

Index of Comments
Testing and Labeling Pertaing to Product Certification
CPSC-2010-0038

PUBLIC SUBMISSION

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
0038-0002	5/31/2010	Vincent Tam	19 On Kui Street On Lok Tsuen Fanling, Hong Kong
0038-0003	6/13/2010	Joseph Boyden	Address Omitted
0038-0004	5/26/2010	Steven Johannessen	12257 Nicollet Ave S Suite C Burnsville, MN. 55337
0038-0005	7/9/2010	Jacques Poulenard	Z.A. Les Chaumes - BP 3 Le Grand Lemps, France. 38690
0038-0006	7/13/2010	Ufficio Italiano Seta Italian Silk office	Via Raimondi 1 Como, CO. Italy. 22100
0038-0007	7/17/2010	Simon Cheng	Address Omitted
0038-0008	7/27/2010	Y M Tam	3901 Metroplaza Tower 2 223 Hing Fong Road, Kwai Chung, NT. Hong Kong
0038-0009	7/29/2010	Christopher Penrod	Address Omitted

0038-0010	7/30/2010	Daisy Li	11/F Fook Cheong Building 63 Hoi Yuen Road Hong kong
0038-0011	7/30/2010	Nancy MacPherson	Address Omitted
0038-0012	7/30/2010	Patrick Cook	204 E. mM.L. King Jr. Blvd. Tampa, FL 33603
0038-0013	8/2/2010	Bernie Ting	31/F, Billion Plaza 8 Cheung Yue Street, Cheung Sha Wan Kowloon, Hong Kong
0038-0014	8/2/2010	CM Chan	Hong Kong Sar, China
0038-0015	8/2/2010	CM Chan	Hong Kong Sar, China
0038-0016	8/2/2010	CM Chan	Hong Kong Sar, China
0038-0017	8/2/2010	CM Chan	Hong Kong Sar, China
0038-0018	8/2/2010	Anne Meininger	NCSCI AT NIST 100 Bureau Drive, MS. 2100 Gaithersburg, MD. 20899-2100
0038-0019	8/2/2010	William M. Hannay	Schiff Hardin LLP 233 S. Wacker Drive, Suite 6600 Chicago, IL. 60606
0038-0020	8/2/2010	Milton Bush	1875 I Street, NW WASHINGTON, DC.

0038-0021	8/3/2010	Claire Kammer	1850 M Street N.W. Suite 1000 Washington, DC. 20036
0038-0022	8/3/2010	James Reed	YKK Corporation of America 1850 Parkway Place, Suite 300 Marietta, GA. 30067
0038-0023	8/3/2010	Karl Spilhaus	6 Beacon St., Ste. 1125 Boston, MA. 02108
0038-0024	8/3/2010	Shawn Paulsen	178 Rexdale Blvd Toronto, Ontario Canada, M9W 1R3
0038-0025	8/3/2010	Wayne Morris	1111 19th St. NW Washington, DC. 20036
0038-0026	8/4/2010	Christopher Hudgins	501 Wythe Street Alexandria, Virginia 22314
0038-0027	8/3/2010	Joseph Ertl	PO Box 327 Dyersville, IA. 52040
0038-0028	8/3/2010	Gene Rider	2107 Swift Drive Suite 200 Oak Brook, IL. 60523
0038-0029	8/3/2010	Jim Neill	1700 N. Moore Street, Suite 2250 Arlington, VA. 22209

0038-0030	8/3/2010	Thomas Schweizer	Address Omitted
0038-0031	8/3/2010	Chris Yip	Illegible
0038-0032	8/3/2010	YK Wong	South District, Oingxi Town, Dongguan City Guangdong Province, China
0038-0033	8/3/2010	Adam Mansell	5 Portland Place London WIB 1PW
0038-0034	8/3/2010	Marcia Kinter	SGIA 10015 Main STREET Fairfax, VA. 22031
0038-0035	8/3/2010	Stacey-Ann Taylor	1500 Rhode Island Ave. NW Washington, Dc. 20005
0038-0036	8/3/2010	Alan Kaufman	One Geoffrey Way Wayne, NJ. 07470
0038-0037	8/4/2010	Pat Jennings	730 College Drive Dalton, GA. 30720
0038-0038 DUP-COPY	8/3/2010	Steve Pfister	325 7th Street, NW Suite 1100 Washington, DC. 20004
0038-0039	8/3/2010	Allan Adler	Association of American Publishers 50 F Street, NW Washington, DC. 20001

0038-0040	8/3/2010	Alison Manhoff	900 19th St. NW Suite 700 Washington, DC. 20006
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0038-0042	8/3/2010	Ed Desmond	1115 Broadway Suite 400 New York, NY. 10010
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0038-0044	8/3/2010	Kim Mann	1850 M Street, NW Suite 280 Washington, DC. 20036
0038-0045	8/3/2010	Michael Gidding	3201 New Mexico Ave, NW. Suite 242 Washington, DC. 20016
0038-0046	8/3/2010	Jim Neill	1700 N. Moore Ste 2250 Arlington, VA. 22209
0038-0047	8/3/2010	Richard Woldenberg	380 North Fairway Drive Vernon Hills, IL. 60061
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Cont: Testing and Labeling Pertaining to Product Certification

0038-0049	8/3/2010	Michael Gidding	3201 New Mexico Ave, NW. Suite 242 Washington, DC. 20016
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0038-0051	8/4/2010	Kyra Mumbauer	1667 K St NW. Ste 1000 Washington, DC. 20006
0038-0052	8/3/2010	Bill Perdue	P O Box HP-7 High Point, NC. 27261
0038-0053	8/4/2010	Richard Ogren	4533 Linscott Ave Downers Grove, IL. 60515
0038-0054	8/4/2010	Dr. Klaus-Jurgen Kraatz	Mainzer LandstraBe 55 60329 Frankfurt/M Germany
0038-0055	8/10/2010	Steven Tsui	16/F Kailey Tower 16 Stanley Street, Central Hong Kong
0038-0056	8/10/2010	Deborah Fanning	1280 Main St, 2nd Fl. P O Box 479 Hanson, MA. 02341
0038-0057	8/11/2010	Mike Dwyer	15000 Commerce Parkway, Suite C Mt. Laurel, NJ. 08054

Cont: Testing and Labeling Pertaining to Product Certification

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0038-0059	8/11/2010	Pierre Van Mol	Address Omitted
0038-0060	8/25/2010	Kevin Burke	1606 North Kent Street Suite 1200 Arlington, VA. 22209
0038-0061	9/2/2010	William Hannay	6600 Sears Tower Chicago, Illinois. 60606

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0002
Comment from Vincent Tam

Submitter Information

Name: Vincent Tam
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Organization: Jetta Company Limited

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0002.1: Comment from Vincent Tam



JETTA
COMPANY
LIMITED

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May 31, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
USA

Re: Docket No. CPSC-2010-0038

Comments on Proposed 16 CFR Part 1107 Subpart C – Certification of Children's Product

We are writing to express our concerns and recommendations regarding the proposed 16 CFR Part 1107 Subpart C - Certification of children's product. The proposed 16 CFR Part 1107 Subpart C – Certification of children's products is designed to provide a high level of assurance that children's product comply with defined safety standards. The proposed rule depends heavily upon testing by 3rd party conformity assessment body. This heavy dependence upon testing by 3rd party conformity assessment body imposes **high cost burden** to the children's product industry and **under-recognizes / under-utilizes the quality assurance professionalism and testing capabilities** of many manufacturers and oversea factories of the children product industry. Our specific concerns and recommendations regarding the proposed 16 CFR Part 1107 Subpart C - Certification of children's product are as follow:

§ 1107.20 Children Product Certification. Manufacturers must submit a sufficient number of samples of a children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body for testing to support certification.

The ultimate safety assurance responsibility of children's product lies with the manufacturer and the oversea factory (where applicable). To fulfill this responsibility, many manufacturers and oversea factories hire qualified engineers and quality assurance professionals, and set up qualified testing facility that conforms to ISO 17025:2005 - General requirements for the competence of testing and calibration laboratories.

To minimize testing cost, to utilize the qualified testing facility of manufacturers and oversea factories, and to encourage manufacturers and oversea factories to set up systems and qualified testing facility to undertake their safety assurance responsibility, we would like to recommend that if the manufacturer and or the oversea factory has testing facility that conforms to ISO 17025:2005 - General requirements for the competence of testing and calibration laboratories, the number of samples requires to submit to 3rd party conformity assessment body for testing to support certification can be reduced to half provided that the manufacturer and or the oversea factory's testing facility perform certification testing with minimum the same sample size as the 3rd party conformity assessment body.

§ 1107.21 Periodic Testing. All periodic testing must be conducted by a third party conformity assessment body.

Our comment and recommendation is same as for § 1107.20 Children Product Certification.

§ 1107.23 Random Samples. Each manufacturer must select samples for periodic testing by using a process that assigns each sample in the production an equal probability of being selected. A manufacturer may use a procedure that randomly selects items from a list to determine which samples are the random samples used for periodic testing before production begins.

The Random Samples rule imposes **extreme high risk and heavy financial burden** to manufacturers. The current business model of most manufacturers is to ship products that have been checked, inspected and or tested for compliance by their own team or their appointed representative. Under the Random Samples rule, if the manufacturers wish to continue with this current business model, the numbers of periodic test and the associated testing costs by 3rd party conformity assessment body are likely to be so high that most manufacturers are not able to afford. If the manufacturers change their business model to random sampling and testing as products are distribute in commerce, the business risk and potential financial burden are a big issue. Incidental failure may happen in mass production and the famous Murphy's Law tells us that failure may then be found during random sample testing. While the manufacturers can ultimately prove "incidentalality" using lots of data and test samples, the time loss and the loss of confidence by retailers and consumers may kill the product anyway. We strongly suggest removing the Random Samples rule. The periodic testing is used for certifying product for the next production and shipping period.

On another note the current proposed Random Samples rule has some deficiencies. One technicality problem is that the "population" is a forecast by the manufacturer and may change frequently and drastically. There may be time that the forecast is completed but then there are

several additional orders later within the periodic testing period. There may be other time that the production order for the children's product is halted immediately such that the manufacturer will not be able to complete the original random samples plan for drawing random samples. The current proposed Random Samples rule does not cater for these situations. The proposed Random Samples rule also does not contain procedure that the manufacturer must follow if one or more samples fail during the periodic testing for manufacturer who produces children's products that continue to be distributed in commerce, and the manufacturer uses a procedure that randomly selects items from a list to determine which samples are the random samples used for periodic testing before production begins, and tests the selected samples as they are manufactured.

§ 1107.23 Material Changes. If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts, the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body. Such testing must occur before a manufacturer can certify the children's product.

Manufacturer and oversea factory make frequent product improvement during production to enhance safety margin. The requirement to submit a sufficient number of samples of the materially changed product for testing by a 3rd party conformity assessment body prior to certifying the change is **costly and very time consuming**. This will definitely deter the manufacturer and oversea factory's good intention to make continuous improvement effort to enhance the safety margin of children's product. We are extremely worried that this will result in lower safety assurance of children's product. We would like to recommend that if the manufacturer and or the oversea factory have testing facility that conforms to ISO 17025:2005 - General requirements for the competence of testing and calibration laboratories, the manufacturer and or the oversea factory testing facility are allowed to conduct the certification of material change themselves.

Yours Sincerely,



Dr. Vincent Tam
Director of Systems & Compliance,
Jetta Company Ltd.

c.c. Mr. T.S. Wong - Managing Director, Jetta Company Limited

PUBLIC SUBMISSION

As of: August 04, 2010
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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0003
Comment from Joseph Boyden

Submitter Information

Name: Joseph Boyden

General Comment

I agree with this regulation on manufacturers to have their products intended for child use inspected by a third party prior to distribution. I believe there should be a proactive measure to ensure the safety of children products, rather than waiting for something bad to happen and doing a mass recall. If a product has to be recalled because it is unsafe, it is really too late and the damage has already been done. Making manufacturers obtain a certification on their product before it is distributed can give both the consumer and the manufacturer themselves a piece of mind that the product will not harm anybody. This is obviously going to be a big task and will most definitely require a lot of funds to accomplish. I didn't notice any specifics on what products get inspected and what don't, unless I missed it somewhere in the regulation proposal. All I saw was that "children's products" which was deemed as 12 years and younger would be subject to a certification prior to distribution. Does this mean products that children operate or play with or products that parents use for children? I was unable to determine whether this is a regulation on toys, child car seats, strollers, cribs etc. Those are just a few details that I was wondering about, but overall I do think this proposal is heading in the right direction. Too many stories of children becoming ill due to lead in their toys, or children playing with materials that turn out to be flammable or toys that present sharp edges that can inflict harm, have been apparent in our society and we should actively pursue an avenue to prevent these occurrences, rather than correcting them after they already happen.

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0004
Comment from Steven Johannessen

Submitter Information

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General Comment

This comment is made with respect to CPSC Docket No. CPSC-2010-0038, Proposed Subpart C – Certification of Children’s Products.

The proposed rule would require a manufacturer or importer of a children’s product to certify that the product complies with every rule (etc.) enforced by the CPSC based on testing by a third party conformity assessment body accredited by the CPSC. One of these rules is the Flammable Fabrics Act. To date, the CPSC has not accredited any laboratory to test fabrics nor defined a test method. Although some fabrics may be exempt from such testing, it is not clear if such fabrics when coated, for example with a waterproof coating, remain exempt from flammability testing. Many fabrics are not exempt from flammability testing in the first place.

Since it is not possible to use a CPSC approved third party conformity assessment body for flammability testing when none have been approved, it is also not possible to issue a conformity certificate based on such testing.

Does this mean that an importer of these products does not need to issue a certificate of compliance because the CPSC has not certified laboratories for this rule or does it mean that such products cannot be imported until the CPSC does certify laboratories for this rule?

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0005
Comment from JACQUES POULENARD

Submitter Information

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Organization: PERRIN & FILS

General Comment

To the attention of Mr Todd A. Stevenson

We are Intersois France an association gathering French actors in Silk business.

We send you in attachment our remarks

We thank you very much for the attention you will pay to this letter

With our best regards

Jacques POULENARD
President of the Quality Committee
Intersois France

See attached file(s)

Attachments

CPSC-2010-0038-0005.1: Comment from JACQUES POULENARD



Lyon, July 9th, 2010

Mr. Todd A. STEVENSON
Secretary of the Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814-4408

Dear Mr. Stevenson,

Let us introduce ourselves, we are Intersoie France, an Association gathering French actors in the silk business.

On Thursday May 20, 2010 the Consumer product Safety Commission has published the proposed rule: 16 CFR part 1107 "Testing and Labeling Pertaining to Product Certification" on which one can give a commentary until August 3, 2010.

As French manufacturers of silk fabrics for our American clothing customers we aren't directly concerned by this draft as it doesn't change testing requirements specified by the 16 CFR 1610 "Standard for the Flammability of clothing textiles".

Nevertheless we would like to remind you that the regulation 16 CFR 1610 exempts plain surface fabrics weighting 2.6 ounces per square yard and more or all fabrics made entirely from fiber or combination of them : acrylic, modacrylic, nylon, olefin, polyester, wool but NOT SILK.

This is a scientific nonsense...

Silk is a protein based fiber and its reaction to fire is comparable to the one of wool and far better than, for example, the one of nylon, olefin and polyester, fibers which are on the exemption list.

We would like to take this opportunity to introduce a request: we are asking you to add Silk on the exemption list because there is no risk at all for the American consumers but the costs of the tests is penalizing American importers of Silk products and textiles

The Association which represents the European Silk Manufacturers- ESF- has produced a detailed report in Europe which documents the safety fire behavior of Silk fabrics produced in their factories.

We are at your entire disposition for further information if needed.

We thank you very much for the attention you will pay to this letter and we hope you'll be able to give a positive answer to our request

With our best regards.

Jacques POULENARD
President of the Quality Committee

Philippe de MONTGRAND
Vice-President of INTERSOIE FRANCE

p/o Jacques Poulenard

ASSOCIATION FRANCAISE INTERPROFESSIONNELLE DE LA SOIE
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PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0006
Comment from UFFICIO ITALIANO SETA ITALIAN SILK OFFICE

Submitter Information

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Submitter's Representative: ALBERTO CLERICI Chairman

Organization: UFFICIO ITALIANO SETA

General Comment

SEE ENCLOSED LETTER OF
UFFICIO ITALIANO SETA
(ITALIAN SILK OFFICE)

Attachments

CPSC-2010-0038-0006.1: Comment from UFFICIO ITALIANO SETA ITALIAN SILK OFFICE

Mr. Todd A Stevenson
Secretary of the Consumer Product Safety
Commission
4330 East West Highway
Bethesda, Maryland 20814-4408

Como, July 13, 2010

Dear Mr. Stevenson,

Ufficio Italiano Seta comprises 70 Italian silk producers, representing each ring of the textile chain of silk in Italy. The core of Italian textile industry for silk is embodied in U.I.S.

We know that, on Thursday May 20, 2010 the Consumer Product Safety Commission published the proposed rule: 16 CFR part 1107 "Testing and Labelling Pertaining to Product Certification" that is subject to public comments until August 3, 2010.

As Italian manufacturers of silk fabrics for our American clothing customers we are not directly concerned by this draft as it does not change testing requirements specified by the 16 CFR 1610 "Standard for the Flammability of clothing textiles".

Nevertheless we would like to remind you that the regulation 16 CFR 1610 exempts plain surface fabrics weighting 2.6 ounces per square yard and every kind of fabrics made entirely from fiber or combination of them: acrylic, modacrylic, nylon, olefin, polyester, wool but not silk.

This is a scientific nonsense.....

Silk is a protein based fiber and its reaction to fire is comparable to the one of wool and far better than, for example, to the one of nylon, olefin and polyester, fibers which are on the exemption list.

We would like to take this opportunity to introduce the following request.

We are asking you to add silk on the exemption list because there is no risk at all for American consumers, furthermore the costs of the tests are penalising American importers of silk products and textiles.

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- 2 -

The Association which represents the European Silk Manufacturers – A.I.U.F.F.A.S.S. – has produced a detailed report in Europe which documents the safety fire behaviour of silk fabrics produced in their factories.

We are at your disposal for further information you may require.

We thank you very much for the attention you will pay to this letter and we hope you will give us a positive answer to our request.

Best regards.

Ing. Alberto Clerici

Chairman of Italian Silk Office

A handwritten signature in black ink, appearing to read 'Alberto Clerici', written in a cursive style.

Como, July 13, 2010

Prot. Nr. 2193

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0007
Comment from Simon Cheng

Submitter Information

Name: Simon Cheng
Organization: Accord International Co., Ltd

General Comment

Sorry, just cannot agree and accept this new rule.

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0008
Comment from Y M Tam

Submitter Information

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Organization: Full Champion Limited

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0008.1: Comment from Y M Tam



Full Champion Limited
盛昌有限公司

22nd July 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
USA

Dear Sir,

Re: Docket No. CPSC-2010-0038
Comments on Proposed 16 CFR Par 1107 Subpart C – Certification of Children's Product

16 CFR Part 1107 Testing and Labeling Pertaining to Product Certification; Proposed Rule was published on 20 May 2010. Being a toy manufacturer, we would like to express our concerns and submit our comments on this proposed rule.

The proposed rule relies heavily on the testing by third party conformity assessment body. Furthermore, it requests the submission of sufficient number of samples for periodic testing as well as for material changes in the product. All these will be imposed a heavy financial burden to the toy industry, and tightened the original thin margin.

Some of the manufacturers have set up their own testing facilities that conform to ISO 17025:2005 – General requirements for the competence of testing and calibration laboratories. These set up are a proactive approach to enhance product quality, we should make them fully utilize. If the products are already tested in these qualified testing facilities, we hope that the number of samples for submission to third party conformity assessment body for testing to support certification could be reduced to a minimum.

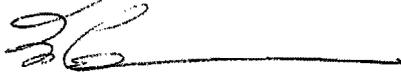
The proposed random samples rule used for periodic testing before production begins is costly and sometimes inapplicable in actual circumstances. The production orders may vary from time to time; and there are chances that the order will be cancelled all of a sudden. Therefore, the total number of units produced may change frequently and drastically. It will affect the population that the samples will be drawn from. We urge that we should drop this random sampling method.



Manufacturers often make on-going product improvement during the production process. The changes in materials are inevitable and frequent. If we need to submit a sufficient number of samples whenever there are material changes for testing by a third party conformity assessment body, we cannot afford both in terms of money and time. It will eventually kill the product and have great impact on the toy industry. Currently the third party conformity assessment bodies are already overloaded by the requests from the branding companies, importers and factories all the year round. It already affected the production cycles adversely. There is no room for additional loading. We strongly suggest that if the manufacturer has his own ISO17025:2005 conforming testing facilities, he can conduct the certification of materials change on his own.

We do hope that you can consider our above comments. Thank you for your attention.

