafts to generate income for their families. In many cases, the small batch importers have built a strong, long-term, and very personal relationship with the artisans and their families, and may also provide health care, education, and other social services and support.

The small batch importers work with suppliers in a wide variety of emerging economies, many of which do not have certified testing laboratories. These countries include Afghanistan, Bolivia, Cambodia, Cameroon, Colombia, Ghana, Haiti, Jordan, Kazakhstan, Kenya, Kosovo, Kyrgyzstan, Laos, Malawi, Nepal, Nigeria, Rwanda, South Africa, Tanzania, Uganda, and Zimbabwe.

It is important to note that several of the principles of Fair Trade to which all of the small batch members of the Coalition adhere are parallel to the purposes of the Consumer Product Safety Improvement Act and the goals of the Commission. These include product safety, both for the producers and end-users, as well as environmental stewardship and the use of environmentally sustainable practices throughout the entire trading chain.<sup>1</sup>

Fair Trade is a strategy for poverty alleviation and sustainable development in which these small batch importers place the interests of producers and their communities as the primary concern of their business enterprise. From a financial perspective, the small batch importers tie up their capital in ways unlike many mass market manufacturers in that they advance the producers fifty percent of the agreed sales price pre-production, with the remaining fifty percent paid upon shipment of the product to the United States. This creates fiscal constraints for the small batch importers of fair trade handmade products in regard to paying for not inexpensive third party testing.

A number of the Coalition's small batch importers are listed in Green America's *National Green Pages*.<sup>TM</sup>, including Sarah's Silks, Terra Experience, One World Projects, and Matur Suksema. The member businesses of the Green Business Network (listed in the *Green Pages*) are "screened for their commitment to the health and safety of people

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<sup>1</sup> <http://www.fairtradefederation.org/ht/d/sp/i/2733/pid/2733>



## **SMALL BATCH COALITION OF IMPORTERS**

and the planet” to provide the “safest and most responsible products” for consumers, in part, through close supervision of the suppliers’ production inputs and processes. For example, Terra Experience’s doll clothes imported from Guatemala were identified as one of the top ten green picks for the 2008 holiday season.<sup>2</sup>

Annual sales in 2010 for these small batch importers ranged from \$30,000 to \$650,000, with most of the companies importing a range of items of which children’s items are usually a small part. These companies sell largely to wholesale businesses numbering between 300 and several thousand businesses. Their average-sized import batches range in size from one dozen to 1000 units over the course of a year. What they consider to be best-selling items are imported in batches between five dozen (60) to 5,000 units, depending on the size of the small batch importer.

### **Results of product tests show lead levels below the 100 ppm standard, no phthalates, and passage of toy standards**

Test results of children’s items imported by the Coalition’s members – both small batch importers and those larger (that have the funds to do third party testing) have shown no lead content exceeding the current 100 ppm standard (See Attachment One). The tested lead content for acrylic, cotton, and wool finger puppets was between 1.8 and 15 ppm. Painted products such as wood puzzles, wood school buses with people, cat box and frog pencil had lead test results between less than 1.67 ppm to 63 ppm. The metal wire Galimoto Toy, a very popular item, tested for 70 ppm. Other tests provided to the Coalition by its members and supporting organizations screened for phthalates and flammability with all items passing.

### **Limitations on the ability of small batch manufacturers to comply with pertinent third-party testing requirements**

#### **Economic Limitations**

The reason these exemptions are so important to these Fair Trade Federation members is because they are committed to supporting artisans and producers living in poverty, and because their experience is that the current regulations make it difficult for them to fulfill their mission and support people in need.

Third-party testing in the United States is expensive. Small importers are not able to get volume discounts that would allow them to obtain lead testing at a cost as low as \$35/product. Instead, the current quotes or actual costs from certified labs have been

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<sup>2</sup> <http://www.greenamerica.org/programs/shopunshop/10greentoys.cfm>

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between \$200-250 per test, and even as high as \$700 per product per color and material type.<sup>3</sup>

These testing costs, depending on the product, equal the cost to the importer of a product's entire batch. For example, if a finger puppet costs 80 cents wholesale plus 20 cents for transportation to the United States, the small batch importer is paying the artisan \$1 per finger puppet. If the importer's batch is less than 250 items (which all of the small batch importers' batches are<sup>4</sup>, except for the few best selling items), even in the most inexpensive of third-party testing cases, the testing will exceed the importers' cost for the entire batch. (The additional costs of duties and expeditors' fees have not been factored in as well.)

Some larger importers have sent their products to China for testing, which ties up the products for a month due to transportation and adds logistics and transportation costs as well. This is not an option for small batch importers because of the cost and time delay to get the product to customers.

These high testing costs pose even greater difficulties for non-profit businesses whose earnings go back to the communities.

ASTM F963 toy safety standard may pose a threat to small batch importers who have limited manpower to understand the restrictive requirements. In their attempt to comply with the rules, they depend on the judgment of third-party testing agencies in determining the required tests. In this case, there is a conflicting interest, where importers try to minimize the number of tests for cost savings and the testing agencies may recommend tests in order to maximize their revenues although they are not necessary. Unlike importers, testing agencies are not held accountable by the CPSC regarding the necessities of each recommended test. Additionally, the mandate tests are quite numerous and require advanced technologies, and hence, bring down the total cost would be a challenge for the testing laboratories.

