

Comments
Conditions and Requirements for Testing Component
Parts of Consumer Products
CPSC-2010-0037
Comments Due August 3, 2010

INDEX OF COMMENTS

Conditions and Requirements for Testing Component Parts of Consumer Products
PUBLIC SUBMISSION
CPSC -2010-0037

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0037-0003	7/30/2010	Nancy MacPherson	LEGO Systems, Inc. Enfield, CT 06082 1-860-763-6886
0037-0004	8/2/2010	Anne Meininger	Natl Inst of Standards and Technology China WTO/TBT National Notification & Enqui NCSCI at NIST 100 Bureau Drive, MS2100 Gaithersburg, MD. 20899-2100 301-975-2921 Fax 301-926-1559 anne.meininger@nist.gov
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0037-0013	8/3/2010	Alan Kaufman	Toys"R"Us, Inc. One Geoffrey Way Wayne, Nj. 07470 973-617-5715, Fax 973-617-4017 alan.kaufman@toysrus.com
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0037-0015	8/3/2010	Allan Adler	Association of American Publishers 50 F Street, NW Washington, DC. 20001-1565 202-220-4544, Fax 202-347-3690 adler@publishers.org
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0037-0018	8/3/2010	Ed Desmond	Toy Industry Association 1115 Broadway, Suite 400 New York, NY. 10010 202-857-9608, Fax 212-633-1429 edesmond@toyassociation.org
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0037-0020	8/3/2010	Jim Neill	1700 N. Moore, Ste 2250 Arlington, Va. 22209 jim.neill@rila.org
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0037-0022	8/3/2010	Kyra Mumbauer	Society of the Plastics Industry, Inc. (SPI) 1667 K St NW Ste 1000 Washington, DC. 20006 202-974-5214, Fax 202-296-7005 kmumbauer@plasticsindustry.org
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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001

Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0002

Comment from Corey J Holden

Submitter Information

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General Comment

To Whom it May Concern,

I just wanted to praise the suggested proposal of the mandates you intend to require from business to test their components before they are sold and made available on the market. Part of the proposed changes included, "manufacturers and private labelers of a product that is subject to a consumer product safety rule or to any similar rule, ban, standard, or regulation under any other act enforced by the Commission, to issue a certificate upon inspection."

I highly endorse this method, because in turn, it helps prevent injures due to goods that do not meet safety standards, and helps deter bodily harm. In this case I am talking about children's toys, where all toys should be inspected, and the manufacture needs to issue a certificate that officiates a "passing" of the product that is safe.

With two small children of my own, I am very happy to see this regulation proposed on todays corporations.

Thank you,

Corey

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0003
Comment from Nancy MacPherson

Submitter Information

Name: Nancy MacPherson

General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0003.1: Comment from Nancy MacPherson



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

July 25, 2010

Re: Docket No. CPSC-2010-0037

LEGO System Inc.'s Comments on Proposed Final Rule regarding Conditions and Requirements for Testing Component Parts of Consumer Products.

LEGO Systems, Inc. is the United States affiliate of The LEGO Group ("LEGO") – 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. Given the nature of our product, we have been closely monitoring the proposed rules related to component testing, as that process is integral to our Testing Program. We now have almost two years of experience in certifying children's products based on the processes described in the previous Guidance documents (*"Interim Enforcement Policy on Component Testing and Certification..." Dec 28, 2009*), so we use that experience as the basis for our comments.

Introduction

LEGO supports the overall direction established in the rule, which allows companies who are exercising 'due care', the opportunity to utilize component testing as an integral part of their testing program. Given the variety of supply chains and products covered under this rule, CPSC's recognition of the need for flexibility is appreciated. We do, however, find many of the documentation requirements in the Proposed Final Rule to be excessively burdensome while providing no practical benefit. We believe the estimates for recordkeeping time and expense are severely underestimated, based on our experience in executing the demands of the existing Interim Enforcement Policy, which does not have the extensive recordkeeping requirements proposed in this Final Rule.

