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## INTERTEK CPSIA PUBLIC POLICY STATEMENT

SUBJECT: CPSIA-related policy considerations  
FROM: Joe Mohorovic, VP Consumer Goods NA  
DATE: 1/29/09

Intertek supports global public policy efforts to implement sound regulations by offering our expertise in the areas of testing, inspection, certification<sup>1</sup> and quality assurance. Intertek divisions internationally are eye-witnesses to some of the difficulties our customers face with regard to complying with elements of the Consumer Product Safety Improvement Act of 2008.

Intertek also has decades of research experience to lend with regard to consumer product safety. We feel that policymakers should consider the following changes to the current implementation of CPSIA. It is our belief that the following changes will ease the regulatory burden without jeopardizing consumer product safety.

We leave it up to the CPSC and Congress to determine the vehicle to effectuate these changes. We also believe that consumer product safety should not be a competitive advantage. Therefore, we welcome the opportunity to develop the mechanics behind any of these suggestions in an open and transparent manner with the idea that solutions derived should be at the regulated community's disposal free and clear.

### 1. Composite Testing.

CPSC's express prohibition against the general practice of composite testing should be reconsidered. While we understand and agree with the premise that no paint covered by CFR 1303 should be in excess of the prescribed limits, prohibiting compositing in any form results in process constraints that significantly raise the cost of testing. There are science-based, strict procedures employing composite testing methodologies that provide the same assurance of compliance with a regulatory limit. Under the careful watch and scrutiny of accredited laboratories, the U.S. government should ease its restriction against all forms of composite testing. Intertek intends to provide a specific composite testing SOP or Protocol for consideration and acceptance by CPSC. Congressional encouragement would be appreciated.

### 2. Phthalate Regulation.

Intertek feels that a reasonable approach to phthalate regulation for the products identified by the Congress should employ an inaccessibility provision similar to the intelligent approach implemented by CPSC for lead. The hazard profile requires exposure through mouthing or hand-to-mouth exposure from direct contact with migratory phthalates. Phthalate testing is some of the most intense and costly testing for consumer goods. For laboratories to provide test reports that a product meets the phthalate regulation requires that we test the entire product for phthalates. Inaccessible plastic coated wiring and other inaccessible substrates that might reasonably include the six regulated phthalates should not have to be tested for compliance with the phthalate regulation.

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<sup>1</sup> For certification programs available through Intertek, please see <http://www.intertek-labtest.com/services/certification>.

### 3. Toy Certification

Section 102 (b) of CPSIA alludes to CPSC rulemaking of a true certification program for children's products fifteen months after the date of enactment. Intertek has decades of experience designing, managing and operating certification programs. The CPSA Section 14 "certification" is not a *real* certification program. In accepted conformity assessment parlance, it is better described as "SDOC – Supplier's Declaration of Conformity." We recognize the compliance and enforcement benefits the CPSA Section 14 enhancements through CPSIA offer CPSC staff. However, a robust toy certification program is needed in the U.S. to provide American children with the level of safety they deserve. Intertek has the only operational toy certification system available in the U.S. market today.<sup>2</sup> It has been operational since the summer of 2008. There are over 70 certified toys currently "listed" and certified by Intertek. But not all certification programs provide the same level of assured compliance with safety standards and regulations. Identified below are four principles that we believe are critical elements of a robust toy certification program. **We encourage the U.S. government to mandate that federally acknowledged or accepted toy cert programs include the following in order to provide an adequate level of safety to American children:**

- a. **Qualified and Documented Design Appraisal:** The root cause of over 50% of recalls is poor toy design.<sup>3</sup> In some toy certifications programs being vetted today, there are no qualifications for the design analyst, there is no requirement to submit the design analysis in writing, nor is there a robust procedure required to conduct the design review. The Intertek toy cert program utilizes trademarked Design Hazard Analysis (DHA®) technology. The results are a mandatory element in the technical file, it is in writing, and can only be performed with properly trained and qualified Intertek design appraisers.
- b. **Appropriate Testing Frequency:** Too often, a manufacturer may only test a prototype once for compliance with regulatory and safety standards. Continued "batch testing" is necessary to ensure that subsequent production are equally compliant. Some toy certification programs offer a tiered approach with insufficient frequency of batch testing. Inadequate frequency levels fail to effectively ensure subsequent batches and runs continue to pass muster. The Intertek program mandates batch testing every 500,000 units and/or first shipment – no less, no exceptions.
- c. **Safeguarding Against "Golden Sampling:"** A common occurrence in manufacturing is when a pristine sample is sent to a lab for testing. To no one's surprise, it passes with flying colors. This is called the "Golden Sample" scenario. CPSA §14 "Certification" suffers from the same shortcoming in its inability to control for this scenario. Testing investment is wasted if "Golden Samples" are sent for testing. To easily combat the "Golden Sample" problem, the Intertek toy cert program mandates that Intertek employees perform the sample pulls for batch testing to ensure that the production units are representative of final product.
- d. **Mandatory U.S. Market Surveillance:** How do you really know if the certified product continues to remain compliant? The answer is market surveillance. To thwart actors who might find ways to end run the controls of a certification system, pull product directly from retail shelves in the marketplace and conduct verification testing. If product fails, de-list the product. This is the greatest deterrent.

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<sup>2</sup> See the Intertek Safety Standard Tested – Toys service information available at [http://www.intertek-labtest.com/services/certification/toys\\_tested\\_cert](http://www.intertek-labtest.com/services/certification/toys_tested_cert).

<sup>3</sup> See "Toy Recalls – Is China the Problem," by Dr. Hari Bapuji and Dr. Paul Beamish, University of Manitoba Asper School of Business, August 31, 2007, [http://umanitoba.ca/news/images/toys\\_recalls\\_report.pdf](http://umanitoba.ca/news/images/toys_recalls_report.pdf).



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#### 4. Component Testing

CPSC has emphasized the need for final product testing. However, the Request for Information about component testing procedures demonstrates the agency's understanding that, especially for textiles, component prequalification is a standard industry practice. With properly verified and proven traceability controls in place, accredited labs should be allowed to conduct CPSIA testing utilizing controlled component testing procedures. Thus, GCCs will reference multiple test reports, some will be referenced multiple times – so a relatively sophisticated web site that mirrors the robust traceability system is necessary. Given the attention to this need by AAFA, the textile industry and CPSC, Intertek is confident that sufficient resources are being directed towards an intelligent component testing allowance. Intertek endorses this adjustment to current CPSIA testing policy.