Phthalate testing also brings more challenges for small batch importers. First, the cost for each sample ranges from \$100 to \$350; Coalition members indicate that the \$100 cost is only offered by Chinese laboratories. Secondly, the definition of products that are subject to the phthalate standards is a vague one: "plastic parts or other product parts which conceivably contain phthalates". This will mislead importers to thinking that all of

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<sup>3</sup> Lucuma Designs had testing done for lead in February 2009 at a cost of \$280 for eight products (all of which passed). That lab now tests only groundwater, wastewater and solid waste for environmental contaminants.

<sup>4</sup> The largest small batch importer in the Coalition has calculated that the company's average batch size for children's and non-children's products is 48.7 items. The company's batches for children's products are even fewer in unit size.

## **SMALL BATCH COALITION OF IMPORTERS**

their products require phthalate screening. And third, phthalates are not ordinarily contained in materials - because they are an additive. Therefore, to test products in which phthalates have not been intentionally added by the customer can be a waste of resources.

### **Administrative Limitations**

The third-party testing requirements significantly limit product innovation, small business growth, and the ability of small batch firms to compete in the marketplace. This is due to the lack of accredited labs located where the producers are and the tests' high costs in the United States - to where the items must be sent for testing - relative to the small amounts of handmade products produced by the artisans.

For example, Global Goods Partners works with forty women's groups in twenty countries, such as Swaziland, Tanzania, Nepal, Cambodia, and Bolivia. Although entirely committed to the safety of its products, the company sees the effect of the third-party testing requirement to be the virtual end of the company's and artisans' opportunity to add new products and experiment with new samples due to the cost and logistical demands of producing the product, sending it to the United States for testing (there are no certified labs in any of these countries), making any necessary design changes, and then resending a sample for hopefully final testing and certification. That process significantly increases product cost in a marketplace where margins are thin.

Compliance with the ASTM F963 toy safety standard is especially difficult in that it requires small batch importers to commit significant efforts in understanding each and every rule that pertains to a wide variety of children's products so that they know exactly for what their products need to be tested. Neither the importers nor producers have that knowledge now, nor is it reasonable for them to expect that they would gain that detailed knowledge without having direct access to a certified testing lab (which is unlikely). In order for small batch importers to minimize third-party testing costs, comprehension is important to be able to dictate which tests need to be conducted; whereas most of them run on lean organizational structures with limited range of expertise.

The following is information provided by Selyn Export PVT Ltd. in remote Kurunegala, Sri Lanka, which produces handmade fabric toys, many made from "left-over" woven pieces, as well as hand-woven apparel items for adults and children:

"This is a great effort by the Small Batch Coalition – and an absolute necessity in order to prevent the "death" of small and medium import/export enterprises, which deal in the import, export and manufacture of children's products

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The cost of repeated testing is enormous and it takes away all the profit which could be otherwise used for the benefit of the people who are involved in the production – which indirectly contributes to alleviating poverty especially among women who are mostly involved in the production of these products – Lots of businesses including ours are going out of the toy production because these repeated costs cannot be made back –

Each Market needs different test reports – e.g., Europe – CE EN 71 and now it is more stringent; USA ASTM – then we have to do AZO PCP, etc., various tests for the fabric – the buyer always passes the testing to us

We as small producers sometimes wonder whether it is a conspiracy or mafia in order for the BIG suppliers to dominate and have the monopoly in the market – we are really penalized –

Long years have passed – many children have grown including our generation – the use of toys have been a legend –

We at SELYN do sincerely wish that this effort would succeed -so that we could continue to produce the beautiful toys which we have been always producing.”

### **Alternative testing methods**

The only alternative to third-party testing for lead content that was identified by the Coalition is the use of XRF screening (the use of an XRF gun), which the Commission has approved in appropriate circumstances for lead testing. However, the cost of buying an XRF gun is in the range of \$30,000 to \$40,000 – an expense not affordable by small batch importers. Renting an XRF gun costs \$1,000 but operating the gun is also complex. It requires the training or hiring of experts to ensure that it is precisely calibrated and used in a careful and consistent manner to ensure reliable and reproducible results.

The Coalition has explored whether artisans' assistance organizations or larger importers would be interested in offering XRF testing. We have received only negative responses due to funding, liability, and other constraints.

Phthalate screening can be achieved in the case of recycled plastics. Phthalates are more likely to be contained in code 3 and 7 plastics (based on the SPI resin identification coding system). Producers and importers can rely on this coding system to identify the raw materials used in their products and be aware of their choices when including (or not) plastics prone to high phthalate content such as acrylic, fiberglass, and nylon. With their financial constraints, small batch importers should be exempted

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from third-party phthalate testing as long as they educate their producers to focus on the resin code on their recycled plastic products.

No alternatives have been identified to meet ASTM F963 requirements.

