



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

BALLOT VOTE SHEET

DATE: May 14, 2010

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Cheryl A. Falvey, General Counsel *CAF*
Maruta Budetti, Executive Director *MB*

FROM: Philip L. Chao, Assistant General Counsel *PLC*
Jan S. Carlson, General Attorney *JSC*

SUBJECT: Commission Response to Petition for Extension of Stay Regarding CPSIA
Testing and Certification Requirements for Bicycles

Ballot Vote Due: **MAY 21 2010**

The Office of the General Counsel is presenting for Commission approval by ballot vote a draft response to the Bicycle Product Suppliers Association's (BPSA) petition for an extension of the stay of enforcement of the CPSIA testing and certification requirements for bicycles. BPSA's stated reasons for seeking the extension are that there are an insufficient number of CPSC-accepted third party conformity assessment bodies (laboratories) accredited to test to the bicycle standards (16 CFR part 1512) and that testing to the standards should be delayed because the bicycle regulations are out of date in many respects. Staff met with the BPSA to discuss these concerns. Staff was already aware that the bicycle standards need to be updated (although most changes would not affect children's bicycles) and a review process is underway with a goal of updating 16 CFR part 1512 to better reflect bicycles on the market today. Staff's recommended response to the petition includes limited extensions of the stay and a request that each bicycle manufacturer inform staff of their specific issues with the current bicycle safety standards. The draft letter has been through clearance and EXHR, EXC, and OGC all recommend approval of the attached letter.

If the Commission approves staff's recommended response to the BPSA petition, preparation and issuance a *Federal Register* notice informing the public of the limited extension of the stay is recommended.

Please indicate your vote on the following options.

R-H 5/14/2010
CLEARED FOR PUBLIC RELEASE
UNDER CPSA 6(b)(1)

CPSC Hotline: 1-800-638-CPSC(2772) H CPSC's Web Site: <http://www.cpsc.gov>

THIS DOCUMENT HAS NOT BEEN
REVIEWED OR ACCEPTED BY THE
COMMISSION.

I. Approve the issuance of a response, as drafted, to BPSA's petition for an extension of the stay, and direct the Office of the General Counsel to prepare a corresponding *Federal Register* notice.

(Signature)

(Date)

II. Approve the issuance of a response to BPSA's petition for an extension of the stay, with changes, and direct the Office of the General Counsel to prepare a corresponding *Federal Register* notice. (Please specify the changes.)

(Signature)

(Date)

III. Do not approve the issuance of a response to BPSA's petition for an extension of the stay, and do not direct the Office of the General Counsel to prepare a corresponding *Federal Register* notice.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachments: Draft letter to the BPSA
Letter from Erika Z. Jones, Mayer Brown LLP, to Todd Stevenson, Consumer
Product Safety Commission (April 1, 2010)



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Todd A. Stevenson
Director • Office of the Secretary
Division of Information Management • Office of Information and Technology

Tel: 301-504-6836
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Email: tstevenson@cpsc.gov

_____, 2010

Erika Z. Jones
Counsel to Bicycle Product Suppliers Association
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101

Dear Ms. Jones,

This responds to your petition, dated April 1, 2010, on behalf of the Bicycle Product Suppliers Association (BPSA). The petition requested an extension of the stay of enforcement of the testing and certification requirements related to 16 CFR part 1512 imposed by section 14 of the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA).

The Consumer Product Safety Commission (Commission or CPSC) has decided to extend the stay related to 16 CFR part 1512 (other than 16 CFR § 1512.16, as discussed below) until August 14, 2010. Manufacturers and importers of products subject to 16 CFR part 1512 that are manufactured on or after August 14, 2010, will need to certify that their product complies with 16 CFR part 1512. Certifications of bicycles designed or intended primarily for children 12 years of age or younger must be based on tests conducted by a third party conformity assessment body whose accreditation has been accepted by the CPSC. As you are aware the CPSC maintains a list of third party conformity assessment bodies on its website. Certifications of nonchildren's bicycles must be based on a test of each product or upon a reasonable testing program.

