



***Statement of Steven Levy  
Star Ride Kids  
On Behalf of  
American Apparel & Footwear Association (AAFA)  
House Energy and Commerce Committee  
Subcommittee on Commerce, Trade, and Consumer Protection  
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Good morning.

My name is Steve Levy. I'm Director of Operations of Star Ride Kids, a New York based wholesaler of children's apparel. Thank you for providing us this opportunity for me to appear before you this morning on behalf of American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industry, and its suppliers.

At the outset, let me state our very strong support of a product safety system that ensures that only safe and compliant product be designed, produced, marketed, and sold. At Star Ride Kids, and throughout the industry, we take our product safety obligations seriously. We view this obligation as key to our business, not only because such an approach is the right thing to do, but because we are also parents and grandparents ourselves and believe very strongly that our kids should only be exposed to safe clothes, shoes, and other products.

Even before the passage of the Consumer Product Safety Improvement Act (CPSIA), AAFA has worked to educate the apparel and footwear industry on important product safety compliance initiatives. For several years, we have published a free Restricted Substances List (RSL) that helps companies understand international product safety standards and implement a chemical management program. For the past 18 months, we have conducted dozens of webinars, briefings, and trainings, throughout the United States and on four continents on the CPSIA. Next week, for example, we are holding two seminars in China.

Finally, AAFA staff and member companies have been active participants in many of the Consumer Product Safety Commission (CPSC) regulatory activities and have worked closely with the Commission's staff to ensure that the regulations were crafted in such a way that they did not hinder the ability of companies to make safe and compliant products. As a result of this partnership, which is on-going, some of the critical implementation issues faced by textile, apparel, and footwear businesses have been largely addressed. The recent determination that there is no lead in textiles – and therefore no need for testing and certification of such materials – is one such example. The imminent ruling to permit component level testing we hope will be another.

Unfortunately, some problems cannot be fixed through the regulatory process.

It is for this reason that we have been strong supporters of initiatives to amend the CPSIA and why we are pleased that this hearing is occurring today.

The proposed amendment, the Consumer Product Safety Enhancement Act (CPSEA) represents an important step forward in the process to fix some of the unintended consequences of the CPSIA that have caused considerable disruption to businesses over the past year and a half. I'd like to offer our assessments on several provisions in the draft CPSEA and suggest several areas of improvement as this process moves forward.

### **100ppm**

We are especially supportive of provisions of the amendment that make the 100ppm lead standard that goes into effect August 14, 2011 prospective. The retroactive characteristics of the previous and existing lead standards were devastating, resulting in the destruction of many millions of dollars of safe, but suddenly non compliant, product. Making the new lead standard prospective will minimize the adverse impact on businesses without compromising children's health or safety.

### **Exclusions**

We also support efforts to grant the Commission greater flexibility to exempt materials, components or products from the lead standard when there is no threat to public health and safety. It is now well-documented that the CPSIA's excessively strict lead standard exemption language prevented several categories of safe products, like children's apparel and footwear products containing crystals and rhinestones, from being sold. These determinations were made despite significant scientific data that the aforementioned products were safe. It is our expectation that the new exception language will give the CPSC the simple ability and flexibility to grant exceptions to these and other similar materials used in children's products when they do not present a danger to public health and safety.

### **Testing and Certification Relief**

We also support efforts to give the CPSC authority to grant testing and certification relief from third party testing. While the CPSEA envisions such relief, it confines that relief to certain small volume manufacturers only. Inasmuch as the obligation to make safe and compliant products does not depend upon the number of employees or one's annual sales, we strongly believe that this relief should be available to all businesses, regardless of their size.

An on-going concern remains the impact of third party testing, which is already in effect for lead in coatings and takes effect for lead substrates next February. This is perhaps one of the greatest areas of concern for our members – regardless of their size. In about ten months, when the current stay of enforcement expires, companies will be forced to rely on third party testing for a variety of components, materials, and products. Based on our experience from the initial days of the CPSIA, we believe there will be incredible demands placed on a finite number of labs. While component level testing, combined with some of the determinations made thus far, may mitigate some of that impact, there is great concern that we will see widespread shortages of lab capacity, price increases, and delays when the stay is lifted. For an industry that is time- and price-sensitive, the economic impact of such an occurrence is unacceptable.