LEGO offers more substantial comments in the following areas:

- A. Content of the Children's Product Certificate
- B. General Recordkeeping Requirements

A. Content of the Children's Product Certificate

As the importer and manufacturer of children's products, LEGO has been issuing Children's Product Certificates since November of 2008, in accordance with Section 14 (a)(1) of the CPSA. The requirements for those certificates have been clearly documented in CPSA sections 14(a) and 14 (g), listing the specific information that must be on the certificate. We have established processes, formats and invested in IT solutions to prepare and transmit these certificates in accordance with the

law. Sec 1109.11(a) (3) of the Proposed Rule mandates that Finished Product Certificates, which are based on component testing, must include on the certificate detailed documentation on each component. *"...the certificate required of certifiers under Sec 14(a) of the CPSA and Sec 1109.5(g) identifies each paint tested by color, location, formulation or other characteristic, the supplier of the paint, and if different, the manufacturer of the paint.*

A similar requirement is found in the component testing for lead section, Sec 1109.12(d), where *"...the certificate accompanying the children's product must list each component part that was tested by part number or other specification and for each component part, identify the corresponding test report, paint certificate.....on which the certification for the finished product is based."*

The requirement to provide a detailed listing of all component information on the certificate adds enormous complexity to the certification documentation process. The CPSC requirement should be traceability, not paperwork. In responding to comments, CPSC notes in Comment 1 that *"certified component parts in a Finished Product must be able to be traced back to their certificates."* It does not say that component parts need to be listed on the certificates. Just as we requested flexibility in test processes, we request that you allow the same flexibility in how companies manage their data and traceability. As long as the testing and traceability conditions defined in Subpart B are met, the method of documenting the information should be determined by the Finished Product Certifier.

CPSC itself has noted in the "Estimate of Burden" section in the related Testing and Labeling Proposed Rule that *"CPSC will likely request access to these records **only when it is investigating** potentially defective or non complying products."* As long as the information can be provided to CPSC, *upon request*, it should not need to be replicated on the Certificate.

In Section VII, Paperwork Reduction Act, CPSC asks *"Whether the collection of information is necessary for proper performance of the CPSC's functions and whether the information will have practical utility"*. Within all supply chains and certainly within the supply chain at LEGO, there are multiple systems where product data is generated, compiled and acted upon. Manually extracting all of this data to replicate pages of information that will never be reviewed is unnecessarily burdensome, and we would argue has no practical utility. The diagram below visualizes the hierarchy of product data that we maintain in multiple IT systems. It likely represents the product data structures of many other companies.



The process for compiling all of this information, for every certificate, is complex. It requires data mining across multiple systems and manual extraction of information from 3rd party test reports that are only in PDF format, so data is not able to be easily sorted or extracted. All of this increases the burden of collection of information, contrary to CPSC's stated goal of minimizing the reporting burden. It likely also adds little value to the 'typical' recipient of a certificate, such as a retailer, since the information contains component and material numbering systems and nomenclature that may not be universally understood.

We also are concerned about the need to put specific supplier information on the certificates, as we are mandated by CPSIA to provide these certificates to our retail customers who may also be producing similar private label products. Supplier information should not need to be shared unless there are issues with non-complying products at which time the data would be provided to CPSC upon request, or as part of a formal report.

Lastly, Sec 1109.5 (h) (3)(ii) notes that companies must "...certify that no action subsequent to component testing.....changed or degraded the consumer product.....". We would reiterate our position that this is a requirement of the law, just as the traceability demands are, so there is no practical utility in re-stating this on every certificate.

B. General Recordkeeping Requirements:

Proposed Section 1109.5 (i) requires that finished product certifiers must maintain the records at the location within the United States that is specified on the certificate. We would request that as long as the records *can be accessed* from that location in the United States, that they do not need to be maintained at the location. This recognizes that certifiers retain documentation related to products across their global supply chains, much of it in digital databases.

The estimates of recordkeeping burden are typically not areas where LEGO would choose to comment, but the time estimates provided by CPSC to manage component testing appear to be grossly underestimated. In Section VII, Paperwork Reduction act, the CPSC assumes that component testing recordkeeping will be about 10% of the total recordkeeping burden for testing and certification which it calculates to be 200,000-300,000 hours. That equates to 20,000 to 30,000 hours across all companies utilizing component testing. Using a relatively low 1500 annual hours/Full Time Equivalent (FTE) would calculate to a maximum of 20 FTEs (30000/1500) to manage recordkeeping across all component certifiers and/or finished product certifiers relying on component testing. LEGO alone has several full time staff members operating globally to manage our component testing process and recordkeeping and would expect the actual costs and resources needed by all impacted manufacturers to be many factors higher.