### **Reasons for exemptions**

The Coalition of Small Importers supports an exemption for small batch importers from the requirements for third-party testing for lead content in children's metal and non-metal products, for phthalates and for the requirements found in ASTM F963, because of the lack of available and economically feasible third-party testing options.

As referenced earlier, there are no certified third-party labs in most of the developing countries from which the small batch importers source artisanal items. If there is one, it is located in the capitol or urban region of the country far away from most artisans and is difficult and expensive for the suppliers to access. Availability of an alternative testing mode for lead content testing, for example, (an XRF gun), in these countries is also problematic. It is too expensive for an individual company or group of companies in-country to purchase. The operators must be trained – another expense and logistical challenge - in their country's language to ensure that the testing producers are well understood so that the testing produces accurate and reproducible results.

Small batch importers sell very small numbers of products into the U.S. market because of their small size and the limited production capacity of their developing-country suppliers. Because the high cost of having a product tested by a third-party certified laboratory in the United States (as explained above) cannot be spread over a large number of products that are eventually imported and sold, as can mass manufacturers and importers, many small batch importers have ceased or are deciding not to import children's products (a situation that is putting developing-country producers that focus on handmade children's items out of business).

Lastly, the importation of products containing lead and phthalates has not been a problem. In all cases except one (a yellow painted music drum<sup>5</sup>), the results of testing of lead content has shown that all are far below the CPSIA thresholds both official at the time of testing as well as the current 100ppm standard. Included with these comments as Attachment One are test results obtained on a number of handmade products<sup>6</sup> that

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<sup>5</sup> In the case of the painted music drum, the importer reported the problem himself and acted quickly to correct the situation. Since that time, he has eliminated much of the use of finishes, varnish, and paints on his items. As he has said, "This has lead to a duller product line~ but [it] is part of my plan to meet the intent of the law."

<sup>6</sup> Wool and cotton finger puppets, painted gourd musical instruments and piggy bank, painted wood puzzle, wooden school bus with people, bobble head turtle, galimoto toy, ceramic ocarina (a musical instrument), painted cat box, and wooden frog pencil.

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the Coalition's small batch companies import. In addition, the small batch importers are redesigning their products not to use paint, varnishes and other finishes, which will continue to be tested; and have worked closely with producers to seek to ensure that they use natural dyes and inputs and do not buy other dyes, jewelry fittings or other inputs that could contain lead.

Small batch importers believe and, more importantly, act in a manner in which the health and safety of their suppliers and buyers are paramount. They work closely with the producing communities to seek to ensure that product inputs are lead-free and phthalate-free and that the production methods do not add lead or phthalates to the final products. The small batch importers guide their producers to comply with lead-free, phthalate-free, ASTM F963 toy safety standards through product design and material selection. These actions are part of these small-producers' "double-bottom-line," which is to be sustainable financially but also facilitate the sustainable economic development of the producers' communities in an environmentally safe manner.

### **Summary**

The Small Batch Importers Coalition greatly appreciates this opportunity to provide comments and to testify before the Commission concerning Alternative Testing Requirements for Small Batch Manufacturers. The Coalition respectfully requests that the Commission exempt small batch manufacturers and importers (as defined by HR 2715) from the requirements for children's products that require third-party testing and certification regarding lead in children's metal and non-metal items, phthalates, and ASTM F963 requirements. The Coalition is seeking these exemptions to third-party testing and certifications because both the current requirements for testing by a certified third party and the only alternative testing requirements the Coalition has identified (such as the use of XRF screening for lead content) are not available or economically practicable for small batch importers.

The Coalition would not be adverse to the need to register with the Commission and are committed to continue to have control over their products and the production process to ensure that the lead content of these items are below the lead threshold. As indicated above, the small batch importers and other members of the Coalition have adopted or are in the process of adopting compliance programs within their financial and administrative capabilities. The market (e.g., buyers), in some cases, may still require third-party testing of some batches. The Coalition will support, comply with the decision, and seek to work with the Commission and its staff regarding registration and other mechanisms as part of exemption actions to ensure the public health and safety.

## **SMALL BATCH COALITION OF IMPORTERS**

Thank you very much for your consideration of the views of the Coalition of Small Batch Importers. We look forward to presenting our testimony at the public hearing and answering any questions you may have.

Sincerely,

Aid Through Trade (Annapolis, MD)  
Aid to Artisans (West Hartford, CT)  
Better Way Imports (Zeeland, MI)  
Charity USA (Seattle, WA)  
Cheppu Himal (Carmel Valley, CA)  
Duerst Lahti Global (Madison, WI)  
Friends of Tilonia, Inc (LaCrosse, WI)  
Global Crafts (Edgewater, FL)  
Global Goods Partners (New York, NY)  
Global Mamas (Minneapolis, MN)  
Global Sistergoods (Portland, OR)  
Jamtown USA (Seattle, WA)  
Kingdom Ventures (Rochester, NY)  
Lucuma Design (Sarasota, FL)  
Matur Suksema (Bothell, WA)  
Mondo Adventure Travel (Vancouver, BC)  
One World Projects (Batavia, NY)