Yours faithfully,



Y M Tam
Executive Director
Full Champion Limited

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0009
Comment from Christopher Penrod

Submitter Information

Name: Christopher Penrod

General Comment

I applaud the Commission's efforts in this endeavor. This proposed rule demonstrates a well-formulated proposal for implementing the standards required by the Consumer Product Safety Act (CPSA). I completely concur with how the Commission has defined a "Reasonable Testing Program." The five components of an adequate testing program are easily understood and clearly defined yet are generic enough to allow individual firms to adapt the program to best suit their needs. The only potential problem I see with the Reasonable Testing Program criteria, specifically the specifications criteria, is that no provision is included to ensure that the manufacturer has the ability to protect trade secrets. A manufacturer needs the ability to protect those secrets to prevent grave damage to the firm.

Additionally, the standards of record keeping outlined in the proposed rule are clear and reasonable. The records that would be required by this proposed rule are reasonable and should not present an unreasonable burden on manufactures or importers. Any responsible firm would maintain these records even without the rule but establishing a reasonable baseline for product safety recordkeeping is crucial to enforcement.

Finally, I very much appreciate the thought and energy put forth in this proposed rule with regard to the small business or low-volume firm. The Commission is on point with the assumption that CSPA will adversely affect the small business community and should be congratulated on acknowledging that concessions must be made to protect that community. To that end, I recommend a system of product risk assessment that will tailor the third party certification schedule for low volume firms as follows:

Non-Children's Products: high risk products require third party certification every 2 years; low risk products require third party certification every 5 years.*

Children's Products: high risk products require third party certification annually; low risk products require third party certification every 3 years.*

As stated in the Commission's recommended rule model or material changes would require immediate retesting regardless of category. I also recommend that a test failure of a product automatically move it to the next most stringent category.

This strategy has two-fold benefits. First, it will focus the inspection on those products that are most dangerous to public safety. A second, unintended consequence is that it will financially reward those firms which make the safest products. Incentivizing product safety in this manner will do much to drive industry to make safer products. After all, a safer product for American consumers is the end goal of CSPA.

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Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0010
Comment from Daisy Li

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General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0010.1: Comment from Daisy Li



永勤有限公司

Wynnewood Corporation Limited

Office of the Secretary
U.S Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD 20814
USA

July 30, 2010

Re: Comments on CPSC 16 CFR Part 1107 Testing and Labeling Pertaining to Product Certification;
Proposed Subpart C – Certification of Children's Products

Dear Sirs,

We would like to take this opportunity to express our greatest concern on the proposed ruling of the above mentioned subject. The toy industries have existed and have been providing joy and happiness to millions and millions of children globally in the past decades. Undesired incidents and accidents did happen like all other industries. Yet, toy industries have not been considered to be one industry that had caused the biggest inconvenience and damages to the users. However, the proposed rule seems to put all the blame on while taking all the credibility away from the manufacturers of toy products. There are highly skillful, experienced, and creditable toy professionals in the toy industries to design and to manufacture toy products which would be safe and fun for all the children. Any ethical and capable manufacturers would do everything economically and technically feasible to safe-guard the safety of the children while the products would comply with the law requirements.

Your proposed rule has put great emphasis on the dependence of third party testing as the safety gates for safe toy products. This may undermine the determination of those who would produce good and safe products while imposing high cost impact and manufacturing procedural difficulties. We consider that parts of the proposed 16 CFR Part 1107 Subpart C in the existing form is not realistic and practical. The related additional cost factors and procedural delay would push the cost of any toy product to any less acceptable level. This would seriously limit the choice of toy available to the children who in turn become the victim of the circumstance.

With regard to the captioned subject, we would like to spell out our concerns on the following parts of the rule as follows:

§ 1107.20(a) Manufacturers to submit a sufficient number of sample of a children's product, or samples that are identical in all material respects to the children's product, to a 3rd party assessment body for testing to support certification.

All importers, manufacturers, and/or factories should have the ultimate responsibilities toward the safety of the products. These concerned parties should have ability and capability to assure the design and manufacture the products according to the required standards which would satisfy the laws of any particular countries. However, having a third party to verify the safety of such product as a double insurance is agreeable with the initial certification of the product. However, different versions of the same product with variation of product color, decoration, packaging and/or assortment of the same product should be waived of such requirement as the product does not have any physical or material variation or change.

Manufacturers should be encouraged to establish their own in-house testing facilities which should conform to the ISO 17025:2005 standard to ensure their capability. CPSC should consider recognizing these testing facilities as a way to have less dependence on third party testing. With such, there would be better monitoring of the product safety and provide better assurance of compliance of the law requirements.

§ 1107.20(b) If the manufacturing process for a children's product results in variability in the composition or quality of children's products, a manufacturer may need to submit more sample to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules.

"Sufficient number of samples" and "variability in composition or quality" can be confusing and should need to be addressed with much greater details. These quantitative amounts would vary with product types, age limits, and sizes of the products. This requirement can victimize the manufacturers or factories when such is set by testing bodies. However, manufacturers can easily perform by internal testing facilities with the greatest assurance of safety requirements as this should be considered as a regular process control.

§ 1107.20(d) If a product sample fails certification testing, even if other samples have passed the same certification test, A manufacturer would not be allowed to certify the children's product until the manufacturer establish, with a high degree of assurance,

This is definitely unrealistic and impractical. If one particular product fails, this does not imply other products would have the same problem. Products vary in designs, engineering, functions, and/or with target users. Failure of such product does not necessarily have any relationship with the other products. We disagree with this assumption of relationship.

§ 1107.21 – Periodic Testing

Periodic testing or auditing should be considered as a regular internal function. Any manufacturers with qualified internal testing facilities should perform such duty easily and regularly ensuring the product quality. Having a third party doing such function would imply big cost impact and would create production delay and difficulties. Government should not involve with and specify the frequencies of testing under different manufacturing conditions at this stage. Product Safety rules should emphasis on final finish products.

§ 1107.22 – Random Samples

A manufacturer may use a procedure that randomly selects items from a list to determine which samples are the random samples used for periodic testing before production begins....., the manufacturer may always test the last unit produced.

Most if not all manufacturers are having periodic testing to monitor quality of product. Most of the toy production items do not enjoy high production volume and lengthy production periods. Almost all production orders are placed within a relative short period of time. At the same time, many production orders are pulled at a very short period of time. Setting a random selection plan is almost impossible with toy production. Pulling random samples regularly for third party testing present extreme high risk and impose high cost exposure. Testing the last unit produced can be the worst representative sample. Regular production does run into quality problems which would lead to incidental or occasional failures which should draw immediate remedy action. However, using random samples especially being tested by third party could lead to wrong and misleading reading on the product.

We would not support such random sample testing. But, we would strongly recommend periodic and shipment testing by accredited internal testing facilities would provide greater assurance to the process control which would lead to safer toy products.

§ 1107.23 – Material Change

§ 1107.23(a) If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts,..... the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body. Such testing would be required before a manufacturer could certify the children's product.

Manufacturers or factories do perform continuous product improvement to enhance better product functions, cost improvement and/or product safety. At the same time, due to occasional material shortages from component suppliers material changes are unavoidable. All existing manufacturers do recognize the importance of absolute need to qualify any new substitute or replacement component to assure functionalities and safety. Most if not all would have thorough testing of the new material before such application would be made. Having a third party to qualify such change could be time consuming and costly. Thus, this requirement would discourage manufacturers to propose or to make any changes due to cost and time consideration. One possible consideration would limit the requirement of testing by third parties on critical component changes. Therefore, we strongly recommend that allowing recognizing accredited internal testing facilities to make such certification would promote continuous improvement of the product which would provide higher product safety.

§ 1107.26 – Recordkeeping

All records would be required to be available in the English language.

In china, most of the testing reports by any third party testing companies are in English language. However, other related testing records which are performed internally or by other component suppliers may not always be in English. Thus, such requirement could have limitation.

Conclusion

At present, toys industries are facing big variation of standards and requirements from different countries, States, brands, importers and retailers. Although most of these requirements are similar with slight variation, yet the difficulties in managing all these difference would be complicated. The industries desperately need harmonization of standards so as to enhance better safety in the products, effectiveness of costing and to provide a happy world for the parents and the children at the same time.

Yours sincerely,



Daisy Li

Vice President – Product Integrity & Compliance

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Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0011
Comment from Nancy MacPherson

Submitter Information

Name: Nancy MacPherson

General Comment

See Attached

Attachments

CPSC-2010-0038-0011.1: Comment from Nancy MacPherson



Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

July 30, 2010

Re: Docket No. CPSC-2010-0038

LEGO System Inc.'s Comments on Proposed Final Rule regarding Testing and Labeling Pertaining to Product Certification.

LEGO Systems, Inc. is the United States affiliate of The LEGO Group ("LEGO"), which is the Danish toy manufacturer and the largest distributor of interlocking plastic construction toys in the world. Annually, we produce over 35 billion LEGO® elements, which are then used in a wide variety of finished goods. We now have almost two years of experience in certifying and testing children's products to the requirements of the CPSIA and related CPSC guidelines, so we use that experience as the basis for our comments on this Proposed Rule.

Introduction

LEGO supports the overall direction established in the rule, which allows companies who have implemented a reasonable testing program to retain more flexibility in how they operate their test program as long as they meet specific criteria. We do, however, find many of the documentation requirements in the Proposed Final Rule to be excessively burdensome while providing no practical benefit. The estimates for recordkeeping time and expense are severely underestimated, based on our experience in executing to the current demands. Additionally, we feel that the random sampling requirement as defined in the Proposed Rule does not recognize variations in production and scheduling processes, and therefore, establishes requirements that cannot practicably be met.

LEGO offers more substantial comments in these areas:

- A. General Recordkeeping Requirements
- B. Random Sampling

A. General Recordkeeping Requirements:

CPSC has specifically asked for input on this rule regarding the burden of recordkeeping and whether or not it adds 'practical utility'. In the preamble (pg 28361) CPSC states that it will "*likely request access to these records **only** (emphasis added) when it is investigating potentially defective or noncomplying products.*" That would indicate that the collection of this information on every item is not necessary for the proper performance of CPSC's functions. Having to integrate multiple systems to compile data that no one will look at unless there is a problem, across hundreds of thousands of products, should not be needed, as long as companies can provide the data 'upon request'.

As we expressed in our comments on the Component Rule, we believe that the estimated resource requirements to manage the general recordkeeping requirements for testing and certification are grossly understated. CPSC essentially estimates that 200 people across all industries impacted by CPSIA will be needed to manage the recordkeeping requirements (based on the estimated 300,000 hours and a conservative 1500 annual hours per resource). LEGO alone has added 6 full time resources across our global supply chain to manage the data and recordkeeping associated with CPSIA's existing testing and certification requirements. Given that, we would expect the resource needs to be significantly higher.

As one example, in Sec 1107.10 (b)(5)(i)(C), the proposed rule requires not only records of each certification test, but *"a description of how the product was certified as meeting the requirements, including how each applicable rule was evaluated, the test results and the actual values of the tests"*. We receive more than a thousand finished good test reports annually from CPSC accredited 3rd party labs. These reports often run 50-125 pages in length and contain hundreds of data points and assessments. Having to add additional descriptive text to explain 'how' the product was certified, simply adds no value. If the test report references an ASTM standard, and the results are acceptable, that should be sufficient without additional explanations.

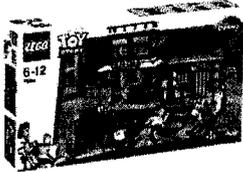
CPSC references a calculation of 100,000 to 150,000 products to which the recordkeeping requirements would apply. Companies typically certify **each SKU/per factory** and there is recordkeeping for every version even if it is 'identical in all material respects'. There may be no need to re-test, but requirements still exist for all of the documentation. LEGO has about 1700 individual products annually requiring testing, certification and recordkeeping, or >1% of the CPSC's total estimated number of products, across all affected industries. (This percentage doesn't even take into account any items produced at multiple factories that would each require their own records.) Since we are only one company from one affected industry, we would expect total products covered by this rule to be much higher.

Random Sampling:

CPSC has specifically requested comments on the burdens or costs that this proposed provision would impose. In general, the random sampling rationale and process defined in the Proposed Rule does not recognize variations in production and scheduling processes, and proposes requirements that are not achievable without a major restructuring of supply chain processes. Specifically:

- It assumes that all production is either non-stop serialized product, permitting continuous sampling or is non-existent between re-test dates.
- It defines 'population' as *the number of products manufactured or imported after initial certification of a product*. In doing so, it assumes that manufacturers would know in advance exactly how many items they would produce over multiple production runs so that they could randomly assign numbers for items to be randomly selected for testing. Some of these production runs could be canceled, increased, or decreased over time depending on the market success of the product. These changes would continuously throw into disarray a "random" sampling plan as described in the Proposed Rule.
- It does not recognize that testing methods at the labs require more than 1 sample, so that you cannot simply "test the samples as they become available instead of waiting until all random samples have been selected." Sometimes you need to send 2 or 12 or 500 samples, depending on the test requirements.

Sample Scenario:



Construction set with 502 pieces
 First production run is Jan 5, 2010 for 25,000 pieces

Samples are randomly selected from first production run and sent to the lab for third party testing. The Children’s Safety Certificate is issued and will be effective for 6 months when the next samples will be sent to the 3rd party lab based on our reasonable test program criteria. Additional production for this item is scheduled based on a ‘pull’ system driven by consumer demand. A sample production schedule that could develop is shown below:

Production Week (1-52)	Production Quantity**	3 rd party test samples *	Comment
1	25,000	10-50	Children’s Product Certificate issued based on results of 3 rd party test report
4	12500		Reasonable Testing Program processes in place
7	7500		Reasonable Testing Program processes in place
12	9200		Reasonable Testing Program processes in place
15	12,000		Reasonable Testing Program processes in place
18	14000		Reasonable Testing Program processes in place
24	10250	10-50	Samples pulled randomly from production run for 3 rd party test and new certificate

*quantity based on product type and input from lab as to #s of samples needed to complete tests
 ** Production quantities as planned in W1, subject to change over time pending retail performance.

In this scenario, we have no way to precisely know in Week 1 what the ‘population’ over the upcoming 6 months will be, so we’re not able to randomly assign which samples are to be picked. Even if we knew the exact production numbers for those 6 months, it would be a logistical nightmare to try to sample uniquely identified products for hundreds of SKUs, on multiple production lines, and then store those samples until the total number needed for testing 6 months later were available.

Throughout the Proposed Rule, and in most previous guidance documents or interpretations, CPSC has clearly stated that manufacturers “*may develop the scope and details of their reasonable testing program based on knowledge and expertise regarding their product and its manufacturing processes*”(pg. 28345 in preamble). We would simply ask that this logic be carried through to the sampling aspects of our test programs. Just as there is no ‘one size fits all’ test program, there is no single sampling plan that will work for everyone. Manufacturers, as part of their reasonable testing programs, should be allowed to define their sampling plans as long as they will provide that ‘high degree of assurance’ that our products are compliant. These sampling plans, shaped by our knowledge of our products, processes, materials and consumer history, will be far more effective than a blanket plan that is assumed to be effective for all manufacturing scenarios.

Summary:

1. Reduce the reporting burden by allowing manufacturers or importers to maintain their own recordkeeping systems if they meet the traceability requirements and ensure that products are properly certified before they enter into commerce.
2. Allow flexibility in the definition of appropriate sampling plans, as long as they result in a high degree of assurance that products are compliant. Products and processes covered in the scope of this regulation are too diverse to be constrained by a single mandated sampling method.

Due to the effectivity dates of the various requirements of the CPSIA, we are able to rely on actual experience in formulating our comments, rather than simply estimating how these demands might impact us. The testing and certification requirements are already part of our global business processes. The realities of resources, reporting, recordkeeping and complexity are well known and the prospect of seeing even greater demands added, with limited practical value, is troubling.

I would be happy to discuss any of these points with you or provide more details regarding our experiences. Thank you for the opportunity to comment.

Kind Regards,

Nancy MacPherson

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Testing and Labeling Pertaining to Product Certification

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Comment from Patrick Cook

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General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0012.1: Comment from Patrick Cook

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July 9, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission,
4330 East West Highway, Room 502
Bethesda, MD 20814

Re: Testing and Labeling Pertaining to Product Certification, 16 CFR Part 1107, Notice of Proposed Rulemaking, CPSC Docket No. CPSC-2010-0038

Dear Mr. Secretary,

Our company, Galaxy Fireworks, Inc., is a direct importer, retailer, and wholesaler of consumer fireworks products. We have been in the consumer fireworks industry for over 25 years, and are members of the American Pyrotechnics Association (APA). We are members of the American Fireworks Standards Laboratory (AFSL) as well as members of the National Fire Protection Association (NFPA).

On May 7, 2010 the Consumer Product Safety Commission (CPSC) published a Notice of Proposed Rule Making for product certification procedures on the agency website. See: <http://www.cpsc.gov/about/cpsia/testlabelNPRdraft.pdf>. This proposed rule contains the procedures and documentation requirements for certification of both Children's and Non-Children's Products. A review of the requirements noted in Subpart B (*Reasonable Testing Program For Non-Children's Products*) has brought forth issues that could affect all importers of non-children's items.

This rule is addressed to "*manufacturers*" so it is important to know that a "*manufacturer*" means *any person who manufactures or imports a consumer product*. See Title 15 USC Chapter 47, §2052(a)(11). Therefore this rule would be applicable to all consumer fireworks industry members that import and/or manufacture their products, and not just the factories in China that actually have the hands on task of making the fireworks devices. But when does the importer/private labeler that is not an actual manufacturer (or in control of the factory that does the manufacturing) actually become responsible for ensuring that these requirements are fulfilled?

Does the CPSC consider the products to be the importers responsibility when an order is confirmed with a factory or broker? Or does title to the goods pass on in the manner prescribed in the Uniform Commercial Code as adopted by the buyer's address of record? The question then becomes how can a federal agency mandate procedures that the buyer needs to perform on products that legally may not belong to the buyer until after they are

delivered? How can the buyer be responsible for keeping records for actions that occur in locations (and under circumstances) in which they have limited or no control over?

Moving on, this proposed rule calls for certification testing to be performed on a consumer product, and lays out all of the steps and requirements that are needed to fulfill this task. It also sets forth the requirements for a mandatory production testing plan as well as the criterion that must be followed for remedial actions on items that fail this certification testing.

Subpart B §1107.10(b) of the proposed rule specifies the four major items that each testing program must contain. These are *Product Specification*, *Certification Tests*, *Production Testing Plans*, and *Remedial Action Plans*. This Subpart also includes the specific recordkeeping procedures that are to be followed for non-children's products. Many of these requirements, while necessary, are simply beyond the control of the average importer. In the consumer fireworks industry the requirements for the certification testing itself are generally met prior to the products being containerized for shipment to the United States by a third party testing agency familiar with the CPSC's mandatory requirements.

There is one area in the *Product Specification* section that needs clarification. This is found at §1107.10(b)(1)(iii), and states that "*each manufacturing site must have a separate product specification*". Does this mean an alpha-numeric signifier for each individual factory, or are they looking for a copy of the buyer's specifications at each individual location where the item is made. Does the manufacturing site mean the actual location where the individual items are made, or the corporate offices of the company contracted to have an item made (i.e.: private label items)? These are issues that are unclear to the average importer or small business owner.

The *Production Testing Plan* is a plan that describes the frequency of the testing, what tests must be performed to meet all applicable standards, and includes the requirement that this plan must be in place at each manufacturing site (wherever that may be). This is followed by the *Remedial Action Plan*. This *Plan* "*describes the steps to be taken whenever samples of a product or a component part of a product fails a test or fails to comply with an applicable rule, ban, standard, or regulation*"

The *Production Testing Plan* and the *Remedial Action Plan* that are called for may or may not pose a problem to the larger companies in an industry that maintains a constant local presence in China and has some sort of control over the factories as well as the processes and procedures that are used. It is the smaller businesses that will definitely have compliance issues in these two areas. One area in particular that may be a cause for concern is in regards to remedial actions actually taken by the individual factory or place of manufacture versus what the required action may be on the individual *Remedial Action Plan*.

Further issues are expected to be seen in complying with the *Recordkeeping* requirements. The requirements noted in this section of the proposed rule are extensive, onerous and have the potential to constitute the biggest hurdle that an importer, small or

large, will face. The requirements noted at §1107.10(b)(5)(i)(A) through (C) (dealing with the general conformity certificate, the product specifications as well as the test procedures and results themselves) are the ones that we as an industry are currently familiar with. Meeting the recordkeeping requirements for this section should not pose too many challenges for any importer or manufacturer.

However, it is the requirements for the Remedial Action Plans records that have the potential to present the largest problem area in this rule. The *Remedial Action Plans* records requirements set an unattainable standard for the small business owner. Here one must record "*the specific action taken, the date the action was taken, the person who authorized the actions, and any test failure which necessitated the action*" for products or items that have failed the certification testing procedures.