The Commission is aware that there are currently no CPSC-accepted conformity assessment bodies accredited to test reflectors for compliance with 16 CFR § 1512.16. Commission staff will be discussing this issue with conformity assessment bodies in the coming weeks. We encourage BPSA members to work diligently to inform the conformity assessment body industry of the bicycle industry's need for CPSC-accepted third party conformity assessment bodies that will be capable of testing reflectors. Nevertheless, because there are not currently any CPSC-accepted third party conformity assessment bodies accredited to perform reflector tests, a stay related solely to 16 CFR § 1512.16 will remain in effect until November 14, 2010. Reflectors on children's bicycles manufactured on or after November 14, 2010, must be third-party tested, absent a finding by the Commission that conformity assessment body capacity remains insufficient.

The Commission is aware that bicycles with non-quill-type stems may not be able to comply with the insertion mark requirement of 16 C.F.R. § 1512.6(a). Until this issue can be addressed by

revision of the regulations, therefore, the insertion mark requirement for non-quill-type stems is hereby excluded from the certification requirement.

Thus, with respect to 16 CFR part 1512, the Commission expects that, for children's bicycles, the requirements of 16 CFR part 1512 that do not pertain to reflectors will be tested by CPSC-accepted third party conformity assessment bodies. For nonchildren's products, the requirements of 16 CFR part 1512 that do not pertain to reflectors will be subject to either a test of each product or a reasonable testing program. For reflectors, the Commission will continue the stay until November 14, 2010. Additionally, as stated in the previous paragraph, for all bicycles with non-quill-type stems, the insertion mark requirement is excluded from the certification requirement.

The Commission is also aware that part 1512 does not adequately address some of the technologies and designs used in conjunction with today's bicycles. The Commission is beginning the process of reviewing its regulations to determine what revisions are necessary. The Compliance staff requests that manufacturers who believe they are unable to certify current designs to part 1512 provide, no later than June 4, 2010, specific information as to which provisions of the current regulation are problematic, which models or classes of bicycles are affected, and an explanation of the issue. The staff will provide certification guidance on these issues as soon as feasible thereafter.

The Commission will publish a notice in the *Federal Register* that will communicate to the public the decision expressed in this letter. We appreciate the BPSA meeting with Commission staff on May 3, 2010, to discuss the issues involved in the petition, and we look forward to continuing to work with the BPSA.

Sincerely,

Todd A. Stevenson
Secretary

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April 1, 2010

Mr. Todd Stevenson, Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Re: Petition for Extension of Stay of Enforcement
of the Requirement for a General Certificate
of Conformity for Bicycles to the Requirements
of 16 C.F.R. Part 1512, 74 Fed. Reg. 68588
(December 28, 2009)

Dear Mr. Stevenson:

I am writing on behalf of the Bicycle Product Suppliers Association, (“BPSA”) which is an association of suppliers of bicycles, parts, accessories and services who serve the specialty bicycle retailer.

On December 28, 2009, the U.S. Consumer Product Safety Commission published a decision to stay enforcement of certain testing and certification provisions of section 14 of the Consumer Product Safety Act (“CPSA”) as amended by section 102(a) of the Consumer Product Safety Improvement Act of 2008 (“CPSIA”). 74 Fed. Reg. 68588. Specifically, the decision stayed enforcement of the requirement to issue a General Certificate of Conformity (GCC) certifying compliance with certain identified CPSC rules, bans, regulations and standards, including the safety standard for bicycles, 16 C.F.R. Part 1512.

Regarding the bicycle standard, the Commission decision noted:

The Commission plans to keep the stay in effect for the bicycle regulations (16 CFR part 1512) as applicable to all bicycles, both non children’s and children’s, until May 17, 2010. With regard to bicycles, the Commission has determined that there is insufficient laboratory capacity for third-party testing of bicycles at this time despite the fact that the notice of accreditation of laboratories issued more than 90 days ago. The Commission understands that the laboratories are communicating with staff about their applications, capabilities and related timing issues. Should the extension of this stay until May 17, 2010 prove insufficient, the bicycle manufacturers and laboratories must petition the Commission for additional relief no later than April 1, 2010. 74 Fed. Reg. at 68590.

