



we wearSM product safety

January 23, 2011

Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland, 20814

REF: Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products

Docket No. CPSC-2011-0082

On behalf of American Apparel & Footwear Association (AAFA) I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC) on the above captioned issue.

AAFA, as a supporter of H.R. 2715 including the change from "random" to "representative" sampling, appreciates the willingness and diligence shown by the CPSC in implementing this change into their testing and certification ruling. We agree with the direction that the CPSC is going in regard to the change from "random" to "representative" and would only like to emphasize two key points that our members feel are vital to ensuring the understanding and compliance of the representative determination.

First is that representative samples can be defined based on what they are not. As long as a sample is not a "golden sample", meaning that it was not manufactured to be different in any way from the rest of the produced samples, then it should be considered to be representative. In the *Federal Register* notice the CPSC states that

"Representative samples of a children's product selected for testing are comparable to the unselected portion of the children's product population with respect to compliance to the applicable children's product safety rule(s). To be representative, the manufacturer must have a basis for inferring that, had other samples been chosen for testing, test results from those samples would have indicated the same compliance or noncompliance to the applicable children's product safety rule as the representative samples."

We fully agree with this statement but also believe that as long as the manufacturer can prove that the sample was not intended to achieve different test results they meet the CPSC's criteria of a representative sample.

The reasoning for this is that outliers may exist even in the most homogenous of manufacturing practices, and manufacturers may not be able to prove why a single test result was an outlier. However, it is much easier to prove that they performed the due diligence to ensure they did everything possible to prevent that outlier from being created. This clarification will in no way change the CPSC definition of a representative

1601 North Kent Street
Suite 1200
Arlington, VA 22209

(703) 524-1864
(800) 520-2262
(703) 522-6741 fax
www.wewear.org

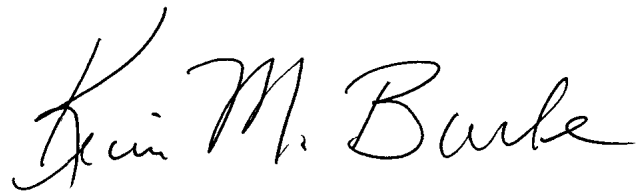
sample. All manufacturers will still have to be able to prove that a test result is representative of their entire product line. Moreover, such a clarification will give manufactures the assurance needed to rely on their individual remedial action plans if a failure occurs due to an outlier that does not represent the entire product line. This will protect manufacturers from having to destroy many more products that may still be compliant.

Secondly, we would like to emphasis the importance of the CPSC continuing to consider random sampling to be a subset of representative sampling. The CPSC gives solid assurance by stating that “Random sampling is another means of selecting representative samples that provide a basis for inferring the compliance of untested product units from the tested product units. The conditions that allow for the inference of compliance concerning untested units versus tested units may be met by a range of probability-based sampling designs, including, but not limited to, simple random sampling, cluster sampling, systematic sampling, stratified sampling, and multistage sampling. These methods allow the manufacturer the flexibility to select a random sampling procedure that is most appropriate for the manufacturer’s product production setting but still allow for the inference about the compliance of the population of product units.” Many companies proactively were implementing random testing program when the CPSC first proposed and supported it in December , 2008, and we are confident that the CPSC will continue to recognize this as an acceptable means of representative sampling.

We again would like to thank the CPSC for using the instructions set out by Congress in H.R. 2715 and applying them in a way that will truly bring relief and clarity to any testing program while still assuring the safety and quality of all regulated children’s products.

Thank you for your time and consideration in this matter. Please contact Michael McDonald at 703-797-9052 or by e-mail at mmcdonald@wewear.org if you have any questions or would like additional information.

Please accept my best regards,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style.

Kevin M. Burke
President and CEO