The generally accepted business model for the consumer fireworks industry is for the testing company to visit a warehouse or production storage area, test a lot or designated amount of product for a factory (or broker), and that tested product is then stored until the entire customer order is filled and ready to be containerized. If an item fails testing at this point it is rejected and is not shipped to the customer in the U.S. What happens to the failed items at that point is not the concern of the importer, as long as they do not end up back in the stream of commerce to the United States.

Under the proposed rule, the average importer would have provided a plan of what they would like to see done with this rejected product, at best this plan would be only a recommendation. This rejected product still belongs to the factory at that point so the average customer (importer) has little or no say over the disposition of the products that are rejected. Taking this into account, how can the customer (importer) meet the proposed requirements to have records indicating the specific remedial action performed as a result of a failed certification, the date this was accomplished and who authorized the action taken?

While there is a need for specific guidelines and procedures for the certification program, these guidelines must be clear-cut and attainable across the board for all importers and manufacturers. This proposed rule, as drafted, does not meet that standard. There should be no rush to meet a calendar deadline to push this rule through; rather this rule should be put on hold until all aspects of it are reviewed and any legal issues noted in this or any other comment are addressed properly.

Thank you for providing us with the opportunity to comment on this important rulemaking. Should you have any questions or require clarification of any comments presented herein, please feel free to contact me at (813) 234-2264 or via email at galaxyfire@aol.com

Respectfully submitted,


Patrick Cook
General Manager

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Testing and Labeling Pertaining to Product Certification

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Document: CPSC-2010-0038-0013
Comment from Bernie Ting

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Submitter's Representative: The Secretariat, Hong Kong Toys Council

Organization: Hong Kong Toys Council

General Comment

Please refer to attachment

Attachments

CPSC-2010-0038-0013.1: Comment from Bernie Ting



香港玩具協會
Hong Kong Toys Council

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Aug 2nd, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Docket ID : CPSC-2010-0038
Re: Hong Kong Toys Council Comments on 16 CFR 1107 Testing and Labeling Pertaining to Product Certification

Dear Mr. Stevenson,

Hong Kong Toys Council (HKTC) appreciates the opportunity to comment on the proposed ruling 16 CFR 1107. In the past several decades, toy industries globally have been providing joy, happiness, educational value, and laughter to children around the world. Since the major toy recall in late 2007, toy industries had worked diligently to implement major improvement in the toy design, the manufacturing process, as well as the quality control. Despite all the hard work by those experienced and creditable toy professionals it is unfortunate that little had been recognized by media as well as many governmental bodies.

The proposed 16 CFR 1107 ruling put a heavy dependence on costly 3rd party multiple testing during the course of the toy production at various stages. This would seriously interrupt any production flow per the existing system. In order to comply with the ruling, the whole toy industry will have to make major changes or adjustments to production planning while adding tremendous costs' time, and unjustified record keeping procedures.

In the current production system, all incoming materials are tested by manufacturers or the test results would be provided by the suppliers of such. Many establishments would even double check such even though same had been assured of the quality by the suppliers. Production quality would usually consistently be monitored from time to time by the quality control staff internally. Completed shipments are usually tested basing on AQL standard by the factory before the customers would sample testing the same lot before releasing for shipment. In many cases, a third round of testing would be performed by the ultimate buyers such as the retailers or the distributors. Thus, if there were any problems with any one shipment lot, the risk would be limited to such lot only without extending to a much larger lot amount.

The Hong Kong toy industry would support the proposal to have third party testing for the initial certification for any new products. Any major changes in design; critical component changes; or meeting changing regulations should require re-certification by third party testing bodies. At the same time, we support the idea of periodic testing by third party of any products providing that a much more refined and more specific requirement can be presented and confirmed by a proper authority. It would be difficult and extremely risky to leave such decision and ruling to the related parties. At the same time, Hong Kong Toys Council supports the earlier proposal of component testing which certifies recognized components for toy production. This would enhance the elimination of certain repetitive and redundant testing on the finish product.

At the same time, Hong Kong Toys Council strongly recommends that CPSC would recognize or endorse certain internal in-house testing facilities which conform to ISO 17025:2000 standard. This would greatly expedite testing procedures and time for certain required testing while reducing costs and putting less dependence on the third party testing bodies.

Below are our concerns for some parts of the proposed sections:

1107.2 Definitions

We would like to see that the ruling to define the term "High Degree of Assurance" in a more understandable or quantitative way. This term can be very confusing and misleading which could lead to unnecessary conflicts between manufacturers and testing bodies when a judgment has to be made in certain cases. We wonder if this requirement are targeting the toy design area, the manufacturing process control, quality control or testing procedures.

1107.20(a) Manufacturers to submit a sufficient number of samples of a children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body for testing to support certification.

The ultimate product safety responsibility lies with the importers, manufacturers, and factories. These concerned parties should have the ability and capability to assure the design and manufacturing of the products according to the required standard of related countries. As we stated earlier, we fully agree to third party testing and certification of any new products. This would provide a good and balanced view in confirming the safety of the toy product. However, we would request CPSC to define quantitatively what "a sufficient number of samples". Otherwise, each third party testing body may end up with variation of requirements.

Subsequent testing of the same product differs by a few minor components with proper proof of equivalent specifications should be allowed with reduced testing frequency and reduced sample size. Furthermore, CPSC may consider to accept testing reports prepared by qualified in-house testing facilities under these circumstances.

1107.20(b) If the manufacturing process for a children's product results in variability in the composition or quality of children's products, a manufacturer may need to submit more samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules.

CPSIA already mandates risk assessment which in turn shall limit "variability". "Sufficient number of samples" and "variability in composition or quality" can be confusing. Regular internal monitoring and periodic testing should be able to provide sufficient data and information to support any assessment of product quality. This procedure is commonly practiced by many manufacturers at present.

1107.20(d) If a product sample fails certification testing, even if other samples have passed the same certification test. ... A manufacturer would not be allowed to certify the children's product until the manufacturer establish, with a high degree of assurance,

We would not consider such practice be logical. Any failure of one product does not always bear the same result with another toy. Failure of a part or product does not necessarily have any other relationship with other parts or products. Using "a high degree of assurance" wording would limit a simple and effective solution. Many toys are designed differently with variation in functions, engineering features and choice of components and parts. The failures of one simple part in a toy can paralysis or even shut down the production of one whole factory. This can kill a factory unnecessarily.

1107.21 – Periodic Testing. All periodic testing must be conducted by a third party conformity assessment body.

Periodic testing or auditing should be considered as a regular internal function. Consistent good product testing record should reflect the competency of qualified internal testing facilities and expertise. Accredited and qualified in-house testing facilities should be able to handle this effectively and economically. However, smaller manufacturers may have to utilize such service by third party per the agreed schedule which needed to be defined and specified.

1107.22 – Random Samples

A manufacturer may use a procedure that randomly selects items from a list to determine which samples are the random samples used for periodic testing before production begins....., the manufacturer may always test the last unit produced.

Defining random sampling plan is not the easiest thing to do. Toy productions do not always have long and steady production run. Most of the orders are always place late and it has been frequent enough that orders are cancelled at the last minute. Pulling random samples from defined quantities and/or lot is difficult to handle with the manufacturers. Order quantities or lot sizes changes frequently. Factories do not always have available storages to keep any sizable stock for such purpose while customs would not allow enough time period to wait for sample pulling. Most, if not all of the factories in China would not be able to handle such.

At the same time customers do inspect production samples by shipment lots. This has been most effective and efficient practices these days while keeping the risk of big size lot failure to the minimum. Thus, the Hong Kong Toys Council would recommend the deletion of this proposed random samples rule.

1107.23 (a) – Material Change

If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts,..... the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body. Such testing would be required before a manufacturer could certify the children's product.

Manufacturers or factories do perform continuous product improvement to enhance better product functions, cost improvement and product safety. At the same time, due to occasional material shortages from components, material changes are unavoidable. All existing manufacturers do recognize the importance of absolute need to qualify any new substitute or replacement component to assure functionalities and safety. Most would have thorough testing of the new material before such application would be made. Having a third party to qualify such change could be time consuming and costly. Thus, this requirement would discourage manufacturers to propose or to make any improvement due to the extra testing required. Therefore, we strongly recommend that allowing recognizing accredited internal testing facilities to perform such certification would promote continual improvement of the product.

Also we do support CPSC's early proposal of using component testing scheme. If there is a common data base that manufacturers or factories can use to attain testing reports of any qualified and approved components, this would be the most effective, efficient and economic approach to this requirement.

Hong Kong Toys Council is working at the initial stage of organizing a master material and component and supplier database in hope of assisting the industry to manage their component supplier base. We do expect this may realize by early 2011 if sufficient support can be acquired from related parties.

§ 1107.26 – Recordkeeping

All records would be required to be available in the English language.

In China, most of the testing reports by any third party testing companies are in English language. However, other related testing records which are performed internally or by other component suppliers may not always be in English. However, translation can be done on as need basis. Thus, such requirement may be secondary.

We also like to suggest that all record keeping should be continued as what we are doing at this time. At the same time, due to the tremendous amount of records and reports needed to be kept for the time that the ruling is calling for, manufacturers will definitely have problems complying with such requirement. An electronic version of record and report keeping should be considered with the manufacturers and at the same time, resolve the problem of keeping the same in United States as electronic transmission can be handled easily no matter where the records are being kept.

At the existing time, all manufacturers have to utilize a great deal of clerical staff to handle just record keeping. A tiny operation can easily need two persons while large factories may need up to a group of twenty to do such job. We sincerely hope that CPSC does not under-estimate the loading of such requirement.

We would like to indicate that heavy element and phthalates testing equipments consumes some form of chemicals during testing. With increased testing, there will be more chemical consumed which may not be desirable.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bernie Ting', with a stylized flourish extending to the right.

Bernie Ting
Chairman

PUBLIC SUBMISSION

As of: August 04, 2010
Received: August 02, 2010
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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0014
Comment from CM CHAN

Submitter Information

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Organization: Qualidux Industrial Co., Ltd.

General Comment

§ 1107.20 General requirements.(a) Manufacturers must submit a sufficient number of samples of a children's product, or samples that are identical in all material respects to the children's product, to a third party conformity assessment body for testing to support certification.

For those manufacturers and overseas factory that already had their testing facilities conformance to ISO17025:2005 – General Requirements for the Competence of Testing and Calibration Laboratories could share the workload with the 3rd party conformity assessment body to strike a balance between the security of the safety standard requirements and the cost burden to those factories. We would like to recommend the number of samples that required submitting to 3rd party conformity assessment body for testing to support certification could be reduced to half of the proposed requirements. Furthermore, the changes will encourage others manufacturers and overseas factories to invest on the human capital, qualified testing facilities and set up systems and processes to conform to ISO17025:2005. The whole children's product industry will move towards from the awareness to execution of the safety assurance program.

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Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0015
Comment from CM Chan

Submitter Information

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Organization: Qualidux Industrial Co., Ltd.

General Comment

§ 1107.21 Periodic testing.
All periodic testing must be conducted by a third party conformity assessment body.

We have the same views as the § 1107.20 General requirements. Apart from reducing half of the samples required to submit to 3rd party conformity assessment body, we would like to have those products that unstable order intervals over the year or even no order in one year, it will be better to allow manufactures to declare "Inactive" status for the products and have period testing pending until next order.

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0016
Comment from CM Chan

Submitter Information

Name: CM Chan
Address:
 Hong Kong SAR, China,
Organization: Qualidux Industrial Co., Ltd.

General Comment

§ 1107.22 Random samples. Each manufacturer must select samples for periodic testing by using a process that assigns each sample in the production population an equal probability of being selected. For purposes of this section, the production population is the number of products manufactured or imported after the initial certification or last periodic testing of a children's product.

The current business model for most of children's product manufacturers is to draw samples based on ISO defined sampling plans from the production lot for checking, inspecting and testing for compliance either by their own quality teams or sending out to 3rd party testing laboratories before the shipment. The proposed Random Samples rule will be another system/ process that only incur additional workload and cost burden while the results may not be as expected to strength the safety standards requirements. Indeed, the "population" in the current proposed Random Samples rule is not easy to executively define due to the changes of order forecast and the actual order status. The up and down of the ordering, in particular, the current economic hectic situation, will result in the poor data integrity and interruptions of the results from the Random Samples system. Furthermore, the Random Samples rule does not have the methodology to take care those product already shipped out in the market when the WHAT IF the samples inspection results that "marginally passed" or "marginally failed" during the periodic testing...

If two systems are required to keep, it's too costly and not having the expected results. Hence, we would recommend keeping the current status quote system for the industry and let the ultimate safety assurance responsibility of the children's product lies within the manufacturer and the overseas factory.

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0017
Comment from CM Chan

Submitter Information

Name: CM Chan
Address:
Hong Kong SAR, China,
Organization: Qualidux Industrial Co., Ltd.

General Comment

§ 1107.23 Material change. (a) General Requirements. If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts, that a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the applicable children's product safety rules, the manufacturer must submit a sufficient number of samples of the materially changed product for testing by a third party conformity assessment body.

Continuous improvement on the product quality, liability and safety are not only the corporate citizen roles and responsibilities but also the sustainable survival methodology for the manufacturers and overseas factory. The requirements to submit a sufficient number of samples of the materially changes product for testing by a 3rd party conformity assessment body is not only costly and time consuming but also will definitely de-motivate the continuous improvement effort.

Hence, we would like to recommend for those manufacturers and overseas factories that having the ISO17025:2005 could conduct the certification of the materials changes themselves. Furthermore, manufacturers and overseas factory should have the obligation to report changes during submission of product for regular testing's such as initial testing and periodic testing and the 3rd parting testing reports should then reflect that the changes of material are documented and verified.

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0018
Comment from Anne Meininger

Submitter Information

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Submitter's Representative: USA WTO TBT Inquiry Point
Organization: National Inst of Standards & Tech

General Comment

Hello CPSC,

The submitted comments were received today in the USA Inquiry Point for the World Trade Organization Agreement on Technical Barriers to Trade (WTO TBT).

Comments are from the Government of China and are referred to by the WTO TBT reference number for this issue, USA/549.

Please let me know if you have any questions.

Thank you --
Anne Meininger
301-975-2921

Attachments

CPSC-2010-0038-0018.1: Comment from Anne Meininger

中国 WTO/TBT 国家通报咨询中心

China WTO/TBT National Notification & Enquiry Center

No.7, Ma Dian Dong Ave, Hai Dian District, Beijing, China, Tel: 86 10 8226 2420 Fax: 86 10 8226 2448

FAX

TO : Anne Meininger WTO TBT U.S. Inquiry Point National Center for Standards and Certification Information National Institute of Standards and Technology 100 Bureau Drive, MS-2160 Gaithersburg, MD 20899-2160	Fax: 301-926-1559 Tel: 301-975-4040 or 301-975-2921 E-mail: ncsci@nist.gov or anne.meininger@nist.gov
Date: Jul 30, 2010	Number of pages: 2+2
Copies:	
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From:	
China WTO/TBT National Notification & Enquiry Center, Standard and Regulation Researching Center, AQSIQ, P.R.China.	Tel: 86-10-84603890 Fax: 86-10-84603813 E-mail: tbt@aqsiq.gov.cn
Subject:	
Comments from P. R. China on USA Notification G/TBT/N/USA/549 Testing and Labeling Pertaining to Product Certification (31 pages, English)	

Comments from P. R. China on USA Notification

G/TBT/N/USA/549

Testing and Labeling Pertaining to Product Certification (31 pages, English)

Dear Sir or Madam,

We appreciate the opportunity to submit comments on the notified regulation proposed by Consumer Product Safety Commission (CPSC).

Enclosed please find comments in English and Chinese.

Please acknowledge receipt of the comments by e-mail to tbt@aqsiq.gov.cn.

Thank you very much in advance for Consumer Product Safety Commission (CPSC) of USA taking into account comments from P. R. China. Your formal reply will be appreciated.

Best regards,

SU Zhongmin
Deputy Director General
China WTO/TBT National Notification & Enquiry Center
No. 18 Xi Ba He DongLi, ChaoYang District, Beijing
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Comments from P. R. China on USA Notification

G/TBT/N/USA/549

Testing and Labeling Pertaining to Product Certification (31 pages, English)

The government of the People's Republic of China appreciates the opportunity given by America to other WTO members to comment on G/TBT/N/USA/549, as well as the efforts it makes in the protection of human health and safety. According to Article 2.9.4 of WTO/TBT Agreements, "without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account", China would like to suggest America to consider the comments submitted as follows:

1、 Section 1107.21 (d) specifies that periodic testing shall be conducted for a product produced or imported more than 10,000 units. Since the production or importation volumes for different children's products may vary substantially, such as large electrical motorcycles and small stuffed toys, it's not reasonable to apply the same number of 10,000 to all children's products. We suggest a greater number for small toys. In addition, is periodic testing necessary when a large number of products are produced in a short time? For example, 100,000 toys produced in three months.

2、 Section 1107.10 (b) (2) (ii) specifies that for a material changes, if only affects the product's compliance with certain rules, the certification may be based on the materially changed components and if it affects the finished product's, the certification must be based on the finished product. Considering the enforceability of the regulations, when arguments arise about the judgments of whether the material change affects the finished product's compliance, who should make a final judgment?

3、 section 1107.21 (b) specifies that if a manufacturer's reasonable testing program fails to provide a high degree of assurance of compliance with all applicable children's product safety rules, the Commission may require the manufacturer to meet the requirements of paragraph(c) of this section or modify its reasonable testing program to ensure a high degree of assurance. Considering the enforceability of the regulations, who should make the final judgment of whether a reasonable testing program provides a high degree of assurance of compliance, and how?

Comments in Chinese is in below:

中国对美国 G/TBT/N/USA/549 通报的评议意见

中国政府感谢美国给予其他 WTO 各成员评议 G/TBT/N/USA/549 号通报的机会，同时赞赏美方在保护人类健康和安全方面所做出的努力。根据 TBT 协定 2.9.4 条“无歧视地给予其他成员合理的时间以提出书面意见，应请求讨论这些意见，并对这些书面意见和讨论的结果予以考虑”的规定，请贵方对中方的评议意见予以考虑，中方意见的具体内容如下：

1. 第 1107.21(d)节规定：当产品产量或进口量超过 10,000 件时需要进行定期测试。由于不同儿童产品的类型差异很大，比如大型儿童电动摩托车和小型毛绒玩具，其产量或进口量差别会非常大。用同一个数字 10,000 来适用于所有类型的儿童产品不太合理，建议对于小型玩具进一步放宽该数字要求。另外，对于短时间内生产大量产品的情况，例如 3 个月生产 10 万件玩具，是否需要定期测试？

2. 第 1107.10(b)(2)(ii)节规定：当发生材料变更时，如果只是影响到对某些法规的符合性，可以只对发生变更的部件或材料进行测试；如果影响到成品对法规的符合性，则应该对成品进行测试。从法规的可执行性上来说，当各方对于材料变更是否影响到最终产品符合性的判断有所不同时，应该由谁来做出最终判决？法规的可执行性

3. 在第 1107.21(b)节中规定：如果制造商的合理测试方案不能对儿童产品符合相应法规提供一个高的置信度，则委员会要求执行(c)段的要求。从法规的可执行性上来说，能否提供高的置信度应该如何做出判决、以及由谁来做出判决？

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0019
Comment from William M. Hannay

Submitter Information

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Submitter's Representative: William M. Hannay, Legal Counsel
Organization: Safety Glazing Certification Council

General Comment

With respect to Docket No. 2010-0038, we believe that the Safety Glazing Certification Council (SGCC) has valuable experience and information to convey to the Commission about the structuring and operations of a reasonable testing program and intend to submit comments on the proposed rule. However, the Board of SGCC will not be able to prepare, review and submit those comments to the Commission by the August 3rd date specified in the Federal Register notice. We do expect to submit comments in approximately two weeks thereafter and are hopeful that the Staff and Commission will consider them.

Attachments

CPSC-2010-0038-0019.1: Comment from William M Hannay



William M. Hannay
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July 30, 2010

BY ELECTRONIC SUBMISSION

<http://www.regulations.gov>

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

Re: Notice of Intent to Comment on Proposed Rule on Testing and Labeling Pertaining to Product Certification, Docket No. CPSC-2010-0038

Dear Sir or Madam:

I am counsel for the Safety Glazing Certification Council (SGCC) which is a non-profit corporation that provides for certification of safety glazing materials to various safety standards. Established in 1971, SGCC is managed by a board of directors comprised equally of representatives from the public interest sector and the safety glazing industry. For more than a quarter of a century, SGCC has maintained a certification program under which manufacturers of safety glazing products voluntarily submit their products for testing to an SGCC-approved independent testing laboratory. The testing procedures used in SGCC's program are consistent with those established in ANSI Z97.1 and/or CPSC 16 CFR 1201.