Partners for Just Trade (St. Louis, MO)  
Sandler Trade LLC (Washington, DC)  
Sarah's Silks (Forestville, CA)  
Selyn Exporters (PVT) Ltd. (Kurunegala, Sri Lanka)  
Tenfold Fair Trade Collection (Harper's Valley, WV)  
Terra Experience (Madison, WI)  
Tesoros Trading Co (Austin, TX)  
Unique Batik (Raleigh, NC)  
UPAVIM Crafts and Mayan Hands (Ijamsville, MD)  
Wanderlust Jewelry (Boulder, CO)  
WorldCrafts™ (Birmingham, AL)  
WorldFinds Fair Trade (Westmont, IL)  
Yellow Label Kids (San Rafael, CA)  
Zen Zen Garden Home, Inc (Bonsall, CA)

## SMALL BATCH COALITION OF IMPORTERS

### Attachment 1: Results from Lead, Phthalate and ASTM F-963 Testing

#### Lab results from July 2006 to July 2011

Product	Country	Component	Result	Conclusion
			mg/kg=ppm	
Painted wooden puzzle	Sri Lanka	Black, White and Yellow coating	<7 mg/kg	Pass
		Green, Orange and Red coating	<7 mg/kg	Pass
Wooden school bus w/ people	Sri Lanka	Composite yellow, red, black and white surface coatings	25 mg/kg	Pass
		Composite light pink, bright pink, green and orange surface coatings	35 mg/kg	Pass
		Composite light blue, dark blue, grey and black surface coatings	24 mg/kg	Pass
		Composite light yellow, brown, peach and light peach surface coatings	26 mg/kg	Pass
Bobble Head Turtle	Burkina Faso	White Paint Swatch	<50 mg/kg	Pass
		Blue Paint Swatch	63.4 mg/kg	Pass
		Red Paint Swatch	<50 mg/kg	Pass
		Yellow Paint Swatch	<54 mg/kg	Pass
Galimoto Toy	Kenya	Metal wire	70 ppm	Pass
Ceramic Ocarina (musical instrument)	Peru	Composite light blue, dark blue, orange and yellow surface coatings	9 mg/kg	Pass
Painted Cat Box	India	Composite pink and black paint	< 59.2 mg/kg	Pass
		Composite yellow and white paint	< 51.5 mg/kg	Pass
Wooden Frog Pencil	Indonesia	White/black/red/orange/yellow coating	<1.67 mg/kg	Pass
Acrylic Finger Puppet	Peru	Coloring dyes	14 mg/kg	Pass



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Cotton Finger Puppet	Peru	Coloring dyes	3.8 mg/kg	Pass
ALPACA Wool Finger Puppet	Peru	Coloring dyes	1.8 mg/kg	Pass
Organic Cotton Finger Puppet	Peru	Coloring dyes	15 mg/kg	Pass
Red color Gourd Maraca	Peru	Red paint	< 0.37 mg/kg	Pass
Orange color Gourd Maraca	Peru	Orange paint	< 0.32 mg/kg	Pass
Natural Gourd Maraca	Peru	Naturally colored with fire with little metal pieces inside	4.1 mg/kg	Pass
Gourd Piggy Bank	Peru	Plastic red plugs	< 2.7 mg/kg	Pass
Six paint colors for use by artisans	Bolivia	White, black, yellow, red, blue, green	Each <50 ppm	NA
Snow White Doll	Thailand	ASTM F963	All required tests fulfilled	pass
Ballet Slipper with Bear Family (large)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Red Riding Hood Doll-Light/blonde (406)	Thailand	ASTM F963	All required tests fulfilled	Pass
Octopus	Thailand	ASTM F963-08	All required test fulfilled	Pass
Humpty Dumpty (blue)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Frog Prince Doll: Blonde	Thailand	ASTM F963	All required tests fulfilled	Pass
African Flopsy Doll	Kenya	ASTM F963	All required tests fulfilled	Pass

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Hand Puppet (various animals)	Thailand	ASTM F963	All required tests fulfilled	pass
Doll Handbag w/zip (various colors)	Thailand	ASTM F963	All required tests fulfilled	Pass
Hand Puppet (cow)	Thailand	ASTM F963	All required tests fulfilled	Pass
Stuffed ball (small)	Thailand	ASTM F963	All required tests fulfilled	Pass
Carrot with Rabbit Family (medium)	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Pineapple with 6 teddy Bears	Thailand	ASTM F963-08	All required tests fulfilled	Pass
Animal Bowling set	Thailand	ASTM F963	All required tests fulfilled	Pass
Mother pig with piggies	Thailand	ASTM F-63	All required tests fulfilled	Pass
BIB Velcro Fastener	Vietnam	Velcro fastener on bib	No phthalates	Pass

We thank you for allowing us to testify here this afternoon on the potential approval of small batch manufacturers to use alternative testing requirements in lieu of testing prescribed in an applicable consumer product safety rule, ban, standard, or regulation.