Summary:

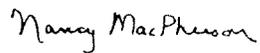
1. Do not require detailed component information to be included on the Children's Product Certificate, as long as the finished product certifier can provide the information to CPSC upon request, using self-defined traceability methods appropriate to the certifier's business practices.
2. As long as the required records can be accessed from a location in the US, the records do not need to be maintained at the US locations.

3. Re-evaluate the recordkeeping requirements associated with this Proposed Rule, as it is critically underestimated and introduces complexity and cost without adding value to CPSC's ability to perform its functions.

Due to the effectivity dates of the various requirements of the CPSIA, we can reflect actual experience in our comments. We are not simply estimating how these demands might impact us because 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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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001

Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0004

Comment from Anne Meininger

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Submitter's Representative: USA WTO TBT Inquiry Point

Organization: Natl Inst of Standards and Technology

General Comment

Hello CPSC,

Please find the attached comments from the Government of China submitted today to the USA WTO TBT Inquiry Point at NIST.

The WTO reference number for this issue is USA/548.

Please let me know if you have any questions.

Thank you --

Anne Meininger

301-975-2921

Attachments

CPSC-2010-0037-0004.1: Comment from Anne Meininger

中国 WTO/TBT 国家通报咨询中心

China WTO/TBT National Notification & Enquiry Center

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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
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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@aqsq.gov.cn
Subject: Comments from P. R. China on USA Notification G/TBT/N/USA/548 Conditions and Requirements for Testing Component Parts of Consumer Products (15 p ages, English)	

Comments from P. R. China on USA Notification

G/TBT/N/USA/548

Conditions and Requirements for Testing Component Parts of Consumer Products
(15 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
Post Code: 100028
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Comments from P. R. China on USA Notification

G/TBT/N/USA/548

Conditions and Requirements for Testing Component Parts of Consumer Products
(15 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/548, 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 1109.5 (f) (4) specifies that testing party shall provide sampling protocols. According to 1109.4(k), the third party conformity assessment bodies are also included in the definition of testing party. Since the third party conformity assessment bodies in principle are only responsible for the samples submitted by applicants, rather than the sampling processes. Therefore, they cannot always provide sampling protocols to the certifier. We suggest deleting or modifying the requirement that testing party must provide sampling protocols.

2. Section 1109.5(i) specifies that all records must be available in the English language. Since testing party including both domestic and foreign organizations, if all testing records must be English for non-English speaking countries, it will greatly increase their testing and management costs, and to some extent may influence the accuracy of the recordkeeping. We suggest deleting the compulsory requirement of using English language for all testing records.

3. Section 1109.11 (a) (3) specifies that the documentation required by a testing party and the certificate required by certifiers shall identify each paint tested by location and formulation. Since the paint formulations involving the manufacturer's commercial and technical secrets, and the requirement of identifying paint formulations is also beyond CPSIA's scope. We suggest deleting the requirement of identifying paint formulations.

Meanwhile, the paint is a kind of important raw materials for consumer products. The same paint may be used in a variety of consumer products or different locations on the same consumer product, with some kind of uncertainty. Therefore, the locations of the paint in the consumer products are difficult to identify accurately before its use. We suggest deleting the requirement of identifying paint location, or changing it to voluntary requirement.

4. CPSIA exempts the lead content requirement for the inaccessible parts of Children's products. Since the legislative intent of CPSIA is to protect children from contacting with hazardous substances when they use these products. We suggest exempting phthalates requirement for the inaccessible parts of Children's products.

Comments in Chinese is in below:

中国对美国 G/TBT/N/USA/548 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/548 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 1109.5(f)(4)节要求检测方应提供抽样方案。由于本法规对检测方的定义中包括第三方检测机构，而第三方检测机构原则上只对检测申请人送检样品负责，不负责抽样，因此无法向认证机构提供抽样方案。建议删除或修改检测方必须提供抽样方案的规定。

2. 第 1109.5(i)节要求所有记录都应该用英文。由于检测方既有国内检测方，同时也包括国外检测方，如果对非英语国家的国外检测方要求所有检测记录都采用英文，将大大增加检测和管理成本，并在一定程度上可能降低记录表述的准确性。建议删除过程记录文件也用英文的要求。