With respect to Docket No. 2010-0038, we believe that SGCC has valuable experience and information to convey to the Commission about the structuring and operations of a reasonable testing program and intend to submit comments on the proposed rule. However, the Board of SGCC will not be able to prepare, review and submit those comments to the Commission by the August 3rd date specified in the Federal Register notice. We do expect to submit comments within two weeks thereafter and are hopeful that the Staff and Commission will consider them.

Please let me know if you have any questions.

Sincerely,

William M. Hannay

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Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0020
Comment from Milton Bush

Submitter Information

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Submitter's Representative: Milton Bush
Organization: ACIL

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0020.1: Comment from Milton Bush

Response of the American Council of Independent Laboratories (ACIL)

Consumer Product Safety Commission: CPSC Docket No. CPSC-2010-0038

Subject: Proposed Rule: Testing and Labeling Pertaining to Product Certification

August 3, 2010

ACIL is delighted to have the opportunity to comment on the subject proposed rule: Testing and Labeling Pertaining to Product Certification.

ACIL was founded in 1937 as the national trade association representing independent scientific laboratory testing. An independent laboratory is not affiliated with any institution, company or trade group that might affect its ability to conduct investigations, render reports, or give professional counsel objectively and without bias. ACIL's 200 member companies operate approximately 400 facilities across the U.S. and abroad. They range from the one-person specialty laboratories to multi-disciplined, international corporations employing thousands of analysts, risk management specialists, consultants and support staff.

ACIL's comments will be limited to three broad categories, and in addition, comment on the particular provisions of the proposed rule where the Commission requests additional comment.

1. The proposed rule fails to differentiate between "firewalled" manufacturer laboratories and independent, third party laboratories.
2. The proposed rule fails to recognize the certification marks of third party conformity assessment bodies.
3. The proposed rule fails to include reciprocity provisions for foreign markets that are closed to US third party laboratories.

The Proposed Rule Fails to Differentiate Between "Firewalled" Manufacturer Laboratories and Independent, Third Party Laboratories

This failure throughout the proposed rule to differentiate between a "firewalled" manufacturer laboratory and that of an independent, third party laboratory is that it allows a manufacturer to submit product to itself even if its reasonable testing program fails to provide a high degree of assurance of compliance with all applicable children's product safety rules.

“Proposed Section 1107.21 (b) would state that, if a manufacturer has implemented a reasonable testing program as described in subpart B of this part...it would be required to submit samples of its product to a third party conformity assessment body for periodic testing to all applicable children’s product safety rules at least once every two years.” Because of the failure to differentiate between the “firewalled” lab and the “independent” lab, the intent of this provision is unclear, or at the very least, construed to mean that the manufacturer may submit its product to its “firewalled” lab and meet the requirements of this provision. ACIL’s opinion is that is not what the commission intended and seeks clarification of this provision as well as to modify the entire rule to differentiate between a “firewalled” manufacturer laboratory and that of an independent, third party laboratory.

Another option that the commission could consider to alleviate concern over this provision as well as to protect against undue influence in general would be to require additional accreditation criteria from “firewalled” manufacturer laboratories similar to that required by OSHA’s Nationally Recognized Testing Laboratory (NRTL) program, ISO/IEC Guide 65 provisions relating to impartiality and conflict of interest, as well as ISO/IEC 17025 4.1.5 b regarding impartiality through ownership and legal structure.

The Proposed Rule Fails to Recognize the Certification Marks of Third Party Conformity Assessment Bodies

ACIL continues to be stunned that the commission is consistently failing to recognize the use of existing Federally-registered certification marks of third party conformity assessment bodies, most of which operate globally.

These marks are relied upon by all stakeholders in the children’s products distribution chain and other participants in the safety system. Introducing the new Certificate of Conformity (CoC) immediately will cause confusion in the marketplace.

At a minimum, the commission should have to justify through a comprehensive and independent study, why it is departing from the existing system and why its proposed system would be better and more reliable.

The Proposed Rule Fails To Include Reciprocity Provisions For Foreign Markets That Are Closed To US Third Party Laboratories

Reciprocity in the international trade context is the exchange of special privileges between countries to the advantage of all.

The system of special privileges that the CPSC is preparing to put in place damages U.S.-based laboratories because it is open to all countries while other countries’ conformity assessment systems are not open to U.S.-based laboratories.

Laboratory services are generally local in nature. Manufacturers prefer to deal with laboratories locally but desire worldwide acceptance. The only way to ensure that trade in services among laboratories is advantageous to all in the supply chain is if the country offering special privileges requires reciprocal treatment from third countries for U.S.-based laboratories; that is, requiring that third countries provide an open laboratory accreditation infrastructure to U.S.-based laboratories under conditions no less favorable to those afforded laboratories in their own country.

The system that the CPSC is preparing to put in place disadvantages U.S.-based laboratories because many of the foreign-based laboratories seeking accreditation operate in countries that deny U.S. laboratories open access to their accreditation infrastructure. This creates a one-way trading relationship and does not advantage all in the supply chain.

However there are more serious consequences to not including reciprocity provisions in the proposed. The very system that the commission is attempting to protect is undermined by government-owned and operated recognition, accreditation and certification infrastructures that are nothing but the fox guarding the henhouse. Under these schemes there is no independence and no impartiality. It is a system that will be imposed on the US because the commission refuses to put in place a system of reciprocity.

Therefore, ACIL believes that the CPSC should amend their proposed requirements to include reciprocity provisions identical to those utilized by the Occupational Safety and Health Administration (OSHA) under its Nationally Recognized Testing Laboratory (NRTL) program as well as those of the Federal Communications Commission (FCC).

Additional Areas Where the Commission Requests Comments

ACIL believes that it has satisfied the commission request for additional comments supra, except in one area and that is the cost to obtain required third party testing product under jurisdiction of the proposed rule.

Regardless of who conducts the testing to prove compliance (first party manufacturer, second party retailer, or third party conformity assessment body), the same tests must be conducted, to the same applicable standards, using the same equipment and test methods by the same type of trained personnel. In fact, third party conformity assessment bodies costs are usually less because they are in the business of certification.

CPSC should look to ACIL and ACIL member laboratories should they wish to investigate product compliance costs.

Conclusion

ACIL appreciates the opportunity to comment on the subject proposed rule and would be delighted to meet and work with the commission in implementing any of ACIL's suggestions.

Milton M. Bush, JD, CAE
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ACIL
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Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0021
Comment from Claire Kammer

Submitter Information

Name: Claire Kammer
Organization: Underwriters Laboratories

General Comment

See attached.

Attachments

CPSC-2010-0038-0021.1: Comment from Claire Kammer



the standard in safety

Underwriters
Laboratories

**Response of Underwriters Laboratories, Inc. (UL)
Consumer Product Safety Commission: CPSC Docket No. CPSC-2010-0038
Proposed Rule, Testing, Certification, and Labeling Requirements**

August 3, 2010

Underwriters Laboratories is an independent, not-for-profit, product safety testing and certification organization with locations around the world. Founded in 1894, UL has earned a reputation as a global leader in product safety standards development, testing and certification.

As the CPSC looks to establish processes around testing, certification and labeling, pursuant to compliance with Section 14 of the Consumer Product Safety Act (CPSA), UL encourages the Commission to consider how existing third party product safety certification programs can serve the Commission's needs and advance public safety interests. For products, like some children's products, subject to third party testing requirements, global consumer safety systems utilizing third party certification and the U.S. workplace safety system currently administered by the Occupational Safety and Health Administration (OSHA) perceive a need for a closed-loop process, including pre-market review and ongoing compliance monitoring, to ensure the integrity of a product's conformance. Effective closed-loop processes address evaluation of designs and testing of samples, attestation/certification, ongoing surveillance and applicable testing of production, and market surveillance and usage history to address critical performance factors on an ongoing basis. Further, the rigor that goes into these certification programs, managed by recognized impartial conformity assessment bodies, should be acknowledged and, recognizing the thoroughness and resulting effectiveness, enable them to be used as a means to satisfy CPSA requirements to execute a reasonable testing program.

The following recommendations are in response to the Commission's request for comments in the May 20, 2010 proposed rule for testing, certification, and labeling requirements pursuant to Section 14 of the Consumer Product Safety Act.

REASONABLE TEST PROGRAM

The published Proposed Rule requested,

Proposed § 1107.2 would define "high degree of assurance" to mean an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture. Comment on the possible amendments or revisions to the proposed definition of "high degree of assurance."

The five elements described in the Federal Register Notice (FRN) are generally reflective of the main functions of conformity assessment, although recognized industry terminology is not consistently used throughout the document. The FRN relies on the term "test" and "testing" as if all consumer product safety requirements could be evaluated by performing a "test" to ensure ongoing compliance. While full product testing is appropriate in some cases, current consumer product safety regulations imply or specify that evaluation activities not considered to be actual testing (inspections, reviews, audits, etc) may be appropriate. These include:

- *16 CFR 1211.14* – requirements for instruction manuals for garage door openers
- *16 CFR 1211.15* – requirements for labels to be installed in the field for garage door openers
- *16 CFR 1633.6(a)* – requirements for quality assurance by manufacturers of mattresses and mattress sets

- *16 CFR 1750.6* – requirements for refrigerators; the first paragraph explicitly indicates evaluation activities other than laboratory testing are expected to be employed for verifying certain aspects of compliance with regulatory requirements in 16 CFR 1750
- *16 CFR 1505.5* – electrical design and construction requirements for electrical products intended to be used by children

UL previously submitted a recommendation that the CPSC refer to Annex A to ISO/IEC 17000, which provides a general description of the functional approach to activities constituting conformity assessment, to address this question relative to the interpretation of the use of the phrases “test” or “testing.” The CPSC did not believe that the recommendation would be equivalent to a reasonable testing program.

The CPSC did indicate in this most recent draft that certification testing and the product testing plan in the reasonable testing program do allow for a wide latitude of actions in determining initial and continuing compliance to the applicable rules for a product. UL interprets this to mean that existing certification programs administered by independent third party certification programs like that at UL, which include the use of inspections, reviews, audits, and other activities, to determine ongoing conformity of a product, constitute compliance for purposes of the CPSC’s proposed reasonable testing program by providing a “high degree of assurance.”

COMPONENT TESTING RECOGNITION

Evaluation at the component level supports end-product manufacturers in their supply chain integrity oversight and can help streamline component sourcing. However, even when certified components are used in end products, it is necessary that evaluation of the end product include a check that each component is being used under conditions for which it was certified. This is because the safety performance of an end-product may not be able to be solely based on the safety of each constituent part of that product, but instead has to be based on how all of those parts perform once assembled.

While certain conformity assessment activities, like those verifying lead content, might allow for component level results to be sufficient (e.g. coupon testing), other requirements, including safety design requirements and other CPSA-required safety metrics, can only be determined at an end-product level. For example, with electronic toys compliance with safety requirements associated with fire and electric shock hazards can only be assessed once all of the electrical circuitry is assembled, insulated and oriented to its final configuration. In this case, component testing would not constitute conformance with the intended safety performance of the product.

The proposed rule would allow a manufacturer to substitute component part testing for finished product testing pursuant to 16 CFR part 1109 unless the rule, ban, standard, or regulation applicable to the product requires testing of the finished product. The language provided in the Proposed Rule is ambiguous and unclear, as it infers component testing is allowed unless the statute already indicates a specific product has to be tested in its final form, which is not spelled out explicitly for every product regulated under the CPSA.

UL requests that the CPSC clarify (including examples) what products would be eligible for component testing and, where applicable, which specific safety requirements are not considered to be compromised by component level testing. This additional detail should include explicit rules that no reasonable test program associated with electrical safety standards and regulations can rely solely on component level testing activities.

EXISTING TESTING AND CERTIFICATION PROGRAMS

The published Proposed Rule requested,

Some industries have developed and implemented testing and certification programs that are intended to determine compliance with specific standards. Comment about such programs.

Recognition of existing third party certification programs and their closed loop approach to safety certification could help the CPSC provide assurances of product conformity with published CPSA requirements. While references to the current requirements for children's products under the CPSA reference "third party certification," UL believes that the focus on ISO 17025-compliant laboratories and requirements associated with test regimens versus closed-loop certification programs indicate that the current programs being developed by the CPSC are not authentic certification programs, but rather mandatory third party laboratory testing – a very different compliance protocol.

The use and control of recognized third party certification marks are among the best practices of certification programs that should be recognized as a compliance tool for purposes of CPSA requirements. Such marks are extensively and effectively used throughout global safety systems, including here in the US, and demonstrate independent assessment that a particular product complies with the associated safety requirements for that product. These marks have come to be relied on by consumers, retailers, manufacturers, customs inspectors, AHJs, and other critical participants in the safety system. Introducing new certificates of conformity and other requirements without recognition of the current system causes confusion amongst stakeholders in how to look for and assess a product's compliance and creates a need for duplicative conformity assessment activities.

As CPSC looks to define how a reasonable test program will apply to all products within its jurisdiction, in addition to considering the closed-loop processes in existing programs like those offered by UL, UL encourages the CPSC to consider leveraging best practices of established third party certification programs and build on those successes. Further, the CPSC should look at requirements for certificates of conformity and take steps to recognize certification marks in lieu of such certificates when the product has been certified as compliant with associated product standards through a program that reflects CPSA requirements by an ISO/IEC Guide 65 accredited certification body.

UNDUE INFLUENCE AND "INDEPENDENT" LABORATORIES

The published Proposed Rule requested,

Regarding protection against undue influence. Comment on the cost and other impacts of the provision.

UL believes that validation of a laboratory's independence is critical to the success of all CPSC safety initiatives, including program development for third party testing for children's products. The Occupational Safety and Health Administration's (OSHA) National Recognized Testing Laboratory (NRTL) program and ISO/IEC Guide 65 underscore the critical role of independence. OSHA's NRTL program requires extensive review of a laboratory's independence. Additionally, ISO/IEC Guide 65 details the requirements of operating without a conflict of interest and includes several requirements concerning organizational structure to protect impartiality and conflict of interest. **While we recognize the CPSC has not moved towards requiring ISO/IEC Guide 65 accreditation as part of its children's product certification program to date, we believe that the Commission should consider the requirements of Clause 4.2 of ISO/IEC Guide 65 and look to OSHA's NRTL program as an example of the level of inquiry that should be required, the type of requirements that should be implemented, and to ensure impartiality and prevent conflict of interest.**

ISO/IEC 17025:2005

Under the CPSC's published accreditation procedures, a firewalled laboratory must be accredited to ISO/IEC 17025:2005 (the baseline third party laboratory accreditation requirement). UL has observed that the means by which an accredited laboratory fulfills the above ISO/IEC 17025:2005 requirement, and the extent of an accreditation body's assessment of this requirement, can vary significantly. Yet, this is the

key requirement of ISO/IEC 17025 on which CPSC relies to ensure that a firewalled or government laboratory will operate impartially.

To achieve needed confidence regarding impartiality and to preserve the integrity of the product testing, CPSC should require applicants, including the firewalled and government laboratories, to submit the evidence used to validate the fulfillment of ISO/IEC 17025 4.1.5 b as part of their application to the CPSC. Independent laboratories would meet this requirement by providing evidence of their impartiality through their ownership or legal structure. To demonstrate a similar level of neutrality, firewalled and government laboratories would need to submit the evidence utilized for the fulfillment of ISO/IEC 17025 4.1.5 b.

By requiring this information, CPSC will drive accreditation bodies and laboratories to prioritize attention to this requirement. It will also help to promote consistency in the accreditation process on a global level by requiring similar documentation for all laboratories and reducing the likelihood that laboratories will be held to differing and lesser standards that may be influenced by culture or geographical differences. Additionally, it will provide the CPSC with a means for monitoring compliance with independence requirements by accredited laboratories.

Frequency of Lab Evaluation

To protect the integrity of the testing process, it is important for the CPSC to require assessments of a lab's independence and freedom from undue influences on a more frequent basis. **This rigorous evaluation of a laboratory's independence should be required annually, or at least coincide with both reassessment visits and surveillance visits.**

Definition of Independent Laboratory v. Firewalled Laboratory

Of critical attention, the CPSC is not differentiating in any CPSC published definitions between what are authentic, independent conformity assessment bodies from manufacturer-owned, firewalled labs . It is imperative that the CPSC continue to use terminology for purposes of developing regulatory requirements differentiating these two categories that is consistent with widely used terminology in the manufacturing communities and to assert the actual structure of such laboratories. Such terminology should be incorporated into all CPSC-published rules and would provide additional clarification as to potential undue influences.

CONCLUSION

Establishment of an authentic certification scheme helps provide a closed loop structure to ensure continued product compliance – from manufacture, to sale, to use. In considering implementation of testing and certification requirements under Section 14 of the CPSA, the CPSC should keep in mind the long-established model of third party product safety certification, which has proven an effective tool for ensuring conformity for more than a century. By looking at such programs, incorporating widely-adopted industry practices and terminology, and recognizing their practices, the CPSC will be better positioned to advance safety and support the manufacturing, importation, and sale of safer products in the United States. UL applauds CPSC's ongoing efforts to develop safety programs and implement the provisions of the Consumer Product Safety Improvement Act of 2008 and welcomes the opportunity to continue collaboration to ensure that existing certification best practices are leveraged where possible to support the Commission's objectives.

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Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0022
Comment from James Reed

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General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0022.1: Comment from James Reed

**YKK Corporation of America Comments to the Consumer Product Safety
Commission (“CPSC”) Regarding Proposed Rules on Certification Testing and
Labeling and Component Part Testing
(Docket Nos. CPSC-2010-0038 and CPSC-2010-0037)**

8/3/10

My name is Jim Reed and I am Vice President and Chief Legal Counsel to YKK Corporation of America. YKK Corporation of America is a subsidiary of YKK Corporation, a global leader in the manufacture of fasteners such as zippers, buttons, snaps and webbing. YKK operates in over 70 countries/regions around the world, including the U.S., where it has over 1,800 employees, principally at manufacturing facilities in Macon, GA, Dublin, GA, Anaheim, CA, Lawrenceburg, KY and Oxford, AL.

YKK supports the Commission’s efforts to create sensible regulations to implement the objectives of the Consumer Product Safety Act (“CPSA”), as amended by the Consumer Product Safety Improvement Act (“CPSIA”). YKK is a leader in its field and is committed to creating safe products of high quality. Although YKK does not manufacture children’s products, some YKK components are used in children’s products sold in the U.S. Consequently, YKK has a strong interest in ensuring its products meet and exceed the requirements of the CPSIA.

As a global manufacturer of component parts, YKK has a practical view into how the proposed testing regulations will work. Because the overwhelming majority of consumer products sold in the U.S. are produced overseas, nearly all of the work necessary to ensure compliance with the regulations will also be performed overseas. Since the cost of compliance for foreign manufacturers can be relatively high while the risks associated with non-compliance can be relatively low, it is important the Commission’s regulations balance the need for a high degree of assurance of compliance with the need to develop a practical regulatory structure that foreign manufacturers can and will implement.

With this in mind, YKK offers its comments to the CPSC’s proposed regulations under both 16 C.F.R. § 1107, Testing and Certification of Consumer Products and 16 C.F.R. § 1109, Component Part Testing. For ease of reference, the comments presented below are organized by the relevant sections of the proposed rules.

I. 16 CFR 1107 Testing and Certification of Consumer Products

A. 1107.2 Definitions, “High Degree of Assurance,” – YKK believes that manufacturers would benefit from further guidance and explanation of how to achieve a “high degree of assurance” through their testing programs. The Commission’s comments accompanying the proposed regulation refer to a 95% statistical significance level as constituting a “high degree” of assurance.

However, that 95% confidence threshold is not mandated by the proposed rule. Does the CPSC consider 95% confidence to be a safe harbor level? What factors would permit a manufacturer to satisfy the “high degree of assurance” requirement with a statistical significance level below 95%? Could the CPSC provide an example of a situation where a manufacturer could still achieve a high degree of assurance with less than 95% assurance?

B. 1107.10 Reasonable Testing Program for Non-Children’s Products - YKK believes it would be useful if the regulations addressed situations in which a certifier or testing party, acting in good faith, may challenge test results produced by a third party testing laboratory. In its comments accompanying the proposed rule, the Commission argues against simply “re-testing” a product that fails an initial test. YKK suggests clarifying this provision to indicate that some re-testing following a failing test result may be appropriate to ensure the testing party did not perform the test incorrectly. We recognize that re-testing is complicated by the fact that the initial test sample is destroyed by the ICP test method. However, the necessary destruction under ICP also creates a problem for the manufacturer that wants to challenge a report. YKK has experienced erroneous reports from third party testing labs from time to time. Challenging test results from an ICP test method has proven to be difficult and time consuming, often taking weeks to sort out. Thus, we suggest the Commission clarify that an acceptable remediation plan could include a good faith investigation into lab test results (even those of third party labs), which could also include retesting additional samples. This accommodation seems reasonable in light of the fact the regulations ensure that most manufacturers should have reasonable testing programs in place and will have a high degree of assurance that their products are compliant before a third party test is conducted.