My name is Michael Gray and I am employed by Thermo Fisher Scientific Corporation of Waltham, MA. Specifically, I am the Director of Business Development for the Portable Analytical Instruments Business Unit of TFS, a BU specializing in the manufacture of portable scientific instrumentation. Today, I am testifying regarding the technology known as Portable, or handheld, X-Ray Florescence, or XRF (HHXRF).

I have been in scientific instruments and advanced technology for more than 25 years, beginning in the electron microscopy business at the time when Transmission Electron Microscopy was developed as the standard for asbestos analysis and abatement. I have been in the portable chemical analysis field for approximately five years and have enjoyed being at the center of great advancements in our field in response to RoHS regulations, CPSIA and HR 2715 of August 2011. There is no doubt about the utility and cost effectiveness of handheld XRF for detection of heavy metal toxins, and we are pleased to do our part in "making the world a cleaner, safer and healthier place."

I am here today not specifically as a representative of my company however. Today, I am speaking more generally on the subject of handheld XRF in as it relates to consumer product safety. There are more than five well established makers of this equipment, and this robust competitive environment has had a positive impact on both technological development as well as cost control for this highly effective alternative test method for detection of hazardous materials in consumer products.

We are here today to testify that under the initial question posed by the commission, namely "whether [such] alternative testing requirements are available or economically practicable." There is, fortunately, a positive answer. Yes, such a method is presently available and highly practicable economically. It is called Handheld XRF, and it is presently being successfully employed by this very commission, along with the majority of compliance minded manufacturers. Unfortunately, while these instruments are being used as we speak to protect the health of public housing residents from lead paint, our environment from the dangers of lead-based solders under RoHS, and greater than 7,000 of them are hard at work at this moment protecting consumers from potentially deadly lead poisoning in the products they buy, the method is, as yet, only recognized as a screening technique for most materials. As detailed in testimony my colleagues earlier this year, demanding exclusive use of an arcane and extraordinarily sensitive technique, performed by scientists, while greater than 95% of non-compliant products contain major concentrations of lead, is akin to using a single fine screen net to catch large sharks all over the sea. Meanwhile, allowance of handheld XRF as a reliable alternative method is akin to deploying multiple nets in many locations.

The present situation unfortunately puts the small batch manufacturer between a rock and a hard place. "Certified testing" is prohibitively expensive for small manufacturers to tolerate. Thus, his or her option is to close up shop and look for a job, or simply trust that their material suppliers are highly committed to keeping their own products free of lead and other heavy metals. I can assure you that one single sales demonstration with one of our account managers is ample proof that the latter option would be bad for

public safety. We are in sales calls every day and continue to find highly non-compliant products, even three years after enactment of the CPSIA.

I think we would all agree that testing is critical, but the very necessity of this hearing is an indication that we would also agree that the present certified method of acid digestion/ICP is certainly not “economically practicable” for small batch manufacturers. Handheld XRF is an analytically accurate alternative, even down to the new standards. Moreover, handheld XRF is non-destructive, which is specifically important to small batch manufacturers.

I would like to pose several examples of how handheld XRF might be effectively deployed as an alternative testing procedure. First, this type of analysis is readily available at commercial laboratories. In recent pricing, we have seen that handheld XRF testing is available for \$5/test, while pricing we have seen recently for acid digestion/ICP is ~\$65/test and, I repeat, is destructive to the sample.

For those manufacturers large enough to make the initial investment in procuring their own handheld XRF instrument, we can offer another example of handheld XRF deployment. The numbers are certainly compelling for those in a position to purchase their own unit. As stated earlier, competition is robust and has actually driven the price of these units down since the enactment of CPSIA. Present market prices begin in the mid \$20k range.

We have shown in recent CPSC testimony that test costs can be under a dollar for modestly large manufactures, but even companies under the “small batch” title could see test costs lower than even the lab prices. Having their own instrument also offers these manufacturers the safety and security of unlimited testing due to the ease of use and zero maintenance offered with handheld XRF. This example of handheld XRF deployment is very important because the ICP method would never be technologically accessible to user without a scientific a background and significant training, no matter how cost effective it could ever be made.

The third example I wish to cite is the availability of rentals. We at Thermo Fisher Scientific, along with several of our counterparts in this industry, have well developed rental programs, where instruments can be rented for a single project or season. This example offers a bit of the best of both of the first two: very low actual cost without a large capital commitment, and the ability to test an unlimited number of samples for no additional charge.

It is important to note that in all three scenarios, the user still has the option of sending all positive results for a third party confirmation. While detection of lead by handheld XRF is practical and robust enough to allow one to merely assume the positively tested sample is lead containing, re-testing by highly trained personnel would remain available. Of course, in this case only a fraction of the products would end up exposed to a destructive and expensive test.

Finally, there is another option which is presently not available, but could have significant impact on the safety of products coming from small batch manufacturers. Perhaps, making available regional testing centers where certified, small batch makers could bring their products for testing on handheld XRF is the very best possible solution. Taking advantage of the ease of use and low maintenance cost of these

units, regional centers could be set up with minimal investment of money and time. I have had initial discussions with certain non-profits with significant regional coverage in the past about sponsorship and possibly contributing in the form of equipment availability. I remain personally available to discuss details at any time, while Thermo Fisher Scientific is ready to support such an effort. We would be very interested in engaging a dialogue with the Small Business Ombudsman and all stakeholders in the small batch manufacturing community to see how such a plan might be executed.

