

## Questions & Answers

The Roost – CPSIA Testing for Youth Furniture  
October 8, 2009

**Would the location of a piece of furniture in a room determine accessibility of product parts such as screws on the back of a case, which is against the wall?**

No. When considering accessibility, you need to consider the furniture as it might be in the middle of an open room. Because accessibility considers normal use and abuse as the furniture sits on the floor that is where you begin to address which part of the furniture item need to be tested. What could a person reach if doors and/or drawers were open and closed? The screws on the bottom of the piece wouldn't be accessible but anything else you can reach with the probe would be.

**Are phthalates ever used in paints or coatings? There was a rumor going around when the law was first passed that they are sometimes used as thickeners. Is there any truth to this?**

Yes, there is some truth to this. Phthalates have been used in some urethane-based coatings and some of the more plastic type coatings. Phthalates are generally used as softeners and as additives in plastics to make them more pliable. But since there are thousands of different phthalates, coatings manufacturers have the opportunity to change from a banned phthalate to another phthalate that is acceptable. The only way you would know whether your coatings contain phthalates is to ask your coatings supplier or to have a third party lab perform the analysis for you.

**What about phthalates in ink?**

Again, to know for sure whether the ink you use has phthalates or not you'd have to ask your ink manufacturer or have a phthalate analysis performed. But based on what we understand phthalates are used for, to keep materials soft and pliable, it is less likely that they'd be in an ink product. Because inks are designed to become part of the substrate rather than sitting on top of it, the need for them to remain soft and pliable is mute.

**I have never seen one of the one of these accessibility probes. Would you describe what it's shaped like and a little bit about the test procedure? Please tell us whether you think something like a metal drawer slide in a piece of youth furniture would be accessible or inaccessible?**

The accessibility probe is generally 24 inches long and 2 inches in diameter and made of metal. On one end there is a tip that is several inches long and has the ability to bend to a 45 degree angle (elbow). If this tip, either in the straight or elbow position, can fit into a hole or space and reach any part, the part then is deemed accessible. A

drawer slide on the side or bottom of a drawer would be considered accessible because when the drawer is open, as it would be in normal use and abuse, it can be reached easily with the probe. Therefore, the slide would need to comply with the regulation.

**I make an adult recliner with a metal recliner mechanism (the arm that connects the foot rest). Do these metal mechanisms need to comply with the lead paint rule?**

No, your recliner mechanism doesn't need to comply for two different reasons. First, lead in metal components and total lead limits are an issue when you are talking about children's furniture only. Second, conceivably you might have a metal coating on the mechanism. For durability, it is probably electroplating of some sort and we know under the statute that lead contained in electroplating is not subject to the law.

**What would the frequency of testing be to meet the CPSC's description of a "reasonable testing program"? We have adult furniture subject to paint and coatings as well as children's furniture subject to lead and phthalates.**

The frequency of a manufacturer to test really boils down to raw materials control and production control. If there are substantial changes in the raw material supply line, then you should test when these substantial raw material changes occur (when coatings content changes due to a supplier change, for example, rather than merely a change in color). That being said, there should be consideration of volume of products coming off the line as well as design changes coming through. Testing after a large volume of pieces come through is reasonable. And each time a design change occurs, that product needs to be tested for compliance to the regulations that apply. The only difference in the "reasonable testing programs" of children's products and adult products is that the testing for children's products has to all be done by a third party lab. The CPSC hasn't set forth specifics as to frequency as each manufacturer has its own personality. But each manufacturer should know if they manufacture children's products, what goes into their products, when the supply chain changes and when their designs change and test to those parameters at a reasonable frequency. The CPSC will be more inclined to work with a company who is prudent in their efforts rather than with a company who isn't.

**What is a reasonable sampling program for a product that needs to be third party tested?**

Third party testing is required for all children's products. Each time a manufacturer has a new product come off the line or a substantial change in the supply chain for product materials, the testing should occur by a third party lab. Also, if there is a large volume production, it is prudent to test after a certain number come off the line but, again, using a third party lab. "A reasonable testing program" for children's products isn't differentiated in the regulation from "a reasonable testing program" for adult products but with children's products you need to utilize a third party.