C. 1107.10(b)(2)(i)(A) and Certification Testing of Raw Materials – This section indicates that only finished products or component parts listed on a product specification can be submitted for certification testing. This regulation appears to limit the extent to which a party may test subcomponents or raw materials. As discussed in more detail below, raw (or base) material testing is critical to manufacturers like YKK being able to develop programs to comply with the law. Please confirm it is not the intent of the rule to limit testing to finished products and component parts in situations where testing subcomponents or raw materials are sufficient to properly assess compliance, such as with chemical content tests.

Components such as fasteners are highly customized for different uses and different customers. Apparel manufacturers require their own button design, with various colors and styles that change with the fashion season. Buttons are typically composed of three or four different subcomponents, and zippers often have seven or more different subcomponents. YKK’s zipper business in China

must maintain over 374,000 different zipper sku's. Our button business must maintain over 10,000 button sku's. In addition, YKK has over 578 stock colors, and creates thousands of custom colors for its customers. In short, even component manufacturers have complex products with complicated production processes.

In order for companies like YKK to consider managing reasonable testing programs or third party testing, they must be able to test the base raw materials prior to actual production. YKK's hundreds of thousands of products can be seen as different combinations of a smaller population of subcomponents and raw materials. It is through working with this smaller population of subcomponents and raw materials where manufacturers like YKK can effectively manage quality in areas such as lead levels.

YKK can and does ensure that its products meet or exceed the lead levels imposed by the CPSIA. Our products currently have less than 90 ppm lead for surface coating and less than 90 ppm lead for content. We can ensure this quality because we (a) purchase high quality raw materials from reputable sources, (b) test samples of raw materials and parts as they come into our facilities, (c) manage and monitor production to control the risk of contamination, and (d) test selected samples post production. The ability to test raw materials, including base paint colors, prior to mixing and production is critical to our ability to comply with the proposed regulations. If we can ensure every item entering the production process has less than 90 ppm lead, then we can ensure that any combination of those materials will also be less than 90 ppm lead; therefore, raw material or base material testing can be effective in managing content and surface coat quality.

On April 1, 2010, the CPSC staff issued a memo to the Commissioners stating that "some chemical tests may be performed on the raw materials used in the component part" The memo continued with a salient example of how resin may be tested in its raw form prior to entering the production process. This was valuable insight and direction, and YKK would suggest this concept be introduced and further explored in the actual language of the regulations and the commentary for further clarification.

D. 1107.22 Random Samples – YKK would like the Commission to provide more guidance on the question of random sample selection. As currently drafted, 16 C.F.R. § 1107.22 requires that all potential samples have an equal chance of being selected. However, from a practical standpoint, perfect randomness is nearly impossible to attain, given variations in product manufacturing schedules and the constraints imposed by the periodic testing requirements in the proposed rule. Such an absolute standard of randomness would not be practicable or cost effective in many manufacturing circumstances. Thus, we believe a more

reasonable and flexible approach to random sampling is warranted, one that companies can tailor to their specific products.

For example, YKK believes it would be appropriate to permit companies to apply reasonable random sampling methods within designated time periods corresponding to a product's production cycle. This approach may avoid confusion about how to maintain randomness while still meeting the time interval requirements for periodic testing. Notably, if the regulations require absolute randomness, then a periodic testing requirement that requires no less than one test every twelve months will actually require testing every six months in order to ensure the test occurs at least once every twelve months.¹ Thus, we believe the timing of random sampling should be clarified in the final rule.

E. 1107.24 Undue Influence – This section of the regulations imposes on manufacturers, importers and testing parties an obligation to provide annual training to their staff to avoid imposing undue influence on third party labs. YKK would like the Commission to consider eliminating this training obligation on manufacturers and importers, as the substantial costs associated with developing and implementing such training will likely far outweigh the benefits, particularly given the existing training requirement already imposed upon third party testing laboratories to detect, avoid and report any such pressure.

Section 14(d)(2)(B)(iv) of the CPSA states that the Commission must establish protocols and standards for avoiding the possibility of undue influence being imposed on third party labs. The Commission, however, has already addressed this by requiring third party labs to train their employees on how to recognize undue influence, avoid it and report it to the CPSC. This seems appropriate since the third party labs will be the most likely to recognize the undue influence.

Companies such as YKK have their own codes of conduct and require their employees to follow the law and not engage in unethical behavior such as exerting undue influence on testing labs. To impose an additional training obligation on both sides of the manufacturer/third party lab relationship seems redundant. The third party lab technicians are already trained on the issue, their accreditation depends on their compliance, and they will be a better barometer of such undue influence than the party alleged to have imposed undue influence. We believe this issue is adequately addressed in the third party lab certification

¹ If absolute randomness is required, then manufacturers would not be able to schedule periodic testing, the date of periodic testing will be selected randomly any time during the period. If the intent is to have annual periodic tests, then the manufacturer will actually need to conduct tests once every six months to ensure the necessary test is conducted at least once in the twelve month time frame. For example, if a manufacturer requires complete randomness to select the date of an annual periodic test, then the manufacturer risks the interval between tests actually being the first day of Year 1, and the last day of Year 2; or, the last day of Year 1 and the first day of Year 2. Therefore, the potential time period between "periodic" tests could be as long as 729 days or as little as 1 day.

regulations and need not be repeated here where the sizeable implementation costs spread across the global supply chain are excessive.

F. 1107.26 Recordkeeping (also, 1109.5(i) Recordkeeping for Component Parts) – The recordkeeping requirements of the proposed regulations require that all test data, production plans, remediation plans, test results and remediation results be maintained in the English language. YKK feels this requirement may be overbroad, unnecessarily expensive and potentially dangerous. YKK understands the need for the CPSC to quickly determine the source of a potentially dangerous situation, however, it seems more appropriate to require all relevant data be translated into English at the manufacturer's or importer's expense when the CPSC conducts an investigation or otherwise requires documentation.

It is likely the overwhelming majority of all consumer products sold in the U.S. will be manufactured, tested and certified in non-English speaking countries. As currently drafted, the proposed rule will require millions of test reports and records be created and maintained in English, even though only a small fraction of a percent of these test reports will ever be reviewed by the CPSC or other third parties. Requiring that all testing and reasonable testing program documentation be created in English is extremely expensive for the manufacturer because they must find and hire English speaking technicians to perform the testing. More importantly, this requirement is potentially hazardous. For example, a quality assurance technician in Vietnam may be excellent at maintaining the quality of a product, and she may even have a passable grasp of English, but her English skills may not be sufficient to communicate precise technical findings in English. If she is nonetheless required to record her findings in English, then there is a risk the test results will be transcribed, described and maintained inaccurately. Thus, we ask that the Commission reconsider this English-only requirement in the proposed rule.

II. 16 CFR 1109 Conditions and Requirements for Testing Component Parts of Consumer Products

A. 1109.4(c) Component Part Certifier vs. 1109.4(k) Testing Party – From YKK's reading of the definitions and the requirements imposed on a component part certifier and a testing party, there does not appear to be any material difference between the two with respect to their testing and reporting duties. The testing party and the component part certifier both appear to be required to provide the finished product certifier essentially the same data in the same format. Thus, the only significant difference between a component part certifier and a testing party appears to be that a certifier assumes legal liability under the law and a testing party does not. What additional benefits would component part certifiers expect to receive for taking on the additional liabilities? What kinds of

enforcement actions, if any, would a testing party be subject to if it failed to comply with the reporting and recordkeeping requirements described in the proposed rules? It would be helpful if the regulations more specifically defined and differentiated the roles and duties of these two actors.

B. 1109.4(g) Component Part Certifier – Those working under the component part certification regulations would greatly benefit from a more detailed explanation of how a component part supplier assumes the role of a “component part certifier.” Since the word “certify” or “certification” is so prevalent in business communications in a variety of different contexts, it would be quite simple for a component part supplier to inadvertently be deemed a component part certifier when it was not its intention to become one.

The CPSIA and the rules around product certification have created new and important responsibilities for “certifiers,” which adds additional weight to the verb “to certify.” Industries such as the apparel industry have relied heavily for decades on certifications of compliance from vendors. Following enactment of the CPSIA, however, the term “certification” now carries significantly more weight. Consequently, there is much confusion in the marketplace as to what “certification” means in various contexts. For example, many purchase orders and standard terms and conditions in contracts and supply agreements continue to include boilerplate language referencing “certification,” but without an express reference to CPSIA compliance.

In order to avoid confusion in the marketplace, and to further support the voluntary aspect of the roles played by component part certifiers and testing parties, YKK suggests that the proposed rule be clarified to require any party seeking to be a component part certifier under 16 C.F.R. § 1109.5(g), or a testing party under 16 C.F.R. § 1109.5(k), to specifically state in writing that it is providing a certification or testing data as a certifier or testing party (as the case may be) under those regulations. Given the voluntary nature of the component part certifier and testing party roles, a component part supplier should not be compelled to act in either of those roles without expressly stating its intention in writing to assume the accompanying obligations under those specific regulations. Thus, we believe the proposed rules should be clarified to include the threshold actions a supplier should take to declare themselves a component part certifier or a testing party under the regulations.

C. 1109.4(m) Traceability and Subcomponents – The traceability requirements under the proposed component part testing rule will strengthen efforts to promote compliance. There remains, however, some ambiguity as to what constitutes a “manufacturer” under this provision. Many components are actually assemblies of several subcomponents. As stated above, zippers and buttons are components constructed from several subcomponents. YKK makes most of its

own subassemblies for its components. Thousands of other smaller component “manufacturers,” however, are more accurately described as component “assemblers.” These “manufacturers” source subcomponents from various other manufacturers and assemble them. A zipper “manufacturer,” for example, may obtain sliders from one provider and zipper chain from another supplier. In order to confirm compliance and trace the components to their source, YKK suggests the traceability requirement continue through the supply chain to subcomponent manufacturers, otherwise, the CPSC risks a break in the chain of accountability for the component.

D. 1109.4(m) Traceability - Component parts from various suppliers can be commingled prior to their introduction into the finished product. YKK recommends that the regulations surrounding traceability require manufacturers to maintain the integrity of different batches of components in the production process.

Notably, finished product manufacturers may receive discrete component shipments, but the shipments may be commingled with similar components from other sources ordered at different times. Since components generally do not carry identifying manufacturing data, the CPSC’s requirement for traceability will be better understood if the traceability requirements specifically included instruction to maintain inventories in a way to avoid commingling components from different sources, or even commingled components ordered from the same source at different times. Commingling can threaten the integrity of component testing as a viable alternative testing procedure. Mixing a batch of non-compliant components with a batch of compliant components contaminates the entire lot without any way to sort them out again. The CPSC can discourage this from happening by requiring finished product manufacturers to manage their component inventories in ways that will avoid the use of commingled lots in a single finished production lot.

E. 1109.5(c) Test Method and Sampling Protocol – This rule requires component part certifiers and testing parties to “use the sampling protocols and test methods required under Section 1107.” This appears from our reading to leave some ambiguity as to which specific aspects of an 1107 reasonable testing program such testers must maintain and which ones are not necessary.

It would be very useful for the CPSC to specify in this rule what aspects of the reasonable testing program under 1107 are required of a component part testing party. A reader may infer 1109.5(c) requires a testing party to maintain all aspects of a reasonable testing program, including the recordkeeping and reporting requirements. Section 1109, however, has its own recordkeeping requirements for testing parties, as well as its own disclosure/reporting requirements; therefore, it seems that there is some difference in what is required

under 1107 and what is required under 1109. Clarity around this is most important to understand what aspects of a reasonable testing program a component part certifier or a component part testing party must have in place to properly provide certifications or test reports (as the case may be) to finished product manufacturers.

F. 1109.5(f)(7) Documentation by Testing Party – (Certification?) – This provision seems to require a testing party to “certify” that third party testing results meet the requirements of Section 14 of the CPSA. Thus, it appears to conflict with other provisions in the proposed rule that establish testing parties as entities that conduct proper testing, but do not have to “certify” under the CPSA. This provision, therefore, causes some confusion on the extent to which a testing party is required to “certify.” Additional clarity regarding the intent of this provision would be useful to better understand the level of “certification” a testing party must make.

G. 1109.11(a) Component Part Testing for Paint and Other Surface Coatings – Generally – Manufacturers do not just deal with single paints of a specific color. Many, like YKK, purchase base colors and mix them to create a specific color required for a specific product. YKK offers 578 stock colors, and develops thousands of custom colors each year for its customers. It would be impossible for manufacturers like YKK to test every mixed color it uses to paint its products. Just like raw material testing, it is important for all testing parties to be able to test base colors prior to them being mixed in the production process.

YKK only purchases base paints that contain less than 90 ppm of lead. As a result, YKK can ensure that no matter what the paint mix is, it will not exceed 90 ppm of lead. YKK also engages in internal testing to ensure the quality of those base paints. Finally, YKK ensures the paint is not contaminated in the production process. It would be useful; therefore, if the rules could specifically recognize that base paint testing under a controlled production process is acceptable under the paint testing regulations.

Also, this section appears to address paints as if they are components of a finished product. Components such as fasteners are also painted, so it would be useful if the surface coating rules applied equally to component parts and finished products. Similar issues of consistent application pertain to lead content testing for components and component part certificates under 1109.12(c) and 1109.13.

H. 1109.11(b) Test Reports – This rule indicates that a test report for paint must be commissioned by the finished product certifier. As stated above, however, components must also be painted. If it is the Commission's intent that paint on

component parts be treated the same as paint on finished products, then we suggest that the proposed rule be revised to permit others, such as component part certifiers or testing parties, to commission test reports as well.

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Comment from Karl Spilhaus

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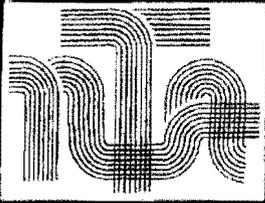
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General Comment

The National Textile Association (NTA) is pleased to file comments on the Agency's proposed rule regarding "Testing and Labeling Pertaining to Product Certification." Our comments will apply primarily to 16 CFR 1610, Standard for the Flammability of Clothing Textiles which has been identified as "Commercial Standard 191-53." Please see attached letter.

Attachments

CPSC-2010-0038-0023.1: Comment from Karl Spilhaus



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August 3, 2010

Office of the Secretary
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Re: Docket No. CPSC-2010-0038

Dear Mr. Secretary:

The National Textile Association (NTA) is pleased to file comments on the Agency's proposed rule regarding "Testing and Labeling Pertaining to Product Certification." Our comments will apply primarily to 16 CFR 1610, Standard for the Flammability of Clothing Textiles which has been identified as "Commercial Standard 191-53."

NTA is the nation's oldest manufacturing association and represents fabric-forming companies. NTA members knit and weave fabric in the U.S. and supply fibers, yarns, or other materials and services to the American textile industry. Our members manufacture textile products used in the apparel, home furnishings and industrial sectors and are proud of our industry's outstanding record of providing safe products for our customers worldwide.

Apparel fabrics were originally regulated in 1953 when Congress passed the Flammable Fabrics Act. Since that period, we have provided safe, functional and stylish products for consumer use and we continue to do so. For more than half a century, fabrics used for apparel have been required to pass 16 CFR 1610. Over these decades of regulation, millions of tests have been conducted on apparel fabrics and industry, government and academia have gained an enormous amount of knowledge of how apparel fabrics will perform when evaluated by 16 CFR 1610.

Based on this vast amount of technical knowledge gained from testing, the government concluded that certain fabrics consistently yield acceptable results when tested via 16 CFR 1610 and therefore those issuing initial guarantees for any of the following types of fabrics, or of products made entirely from one or more of these fabrics are exempt from any requirement for testing to support guarantees of those fabrics:

- A. Plain surface fabrics weighing 2.6 ounces per square yard or more, regardless of fiber content, and

- B. Regardless of fabric weight, all fabrics, both plain surface and raised fiber surface, made entirely of acrylic, modacrylic, nylon, olefin, polyester or wool, or any combination of these fibers.

The Standard for the Flammability of Clothing Textiles applies not only to adult apparel but also to children's apparel. Therefore, we envision applying this requirement to children's products will have no practical impact to the way fabrics have been evaluated in the past.

Fabrics that are regulated by 16 CFR 1611, Standard for the Flammability of Vinyl Plastic Film, are ".....nonrigid, unsupported, vinyl plastic film, including transparent, translucent, and opaque materials, whether plain, embossed, molded or otherwise surface treated." These fabrics include products for rainwear and other specific applications.

Our members do not normally manufacture fabrics regulated by 16 CFR 1611 and therefore, are not directly affected by this regulation. However, we acknowledge that others are. Without an option to exempt specific fabrics as allowed in 16 CFR 1610, the testing costs for the many styles of fabrics in the 16 CFR 1610 category could be large. In order to reduce the testing burden, a similar exemption scheme might be established based on extensive prior testing.

In conclusion, we envision that flammability testing costs will be minimal for fabrics regulated by 16 CFR 1610 due to the exemption set out in 16 CFR 1610.1 under the purpose, scope and applicability.

We appreciate the opportunity to provide comments on this proposed rule and will be pleased to respond to any questions.

Sincerely,



Karl Spilhaus
President

KS/jl

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038

Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001

Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0024

Comment from Shawn Paulsen

Submitter Information

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Phone: 416-747-4223

Organization: CSA International

General Comment

Please accept this document and referenced document as official comments.

Attachments

CPSC-2010-0038-0024.1: Comment from Shawn Paulsen

CPSC-2010-0038-0024.2: Comment from Shawn Paulsen



August 3, 2010

Office of the Secretary
Consumer Products Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
cpsc-os@cpsc.gov,

**Subject: Consumer Product Safety Commission, CPSC Docket No. CPSC-2010-0038
Proposed Rules for Testing and Labeling Pertaining to Product Certification**

CSA International is pleased to submit comments on the Proposed Rule for Testing and Labeling Pertaining to Product Certification under CPSC Docket No. CPSC-2010-0038 found in the Federal Register 16 CFR Part 1107 published on May 20th, 2010.

Proposed Definition of “High Degree of Assurance” and Requirements for a Reasonable Testing Program

Proposed § 1107.2 would define “high degree of assurance” to mean an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture.

Proposed § 1107.10(b) would describe the five elements that a reasonable testing program must contain. The Commission invites comments on these five elements of a reasonable testing program. How well do these elements fall within the elements of existing quality assurance/quality control programs? In cases where no quality assurance/quality control programs exist, what activities will have to occur to implement the proposed reasonable testing program?

CSA International agrees that there must be a high degree of assurance pertaining to compliance of a product, however, this cannot be based solely on the knowledge of a product and how that product is manufactured. CSA International advocates that a high degree of assurance can be accomplished using existing and entrenched requirements for an accredited certification program that meets the requirements of ISO/IEC Guide 65 and the fundamentals of System 5 product certification requirements of ISO/IEC Guide 67. A System 5 Product Certification System in ISO/IEC Guide 67 already reflects many of the elements identified in the CPSC Reasonable Testing Program such as:

- a) Samples requested by the certification body;



- b) Determination of characteristics by testing or assessment;
- c) Initial assessment of the production process or the quality system, as applicable;
- d) Evaluation of the test and assessment reports according to ISO/IEC 17025
- e) Decision on certification according to ISO/IEC Guide 65
- f) Licensing which is granting, maintaining and extending, suspending or withdrawing the right to use certificates or marks;
- g) Surveillance of the production process or quality system or both of the organization; and
- h) Surveillance by testing or inspection of samples from the factory or the open market, or both.

CSA International maintains that the already existing 3rd party certification system under the Occupational Safety and Health Administration (OSHA)'s Nationally Recognized Testing Laboratory (NRTL) program meets the requirement for a reasonable testing program and we recommend that a similar program or an accredited certification program that meets the requirements of ISO/IEC Guide 65 and ISO/IEC Guide 67 be considered by CPSC. In addition to the above comments CSA International previously urged, (please refer to attached second document), the Commission to consider the principles of product certification outlined in the American National Standards Institute document: "*National Conformity Assessment Principles for the United States*".

Proposed Subpart C – Certification of Children's Products

Some industries have developed and implemented testing and certification programs that are intended to determine compliance with specific standards. The Commission invites comments about such programs.

CSA International believes that the already existing 3rd party certification system under the OSHA NRTL program, in conjunction with testing being carried out in testing facilities accredited to ISO/IEC 17025, is the preferred direction that the CPSC should be headed and we recommend that a similar program or an accredited certification program that meets the requirements of ISO/IEC Guide 65 and ISO/IEC Guide 67 be considered by CPSC. In addition to the above comments CSA International previously urged the Commission to consider the principles of product certification outlined in the American National Standards Institute document: "*National Conformity Assessment Principles for the United States*".

CSA International has concerns with the wording suggesting that component part testing may be used as a substitute for complete product testing. A certified component should not require additional testing requirements, however, the end product may require further evaluation to assess conformity to the end product standards. The CPSC should further clarify under what conditions this process would be accepted.