In conclusion, I would like to thank the commission for hearing us today and I look forward to being helpful in any way possible to ensure public safety while protecting businesses from economic hardship. We have been hard at work doing this for the past three years and will continue to do so.

Thank you.

## Stevenson, Todd

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**From:** Quin Dodd [quin@quindoddlaw.com]  
**Sent:** Friday, October 21, 2011 12:17 PM  
**To:** Stevenson, Todd; Hammond, Rocky  
**Subject:** Todd and Rocky,  
**Attachments:** XOS Dodd Tesitmony for CPSC Small Batch Hearing 10-26-11.docx

Attached is my testimony for next week, on behalf of XOS. (And I understand that Satbir Nayar of Intertek has already submitted his testimony he would like to present as well).

Please advise if there are any issues.

Also, please note that my other client, Intertek, will be submitting written comments for the hearing. Do those also have to be in today or can those be timely submitted on Monday?

Many thanks!

Quin

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**TESTIMONY OF QUIN D. DODD, PRINCIPAL**

**LAW OFFICES OF QUIN D. DODD, LLC**

Before the

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

“Alternative Testing Requirements for Small Batch Manufacturers Public Hearing”

October 26, 2011

Good morning Madam Chairman and distinguished Commissioners.

My name is Quin Dodd and I am a sole practitioner in the area of Federal product safety law.

I am pleased to be here today with my colleague and client, Satbir Nayar of XOS, Inc., to discuss the need for this agency to approve ASTM F2853-10 for the CPSC-recognized third party testing and certification of children’s products to the lead substrate standard.

You’ll be happy to know my remarks this morning will be brief.

I know there are many issues, big and small, currently before this Commission and this overworked and underappreciated agency and its staff. And I know firsthand how those demands can be, quite simply, overwhelming at times. For the past three years the CPSIA and now HR 2715 have imposed and continue to impose incredible challenges and issues of first impression on this agency. Those laws have expected this agency of some 560 dedicated staff to immediately and comprehensively address every product hazard, large or small, real and perceived.

You are demanded by these statutes to protect consumers, especially children, at virtually any cost, but yet not to overreach or overregulate. You must be transparent in your decision making and engage stakeholders, but at the same time be above the fray and not beholden to any single group. You must respond to the headlines, but not chase them. And you must answer to Congress and the Administration, yet be fully independent. In short, the CPSC must be all things to all people, all the time. And I would venture to say that any agency...any individual...who has ever tried to do so has been frustrated by the effort, to say the least.

It is with this knowledge and in this spirit that we come before you today with a small issue and request, but one that I humbly suggest will be of benefit to industry and is far simpler and easier than many you face, particularly in the context of this hearing.

As you know, in April of this year the Commission voted to approve a new ASTM standard, F2853-10, for the testing and certification of toys and many other children's products to the CPSC lead paint standard. This method, which was developed over an approximately two-year period, with numerous stakeholders (including CPSC lab staff), and with the appropriate rigor that the ASTM process demands, covers not only the measurement of lead in paint but also of lead in all major substrates of children's products, and at levels well within the current 100 parts per million regulatory limit.

F2853 is the first-ever valid, precise and reliable test method so recognized by the agency for the measurement of lead since the advent of inductively-coupled plasma (ICP, or so-called "wet chemistry") technology some 40 years ago. F2853 recognizes the use of high definition x-ray fluorescence (HDXRF) as the mechanism for measurement, with which everyone here is quite familiar. However, F2853 demands a level of precision, reliability and repeatability that traditional XRF cannot and does not afford and that heretofore was found only with ICP.

ICP, as you know, requires large, expensive instruments, in laboratory conditions, significant preparation time and destruction of product samples. By contrast, F2853 is non-destructive, can be conducted in-situ, and requires minimal product preparation. In short, HDXRF is cheaper, better and faster for the measurement of lead than any other method currently available.

My lawyer's understanding of HDXRF is that it essentially refocuses fluorescing rays from a product sample in a way that eliminates the background "noise" of traditional XRF analyzers. This provides a far more precise isolation and measurement of lead and other heavy metals in both surface coatings and substrate materials. And HDXRF does this, as each of you know and have seen, in a matter of minutes, in any environment, without any sample destruction, and with minimal sample preparation and therefore minimal likelihood of human error.

As I mentioned, earlier this year the agency recognized this breakthrough technology and approved the use of F2853 for lead paint testing and certification. The CPSC Lab concomitantly purchased an XOS analyzer and is now using it for final measurement of lead in surface coatings and, we understand, as an augmentation for lead substrate testing as well. Most major third party labs and a number of manufacturers, importers and retailers have purchased XOS units for lead paint and substrate testing pursuant to the F2853 standard as well.

All of this you know.

