

BEFORE THE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 7, 2011

TESTIMONY OF
ERIKA Z. JONES
ON BEHALF OF
BICYCLE PRODUCT SUPPLIERS ASSOCIATION

SUMMARY OF TESTIMONY

- The Bicycle Product Suppliers Association supports reforming the CPSIA and believes that sensible reforms are needed to address practical problems in the market.
- BPSA supports revising the age threshold for the definition of “children’s product” to a lower age, and recommends establishing the threshold at age six.
- BPSA agrees that any new lead substrate standard should be prospective only.
- BPSA supports the establishment of an alternative lead substrate standard for components manufactured of certain specified metal alloys.
- BPSA welcomes provisions that recognize that component parts not likely to result in the ingestion of more than a de minimis amount of lead should not be subject to the standard and the testing requirements.
- BPSA supports an exclusion for the resale of used and refurbished children’s products by charitable organizations.
- BPSA supports the proposed changes to the public database to make the data submissions more useful and accurate.
- BPSA does not support conferring authority on CPSC to extend the 100 ppm lead substrate limit to adult products.
- BPSA urges prompt action on sensible reforms of the CPSIA.

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Chair Bono Mack, Ranking Member Butterfield, and members of the Subcommittee, I appreciate the opportunity to testify before you this morning on the important matter of the need for amendments to reform the Consumer Product Safety Improvement Act of 2008 (“CPSIA”).

I am Erika Jones, counsel to the Bicycle Product Suppliers Association, an association of suppliers of bicycles, parts, accessories and services who serve the specialty bicycle retailer. BPSA has engaged actively and constructively with the U.S. Consumer Product Safety Commission since the enactment of the CPSIA. BPSA’s efforts to work with the CPSC staff to find solutions to CPSIA implementation issues have included the following:

- BPSA met in the fall of 2008 with the staff to discuss issues related to the bicycle standard (Part 1512) and challenges that were presented by the requirement for certification to all provisions of that standard, in light of the fact that the standard had not been revised in many years and contained some provisions which were not applicable to some modern bicycle designs. Since that time, BPSA has worked with the staff to identify the bicycle standard provisions requiring clarification or modification.
- In early 2009, BPSA petitioned the CPSC for limited relief from the lead standard for children’s bicycles on the grounds that the lead in the metal materials used for children’s bicycles would not result in the absorption of any measurable lead in a child’s body. The

BPSA petition was supported by the best available scientific evidence, including specifically the expert report of Dr. Barbara Beck of Gradient, who analyzed worst-case scenarios of exposure to BPSA's members' products and concluded that no measurable increase in the blood levels of children could be expected to result from their exposure to, and contact with, the metal materials for which the BPSA sought relief. As the Committee knows, the CPSC concluded that it was unable to provide the relief sought under the terms of the statute, but provided a limited stay of enforcement for the lead requirements.

- BPSA presented data at a public Commission meeting earlier this year regarding the imminent change in the lead substrate standard, which is scheduled to change from 300 ppm to 100 ppm in August of this year. BPSA advised the Commission that its test data documented the significant variability that exists in components manufactured of certain metal alloys, making it infeasible to certify compliance with a 100 ppm standard with any reasonable degree of confidence.
- BPSA also advised the Commission at that hearing that its members had been successful in identifying substitute materials for high lead-content metals and/or alternative designs that resulted in making the high lead-content materials inaccessible to children, but that these efforts came at high costs, and despite substantial investment, the industry has still not been able to identify suitable metal materials that can consistently meet a 100 ppm standard. Yet, the prospects for obtaining administrative relief from the Commission are unclear, particularly with respect to products that will be on retail shelves as of August 2011.

In short, BPSA members have taken seriously the expectations of the Congress in enacting the CPSIA, and have made substantial progress toward achieving the goal of reducing unnecessary lead in children's bicycle products. Nevertheless, despite these substantial efforts, BPSA members are facing yet another brink of uncertainty as the date for implementation of the 100 ppm standard looms on the horizon.

With respect to the requirements for third-party laboratory testing of children's products, BPSA has worked constructively with the CPSC staff to address issues related to laboratory capacity; however, some issues remain, particularly with respect to the costs of testing. BPSA presented information to the Commission at the recent public meeting on the feasibility of the 100 ppm standard about the shrinkage of the market in terms of the number of companies willing to market children's bicycles. While the total volume of children's bicycles sold annually has not diminished, the number of children's bicycle models in the market is reduced from the number that were offered for sale before CPSIA's enactment, and the number of manufacturers willing to participate in the children's bicycle market sector has diminished, according to BPSA's expert who participated in the recent public meeting at the CPSC regarding the technological feasibility of a 100 ppm lead substrate standard. We believe that these market impacts are directly traceable to the onerous requirements of the CPSIA, including specifically the testing costs that are required to certify compliance with the CPSC's regulations.