Protection Against Undue Influence

The commission invites comments from the public providing information on the cost and other impacts of this provision.

CSA International has continuing concerns over the distinct possibility that accredited testing organizations, especially “firewalled” and “government laboratories,” could be subject to influence and threats to impartiality by outside or related interests. CSA International has previously submitted comments to address the recent proposal to issue regulations, establishing requirements for the audit of third party conformity assessment bodies as a condition for their continuing accreditation.

The new audit procedures establish baseline requirements for independent 3rd party laboratories and also firewalled suppliers laboratories and government laboratories. These requirements state that all types of conformity assessment bodies: independent 3rd party, firewalled suppliers, and government owned or controlled, would be treated the same and be called third-party conformity assessment bodies. These different types of conformity assessment bodies have different modes of operation and they need to be treated differently by the CPSC, in both auditing as well as accreditation requirements.

As outlined in previous comments the language used in ISO 17025 to address “undue influence, conflict of interest, and impartiality” is minimal and general in nature and is not adequate to address the needs of CPSC to ensure that children’s toys and other products under the CPIA are adequately evaluated for safety. A more appropriate approach to this issue is to meet the same standard that conformity assessment bodies, that certify products for compliance, must meet – ISO/IEC Guide 65. (Soon to be ISO/IEC 17025 **Error! Reference source not found.**)

Since the CPSC chose not to adopt ISO/IEC Guide 65 for Accreditation applicants, to achieve the needed confidence regarding impartiality and to preserve the integrity of the product testing, CPSC should require applicants to submit the evidence used to validate the fulfillment of ISO/IEC 17025 requirements for the laboratory to “have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work,” not only as part of their application to the CPSC but also ongoing as part of each audit review and resubmission of CPSC Form 223. By adequately evaluating the independence of each accredited laboratory, both in the original accreditation criteria, as well as the audit process, the CPSC will ensure that the important function of its mandate to ensure the safety of consumer products is not compromised by any questions of laboratory integrity.



CSA INTERNATIONAL

CSA International also strongly recommends that independent third party test laboratories be specifically CPSC accepted based on accreditation which the International Laboratory Accreditation Cooperation (ILAC) system, on its own, may not ensure. This would better secure the impartiality of certification. CSA International continues to oppose using ILAC, only, recognition, because there is no reciprocal agreement with ILAC countries to accept American National Standards Institute, Occupational Health and Safety Administration or the Standards Council of Canada accreditations.

Proposed Subpart D – Consumer Product Labeling Program

CSA International believes that the requirement to only provide a statement : “**Meets CPSC Safety Requirements**” is not adequate for indicating compliance. CSA International believes that a registered certification mark is the only way to adequately indicate full compliance. The use of a registered certification mark is also used as a tool to address counterfeiting activities.

In conclusion, CSA International is pleased to have been given the opportunity to provide comments on the Proposed Rules and is very supportive of the initiatives undertaken by the CPSC to address ongoing product safety concerns.

Should you have any questions concerning the foregoing, please do not hesitate to contact me.

Yours truly,

Shawn Paulsen
Manager, Conformity Assessment
CSA International
Shawn.Paulsen@csa-international.org
Phone : 416-747-4223



Office of the Secretary
Consumer Products Safety Commission
4330 East West Highway
Bethesda, Maryland 20814
cpsc-os@cpsc.gov,

October 13, 2009

**Subject: CPSC Federal Register Notice (16 FR Part 1112), CPSC Docket No. CPSC-2009-0061,
Audit Requirements for Third Party Conformity Assessment Bodies**

In October of 2008, CSA International submitted comments on Section 102 Consumer Product Safety Commission's (CPSC's) Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with 16 CFR Part 1303 contained in the September 22, 2008, Federal Register. At that time CSA International expressed concern about the lack of reciprocity requirements. Specifically, the countries of non-US based test laboratories that wish to participate in a certification program such as this should, as a prerequisite, be mandated to offer recognition to US-based test laboratories for its certification programs. Without reciprocity there is the lack of a level playing field; regulators of other countries, such as China, are free to block external competition for its certification programs, eliminating any choice of service providers by manufacturers.

CSA International also strongly recommended that independent third party test laboratories be specifically CPSC accepted based on accreditation which the International Laboratory Accreditation Cooperation (ILAC) system, on its own, may not ensure. This would better secure the impartiality of certification. CSA International continues to oppose using the ILAC only recognition, because there is no reciprocal agreement with ILAC countries to accept American National Standards Institute, Occupational Health and Safety Administration or the Standards Council of Canada accreditations.

In addition to the above comments CSA International also urged the Commission to consider the principles of product certification outlined in the American National Standards Institute document National Conformity Assessment Principles for the United States. While it is generally recognized that, requiring manufacturers to



certify their products based on testing by laboratories that are accredited to ISO/IEC 17025 - General Requirements for the Competence of Testing and Calibration Laboratories, by an ILAC MOU signatory, can ensure that a product conforms to the required standard at the time of testing, it does not ensure that the product continues to conform to the standard throughout production and distribution. Adequate certification type conformity assessment of a product is more appropriately accomplished through the use of ISO/IEC17065 - General Requirements for Bodies Operation Product Certification Systems.

At this time, our continuing concern over the distinct possibility that accredited testing organizations, especially “firewalled” and “government laboratories,” could be subject to influence and threats to impartiality by outside or related interests, has prompted CSA International to submit comments to address the recent proposal to issue regulations, establishing requirements for the audit of third party conformity assessment bodies as a condition for their continuing accreditation.

The new audit procedures establish baseline requirements for independent 3rd party laboratories and also firewalled suppliers laboratories and government laboratories. These requirements state that all types of conformity assessment bodies: independent 3rd party, firewalled suppliers, and government owned or controlled, would be treated the same and be called third-party conformity assessment bodies. These different types of conformity assessment bodies have different modes of operation and they need to be treated differently by the CPSC, in both auditing as well as accreditation requirements.

As outlined in previous comments the language used in ISO 17025 to address “undue influence, conflict of interest, and impartiality” is minimal and general in nature and is not adequate to address the needs of CPSC to ensure that children’s toys and other products under the CPIA are adequately evaluated for safety. A more appropriate approach to this issue is to meet the same standard that conformity assessment bodies that certify products for compliance must meet – ISO/IEC Guide 65. (Soon to be ISO/IEC 17025 **Error! Reference source not found.**)

Since the CPSC chose not to adopt ISO/IEC Guide 65 for Accreditation applicants, to achieve the needed confidence regarding impartiality and to preserve the integrity of the product testing, CPSC should require applicants to submit the evidence used to validate the fulfillment of ISO/IEC 17025 requirements for the laboratory to “have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of



their work," not only as part of their application to the CPSC but also ongoing as part of each audit review and resubmission of CPSC Form 223.

By adequately evaluating the independence of each accredited laboratory, both in the original accreditation criteria, as well as the audit process, the CPSC will ensure that the important function of its mandate to ensure the safety of consumer products is not compromised by any questions of laboratory integrity.

Yours truly,

A handwritten signature in cursive script, appearing to read 'William J Burr', is positioned below the 'Yours truly,' text.

William J Burr
Director, Conformity Assessment
CSA International,
bill.burr@csa-international.org

778.385.7066

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0025
Comment from Wayne Morris

Submitter Information

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Submitter's Representative: Wayne Morris
Organization: AHAM

General Comment

Enclosed are the comments of the Association of Home Appliance Manufacturers on the Proposed Rulemaking on Testing of Children's and Non-Children's Products.

If you have any questions, please contact me.

Attachments

CPSC-2010-0038-0025.1: Comment from Wayne Morris



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August 3, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

CPSC Docket No. CPSC-2010-0038

Dear Mr. Stevenson,

Enclosed are the comments of the Association of Home Appliance Manufacturers (AHAM) with regard to the CPSC Notice of Proposed Rulemaking on Testing of Products 16 CFR 1107, Testing and Labeling Pertaining to Product Certification.

The Association of Home Appliance Manufacturers (AHAM) represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety, and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM is also a standards development organization, accredited by the American National Standards Institute (ANSI). The Association authors numerous appliance performance testing standards used by manufacturers, consumer organizations and governmental bodies to rate and compare appliances. AHAM's consumer safety education program has educated millions of consumers on ways to properly and safely use appliances such as portable heaters, clothes dryers, and cooking products.

AHAM is confining its comments to the Non-Children's Product sections of the Proposed Rule. At this time, the proposed testing and certification requirements would apply to refrigerators and refrigerator-freezers (hereinafter referred to just as "refrigerators") that are subject to the Refrigerator Safety Act (RSA), Public Law 84-930, enacted August 2, 1956, and that is administered by the CPSC. Under Section 102 of the CPSIA, CPSC must establish requirements

for the testing and certification for a product safety rule, similar rule, ban, standard or regulation under any act enforced by the CPSC.

Manufacturers of refrigerators currently comply with the requirements of Section 14 (a)(1)(A) of the CPSA and make available a general conformity certificate for refrigerators showing that they comply with the RSA.

We understand the need for CPSC to implement the law. But, the CPSC has discretion in this area to ensure safety and legal compliance without burdening an industry recovering from a deep recession, particularly considering our exemplary record of compliance.

In the May 20, 2010 Notice of Proposed Rulemaking, CPSC has outlined several important items with regard to testing of random samples, use of third-party testing organizations, defining testing programs or plans and defining a product specification. We believe in substance and in fact that the present third-party safety certification program under the U.S. Department of Labor, OSHA Nationally Recognized Testing Laboratory (NRTL) but to prevent unnecessary expense, resource, waste and confusion we seek several important clarifications.

Clarifications

I. Proposed 16 CFR, Section 1107.10, Subpart B

We believe it is important that the Commission clarify several elements in the proposed Section 1107, Subpart B, to show that currently applied and effective methodologies comply with the intent in the NOPR.

Under Section 1107, Subpart B, “Reasonable Testing Program for Non-children's Products,” the Commission outlines the requirements for a “Product Specification.”

In the appliance industry, manufacturers maintain a technical file or safety certification listing report that contains the elements required by the NOPR. This file describes the product, includes photographs, where important, model names and numbers, and a detailed description of the product. This report from a third-party safety certification organization is actually the property of the certification organization. The material carries a copyright and in order to supply this to the Commission we would need to secure the approval of the certification organization. If it is required, a refrigerator manufacturer can supply a Bill of Materials (BOM), parts listing, raw materials selection and sourcing requirements. However, these are not kept as a part of the technical file. While manufacturers keep this material, it may not be kept in one particular file. In today’s modern supply chain world, these documents are kept by electronic means and may be in different physical locations in the world, but can be produced, with fairly short notice, to CPSC if required.

We believe CPSC should clarify the wording of 1107.10 (a)(1) to indicate that such materials may be available upon request. With regard to 1107.10 (a)(1)(iii), a separate product specification should not be required for each manufacturing site so long as the products and manufacturing processes are identical. Requiring separate product specifications for each site is based on old fashioned methods of manufacturing. Today, manufacturers build identical

products in multiple locations. This same comment applies to the proposed rule's requirement that there be separate product testing plans for each manufacturing site.

II. *Proposed 16 CFR, Section 1107.10—Samples for testing*

The proposed rule seems to suggest that a “sample” must be a finished product or finished component part. This is not consistent with current industry practice. Manufacturers test samples that are identical in all material respects to the product that will be produced in large quantities and distributed in commerce. But it is not always necessary for the sample to actually be a finished product. For example, when testing for compliance with the Refrigerator Safety Act, what matters is that the components and construction of the doors that need to be tested (e.g., hinges, door frame, door seals, etc.) are materially identical to the components and construction that will be used in the final product produced in large quantities. In addition, manufacturers submit to third-party safety certification organizations samples that are identical in all material respects to the finished product. These are accepted for certification testing provided that the manufacturer agrees that the samples are identical in all material aspects.

The Commission should not require finished product/component testing. It should allow samples that are identical in all material respects to the finished product to be tested. Industry has conducted safety tests this way since the 1950s and to date, to AHAM's knowledge, there has not been a single recall for failure to comply with the door opening test. Thus, requiring finished product/component testing in order to give a manufacturer a higher degree of assurance that the product complies with the applicable rule, standard, ban, or regulation would be extremely costly and burdensome and would not increase safety.

We believe CPSC should modify the wording of Section 1107.10 (a)(2)(i)(A) to make it clear that component parts that are materially similar to the finished part can be used for safety certification testing.

A. *Section 1107.10(b)(2)—Certification Testing*

With regard to Section 1107.10 (b)(2) on Certification Testing, it should also be noted that testing of units within a common family of products should allow a test of one unit to represent all others within the family of products, if the other models are materially the same in all aspects that would relate to the compliance with the RSA.

In addition, with regard to 1107.10 (b)(2)(ii)(B), a manufacturer should not be required to conduct additional “certification” testing upon a change to the parts or materials, if they know that the change does not affect the overall safety of the system. We believe this section needs to be re-written to allow manufacturers the ability to make changes to parts and materials, without having to undergo costly and time-consuming certification testing. Manufacturers can conduct in-house testing that would show the results of any change do not materially alter the performance of that part or system with regard to the safety elements in the RSA.

III. *Proposed 16 CFR Section 1107.10 (b)(3)—Production Testing Plan*

We are pleased that CPSC has acknowledged that alternate pathways for showing continued compliance can be used. CPSC has noted that “A production testing plan may include recurring testing or the use of process management techniques such as control charts, statistical process control programs, or failure mode and effects analysis (FMEA’s) designed to control potential variations in product manufacturing that could affect the product’s ability to comply with the applicable rules, bans, standards, or regulations.” However, CPSC goes on to describe a rather rigid product testing plan that must include “A description of the production testing plan¹” and that “Each manufacturing site must have a separate production testing plan²” and that “The production testing interval selected must be short enough to ensure that, if the samples selected for production testing comply with an applicable rule, ban, standard or regulation, there is a high degree of assurance that the untested products manufactured during that interval also will comply with the applicable rule...”³

AHAM urges the Commission to more clearly acknowledge that the elements of a production testing plan enumerated in the rule are not the only elements the Commission will recognize. For example, CPSC should expressly state that the elements the rule enumerates may be used, but that other processes, such as statistical process control mechanisms, may also be used to show compliance.

IV. *Proposed 16 CFR Section 1107.10 (b)(5) Recordkeeping*

In section 1107.10 (b)(5)(i)(C), CPSC proposes that the records of each certification test include the identification of the third-party certification body and “Records of certification tests must describe how the product was certified as meeting the requirements, including how each applicable rule was evaluated, the test results, and the actual values of the tests.”

With regard to safety certification testing by many of the OSHA NRTL laboratories, a full certification testing report is made available to the applicant or holder of the certification file. It is often the case, however, that the safety certifier will list the tests conducted, but not describe in detail the test or the test values. The safety certifier will make available a certificate of compliance or notice of authorization to ship the product, which will designate that a particular model or group of models within a family comply with all aspects of the safety standard (which would include UL 250, Section 8.28) and is the same as the RSA. The fact that a manufacturer has available a notice of authorization to ship or to apply the safety mark is proof that the product complies, even though a traditional test record may not accompany the full report to the applicant or company owning the file.

¹ Proposed 16 CFR 1107.10 (b)(3)(i)

² Proposed 16 CFR 1107.10 (b)(3)(ii)

³ Proposed 16 CFR 1107.10 (b)(3)(iii)

We believe CPSC should clarify the language in this section to allow manufacturers the option to show compliance without necessarily producing a full test record and all test values. Requiring anything more will not add to the goal of increasing product safety, but will substantially add to the test and record-keeping burden.

In addition, this section implies that, upon request, CPSC must have available the technical file from the safety certification organization. As we mentioned earlier, the technical file is the property of the safety certification organization. A copy of this technical file or listing report will be available at the office of the company that owns the file. This detailed technical file with test reports also includes a full description of the product and all components. It is considered by companies as confidential business information (CBI) source. A copy of this technical file may not be available at the office of the brand owner, an international company operating a sales organization in the U.S., or retailer location in the case of imports. Upon request, and with the approval of the safety certification organization, such a file may be made available to CPSC with fairly short notice direct from the OEM.

Additionally, companies often produce privately branded product for another company or retailers. The Original Equipment Manufacturer (OEM) company may have a copy of the safety certification testing report or listing report. Because of confidential business information and the copyright of the safety certification organization, the OEM may not wish to make such information available to the brand owner or to the retailer. However, upon request and with the approval of the safety certification organization, refrigerator manufacturers could make this available to CPSC. CPSC should acknowledge that because of protection of Intellectual Property and CBI, the files may be made available upon request.

* * *

We appreciate the ability to comment on this important rule. If you have questions on any issues we have raised, please do not hesitate to contact us.

Sincerely,



Wayne Morris
Vice President, Division Services

PUBLIC SUBMISSION

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Tracking No. 80b281ce
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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0026
Comment from Christopher Hudgins

Submitter Information

Name: Christopher Hudgins

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0026.1: Comment from Christopher Hudgins



INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

August 3, 2010

Consumer Product Safety Commission
Office of the Secretary
4330 East West Highway
Bethesda, MD 20814

Re: Testing and Labeling Pertaining to Product Certification; Proposed Rule [CPSC Docket No. CPSC-2010-0038], published at 75 FR 28336 (May 20, 2010)

Dear Mr. Secretary:

The International Sleep Products Association (ISPA) submits the following comments to the Consumer Product Safety Commission (CPSC) regarding the above referenced rulemaking on behalf of the mattress manufacturing industry.

Introduction

As amended by the Consumer Product Safety Improvement Act (CPSIA), Section 14 of the Consumer Product Safety Act (CPSA) requires “the testing and certification of products subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission.” Currently, this requirement applies to all mattresses, which are required to meet CPSC flammability standards codified at 16 CFR Parts 1632 and 1633.

Section 14(a)(1), as amended, further states that such certifications should be “based on a test of each product or upon a reasonable testing program.” In comments filed with the CPSC earlier this year, ISPA had urged the CPSC to conclude that Parts 1632 and 1633 already constitute a reasonable testing program for these purposes, and that no further action relative to these standards is necessary. In its proposed rules, the CPSC did not address this approach.

For purposes of these comments, ISPA:

- reiterates its prior comments urging the CPSC to conclude that Parts 1632 and 1633 already constitute a reasonable testing program,
- provides input on specific provisions in the CPSC’s proposed rules, and
- urges the CPSC to conduct a full cost-benefit analysis of the impact of the proposed rules on industries like ours that are overwhelmingly comprised of small businesses in order to determine whether the costs that the new rules will impose on the industry are appropriate under the circumstances.

1. The Proposed Rules Will Impose Significant New Costs on the Mattress Industry

As the CPSC’s own data show, several hundred facilities in the United States manufacture mattresses and the vast majority of these (i.e., 456 of 466 entities) are considered to be small businesses for

purposes of the agency's Regulatory Flexibility Act analysis. 75 FR 28353. In fact, of the 27 industries that the CPSC has analyzed in Table 2 of the preamble to the proposed rules, it appears that the mattress industry ranks 11th in terms of the ratio of small firms to total firms, at a concentration of 96.97%. After analyzing how the proposed rules might affect all of the small businesses subject to the proposed rules, the CPSC recognizes that "[t]he proposed rule, if finalized, could have a significant adverse impact on a substantial number of small businesses." Id. at 28359.

ISPA submits that this impact would be substantially worse for the mattress industry, given the nature of the products we make, the types of standards that those products must meet, the destructive nature of the testing involved and the cost of the samples to be tested. For example, the open-flame standard codified in Part 1633 exposes a finished mattress set to a large flame on both the top and one side surface of the mattress. Even if the mattress passes the test in all respects, the flames exposed to the product damage all materials and components used in the mattress rendering them completely useless. As a result, a manufacturer has no choice but to scrap a test sample in its entirety because it cannot repair or otherwise modify the mattress into a form that the company can sell to a consumer. Depending on the type of mattress being tested, the value of the sample product being destroyed averages roughly \$400 to \$500.

Furthermore, given the complexity of, and dangers inherent in, the fire testing required by Part 1633 and the fact that the standard requires the testing of a finished mattress set, only fairly large and sophisticated fire labs are qualified to conduct these tests. As a result, virtually all 1633 tests are conducted by third party labs. Only a handful of labs in the United States are qualified to perform these tests. Thus, in addition to the cost of the sample to be destroyed in the 1633 test, mattress manufacturers must pay freight costs to ship the product to the test lab as well as the test lab fees themselves. Lab test fees today run approximately \$350 to \$550 per sample tested and, depending on the distance that the samples must be shipped, transport costs can range up to \$600 per sample.

Finally, many mattress manufacturers find it useful to have personnel present at the fire labs to witness the testing. Although the lab usually provides data and video of each fire test, much can be learned from personally observing how a given sample behaves when exposed to the 1633 heat source. As a result, the full cost of conducting a 1633 test can range from \$850 to \$1650 per sample tested, plus added travel and salary expenses for company personnel to witness the tests, which can range from \$300 to \$1000. Therefore, the cost of additional mandatory full-product testing would be substantial for an industry that the CPSC's data show is overwhelmingly comprised of small businesses.