3. 第 1109.11(a)(3)节规定：检测方提供的文件和认证方提供的合格证书中应标明被检测油漆的位置和配方。由于油漆的配方涉及制造商的商业和技术机密，且要求标明油漆的配方也超出了 CPSIA 的要求。建议删除本节中的配方要求。

同时，油漆作为消费品的一类重要原料，在多种消费品或同一消费品的多个位置都可能用到同一油漆，且使用位置带有较大的不确定性，因此，在检测方提供的文件和认证方提供的合格证书中，难以在使用油漆前准确标明被检测油漆在

消费品中的使用位置。建议删除本节中的位置要求，或者将其改为自愿性要求。

4. CPSIA 对儿童产品中不可触及零部件的铅含量是豁免的。因为 CPSIA 的立法目的是保护儿童在使用儿童产品时不会接触有害物质，因此建议对不可触及零部件也豁免邻苯二甲酸盐的要求。

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0005
Comment from Terry Bush

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General Comment

Neither 16 CFR Part 1107 or 16 CFR Part 1109 nor the comments or responses address why ordinary books are included in CPSIA. According to the CPSC website, there has never been a recall or report of illness or injury due to the presence of lead or heavy metals in ordinary books. Therefore, either one of the proposed rules, or CPSIA itself, should be amended exclude ordinary books because they are not a hazard.

Although providing the means to test less frequently for a problem that doesn't exist still does not address this issue, the Commission has stated in the proposed rules "that products with a higher potential for injury or death should undergo greater scrutiny." Using the same reasoning, products with a much lower potential should undergo much less scrutiny. Therefore, while exempting ordinary books should still be done, the proposed rules should be amended to provide an exemption process for component parts and/or finished products that demonstrate they are in compliance with applicable rules and regulations with test results for a particular chemical that indicate a very low or nonexistent level. The exemption process could begin with a reduced testing regimen followed by removal from the testing requirement altogether.

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0006
Comment from Richard Woldenberg

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Organization: Learning Resources, Inc.

General Comment

My Comment Letter is attached in a Word file.

Attachments

CPSC-2010-0037-0006.1: Comment from Richard Woldenberg

August 3, 2010

Todd A. Stevenson
Director, Office of the Secretary
Room 820
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Agency: Consumer Product Safety Commission (CPSC)

Re: Docket No. CPSC-2010-0037 Conditions and Requirements for Testing
Component Parts of Consumer Products.

Dear Mr. Stevenson:

I am hereby submitting comments in response to the Solicitation of Comments on the Conditions and Requirements for Testing Component Parts of Consumer Products (Docket No. CPSC-2010-0037) published in the Federal Register on May 20, 2010 (the "Proposed Rule").

This request for comments comes after, among other things, a two-day workshop held at the CPSC on December 10-11, 2009. Our company incurred the expense of sending three people (all panelists on multiple panels) to attend this "sold out" event which was purportedly to solicit stakeholder feedback on this rule and the so-called "15 Month Rule" (also up for comment today). There is little evidence from the Federal Register that any of our feedback was taken or possibly even heard. I have lost track of how many comment letters I have filed, panels or hearings I have appeared at and essays or letters I have written about the CPSIA and these issues. So far, my comments have added up to . . . nothing. Nevertheless, I am filing this letter in the vain hope that perhaps this will be my lucky day and you may listen to me, finally.

I would like to make some general comments first.

- a. **Some Positives in the Proposed Rule.** I am in favor of the concept of component testing and applaud the Commission for taking steps to make it a reality, however flawed. In addition, I am also enthusiastic about composite testing. Regrettably, however, the devil is in the details.