What you perhaps did not know, and what we until very recently did not know, is that, rather than approve F2853 for lead substrate testing prior to the lifting of the stay at the end of this year as expected, agency staff has thus far decided to, quote, "continue to evaluate the potential of



XRF analysis for third party testing,” as part of the HR 2715 review process, one that will take in excess of a year. (I am citing here remarks in the staff documents accompanying the recently approved Testing and Certification Rule).

Madam Chairman and commissioners, those who know me know that I can be a vocal advocate for my clients, even perhaps, at times, a bit hyperbolic. But I have always sought to deal honestly and forthrightly with each of you and with every member of the agency staff. I regard this as not only a quality but as a solemn obligation.

And on this small but important issue, I strongly disagree with this approach.

F2853 and HDXRF are not “XRF” as it is traditionally understood. Failure to distinguish the two, for whatever reason, is simply inaccurate and is a disservice to all of your stakeholders.

The F2853 method is sound. It is applicable for paint as well as all major product substrates. All that is required is for the agency to recognize this method by adding it to the existing, approved SOPs for lead substrate testing. This can be done by the agency staff, today. And if approved for substrate, 2853 will provide the CPSC with a second major accomplishment in providing a low-cost, alternative test methods for manufacturers and importers of children’s products, in keeping with, and well ahead of schedule of, the mandated HR 2715 review.

Now of late, we have heard that the CPSC lab staff may have some technical and/or procedural questions about the use of 2853 for lead substrate testing. What those issues are, exactly, we have not yet been told, nor have we yet been afforded an opportunity to address whatever questions the staff may have, but are willing and available to do so at any time, including today if desired. My colleague will address what we think may be some of those questions, and are of course available at any time and place to do so in greater depth.

But to the best of our collective knowledge, there is no substantive or procedural roadblock to the immediate approval of ASTM F2853-10 to the agency’s Standard Operating Procedures as an approved method to test for lead in the substrates of children’s products.

Madam Chairman, Commissioners and staff, I apologize for my directness today. But seldom have I seen such a clear-cut means to achieve the overtly stated goal of both the Commission and the Congress: to provide a low cost alternative test method, and to do so before January 1 stay lifts.

I thank you very much for your time and would be happy to answer any questions.

## Stevenson, Todd

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**From:** Satbir Nayar [SNayar@xos.com]  
**Sent:** Friday, October 21, 2011 11:58 AM  
**To:** Stevenson, Todd; hammond@cpsc.gov; cpscos@cpsc.gov  
**Cc:** Quin Dodd  
**Subject:** XOS testimony for CPSC Small Batch Hearing on October 26  
**Attachments:** XOS Nayar Testimony for CPSC Small Batch Hearing 10-26-11 final.pdf

Good morning,

Please find enclosed my testimony for next week's hearing.

As our attorney, Quin Dodd, has indicated, we would both like to present, in sequence, at the October 26 Commission hearing on small batch manufacturers.

Please let me know if any questions or if you need additional information.

Thank you for the opportunity to speak and I look forward to seeing you next week.

Best regards,

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**TESTIMONY OF SATBIR NAYAR  
PRODUCT MANAGER  
XOS, Inc.**

Before the

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

“Alternative Testing Requirements for Small Batch Manufacturers Public Hearing”

October 26, 2011

Good morning Madam Chairman and distinguished Commissioners.

My name is Satbir Nayar and I am a Product Manager with XOS, Inc.

I appreciate the opportunity to address you again this morning and for the Commission holding this important hearing on ways to provide manufacturers, particularly small batch manufacturers, with cost effective, alternative means of assuring that their children’s products meet the CPSC lead, toy, and other important safety standards.

By way of brief reintroduction, XOS, located near Albany, New York is a small technology company that pioneered the use of advanced X-ray optics in application-specific analyzers that measure environmental and product contaminants such as lead, cadmium, chlorine, and sulfur. Immediately after enactment of the Consumer Product Safety Improvement Act of 2008, XOS answered the call from CPSC and began development of next generation XFR technology--what we call HDXRF--for specific use in consumer products. The result was the development of our HD Prime and HD Equity units, which as Quin mentioned are now in use around the world to measure lead and other heavy metals in both surface coatings and substrate materials of consumer products. You have each seen these analyzers in action and how they are easy to use, provide fast results and most importantly to the topic at hand of small batch manufacturers, do not require destruction of the sample.

We then worked with the agency staff and many other stakeholders to develop the ASTM F2853-10 test method that the agency approved this last spring for lead paint testing and certification. This action by the agency is today enabling numerous manufacturers and their lab partners to test and certify their products to the lead paint standard, with all the advantages provided by traditional XRF but with much greater precision and reliability. We firmly believe that doing the same for lead substrate will provide all manufacturers, and particularly small batch

manufacturers, with an immediately available alternative, cost effective and non-destructive test method to the lead in substrate standard.

As you know, one of the biggest complaints small manufacturers have with regard to lead testing has been that samples must be destroyed using the wet chemistry method, which of course increases the total cost of testing. HDXRF, by contrast, is non-destructive, so toy and other children's product manufacturers do not have to sacrifice any samples in order to assure compliance with the CPSC lead standards.