ISPA urges the CPSC to take this information into account in deciding what type of "reasonable" testing program the mattress industry needs to implement in order to meet the requirements of CPSA Section 14. The onset of the current recession roughly coincided with the July 1, 2007 effective date of Part 1633. The recession has hit the mattress industry hard. Our market, measured in terms of wholesale dollars and units, shrank from 2007 to 2009 by nearly 20% and the industry lost more than \$1.2 billion in sales. During this period, mattress producers and suppliers of every size either closed their doors, went through bankruptcy, or were forced to layoff workers and restructure. Many still struggle to remain in business.

Although it is difficult under these circumstances to pinpoint specific factors that influenced this outcome or to quantify their impact, the mattress industry's compliance with Part 1633 at the very least compounded the financial pain. As the cost-benefit analysis that the CPSC conducted when it

promulgated Part 1633 several years ago showed, the agency clearly understood that the industry would incur substantial additional costs, in terms of design, testing, new materials, labor, machinery and other factors of production, to meet the requirements of the new standard. Being required to incur these added costs at a time that the current recession began has clearly hurt an industry that was already experiencing substantial financial stress.

To be clear, the industry is not seeking relief from the existing requirements of Part 1633. However, we urge the CPSC to take into account the significant new costs that the proposed rules will impose on an industry like ours, which is overwhelmingly comprised of small businesses and is financially fragile. For these reasons, ISPA urges the CPSC to reconsider our request that the existing testing and other requirements of Parts 1632 and 1633 be considered a reasonable testing program, as required by Section 14.

2. Parts 1632 and 1633 Are Already Reasonable Testing Programs

The testing, quality control, documentation and recordkeeping, labeling and certification requirements set forth in Parts 1632 and 1633 represent a detailed and carefully balanced set of procedures and controls that constitute a reasonable testing program for purposes of Section 14 of the CPSA.

Although these standards focus on the performance of the finished product when exposed to different ignition sources, they are more robust than that. They represent a hybrid standard that contains a combination of finished product performance criteria and requirements that the manufacturer continually monitor the quality of incoming raw materials and assembly to confirm that the materials and assembly processes conform to those used to make the qualified 1633 prototype.

Specifically:

- All mattresses (and mattress pads for Part 1632) sold for use in the United States must meet Part 1632 and 1633 flammability standards. Both standards require mattress prototypes to meet rigorous and detailed prescriptive test procedures and product performance criteria.
- With particular regard to Part 1633, the CPSC also requires that each manufacturer implement a quality assurance program to confirm that mattress sets manufactured for sale are the same as the qualified and/or confirmed prototype on which they are based with respect to materials, components, design and methods of assembly, except as permitted by 1633.4(b). At a minimum the quality assurance program must include:
 1. Controls, including incoming inspection procedures, of all mattress set materials, components and methods of assembly to confirm that they are the same as those used in the prototype on which they are based;
 2. Designation of a production lot that is represented by the prototype; and
 3. Inspection of mattress sets produced for sale sufficient to demonstrate that they are the same as the prototype on which they are based with respect to materials, components, design and methods of assembly.
- If any test performed for quality assurance yields results which indicate that any mattress set of a production lot does not meet the Part 1633 product performance criteria, or if a manufacturer obtains test results or other evidence that a component or material or construction/assembly process used could negatively affect the test performance of the mattress set under Part 1633, the manufacturer must cease production and distribution in commerce of such mattress sets

until corrective action is taken. Part 1633 further provides that a manufacturer must also take corrective action when any mattress set manufactured or imported for sale fails to meet the Part 1633 product performance criteria.

- 16 CFR 1633.11 defines in detail the types of records that a mattress manufacturer must maintain to document compliance with this standard. It provides that every manufacturer and any other person initially introducing into commerce mattress sets subject to the standard must maintain the following records in English at a location in the United States:
 1. Test results and details of each test performed by or for that manufacturer (including failures). Details shall include: name and complete physical address of test facility, type of test room, test room conditions, time that sample spent out of conditioning area before starting test, prototype or production identification number, and test data including the peak rate of heat release, total heat release in first 10 minutes, a graphic depiction of the peak rate of heat release and total heat release over time. These records shall include the name and signature of person conducting the test, the date of the test, and a certification by the person overseeing the testing as to the test results and that the test was carried out in accordance with Part 1633.
 2. Video and/or a minimum of eight photographs of the testing of each mattress set (one taken before the test starts, one taken within 45 seconds of the start of the test, and the remaining six taken at five minute intervals, starting at 5 minutes and ending at 30 minutes).
- Other records that the manufacturer must maintain include:
 1. A detailed description of all materials, components, and methods of assembly for each qualified, confirmed and subordinate prototype. Such description shall include the specifications of all materials and components, and the name and complete physical address of each material and component supplier.
 2. Identification, composition, and details of the application of any flame retardant treatments and/or inherently flame resistant fibers or other materials employed in mattress components.
- A manufacturer must also maintain the following quality assurance records:
 1. A written copy of the manufacturer's quality assurance procedures.
 2. Records of any production tests performed.
 3. For each qualified, confirmed and subordinate prototype, the number of mattress sets in each production lot based on that prototype.
 4. The start and end dates of production of that lot.
- Furthermore, every manufacturer conducting tests and/or technical evaluations of components and materials and/or methods of assembly must maintain detailed records of such tests and evaluations.
- The manufacturer or importer must maintain the records required under Part 1633 for as long as mattress sets based on the prototype in question are in production, plus 3 years.
- All mattresses offered for sale in the United States must bear permanent labels certifying that those products meet these requirements (unless exempt under 16 CFR 1632.31(f) or

1633.13(c)). Mattresses must be labeled to include the company producing the mattress and contact information, the date of manufacture, model number, and an identification number for the prototype that was tested.

By meeting the testing, record keeping, quality assurance, labeling and certification requirements of these standards, manufacturers demonstrate compliance with a “reasonable testing program” established as a result of an exhaustive and comprehensive rulemaking conducted by the CPSC. For these reasons, ISPA urges the CPSC to recognize that the existing product safety standards embodied in Parts 1632 and 1633 meet the requirements of Section 14 of the CPSA in this regard.

3. Comments Regarding Specific Sections of Proposed Rules

The proposed rules contain many terms that appear to be similar to concepts used in Part 1633. To avoid any ambiguity in the mattress industry’s compliance with the new rule, ISPA urges the CPSC to expressly state in Part 1107 when specific provisions in this regulation are met by compliance with parallel provisions in Part 1633. In particular, we note the following:

A. Definitions – Section 1107.2

- *“Identical in all material respects”*

Part 1633 requires a mattress manufacturer to “qualify” mattress prototypes through triplicate testing. Manufacturers may produce mattresses that vary to some extent from the qualified prototype. Specifically, 16 C.F.R. § 1633.4(b) provides as follows:

a manufacturer may sell or introduce into commerce a mattress set that has not been tested according to § 1633.7 if that mattress set differs from a qualified or confirmed prototype only with respect to:

- (1) Mattress/foundation length and width, not depth (e.g., twin, queen, king);
- (2) Ticking, unless the ticking of the qualified prototype has characteristics (such as chemical treatment or special fiber composition) designed to improve performance on the test prescribed in this part; and/or
- (3) Any component, material, design or method of assembly, so long as the manufacturer can demonstrate on an objectively reasonable basis that such differences will not cause the mattress set to exceed the test criteria specified in § 1633.3(b).

In many cases, mattress manufacturers produce many different models of a product based on variations in size, appearance and other features. Though these models are varied, each “family” of product is based on a standard prototype as defined in Part 1633. Though models may differ in aesthetics and other customer options, the models contained in a family are structured the same for flammability purposes. As defined by the proposed rule, these characteristics appear to meet the definition of “identical in all material aspects” and appear to be consistent with the provisions of 1107.10(b)(1)(ii) (which describes variations in products that “would not be considered a material change”), 1107.10(a)(2)(ii) (which discusses the “material change” concept further) and other provisions in the proposed rules.

ISPA urges the CPSC to conclude that the term “identical in all material respects” is intended to be consistent with the “objectively reasonable basis” standard from Part 1633, and that the CPSC would conclude that individual subordinate mattresses that meet the requirements of 16 CFR 1633.4(b)(3)

would be “identical in all material respects” to the qualified prototype to which a specific mattress is subordinate.

- *“Production testing plan”*

ISPA urges the CPSC to conclude that the testing, documentation and recordkeeping requirements set forth in Part 1633 “provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules” for purposes of a “production testing plan.”

B. Reasonable testing program for nonchildren’s products – Section 1107.10

- *Product Specification – 1107.10(b)(1)*

Consistent with our comments above regarding “identical in all material respects,” ISPA urges the CPSC to state that for purposes of 1107.10(b)(1), the term “product” is equivalent to the term “prototype” defined in 1633.2(1).

- *Each manufacturing site must have a separate product specification – Section 1107.10(b)(1)(iii)*

If a manufacturer is assembling products at multiple plants that are not materially different from one another (at least as that concept is reflected in 1633.4(b)), then it would appear reasonable for the same product specification to be used at each assembly plant. ISPA is concerned that this provision may lead to confusion, and urges the CPSC to either remove this requirement from the final rules, or to recognize that this applies only when different manufacturing sites are producing materially different products.

- *Certification tests – Section 1107.10(a)(2)(i)(B)*

The proposed rules distinguish between standards that are based on the performance of components of a finished product and those that look at the performance of the finished product itself. As noted above in Part 2 of these comments, Parts 1632 and 1633 together represent a hybrid standard that has aspects of both component and finished product testing and quality assurance requirements. For these reasons, ISPA urges the CPSC to state in the final rules that compliance with the combination of prototype testing, quality assurance, recordkeeping and documentation requirements specified in Parts 1632 and 1633 would meet the requirements of 1107.10(a)(2)(i)(B).

C. General requirements (for testing children’s products) – Section 1107.20

ISPA urges the CPSC to state that for purposes of 1107.20(b), a mattress that qualifies as a children’s

would be “identical in all material respects” to the qualified prototype to which a specific mattress is subordinate.

- *“Production testing plan”*

ISPA urges the CPSC to conclude that the testing, documentation and recordkeeping requirements set forth in Part 1633 “provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable safety rules” for purposes of a “production testing plan.”

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C. General requirements (for testing children’s products) – Section 1107.20

ISPA urges the CPSC to state that for purposes of 1107.20(b), a mattress that qualifies as a children’s product that is manufactured in a way that meets the combination of prototype testing, quality assurance, recordkeeping and documentation requirements specified in Part 1633 is a “manufacturing process for a children’s product [that] consistently creates finished products that are uniform in composition and quality.”

D. Periodic testing – Section 1107.21

In an effort to reduce the impact that the proposed rules would have on small businesses, the CPSC proposes that a manufacturer of a children’s product would not need to conduct periodic testing until it manufactures 10,000 units of that product. See 1107.21(d). The proposed rule does not specify over what time period this quantity of production may occur. Once this quantitative threshold is passed, the

manufacturer must then perform periodic testing without regard to whether the next 10,000 units of production have occurred.

While the first part of the proposed rule is reasonable to protect small businesses, the second part that is triggered once they pass the 10,000 unit mark will impose substantial new and unreasonable costs on the same businesses that were "small" for these purposes before the threshold was hit and remain "small" even afterwards.

To avoid this undesirable outcome, ISPA urges the CPSC to state in its final regulations that for industries such as the mattress industry, which the agency's own data show is overwhelming comprised of small businesses, the periodic testing requirement can be met by testing no more than one product for every 10,000 units of production of a given product, provided that a material change to that product has not occurred since the last periodic test. (Depending on the internal controls a given manufacturer sets as part of its component and finished product testing program, a frequency of less than 1 sample per 10,000 units produced may in fact be appropriate.)

This change would continue to protect the small companies from unreasonable testing costs throughout their production activity, and would treat all manufacturers in a highly competitive industry like ours in a consistent manner.

E. Random Samples – Section 1107.22

Mattresses are often produced on a "just in time" basis. For example, many manufacturers do not produce a mattress until an actual order has been placed for the product. Thus, to select a mattress that is to be used for testing, an order for a product must be generated (though the selection of the actual mattress to be tested remains blind). The CPSC should clarify that random samples may not necessarily have to be selected from existing inventory and may be generated for testing provided that the actual selection of the product remains random.

4. Other Comments

A. The CPSC Should Conduct a Cost-Benefit Analysis of the Impact of the Proposed Rule Before Implementing it With Regard to Mattresses

The CPSC took all of the factors described in the first section of these comments into account when it developed and promulgated Part 1633. As a result, the testing, quality control, documentation and recordkeeping, labeling and certification requirements set forth in Parts 1632 and 1633 represent a detailed and carefully balanced set of procedures and controls. The agency established a stringent system for testing mattress prototypes, controlling raw material quality, allowing for limited variation in design and materials composition from a qualified prototype, and documenting compliance with the standard. The CPSC also conducted an extensive cost-benefit analysis, comparing the cost of the standard to the benefits in terms of improved safety, and concluded that the provisions of Part 1633 were cost effective.

As the CPSC notes, "[t]he proposed rule, if finalized, could have a significant adverse impact on a substantial number of small businesses." *Id.* at 28359. The overwhelming number of facilities in this country that manufacture mattresses (nearly 97%, according to the CPSC's data) are small businesses. As discussed above in Part 1 of these comments, this industry has been hit hard by the current

recession, and urges the CPSC to take into account the financial hardships that its proposed rule will impose on mattress manufacturers.

For any safety standard rulemaking that the CPSC undertakes after it finalizes the Part 1107 rules, the agency will need to take into account the cost of complying with the Part 1107 rules as well as a proposed safety standard itself when evaluating the costs and benefits of the future safety standard. Industries like the mattress industry, which are subject to standards that pre-date the effective date of Part 1107, should also be entitled to a similar cost-benefit analysis before the costs of meeting Part 1107 are imposed.

To do otherwise would distort the true costs and benefits of the CPSC's safety standards. Therefore, ISPA urges the CPSC to conduct a new cost-benefit analysis – looking at the combined impact of Parts 1632 and 1633, plus the new Part 1107 rules on mattress producers – before imposing these significant new costs on the industry. Failure to do so could cause incalculable harm to the industry.

B. Before Part 1107 Becomes Effective, CPSC Should Conduct Regional Industry-Specific Workshops to Explain the New Requirements

In adopting testing regulations that can be applied to all consumer products regulated by the agency, the CPSC out of necessity must word these proposed rules in a very general manner. As a result, it is difficult in many instances to understand exactly how these general rules will be applied to specific industries that manufacture products in compliance with existing and complex safety standards like those codified in Parts 1632 and 1633.

To minimize the confusion and uncertainty that will occur when these rules are finalized, ISPA urges the CPSC to conduct regional industry-specific workshops to explain to the regulated manufacturers how these general rules will apply to their existing procedures and where new regulatory obligations exist. ISPA would welcome the opportunity to participate in such workshops.

* * *

Please contact me at (703) 683-8371 or chudgins@sleepproducts.org should you have any questions

Sincerely,



Christopher Hudgins
Vice President, Government Relations & Policy

PUBLIC SUBMISSION

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Docket: CPSC-2010-0038
Testing and Labeling Pertaining to Product Certification

Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0027
Comment from Joseph Ertl

Submitter Information

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Organization: Scale Models

General Comment

Thank you for the opportunity to comment.
Please see the attached.

Attachments

CPSC-2010-0038-0027.1: Comment from Joseph Ertl

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August 3, 2010

TO: Consumer Products Safety Improvement Act

FR: Joseph L. Ertl, President
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jertl@scalemodeltoys.com

RE: Docket No. CPSC-2010-0037

We are a small American-based toy manufacturer, in business since 1978. We believe Scale Models is the only die-cast metal toy manufacturer remaining in the USA. We have fought Chinese competition and the Chinese have failed to put us out of business. Our customers want American made toys. It would be sad if our Government closed our doors or forced us to go to China because of the high compliance required through CPSIA's Docket No. CPSC-2010-0037.

For third party testing it cost us \$3,700.00 to test one unit. The market will not absorb the costs to test multiple units per batch. We make about 20 different models with various paint and body configurations.

As an American-based manufacturer, we do not see a need to third party test for the following reasons:

1. We are ISO 9001:2008 compliant.
2. We document all our supplier receipts of metal, plastic and powder paint materials.
3. We conduct a metal analysis for each production run with our Spectrometer.

The 90 PPM lead specification is not realistic. The standard aluminum die-cast alloy, Aluminum 380, calls for a lead content of 500 PPM. This standard has been used for years. Aluminum 380 is used for cooking and baking ware. *It doesn't make sense that a child cannot ride a die-cast pedal tractor but can eat food baked in a die-cast cake pan.*

Please come to a realistic solution for American manufacturers soon. Presently, our toy business is out of business due to CPSIA's compliance requests. We have laid-off production laborers for a 60-year old product line, which was previously safe. There has got to be a simplified solution for American manufacturers, such as Scale Models.

Please help to keep the *American Tradition* of riding pedal tractors Made In the USA. Scale Models is now in the fourth generation of toymakers.

To learn more about our Company please visit www.scalemodeltoys.com.

Thank you for your consideration.

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Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0028
Comment from Gene Rider

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General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0028.1: Comment from Gene Rider



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August 3, 2010

Via Regulations.gov

Mr. Todd Stevenson
Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Intertek Consumer Goods, NA Comments Regarding: 1) Testing and Labeling Pertaining to Product Certification, 16 CFR Part 1107, Notice of Proposed Rulemaking, CPSC Docket No. CPSC-2010-0038; and 2) Conditions and Requirements for Testing Component Parts of Consumer Products, 16 CFR Part 1109, Notice of Proposed Rulemaking, CPSC Docket No. CPSC-2010-0037.

In response to the above referenced proposed rules, Intertek Consumer Goods, NA submits the following comments:

I. Summary of Comments.

At the outset, Intertek applauds the U.S. Consumer Product Safety Commission (CPSC) – professional staff and commissioners alike – for the tremendous effort they have undertaken to produce the proposed rules. Intertek also acknowledges the Commission's accomplishment in unanimously voting to issue these proposed rules for public comment. There are understandably strong and divergent opinions among the commissioners on many of the complex issues raised by the proposed rules. But a unified request for public input encourages more and more beneficial comments from affected stakeholders.

While the proposed rules are of course quite extensive in scope and content, Intertek has chosen to focus on three areas for its comments: (1) encouraging more specific allowance for certain lead paint test procedures, as set forth last year in the Intertek/AAFA Petition; (2) a suggestion that design hazard analysis be incorporated into the rule to address the root cause of the large majority of product recalls; and (3) a suggestion that the CPSC recognize the existing and proven Nationally Recognized Testing Laboratories (NRTL) program and products certified under that program as being *per se* compliant with the proposed rules.

Each of these comments and suggestions is based on Intertek's decades of direct experience working with manufacturers and other customers to meet testing, certification and quality assurance needs. These comments are not intended to "feather Intertek's nest." Rather, they are offered in good faith as proven, practical and efficient means of achieving the landmark mandates of the Consumer Product Safety Improvement Act (CPSIA).

II. Overview of Intertek.

Founded over 100 years ago by Thomas Edison as Electrical Testing Laboratories (ETL) to test the safety and performance of incandescent bulbs and lamps, Intertek is today a world leader in providing testing, inspection and certification services for a wide range of products and processes, including consumer products under the jurisdiction of the CPSC. Intertek maintains over 1,000 labs and offices in over 110 countries and manages over 150 certification programs, including many for consumer products. The company also currently owns and operates 25 CPSC recognized labs for the third party testing of children's products to mandatory CPSC standards.

With respect to CPSC activities, including the implementation of the Consumer Product Safety Improvement Act (CPSIA), Intertek routinely contributes its experiences and ideas to the agency and its stakeholders. For example (and as described below) Intertek, along with the American Apparel and Footwear Association last year petitioned the CPSC to allow product certification to the lead paint standard, based on test methods that have the potential to save manufacturers and others in the supply chain both time and money, while fully protecting consumers.

III. Comments Regarding the Proposed Rule, "Conditions and Requirements for Testing Component Parts of Consumer Products:" *The final rule should specifically allow the lead paint test methods set forth in the Intertek/AAFA Petition, in order to remove any doubt about their permissibility and to reduce testing costs for affected companies, without any reduction in testing reliability or consumer protection.*

On July 9, 2009, Intertek and the American Apparel and Footwear Association (AAFA) jointly submitted a petition to the CPSC for the agency to authorize, via regulation, the use of "spray sampling," "multiple stamping," and "finished component testing" as acceptable means of certifying compliance to the lead in paint standard (16 C.F.R. § 1303) ("Petition"). In December 2009, the Petition was docketed for official agency review by a unanimous vote of the Commission. (See <http://www.cpsc.gov> LIBRARY/FOIA/FOIA10/petition/CP10-1.pdf)

While the CPSC has yet to vote on the Petition, Intertek urges the agency to effectively grant the Petition's intended purposes via the proposed component testing rule.