Moreover, this is not a good outcome for product safety. Putting product safety first includes making sure lab resources are directed at those components or materials that present the greatest risk or about which there is uncertainty. But the system we are about to see will treat all components and materials equally regardless of risk. Materials that are safe and compliant

will be subject to repeated, and expensive, third party testing. This will continue to occur despite the fact that most materials in a clothing and footwear have been lead free for years.

Consumer product testing is extremely important to our members. Although companies currently do not have to conduct third-party tests for lead substrate (because of the stay of testing and certification), they have implemented robust, efficient and effective testing programs throughout their supply chains to check production and ensure product compliance. Members use various technologies right at the production line to immediately test for a problem and, if they happen to encounter one, deal with it right away. We believe that this type of verification is the most effective and efficient way for a company to test for lead during production and, more importantly, ensure that products are safe for our children.

The CPSC should have full flexibility to authorize alternative testing requirements in lieu of third party testing. This flexibility is appropriately applied to all companies – not just certain small batch manufacturers. Allowing the Commission to approve alternative testing methods in lieu of third party testing will result in an increase in product testing and product safety assurance.

### **Preemption**

More work needs to be done to ensure that the CPSIA fully preempts state and local product safety rules. Companies find it increasingly difficult to manage the conflicting and ever growing number of state regulations that are being promulgated. Companies labor to comply with the CPSIA only to find out – often after the fact – that they are not in compliance with a little known state standard. To comply with drawstring limitations, companies must meet conflicting standards established at the federal level and in the states of New York and Wisconsin. And this is just the tip of the iceberg, with new rules coming online in Illinois, Connecticut, Maine, and elsewhere. With regard to CPSIA, California Proposition 65, in particular, has created significant difficulties because it relies upon different standards and product coverage, even though it purports to address product safety as well. While I understand Congress exempted out Proposition 65 from the CPSIA, I think this is a mistake. We urge you to make federal preemption stronger to cover all these others measures so we can achieve a single, harmonized national product safety standard.

### **Final Thoughts**

Let me conclude by addressing another critical issue not specifically addressed by the CPSEA.

We encourage the Committee to keep a close eye on the on-going regulatory process at the Commission. As the Commission continues to publish an amazing number of regulations to implement the CPSIA, we are finding that some guidance that is intended to help may in fact create more problems. A directive to run validation tests on third party testers is one recent example that will only lead to more testing costs with no product safety benefit. The most effective product safety system we can have is one that recognizes that the regulated companies are active partners of the Commission. But if these companies are constantly subjected to burdensome, costly, and, in some cases, silly requirements, that partnership is severely strained and, in the process, product safety takes a black eye. The Commission should be commended for the enormous amount of work they are doing in implementing the CPSIA. But the Commission also needs to focus on other important safety efforts – outside the CPSIA – as well. We encourage the Committee to recognize that this work is being done under enormous pressure, great expectations, and very tight timetables. It is our hope that the Committee will continue to revisit CPSIA implementation and indeed the work of the agency in future hearings.

Mr. Chairman, the CPSC and the regulated community have come a long way over the past two years. Thanks to your leadership we now have five Commissioners and an agency that is more fully funded. The CPSIA was indeed a “wake-up” call for the agency and for many in the business community to tighten their own product safety regimes. But the CPSIA also created considerable pain for companies who were already doing the right thing in this area. In some cases, that pain came with little gain for public safety.

With an eye to maximizing public health and safety, it is our hope that through this CPSEA we can give the agency additional tools it needs to create a stable, predictable, risk-based, and science based regulatory environment.

Thank you again for providing us this opportunity to discuss the CPSEA. I am available to take questions.