For all of these reasons, BPSA strongly supports the efforts of this Subcommittee to bring some sorely needed reform to the CPSIA.

BPSA is particularly supportive of the following proposals in the discussion draft:

- Reducing the age threshold for definition of a "children's product." BPSA supports lowering the age threshold for the definition of a "children's product," and recommends

that the appropriate age threshold for determining whether a bicycle is a “children’s product” should be whether the bicycle is intended primarily for use by a child six years of age or younger. This change alone would relieve BPSA members of the need to expend scarce resources on lead substrate testing on those bicycles intended for use by pre-teens, for whom there is no reasonable prospect of being injured from exposure to lead, as documented in Dr. Beck’s analysis supporting the 2009 BPSA petition.

- Specifying that any new lead substrate standard would be prospective only, and not apply to products on retail shelves. BPSA has provided the Commission with information as to why a 100 ppm standard is not technologically feasible for metal components on children’s bicycle products, and urges this Committee to report legislation that will provide complete relief from this requirement for bicycles. Although BPSA members are not seeking relief from a 100 ppm lead substrate standard for non-metal components, such as vinyl handgrips, it is unfair and extremely disruptive to apply that standard, or any new performance standard for that matter, to products that were manufactured before the effective date of the new standard. Except in the rarest of circumstances, new government standards should apply prospectively to products that are manufactured after the effective date of the new standard.
- Establishing an alternative lead substrate standard for metal components made of steel, copper or aluminum alloys. BPSA supports this provision, and believes its enactment would be directly responsive to some of the practical concerns that BPSA members have identified, and documented in prior presentations to the CPSC; however, it is unclear whether this provision would provide any relief from the testing burdens associated with the requirement to certify compliance. BPSA suggests that one additional step that might

be helpful to small businesses that are struggling with the testing costs would be to direct the CPSC to establish a roster of those metal alloys (perhaps identified by grade or other recognized identifier) that would be identified as presumptively compliant with the alternative standard, thereby relieving the manufacturer of the obligation to test separately for lead substrate compliance if the manufacturer chooses to use one of the alloy grades specified on the roster. (Of course, a manufacturer would remain free to specify a different material and test components made of that different material for compliance with the lead substrate standard.)

- Establishing a de minimis exception for component parts that are not likely to result in ingestion of more than a de minimis amount of lead. BPSA welcomes any provision that acknowledges the fact that the mere presence of lead in certain components does not necessarily present a health or safety risk to children. BPSA believes that product regulations that effectively ban the use of certain materials should be based on scientific risk assessments and a thorough understanding of the societal trade-offs that arise from such effective bans.
- Creating an exclusion for the resale of used or refurbished children's products by charitable resellers. BPSA strongly supports the intention of this provision, which is to permit the distribution of used or refurbished children's products by charitable organizations. Particularly given the scientific evidence strongly supporting the conclusion that children's bicycles do not present a health or safety risk to children based on the presence of lead in certain components, there is no good public policy reason to deprive families of the option of obtaining affordable, second-hand bicycles.

- Revising the public database provisions to make the submissions more useful by ensuring that submitters have actually experienced harm or risk of harm and by requiring more verification of disputed reports.

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BPSA does not support conferring authority on the CPSC to extend the 100 ppm lead substrate limit to adult products. No justification has been offered for the need for any such requirement for adult products. In the short time since this draft legislation has been made available for review, BPSA members have been unable to evaluate whether the materials substitutions and redesigns for inaccessibility that were done for children's bicycles are feasible or practicable for adult bicycles. Before conferring any such authority on CPSC, BPSA urges this Committee to allow more time to evaluate the need for, and consequences of, any such new authority to impose a new mandate.

Our collective experience with the CPSIA has reminded us all of the need for regulators to consider unintended consequences before moving to ban a product or a material. The CPSIA was enacted with the best of intentions, but has proven in practice to present some practical challenges for manufacturers. BPSA believes that the CPSC should maintain its traditional method of regulating potentially harmful products and substances on the basis of a scientific risk-based assessment of potential harm balanced against the costs and other consequences associated with the ban or other regulation.

BPSA members are very proud to serve the needs of American bicycle consumers of all ages. Bicycles provide safe, affordable and environmentally friendly transportation. Bicycles provide children with an enjoyable means of outdoor exercise, which is far more important for the health of America's children than protecting them from the theoretical risks from touching

metal bicycle components with low lead levels. If lead testing costs make children's bicycles too expensive for average families to afford, and if affordable, used bicycles are difficult to obtain, the health of America's children could be affected far more than from the presence of lead in tire valve stems.

BPSA applauds this Subcommittee for convening this hearing today to consider the need to reform the CPSIA to reverse the unintended consequences of that law and to eliminate unnecessary regulatory requirements that are driving up the costs of children's bicycles. BPSA urges prompt action on sensible reforms of the CPSIA.