- b. **CPSC Data Demonstrates that Risk is Low, so the Proposed Rule does not Need to be so Strict.** I have analyzed the recall data published on the CPSC website and determined that from 1999 – 2010, the CPSC can account for ONE DEATH and THREE ASSERTED INJURIES from lead or lead-in-paint. If the goal of these rulemakings is to reduce deaths and injuries from lead, then these data must be borne in mind. With so few incidents involving lead injury of any kind in children's products (less than occurs on AN AVERAGE DAY from swimming pools and spas in the U.S.), there is no justification for building such an ornate rule for something simple and logical like component testing or composite testing. Likewise, incidents of fraud in testing are equally infrequent and in any event, already addressed by other statutes. Congress did not require this complicated regulatory scheme, and the data cannot justify it.
- c. **The Proposed Rule Puts Compliance First, Before Safety.** This rule seems to place a very high emphasis on the need to comply, as opposed to the need to make children safer. One is not necessarily the equivalent of the other. My favorite example is our company's record of compliance. Founded in 1984, our company has recalled a grand total of 130 pieces in its history, all recovered, out of perhaps one billion pieces sold. Not bad. Were we to meet the myriad requirements of this rule, I cannot fathom that our products would be safer. Does all that extra compliance benefit anyone? It certainly will cost a lot (we pay, you don't). As I read your rule, I wondered why you didn't list the wire transfer instructions for the top testing companies. You might as well Still, the casual waste of our resources cannot make anyone safer – they were already completely safe.

Safety is the reason the CPSC exists. This document fails because it confuses the desire to powerfully enforce the CPSIA with actually making people safer. The only thing that may be accomplished is business death for many companies, principally small ones. Swashbuckling enforcement may make great headlines but no one will be any safer. Compliance is not safety.

- d. **Science Has Apparently Been Rendered Moot at the CPSC.** While I accept that Congress has banned certain phthalates in toys, I do not accept that the ban is a SCIENTIFIC CONCLUSION. It is legislation, not science. Notably, the CPSC has twice investigated phthalates and held that phthalates were safe in toys. Yet, on page 28213 in the Federal Register, the Proposed Rule discusses the "risk" presented by a product that might have a violative concentration of phthalates in a component, but with an overall concentration that wouldn't violate the ban. It goes on to assert that a component-based rule is "more protective of human health", as though the agency had reached

the scientific conclusion that phthalates were dangerous – which is not true. Re-characterizing the legislative ban as an assessment of “risk” may appear to legitimize your rule, but it is certainly not an accurate statement of the historical position of the agency. I object to the rule’s equating of a ban by politicians to a scientific judgment. Science is under enough assault without the stamp of approval of the CPSC announcing its death.

My specific comments on this proposal:

1. **Component Testing Looks Better Than It Is.** I wish I felt we (or anyone else) would use component testing extensively in the future. There are several reasons why this option will be of little use to anyone, particularly the small companies that it was intended to benefit. [Companies with enough scale may find the Proposed Rule useful – one of the many ironies of the CPSIA is that its principal beneficiaries may be the companies that prompted its passage.]
 - a. **Limited Market Availability for Component Certificates.** While some high volume components of children’s products may quickly be tested to meet these requirements, many other kinds of components are not likely to be tested:
 - i. Low volume components
 - ii. Components made in small lots
 - iii. Components made by small suppliers (many fabrics)
 - iv. Components which derive only a tiny percentage of revenues from regulated products or which principally cater to other industries (e.g., paper clips or aluminum foil in a science kit)

Unfortunately, it appears to me that the logic of this rule is that if we can be certain that some certificates will be widely available (e.g., paint, plastic pellets), therefore all other certificates will be available. That’s plainly ridiculous.

- b. **Complexity.** The subdividing of compliance testing into component parts and the whole, some tests done on parts and some on the whole, with tests of varying dates substituting from time to time, is simply a mindboggling mess. I cannot imagine that this can be successfully managed on any scale (how many products need to take advantage of this rule before test reports develop big and inconsistent holes?). And how will retailers be able to interpret this patchwork quilt of tests? This scheme will be self-defeating on all levels.

Add to this the requirement that components need to be traceable, and you basically rendered the component testing opportunity moot. Of course, I am presuming that industry will take your rules seriously. To me, it's completely inconceivable that anyone will build your traceability system. [Traceability will not raise revenues, only mindless complexity, and as noted above, cannot conceivably improve safety.] If you take these rules seriously, you will cry, laugh/scream – or walk away. The paperwork required for this exercise is well beyond almost all companies' capabilities. [Does the CPSC have ANY tangible evidence that its requirements can be met by anyone . . . other than Mattel and Wal-Mart? Presumably, no one at the agency living in the real world thinks that traceability rules can be met by the typical Handmade Toy Alliance member, or other small businesses like ours.]

