

Comments on Proposed CPSIA Amendment

Report language on “practicability” – Committee report language to provide further guidance on this term as it is used in the functional purpose exemption would be helpful.

Report language on “measurable adverse effect on public health or safety” – Committee report language along these lines would be helpful to provide further guidance on this term as it is used in the functional purpose exemption:

The Committee expects that the Commission, in implementing this provision of the law, will follow a scientific protocol to determine whether, after foreseeable use and abuse, any lead in the product, component part, or material will produce a *measurable* adverse effect on public health or safety. Given that there is no current blood level at which the scientific community considers lead exposure to be “safe,” the Committee understands that a very small adverse effect may theoretically occur at any level of exposure. The Committee intends, however, for the Commission to deny requests for exclusion under this section only for those adverse effects that the Commission determines to be empirically, as opposed to theoretically, measurable.

Labeling Provision within Functional Purpose Exemption – It would be helpful if the Commission had full discretion in deciding what kind of label to require when granting an exemption when the Commission chooses to require such a label. This flexibility could be achieved by:

- Inserting “; or” on page 4, line 12.
- Inserting a fourth provision: “(iv) the Commission deems appropriate.”

Limitation Provision within Functional Purpose Exemption – The language in (D)(i) could be clarified by:

- Striking the language on page 6, lines 1-5.
- Inserting “(i) require each manufacturer of such product, component part, or material to reduce the level of lead in such product, component part or material; or”

Definition of “used children’s product” – This definition could be clarified by:

- Inserting “used” after “a” on page 7, line 22 (to clarify that the extension of this definition to sellers who donate or lend is still limited to “used” children’s products).

Title Change under Small Business – Because the “alternatives” testing methods allowed for low volume manufacturers under the amendment are not alternative “third-party” testing requirements, it would be helpful to add “to” after “alternative” on page 8, line 12.

“Low Volume Manufacturers” – We are open to using other terms besides the term “low volume manufacturer” such as “small batch manufacturer.”

Definition of “Low Volume Manufacturers” – Because the current definition could capture non-manufacturing/importing revenue, it might be helpful to clarify the definition by inserting “from manufacturing or importing” after “had gross receipts” on page 11, line 24.

Workability of Alternative Testing Methods for LVMs – The flexibility provided for the agency to allow alternative requirements that “provide for reasonable testing methodologies to assure certification based on compliance with the relevant consumer product safety standards” may provide minimal testing relief to “low volume manufacturers.” At this time, CPSC staff believe that reasonable testing methodologies meeting this criterion could be developed for only a few of the CPSIA testing requirements and that third party testing will still be required in many instances. However, this provision could provide greater relief in the future as new technologies develop that the agency may be able to recognize as capable of ensuring compliance through reasonable testing methodologies.

Office of Education, Advocacy, and Business Ombudsman – This office is envisioned as one that would provide education, outreach, and advocacy for all agency stakeholders. Accordingly, the following changes would be helpful:

- Strike the current titles on Page 10, lines 1-2 & 6-7 and Replace with “Office of Education, Advocacy, and Business Ombudsman”
- Make same change to the corresponding language on page 10, lines 8
- Page 10, line 9 – Delete “in”
- Page 10, line 9 – After “Commission” insert “with providing education and advocacy for all stakeholders and to inform and educate”

Authorization of Funding for the Office of Education, Advocacy and Business Ombudsman – If this office is created, then the Commission will require an authorization of approximately \$1.8 million to fund the office based on the data below to fund 8 FTEs with benefits and overhead, including a high level of travel expenses associated with office activities.

Estimated Annual Cost for 8 FTEs

Grade	Title	Base Salary	w/ Benefits	w/ Overhead
SES	Director	\$167,983	\$218,400	\$294,800
GS 15	Staff	\$142,363	\$185,100	\$249,900
GS 15	Staff	\$142,363	\$185,100	\$249,900
GS 15	Staff	\$142,363	\$185,100	\$249,900
GS 14	Staff	\$121,027	\$157,300	\$212,400
GS 14	Staff	\$121,027	\$157,300	\$212,400
GS 14	Staff	\$121,027	\$157,300	\$212,400
GS-11	Administrative	\$71,537	\$91,300	\$109,600
	TOTAL	\$1,029,688	\$1,336,900	\$1,791,300

Coordination with Voluntary Standard-Setting Organization – It would be helpful if the Commission was not required to engage in a rulemaking each time a voluntary standard underlying a mandatory durable infant nursery standard is updated. Also, it would be helpful if the voluntary standards body was required to notify the Commission of the update.

Accordingly, it would be helpful to insert the following sentence on page 14, line 21, after “the organization.”

If the organization (or its successor entity) proposes to revise the voluntary standard, or a successor standard, it shall notify the Commission of the proposed revision within 60 days.

Also, it would be helpful to strike the current language in (a)(B) on page 14 and replace with the following:

(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD – If an organization revises a standard that has been adopted as a consumer product safety standard under subsection (A), the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C 2058), effective 180 days after the date on which the organization notifies the Commission unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard. In the case of such a notification, the Commission may, within 60 days:

Initiate a rulemaking in accordance with section 553 of title 5, United States Code, to amend the consumer product safety standard to be more stringent than the revised voluntary standard, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

Public Notification of Imminent Hazard – It would be helpful to make the following changes to this provision so that the Commission is only required to make such a public notification once it “identifies” a class of imminently hazardous consumer products.

- Page 16, line 18 – Strike “inform” and replace with “notify”
- Page 16, line 19 – After “products” insert “, as defined in § 12 of the CPSA,”
- Page 16, line 20 – Strike “or being made aware of”
- Page 16, line 25 – Strike “or is made aware of”
- Page 17, line 2 – Strike “inform” and replace with “promptly notify”