**Once you have to meet the third party testing requirement because you manufacture children's products, you don't necessarily get thrown into higher frequency testing. The question becomes whether or not a manufacturer can do it themselves or whether a third party has to do it, right?**

Absolutely, that's a great way of putting it.

**When the new tipover standards are confirmed and put into place, will that change accessibility standards if some product instructions say "fasten this to a wall"?**

The way they describe accessibility of product components is whether a part is accessible during normal use and abuse of the product. If part of your product description and instruction includes screwing the part to a wall, and through normal use and abuse of that product it isn't conceivable that the parts that are against the wall would become exposed or reachable with the probe, then the parts against the wall would be considered inaccessible. But if the product can potentially be used without having it screwed to the wall, then I would treat those parts as accessible and maintain compliance on those parts also so you aren't put in a position having to justify why some parts should and shouldn't be considered accessible to the CPSC. Because the CPSC is very non-definitive on many of these descriptions, they do leave a lot for interpretation. Unfortunately, that fact dumps it into attorney's interpretation. From there it really depends on your "reasonable testing program" and how aggressive you want to be with it.

**If we test a metal drawer guide once with a third party lab and then screen regularly with XRF, is this a reasonable and prudent testing solution? And how often would we need to third party test that drawer guide if the XRF isn't pinging any warning to us? And is there any idea of when or if the CPSC will be establishing reasonable testing protocols?**

The testing solution you have proposed for the metal drawer guide seems to be reasonable and prudent and what the CPSC would be looking for. The third party test would need to occur each time a substantial change in materials occurred and each time a design change occurred. The routine XRF screening is the way to go to make sure nothing sneaks through that might become a compliance issue.

The CPSC probably will not be establishing testing protocols. We think that they recognize that this law regulates so many hundreds of thousands of products that it would take an entire government agency just to identify what is reasonable for each product category. Hence, the law was framed so that each manufacturer would have to do a bit of guess work. Each product needs to be evaluated on what its nature is and what foreseeable misuse there might be associated with it. It is reasonable when considering a new testing program to factor in the volume of production as well as whether the product might be coming from any of the parts of the world that have

given rise to statute. It seems the CPSC would like to leave it vague like this.

Likewise, the CPSC has left “a reasonable testing program” loosely termed so they could interpret each situation or testing program on its own merit. For example, if a manufacturer says that they are going to test a product once because this is what THEY think is reasonable, they might then consider that because they import 500,000 parts annually, the CPSC might feel otherwise. The CPSC would probably not see testing once as a reasonable testing program. The addition of XRF screening is certainly going to bolster the reasonability of your program. If XRF is part of your testing program and you indicate in the program that XRF concentration levels exceeding X level then will need third party confirmation, you are covering your bases. We would encourage that the XRF levels not be right at the regulatory limit either because the CPSC probably would not interpret that as reasonable as XRF measurements contain variation potential.

So “a reasonable testing program” boils down to a corporate preference as to how much a manufacturer wants to limit its liability. Companies that want to operate loose and fast will need to bear in mind that they are elevating their liability potential and scrutiny for compliance issues with the regulation. The CPSC would be fair on any type of program providing it sounds and looks like “a reasonable testing program”. Ultimately, a program that identifies; after X amount of pieces you’re going to test, after X amount of time you’re going to test, every lot that comes in we’re going XRF, will be safe under CPSC scrutiny.

**In the past seminars we’ve had on children’s products, the indication was that any time we changed finishing lots we should re-test. Or anytime we had a new job running through the plant and it was a new order of finishing materials, we should retest. Are we saying that this is not necessarily true?**

Again, it boils down to how strict you want to be with your testing program. For many of the coating manufacturers, though your lot may change, the raw materials that they put into your present lot may be the same as contained in the previous lot. A coatings manufacturer will certainly not buy 5-gallon quantities of their raw materials. They may have 10,000 gallon vats of different materials that they are blending to give you your coating. Maybe this means you don’t have to third party test each time a lot is changed. Maybe an XRF screen between lots would be more appropriate. Each manufacturer is going to have to develop a protocol with their raw materials suppliers and make determinations with them as to what a significant change in materials is. For example, if you have a coating that is 80% made of one ingredient, and the supply of that ingredient changes or the ingredient itself changes, it would need to be tested for compliance.