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In accordance with the December decision, the BPSA is petitioning for a one year extension of the stay of the requirement to issue a GCC for compliance with Part 1512 because the facts supporting the December 2009 decision to extend the compliance date have not materially changed, and there is still insufficient laboratory capacity for third-party testing of bicycles at this time.

1. There are only four certified laboratories for Part 1512 testing, only one of which is certified to test for compliance to the entire standard.

At the time of the December 2009 decision, the Commission determined that the small number of accredited laboratories was “insufficient laboratory capacity for third-party testing of bicycles”. In April 2010, the situation is still inadequate. The CPSC website now lists four certified laboratories capable of performing some third-party testing for Part 1512 compliance, and only one laboratory is certified to test for compliance to the entire standard. Each of the other three are only partially accredited (meaning that one or more provision of Part 1512 is excluded from the accreditation). The one laboratory that appears to have unconditional accreditation received its approval approximately two weeks ago.

Clearly, the availability of only a single third-party laboratory to handle all of the GCC requirements for the entire children’s bicycle sector is inadequate.

2. Part 1512 is out of date in many respects, and may be scheduled for revision in the near future.

In the December decision, the CPSC noted that a pending rulemaking proceeding affecting the product is one factor that supported extending the GCC stay for products in certain categories (such as baby walkers and bath seats, for which the CPSC had issued proposed rules to revise the standards).

BPSA understands that the CPSC may intend to commence rulemaking to revise Part 1512 in the near future, and urges the Commission to do so. As BPSA has noted in previous communications with the Commission, Part 1512 is out of date in many respects, and requires modernization to reflect contemporary bicycle designs. It has not been substantively revised since 1976, and bicycle technology and design have changed substantially since that time. Several provisions of the current Part 1512 need to be revised to reflect modern adult bicycles. Until that rulemaking is completed, a requirement for a GCC for Part 1512 compliance raises interpretation questions that are unresolved. For example, how does Section 1512.6(a) (relating to the stem minimum insertion mark) apply to adult bicycles that use threadless headsets that have no stem to be inserted? Or, how does Section 1512.16(e) (related to pedal reflectors) apply to adult bicycles that use clipless pedals that have no surfaces available to attach reflectors?

As the CPSC noted with respect to other products that are subject to pending rulemaking or for which rulemaking was planned, it is sensible to stay the requirements for testing and certification until after the rulemaking proceeding is complete. BPSA urges the CPSC to apply

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the same factor to the bicycle industry, if Part 1512 is scheduled for revision in the near future, and to defer the requirement for a GCC for Part 1512 compliance for one year, or if necessary, until that proceeding is concluded.

3. The bicycle industry has a good record of Part 1512 compliance.

Despite our observations above regarding the obsolescence of portions of Part 1512, the core requirements of the standard are well understood to the industry, and there are not recurring compliance issues in this industry. Bicycles are a safe, healthy and environmentally sensitive form of transportation and recreation. There will be no degradation to the public interest by granting this petition, nor any increased risk to public health and safety. By contrast, granting this petition will relieve administrative burdens (including third-party testing costs) for members of the bicycle industry and allow time for the orderly evolution of the third-party testing market to a position where there is more than one laboratory fully accredited to test for Part 1512 compliance.

We appreciate your consideration of this petition

Sincerely,



Erika Z. Jones
Counsel to Bicycle Product Suppliers Association

cc: The Honorable Inez Tenenbaum
The Honorable Thomas H. Moore
The Honorable Nancy Nord
The Honorable Bob Adler
The Honorable Anne Northrup
John Gibson Mullan, Esq., Director, Compliance and Field Operations
Cheryl Falvey, Esq., General Counsel