- c. **Unrealistic Expectations on Manufacturing Control and Traceability.** To take advantage of this rule, a manufacturer must take responsibility at the sub-micro-level for manufacturing quality. Let's recall for a moment that we are not making drug treatments here, nor are we building the Space Shuttle. We are making simple plastic toys and games, children's shoes, pens, shirts, books, educational materials and so on. Consider this instruction from your new rule: *"The manufacturer must exercise due care that the manufacturing process does not add a prohibited chemical from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product."* Our company has several hundred vendors producing thousands of SKUs – do you honestly believe we could possibly manage how all these independent companies wash out their molding machines or manage their regrinding operations? **Is this some kind of sick joke?**

By the way, this verbiage will end the use of recycled materials in children's products. This is completely unjustified for safety reasons and is certainly very unfriendly to the environment. As noted above, your agency's responsibility is to manage safety. You have **no basis in fact** for asserting that these theoretical sources of lead are or could constitute a public safety risk.

- d. **Liability Risk.** The Proposed Rule goes to great length to ram home the message that all the risk is on our shoulders. The monotonously repetitive use of the term "due care" throughout this document makes

abundantly clear that the CPSC is perfecting a myriad of claims to be made against any and all manufacturers of children's products when it suits the purpose of the agency. Many of the claims may be perfected with the agency's 20-20 hindsight. The Proposed Rule minces few words on this preservation of rights: *"The above information is needed so that, if noncomplying products are found, the Commission can use this information to determine whether a finished product certifier, component part certifier, or third party conformity assessment body is not complying with the appropriate requirements."* Under the Proposed Rule, even a missing piece of paper can be the basis of charge of failed due care. A fear of criminal charges seems realistic.

Will aggravating letter writers be the first to suffer under this hammer? The answer is – it's entirely up to YOU under your rule. Small companies will see how the deck is stacked against them and steer far from the component testing option (if they understand the obtuse wording of the rule).

2. **If Few Companies Can or Will Use Component Testing, Has the Agency Provided "Relief"?** Of course, the answer is NO. The Proposed Rule may look like good policy, but if the practical impact of the rule is that few people can or will take advantage of it, it is simple window-dressing. The impact on small businesses, exemplified by the well-known and sympathetic Handmade Toy Alliance, will be severe. They are not the only ones in need of help, either. If small companies like HTA members cannot take advantage of these rules in large part or would be too scared to take a chance in the face of the awesome display of governmental power in the rule's terms, then they will suffer and shrink. I would note that the Notice on the "15 Month Rule" explains how a failure to protect small companies could play out badly (see "Caveats and Possible Market Reactions to Third Party Testing Requirements" on page 28358). Those negative impacts could result from a failure of policy here, too.
3. **Maintenance of Records for the Life of a Product Plus Five Years Is Unduly Burdensome (Not to Mention Pointless).** Please consider our case: We still produce certain items from our original product line in 1984. Clocks don't go out of style in education, even if Tickle Me Elmo and Furby last only one year. The requirement that we must retain records for the life of the product plus five years could theoretically be ***forever*** in our case. Perhaps the CPSC can provide us free unlimited warehouse space for all these records. In any event, our case also makes clear how pointless this

requirement is. We have only had one recall in 26 years, which we successfully administered without the assistance or guidance of the thousands of pages of rules and legislations that befell us under the CPSIA. How, precisely, will decades of records improve the public weal in OUR case? Your rule is very good at spending our money, our resources and our time, but doesn't make a reasoned connection to safety in any way. We are not Mattel and in any event, they don't define the market. Had you listened to us in December 2009 at your workshop, you would know this already.

4. **Composite Testing Rule for Paint LOWERS the Lead Standard to Sub-trace Levels.** In yet another example of overly risk-averse rulemaking, the agency's new composite testing rule for paints requires that lead content must never exceed that for any individual component paint in the composite. This slices the 90 ppm limit by two-thirds for a three-paint sample and by 75% for a four-paint sample. This super-stringent rule ensures that it is literally a gamble to use composite testing – so why would anyone bother? Even more bothersome, since the new policy of the agency is to impose strict liability for lead-in-paint violations, this new rule demonstrates the ascendancy of the debunked notion that there is “no safe level for lead”. If the agency really wants to take this position, it should not permit composite testing for paints. Too risky
5. **The Regulatory Flexibility Analysis is Flawed and Self-Justifying.** The analysis justifying this Proposed Rule is a “best case” scenario, and takes none of the foregoing into account. If in fact the rule will be hard or impossible to use, or will create too many legal risks or recordkeeping burdens and thus go largely unused, the reasoning in this section will be completely inapplicable.
6. **The Burden of Recordkeeping is FAR GREATER than Asserted in the Proposed Rule.** At our company, we produce about 1500 “catalog” items and several thousand other SKUs and custom products through a network of hundreds of factories in various countries. We do not control these factories – they are generally family businesses like our company, and are independent of us. Typically, we provide only a small share of annual revenue of any of our factories and thus have limited leverage over their business practices. Like many small businesses, we have a very limited infrastructure in place to supervise factories “on the ground”, although it is worth noting that our safety record indicates that our business methods have worked well for more than two decades.