I will also mention, as I'm sure you're each aware, that the CPSC currently recognizes traditional XRF technology for final lead testing of homogenous plastic substrates, so long as the measurement is below 70 ppm, owing to the precision and repeatability parameters offered by that technology. And presumably this will continue to be the case once third party testing and certification to the lead substrate standard is again required beginning January 1, 2012. This amendment to the existing staff Standard Operating Procedure was accomplished without the need for a Commission vote, as have been many other changes to lab SOPs over the years.

As we have previously highlighted in comments and testimony to the Commission in connection with the lowering of the lead substrate limit to 100 ppm, the efficacy of ASTM F2853 for the quantification of lead is well established. The method is capable of reliably measuring lead at below the 100 ppm regulatory limit for a variety of substrate materials, including plastics, metals, glass and ceramics. This method, as you know, was developed as part of the necessarily lengthy ATSM committee process and involved CPSC lab staff as well as the testing of over 1,000 individual substrate samples at various independent and reputable labs around the world.

Nevertheless, we have recently been made aware that there may be some technical questions among the CPSC staff about approving F2853 for lead in substrate. And, since it was suggested by staff that this would be the appropriate forum to do so, let me briefly address what those questions may potentially be.

First, there is the possible question of homogeneity. As many have raised to the Commission's attention over the last couple of years, seemingly homogenous substrates are not, in fact, always homogenous. The amount of lead may vary from one part of the same substrate material to another. Since HDXRF measures one location of a product at a time, it might be argued, higher levels of lead in another part of the component part may be missed.

But this issue, if it is in fact an issue, is also true for wet chemistry, handheld XRF, or any conceivable product test method that tests less than 100% of the product. With wet chemistry, for example, only a very small piece of whatever substrate it is you are testing—typically less than 100 micrograms of material—is needed for acid digestion. That small piece of metal, for

example, might itself measure at below 100 ppm for lead while a neighboring part of the same component substrate could measure above 100 ppm. And the same is true when using traditional handheld XRF instruments for plastic substrate.

If anything, this issue highlights one of the key advantages of F2853 and HDXRF, since several measurements can be taken at several spots in less time than it takes to conduct a single wet chemistry test. Indeed, the only way you are likely to even know that a particular substrate is, in fact, not homogenous is by using HDXRF on multiple spots on that material. It would therefore be ironic, to say the least, to question the use of a lower cost test method because of an issue that only that test method is likely to identify in the first place.

In addition, there may be a question about the use of the F2853 method for measuring lead in plated metals and glazed ceramics, both of which are considered uncoated products under current regulations. The regulation requires that the TOTAL value of both surface material combined with the underlying material contain less than 100 ppm lead.

Wet chemistry addresses this not by distinguishing between the content of lead in the surface vs. the substrate, but rather by digesting both together and obtaining an average reading for the combined sample. Don't get me wrong; this is of course appropriate since the idea is to measure the total lead content of the component as it is "averaged," if you will, in a child's digestive tract.

HDXRF reports a lead value for the surface material as well as a separate lead value for the substrate. But again, far from highlighting any weakness of the F2853 method, HDXRF provides a greater level of information about the sample. However, if this is indeed a concern of the lab staff, it can easily be addressed by utilizing F2853 to obtain an average reading of both the metal plating and the metal substrate (or glazing and clay in the case of ceramics), as is now done in various contexts with regard to wet chemistry testing, or worst case, by simply excluding plated metals and glazed ceramics from the scope of the lab's approval of F2853 for substrate testing, as these product categories account for a small percentage of children's products subject to the 100 ppm limit.

Also with regard to specific substrates, I will note in passing that the use of F2853 for the measurement of lead in glass has at least one distinct advantage over traditional wet chemistry, since the strong acids needed to adequately digest glass are so dangerous that many labs refuse to conduct such testing. This problem is negated using HDXRF.

Third, there has been some question raised about so-called "interferences" in certain metal substrates, whereby some other elements potentially interfere with lead. HDXRF in fact handles these interferences very well at and below the regulatory levels, something that cannot be said of traditional XRF. We have addressed this issue with CPSC staff in the past, but welcome the

opportunity to discuss further. It is worth pointing out that wet chemistry methods also have interference issues that must be dealt with.

Finally, I would assert that approval by the CPSC staff of F2853 for testing and certification to the lead substrate standard is not only justified and necessary to provide small and other manufacturers with a cost effective and non-destructive alternative to wet chemistry, but is also necessary to maximize the benefits of using the method for lead paint testing and certification. By approving F2853 for lead substrate, it will help ensure that the method will continue to be an attractive alternative test for lead in paint, particularly, as expected, when the toy standard is expanded to include heavy metal substrate limits.

Madam Chairman, commissioners, I thank you again for your time this morning. I look forward to working with each of you and the professional and dedicated lab and other agency staff to helping you achieve the difficult mandate Congress has given you to relieve the burdens of testing, especially for small companies, without sacrificing children's safety. I and my colleagues at XOS believe in our heart of hearts that we are offering a tangible and immediate step in that direction.

Thank you and I would be happy to answer any questions you or the staff may have.