A. Spray Sampling and Multiple Stamping.

As detailed in the Petition, "spray sampling" and "multiple stamping" are techniques by which a product or a portion of a product is either painted or stamped with a surface coating in an area larger than that which appears on the final product. These samples are then scraped and tested for the presence of lead, pursuant to recognized CPSC test procedures.

An example of spray sampling would be to paint an entire doll (or large portion of a doll) with one color of paint and then testing that sample rather than having to destroy numerous, finished product dolls to obtain enough paint for testing, especially if a particular color or type of paint is only on a small area of the finished product – the doll's eye for example. The technique is similar for multiple stamping, where a product (a pair of children's jeans, for example) is stamped multiple times with a surface coating brand stamp and tested, thereby avoiding having to scrape (and destroy) numerous pairs of jeans. Not only do these techniques save manufacturers and importers money and time, but, since they are in fact tests of the

actual paint on the actual, final products they provide greater assurance of compliance with the lead paint standard.

Prior to the December 28, 2009 issuance by the CPSC of its “Interim Enforcement Policy” regarding the allowance for component testing to support certification to the lead paint and lead in substrate standards (the latter being relevant once the present stay of enforcement for certification is lifted), the agency’s informal interpretation of the CPSIA had been that only final products could be submitted for testing and certification to those standards. The result for the lead paint standard was that several dozen (sometimes several hundred) product samples had to be submitted for lab testing and destroyed to obtain adequate amounts of paint for testing. Intertek and the AAFA responded by submitting the Petition, again as a practical solution to save manufacturers and their supply chain partners money and time, but without any diminution in consumer protection.

Intertek therefore welcomed both the Interim Enforcement Policy and the proposed component testing rule to allow the testing of paint or substrate material directly, before those components are incorporated into the final product set forth in the Intertek/AAFA Petition. Under appropriate safeguards, component testing of paint, plastic and other component materials can ensure dramatic savings in testing costs for manufacturers and importers, while assuring that the outcome of the testing – compliant products – is not compromised.

But given the intricacies and uncertainties of the proposed component testing rules to assure such safeguards, it is highly uncertain whether agency allowance of component testing to support final product certification, as proposed, will be embraced by affected industries, particularly importers of record and retailers. In short, there appear to be numerous questions about how, in fact, component testing and reliance on suppliers’ component testing and certification is to be conducted to ensure compliance with the testing rules and compliance with standards. Specifically recognizing the Petition test methods, then, in addition to final issuance of the other provisions of the proposed rule allowing for component testing, will give adequate assurance that these methods are not only permissible but are in fact tried and true means of assuring compliance with the important lead paint standard.

B. Finished Component Testing.

The Intertek/AAFA Petition also requests that the CPSC specifically approve testing and certification to the lead paint standard of finished product components, prior to their incorporation into the finished product. For example, painted buttons would be allowed to be tested for lead before they are sewn onto a child’s garment. As with spray sampling and multiple stamping, this provides for both reduced testing costs and a high level of assurance for all involved in the supply chain that both the tested components and the final products comply with the lead paint standard.

While arguably allowable under both the Interim Enforcement Policy and the proposed component testing rule, specific allowance of this finished component testing method for children’s products would enhance the likelihood that such testing would be embraced by importers, retailers and private labelers. If such relief is not specifically granted in this rule, then doubt would likely remain about the actual compliance of products tested under the proposed rule’s component testing procedures.

IV. Comments Regarding the Need to Incorporate Design Hazard Analysis Into Proposed Testing and Certification Rules: *The final rules should require adequate product design hazard review, both before introduction of products into commerce in the U.S. and, where appropriate, as an element of remedial action plans.*

A. Importance of Design Hazard Analysis¹ in Product Safety.

In a widely noted 2007 academic analysis of 550 CPSC toy recalls between 1988 and 2007, an examination was made of the root cause of each recall, whether it was the result of a manufacturing issue (e.g., excessive lead in the paint used on the toy) or whether it was due to some design defect (e.g., an improperly designed toy that resulted in violation of the “small parts” standard).² The study found that fully three-fourths (76.4 percent) of the toy recalls over this 20-year period resulted not from inferior manufacturing materials or processes, but rather from improper product design.³ These findings are consistent with annual lists publicly issued by a number of consumer advocacy organizations of what they consider to be the most hazardous toys on the market for that year.⁴

Indeed, it stands to reason that design defects would be the leading cause of safety-related problems, not just in toys and other children’s products, but for all consumer products. There are only a few dozen CPSC product safety standards in place but thousands of types of products and millions of individual product types. Even if the CPSC (or the Congress) could try and account for a broader swath of potential product hazards by issuing more mandatory standards, new products emerge on the market so quickly that such standards would always cover only a small percentage of potential hazards. In addition, it is likely that some hazards can practically never be anticipated and/or responded to in a timely fashion through the issuance of standards. Simply put, adherence to CPSC standards, no matter how numerous or strictly enforced, will never fully protect consumers from even the majority of product hazards. It is good design and comprehensive design review by qualified individuals that will truly improve the consumer products safety over time.

While many manufacturers of consumer products do conduct a systematic review of the design of their products relative to consumer safety, others are less comprehensive in their approach. This may be due, in part, to lack of awareness of the many tools and resources now available that can aid in determining whether a particular product design is more or less likely to result in a violation of CPSC mandatory standards or to otherwise pose a hazard to consumers. And it should be noted that well over half of all recalls are the result of design and other hazards, not the result of any violation of a CPSC mandatory safety standard.

¹ Although Design Hazard Analysis® is a service and registered trademark of Intertek, in the context of this comment, it is used to represent the generic service of product safety design analysis, which many companies, including a number of other large testing labs, offer throughout the world. This comment is meant solely to endorse the activity of design analysis, not any particular product or service.

² Bapuji and Beamish, University of Manitoba, “Toy Recalls: Is China Really the Problem?” Canada-Asia Commentary, Asia-Pacific Foundation of Canada, September 13, 2007; Harvard Business Review, March 2008. *See also* Bapuji and Laplume, “Toy Recalls and China: One Year Later.” Asia Pacific Foundation of Canada, 2008.

³ *Id.*, at 6.

⁴ For example, a review of the U.S. PIRG (Public Interest Research Group) 2009 “Unsafe Toys” list shows that at least 11 out of the 17 toys listed appeared to contain design rather than manufacturing defects. And of the 2009 “10 Worst Toys” list issued by WATCH (World Against Toys Causing Harm, Inc.), all 10 manifested issues related to the design of those products that caused them to make the list.

Today, there are a growing number of training programs and other government, academic and industry resources available to firms and design hazard analysts, including a developed body of human factors knowledge about how children interact with toys and other products.⁵ In short, proper design hazard analysis is today a science, one that can significantly reduce the likelihood that a consumer product will violate CPSC standards or cause injury to consumers.⁶ It is therefore critical that the pending CPSC testing and certification rules require design hazard analysis for both reasonable testing programs for non-children's products and in third party testing and certification programs for children's products.⁷

Indeed, it is worth noting that the new (2009) European Union Toy Safety Directive is replete with references to the importance of design appraisal and review. These include a mandate that, by July 2011, manufacturers must produce and maintain "a detailed description of the design" of toys; produce a "toy safety assessment" which must include an assessment of "whether there any gaps" between mandatory standards and the toy's design "that could present a potential hazard." The new EU Directive also mandates that "toys must be designed...in such a way as not to present any risk or only the minimum risk inherent to their use..." and requires that manufacturers "ensure that procedures are in place" to account for any "changes in toy design or characteristics...."⁸ Thus, with respect to any additional costs that might be placed on manufactures by mandating design hazard analysis, including such requirements in the proposed CPSC rules would simply reflect a degree of harmonization with the pending toy safety requirements of the world's largest economic union.

B. Congressional Intent and CPSC Authority to Require Design Hazard Analysis in the Proposed Rules.

Congress' statutory mandate to the CPSC in Section 102 of the CPSIA was to require comprehensive testing and certification programs for all products subject to CPSC mandatory safety standards. As the Commission and staff know, this authority is in addition to, and must be viewed in conjunction with, the agency's preexisting authority under Section 14 of the Consumer Product Safety Act (CPSA). Taken as a whole, then, Section 14 of the CPSA, as amended by Section 102 of the CPSIA, grants the CPSC the authority to "prescribe reasonable testing programs" for any product subject to mandatory Federal standards (and thus subject to certification).

Section 102 of the CPSIA does specify particular elements of testing plans for children's products subject to mandatory standards (including requirements for periodic testing, the nature of test samples to be submitted for testing and that there be in place procedures to prevent undue influence over third party test labs, etc.). But this congressionally-directed list is by no means exclusive or exhaustive and was not intended by Congress to be so.

⁵ These include the CPSC Handbook for Manufacturing Safer Consumer Products; ISO Guides 50 and 51; and the RAPEX Management Guidelines, among numerous other publications.

⁶ It is, however, important to note that design appraisals not themselves mitigate hazards. Rather, effective design hazard analysis identifies risks inherent in the product design so that an informed decision about tolerable risk can be made and risk mitigation efforts may be deployed.

⁷ This conclusion is also supported by innumerable public statements of CPSC commissioners, present and past, as well as many senior staff of the agency, who have repeatedly discussed the critical importance of incorporating good design appraisal into every consumer product, especially those intended for use by children.

⁸ Directive 2009/48EC of the European Parliament and of the Council on the Safety of Toys, June 18, 2009, Finding 35; Chapter II, Article 4, Section 4; Annex II, Section 1.3; Annex IV(a).

For decades the CPSC has issued specific requirements of “reasonable testing programs” for a number of types of products, from bicycle helmets to mattresses. Virtually none of these regulatory requirements were prescribed or specifically authorized by Congress. Indeed, the proposed CPSC testing rules require remedial action plans and extensive records production and maintenance requirements – to name but two examples – which are found nowhere in the CPSIA or elsewhere in statute. These requirements have rather been determined by CPSC staff to be necessary to affect the intent of the Congress in enacting its authorizing statutes and mandate to protect consumers from unreasonably unsafe products.

Similarly, Intertek believes that mandating design appraisal for products subject to CPSC standards is necessary to carry out congressional intent, utilizing CPSIA and pre-existing Section 14 certification authority. While there is no direct mention of design hazard analysis in either Section 14 or Section 102 of the CPSIA, a requirement that there be adequate design review prior to selling a product subject to a mandatory standard and as part of a remedial action plan (whenever a sample failure could reasonably be the result of a design flaw) is wholly consistent with and necessary to implement congressional intent underlying both provisions of law. In fact, the proposed testing rule actually concludes that a change in a product’s design is a material change if the manufacturer knows or should know could affect compliance with mandatory standards, which is simply a specific proposal to give effect to the intent of Congress in this regard.⁹

It should also be noted that, in addition to its existing, broad authority under Section 14 and Section 102 of the CPSIA, the CPSC has the inherent rulemaking authority under Sections 7 and 9 of the CPSA to issue consumer product safety regulations it determines are in the public interest and under Section 3 of the CPSIA to “issue regulations, as necessary, to implement the Act...”¹⁰ There can be no question, therefore that the CPSC has the authority to mandate design appraisal via the proposed rules.

C. Suggested Modifications to Proposed Testing Rule.

As explained below, and as set forth in detail in Attachment A, Intertek strongly recommends that an adequate design hazard appraisal be a requirement of both reasonable testing programs for non-children’s products and for the certification requirements for children’s products, both with respect to precertification activities as well as an element of any remedial action plan when a sample failure is known or should be known to be related to a product design issue.

1. Definition of “Design Appraisal.”

The proposed testing rule sets forth a number of new requirements in terms of specific actions manufactures must undertake to be complaint with the new regulations, including the production of specific documents. Intertek therefore suggests establishing the requirement for design hazard analysis by

⁹ While Intertek believes that all the comments contained herein are fully within the scope of either or both of the proposed rules, this reference in the proposed testing rule regarding design appraisal clearly makes these comments relevant and within the scope of the proposed rule.

¹⁰ Intertek also notes in this regard that, while it would likewise be permissible for the CPSC to require design appraisal for all consumer products under its jurisdiction under its inherent rulemaking authority, such comment may be considered to extend beyond the scope of these proposed rules, which apply to only those products subject to mandatory standards.

requiring the production of a “design appraisal,” with specificity as to what the elements of such appraisals must be.

Intertek therefore proposes a definition of “design appraisal” as a “technical document that identifies and characterizes potential hazards associated with a consumer product” which must be conducted “by individuals who demonstrate the knowledge and skills to manage the process....” Additionally, design appraisals are suggested “to include, at a minimum, an engineering, chemical and biological analysis of the product, as appropriate to the type of product and the materials contained in the product,” which Intertek believes would cover most aspects of product safety.¹¹ These definitional requirements are those that Intertek believes are minimally necessary to ensure that design appraisals achieve their intended purpose of providing a sound design review of products by qualified individuals.

2. Scope Regarding Design Appraisal as Element of Remedial Action Plan.

Clearly it would be unreasonable and unnecessary to require design hazard analysis as part of a remedial action plan upon any sample failure. Rather, Intertek suggests requiring it only when “the manufacturer knows or reasonably should know that the failure of the product is related to the product’s design.” This language is consistent with other provisions of the proposed rules, including those related to the occurrence of a material change in a product, and the suggested language would limit design hazard appraisal to only those instances where it makes sense for manufacturers and importers to undertake.

3. Recordkeeping Requirements.

Also, to be consistent with the other provisions of the CPSC proposed rules, Intertek suggests that documentation be produced demonstrating that an adequate design appraisal has occurred and that appropriate remedial action has taken place, where necessary.

V. **Comments Regarding Deference to Federal Nationally Recognized Testing Laboratory Accreditation Program:** *The CPSC should not impose redundant new testing requirements to this proven and universally recognized product testing and certification system.*

As the CPSC is aware, the U.S. Occupational Health and Safety Administration (OSHA) administers the Nationally Recognized Testing Laboratories (NRTL) program. This program was established to ensure workplace safety, but has produced ancillary benefits for the safety of consumer products. Through this program OSHA recognizes private, third party organizations (independent certification bodies and product testing laboratories) to test and certify products used in the workplace. Many products that are used in the workplace are also consumer products that are sold by retailers and are used outside of the workplace.

For example, products that are already included in the OSHA NRTL Program include lighting, electrical products, cooking appliances and electrical toys. These products benefit from the third party safety certifications required in the NRTL program. Additionally, the OSHA NRTL Program authorities having jurisdiction over electrical installations and products – such as the City of Los Angeles and the majority of cities and states – typically require NRTL certification, either through local codes, formal policies or other means. A certification mark by a NRTL means that products bearing such marks are compliant with applicable standards intended to safeguard users from fire, shock and mechanical hazards.

¹¹ See Attachment A.

These OSHA recognized NRTLs are required to meet a number of very specific criteria, including safeguards against undue influence from manufacturers, the capability to adequately test and certify products using specified product testing standards and evaluation by OSHA for detailed institutional capacity and procedural requirements. After successful testing of a product, an NRTL will issue an authorization that permits the manufacturer to apply the NRTL's registered certification mark on workplace products. Intertek has 12 recognized NRTLs that test and certify many millions of products every year.

The NRTL program is an example of an extremely successful public/private partnership that is both cost effective and that ensures workplace and consumer safety. All 50 states and virtually all major U.S. importers and retailers accept NRTL-certified products as meeting an array of mandatory and voluntary consensus standards. The electrical product conformity assessment system in the USA is also recognized internationally as a premier program of product compliance and certification. The OSHA NRTL Program is the cornerstone of that system, along with the National Electrical Code and local code enforcement.

While Intertek recognizes the responsibilities of the CPSC specified in the CPSIA statutory directive, as well as the need to establish testing and certification standards and procedures for children's and other consumer products, it urges the CPSC to avoid requiring redundant criteria for products already third party certified by an NRTL. The NRTL program assures competent, independent and comprehensive testing and certification of such products that it would simply be unnecessary to establish duplicative requirements. Intertek therefore requests that the final testing and certification rules defer to the well-established NRTL certification program by determining such products, as they are manufactured and distributed for consumer use, are *per se* compliant with the proposed testing and certification rules.

Of course if violations of CPSC standards or otherwise defective products are found, the agency would still maintain its full authority to exercise recall, civil penalty and its other authorities with regard to such products. But given the enormity of the resource and other challenges the agency continues to face in implementing Section 102 and the many other provisions of the CPSIA, CPSC recognition of products bearing third party NRTL certification marks would be at least one step toward a more efficient allocation of the agency's resources, without any diminishment in the protection of American consumers.

Attachment A:

Suggested Changes to Proposed Rule, “Testing and Labeling Pertaining to Product Certification,” To Include Design Analysis

Amend “Proposed Rule: Testing and Labeling Pertaining to Product Certification,” to wit:

Subpart B – Reasonable Testing Program for Non-Children's Products

Section 1107.2 Definitions.

Insert new subsection (c): “*Design appraisal* means a technical document that identifies and characterizes the potential hazards associated with a consumer product that is produced after design hazard analysis by individuals who demonstrate the knowledge and skills to manage the process of design appraisal generation by taking a rigorous and multidisciplinary approach to adequately identify and characterize the potential hazards of consumer products.”

Section 1107.10 Reasonable Testing Program for Non-Children's Products.

Insert new subsection (b)(2): “Design Appraisal. A design appraisal is a document identifying and characterizing the potential hazards associated with a consumer product that are related to the design of a product. The design appraisal should include, at a minimum, an engineering, chemical and biological analysis of the product, as appropriate to the type of product and the materials contained in the product.”

Insert in subsection (b)(4) (Remedial Action Plan), after “upon the applicable rule, ban, standard or regulation.” the following:

“If the manufacturer knows or reasonably should know that the failure of the product is related to the product's design, the manufacturer shall conduct a revised design hazard review and produce a new design appraisal.”

Insert in subsection (b)(5) (Recordkeeping), a new subsection (i)(A):

“Records of the design appraisal and the individuals conducting the design appraisal and records of the professional qualifications or certifications of the individuals conducting that appraisal, including design appraisals conducted as part of a remedial action plan.”

Subpart C – Certification of Children's Products

Section 1107.20 Children's Product Certification.

Insert new subsection (a): “Prior to submitting samples of a children's product for testing by a third party conformity assessment body, manufacturers must conduct a design hazard analysis and produce a design appraisal of the product that identifies and characterizes the potential hazards associated with that consumer product that are related to the design of a product. The design appraisal should include, at a minimum, an engineering, chemical and biological analysis of the product, as appropriate to the type of product and the materials contained in the product.”

Section 1107.26 Remedial Action.

Insert in subsection (c), after “...children's product safety rules.” the following:

“If the manufacturer knows or reasonably should know that the failure of the product is related to the product's design, the manufacturer shall conduct a revised design hazard review and produce a new design appraisal.”

Respectfully Submitted,



Gene Rider
President,
Intertek Consumer Goods, NA

Stevenson, Todd

From: Gougisha, Michael
Sent: Friday, April 16, 2010 9:55 AM
To: Stevenson, Todd
Subject: FW: reasonable testing program

Todd, I am forwarding this communication to your office for the usual handling.

Thanks

Michael Gougisha
Counselor to Commissioner Moore

From: Jim Neill [mailto:Jim.Neill@retail-leaders.org]
Sent: Wednesday, April 14, 2010 10:51 PM
To: Gougisha, Michael
Cc: Stephanie Lester
Subject: reasonable testing program

Hi Michael,

A short note to let you know that several RILA members have read through the hundreds of pages of proposed rule on testing and labeling, and have identified several significant concerns. After this first review, we feel if adopted as written, these rules are unclear and may:

- Be overly burdensome for importers, particularly large importers
- Require expanded, costly and duplicative testing and recordkeeping
- Require retailers to verify testing labs with additional tests and recordkeeping

The Commission staff has tackled an incredibly complicated issue with remarkable tenacity. Retailers are strongly committed to our proactive and aggressive efforts, and our partnership with the CPSC, to assure product safety. At the same time, we are concerned that this proposed rule would require significantly more work than is currently being done by even the most active retailers with robust product safety programs, and may not necessarily assure better product safety.

We look forward to working with Commissioners and CPSC staff to develop the most effective and attainable reasonable testing program to help ensure the safety of products carried on our shelves.

Thanks,

Jim

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Comment On: CPSC-2010-0038-0001
Testing and Labeling Pertaining to Product Certification

Document: CPSC-2010-0038-0029
Comment from Retail Industry Leaders Association

Submitter Information

Name: Jim Neill
Address: United States,
Submitter's Representative: Jim Neill
Organization: Retail Industry Leaders Association

General Comment

See Attached

Attachments

CPSC-2010-0038-0029.1: Comment from Retail Industry Leaders Association