



September 17, 2010

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

RE: REQUEST FOR COMMENTS DOCKET NO. CPSC-2010-0086

On behalf of the American Apparel & Footwear Association (AAFA) – the national trade association representing the apparel and footwear industry and its suppliers – I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC or “the Commission”) regarding proposed rule, “Third Party Testing for Certain Children’s Products; Clothing Textiles: Requirements for Accreditation of Third Party Conformity Assessment Bodies.” We strongly oppose the CPSC imposing third party testing requirements to demonstrate compliance with the Flammable Fabrics Act (FFA) or any of the regulations promulgated under the FFA.

Third party testing requirements specified in the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act (CPSIA), do not extend to children’s products subject to *general* product safety requirements like 16 CFR 1610, the Standard for the Flammability of Clothing Textiles. Section 14(a)(2) of the CPSA specifically states that children’s products subject to *children’s* product safety rules are subject to third party testing. Congressional intent to differentiate between general product safety standards and children’s product safety standards is seen throughout Section 14 of the CPSA. For example, Section 14(a)(3) includes a timeline to accredit third party conformity assessment bodies to test children’s products for compliance with lead paint, cribs and pacifiers standard, small parts, children’s metal jewelry standard, baby bouncers standard, walkers and jumpers standard, and all other children’s product safety rules. Logically, “other” children’s product safety rules similarly include standards specifically targeting children’s products like those for toys or bicycle helmets, the ban on phthalates in child care articles. These *children’s* product safety standards can be differentiated from product safety standards applicable to all consumer products – like the FFA.

As the FFA and its implementing regulations at 16 CFR 1610 is a general product safety rule, not a “children’s product safety rule,” it is not subject to the third party testing requirements. According to CPSC’s notice of its proposed rule for testing and labeling pertaining to product certification: “Currently the rule on children’s bicycle helmets is the *only children’s* product safety rule that contains requirements for a reasonable testing program. The reasonable testing program requirements in this rule are not intended to replace the preexisting testing requirement.” (Emphasis added.) 75 Fed. Reg. 28336, 28348

(May 20, 2010).¹ However, the FFA and its regulations undeniably include its own reasonable testing program, as the CPSC's notice also emphasizes. *Id.* at 28344 Table 1. Therefore, using the CPSC's *own* characterization of what is a children's product safety rule, the FFA and its regulations must *not* be a children's product safety rule and should not be subject to the CPSA's third party testing requirement.

If the CPSC nonetheless believes that the FFA and its regulations, as applied to children's products, constitute a children's product safety rule, then the CPSC should offer the reasonable testing program requirements for that rule in 16 CFR 1610 the same treatment CPSC has afforded to all children's product safety rules with existing reasonable testing programs (i.e., bicycle helmets) and to all other product safety rules with existing reasonable testing programs (as listed in Table 1). Specifically, the CPSC should recognize that the existing testing program set forth in 16 CFR 1610 is sufficient to ensure the safety of the fabrics tested, and the CPSC should not require those fabrics to undergo further, duplicative testing under CPSC's newly proposed general requirements for testing programs (like 16 CFR 1107 and 1109).

Imposing additional third party testing requirements for textiles subject to the FFA is not appropriate. First, within the legislative limits of the CPSA and other statutes enforced by the Commission, it is crucial that, when Congress has not *expressly* required third-party testing, the CPSC assess the necessity of third party testing on a case-by-case basis (using authority granted in Section 14(b) of the CPSA). Complying with third party testing regulations has been extremely burdensome on companies. The new requirements have disrupted supply chains, delayed shipments and have placed significant financial burdens on companies. Many businesses are further frustrated by the CPSC's regulatory promulgations because more time is being spent on ensuring technical compliance with obtuse regulations, rather than ensuring overall product safety. Requiring third party testing further triggers compliance with requirements under the recently proposed 16 CFR 1107 (Testing and Labeling Pertaining to Product Certification) and, if the manufacturer is using component testing (testing fabric rather than garments, for example), 16 CFR 1109 (Conditions and Requirements for Testing Component Parts of Consumer Products). If manufacturers of children's clothing were required to comply with third party testing rules, the manufacturer who wanted to demonstrate compliance with the flammability standards for children's clothing would have to ensure legal compliance with three different sets of regulations. These regulatory burdens dilute the focus from what should be the bottom line – ensuring that the product is safe and compliant with regulatory standards. Many general product safety standards like 16 CFR 1610 include effective test methods that appropriately assess the product's compliance with the underlying standard. Requiring third party testing simply adds unnecessary cost without giving any additional assurance of the product's ability to pass the applicable product safety standard.

Furthermore, requiring manufacturers of children's apparel to comply with third party testing requirements (and therefore the corresponding proposed testing regulations particularly 16 CFR 1107 Subpart C), bypasses the entire FFA rulemaking process. In accordance with Section 4(b) of the FFA, the CPSC hosted several meetings between Commission staff, testing facilities and industry representatives who collectively worked together to determine what test methods are appropriate to assess fabric compliance with flammability standards. Requiring third party testing and compliance with the testing, tracking and data keeping requirements in proposed 16 CFR 1107 and 1109 entirely undermines this cooperative effort between industry and the CPSC. Furthermore, requiring manufacturers to go beyond the testing requirements laid out in 16 CFR 1610 to demonstrate compliance in effect backdoors an amendment to the FFA regulation violating the requirements laid out in Section 4(b) of the FFA.² Any amendment to an FFA standard, "shall be *based on findings*" that the

¹ We also note that standards for flammability of children's sleepwear are children's product safety rules, and already include reasonable testing programs at 16 CFR 1615 and 1616.

² While it could be argued that compliance with 16 CFR 1700 and 1900 are independent from compliance with 16 CFR 1610, the proposed rulemaking on the accreditation requirements for third party testing facilities to test for compliance for

amendment “*is needed* to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, *is reasonable*, technologically practicable, and *appropriate*” (emphasis added). The CPSC has *not* demonstrated that third party testing is needed, the burden companies subsequently take on is *not* reasonable and therefore, the CPSC has not any findings that amending 16 CFR 1610’s testing requirements is appropriate.

In conclusion, AAFA believe the testing requirements within the Standard for the Flammability of Clothing Textiles are sufficient for industry to demonstrate compliance with that standard. However, if the CPSC feels otherwise, we ask the Commission hold a public meeting to share the Commission’s concerns and give industry an opportunity to contribute to discussion on how to improve the standards and determine whether third party testing for children’s products is, in fact, necessary.

Thank you for your consideration of these comments. If you have any questions, please contact Rebecca Mond with my staff at rmond@apparelandfootwear.org or 703-797-9038.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Burke".

Kevin Burke
President and CEO

flammability of textiles notes that “...Reasonable and representative tests performed by a manufacturer sufficient for the issuance of an FFA guaranty *are not sufficient* for the issuance of a certification of compliance with 16 CFR part 1610 for clothing textiles designed or intended primarily for children 12 years of age or younger...” (emphasis added). In order to demonstrate compliance with 16 CFR 1610, a children’s product manufacturer has to comply with *both* the testing requirements *as well as* third party test the product (and thus 16 CFR 1700).