To implement the recordkeeping set forth in this rule, I estimate that we would have to spend \$50,000 - \$100,000 in software development expenses to store and manage the desired records. In addition, we would need to expand our staff significantly. To reach out to all of our factories, negotiate and monitor many new business practices, will take a significant increase in staff. I posit that we would need to open an Asian office with as many as 5-10 local employees. A Chinese office would cost us at least \$500,000 per annum. In addition, we would have to increase our clerical and management staff in the U.S. to help with data input, software management, project management, audits, vendor relations and general management. This would cost us at least \$250,000 per annum. We anticipate that this intrusion on the business practices of our vendors would cost us business relationships and would lead to significant cost increases. The total cost of these disruptions would add another \$500,000 or more per annum. It is not inconceivable that we ALONE could incur annual expenses of \$1.5 million and certainly at least 10 man-years of labor (more than 20,000 hours) to comply with these rules. There are THOUSANDS of companies affected by this rule. We estimate that the assessment of cost and man-hours in the Paperwork Reduction Act section of the Proposed Rule is LOW by a factor of 100x-5,000x.

I would suggest that this rule be greatly simplified by making the following changes:

- a. **Eliminating the Requirement for Traceability Recordkeeping.** As noted above, this ornate rule architecture is completely inappropriate for the minimal, almost non-existent threat, demonstrated by the CPSC's own injury data. Recordkeeping requirements should be minimized or dropped altogether.
- b. **Encourage the Exercise of Business Judgment.** The presumption that only the CPSC (or Congress) can make sound judgments when considering safety issues is simply not supported by the data. Again, our company is a good example of that - we scrupulously maintained our safety record without the CPSC's oversight, coercion or even encouragement since 1984. The concept of "business judgment" is well-defined in U.S. common law and has real meaning under the law. I think the concept of using components supported by GCCs is simple enough. Given that the restrictions on lead are clear under the CPSIA, why not let businesses exercise their judgment on how to meet those requirements and then measure them on their success in doing so? What is to be gained by inserting the CPSC into all aspects of how we conduct business? We were doing just fine before you arrived on the scene.

Given the few lead injuries noted in the CPSC's historical data, the agency could save its scarce resources and remain effective as a safety administrator by focusing on known safety issues and incidents and leave the vast majority of law-abiding and safety-conscious companies ALONE. The data suggests that higher and higher mountains of regulations will never reduce injuries from the historically miniscule levels documented on the CPSC website.

- c. **Allow Composite Testing Using the Overall Concentration as the Pass/Fail Measure.** Again, this is justifiable based on the historically minimal risk posed by the regulated substances. The already low lead levels specified in the CPSIA have not reduced injuries or deaths from the negligible levels that predated it. Since the number of recalls is so dramatically affected by agency policy (e.g., strict liability or not, how recalls are accounted for, etc.), the only reliable measure of the effectiveness of policy is injuries. Composite testing holds the promise of real savings to the many law-abiding companies affected by the CPSIA. Loosen the noose and they may actually save some money.

Component testing can be a simple and effective way to lower costs, but a different approach is necessary to get to that result. A sharp reconsideration of the Proposed Rule will be required to achieve this goal.

Thank you for considering my views on this important subject.

Sincerely,

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0007
Comment from James Reed

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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0007.1: 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.

PUBLIC SUBMISSION

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Comments Due: August 03, 2010
Submission Type: Paper

Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0008
Comment from Emily E. Martin

Submitter Information

Name: Emily Martin
Address: United States,

General Comment

See Attached

Attachments

CPSC-2010-0037-0008.1: Comment from Emily E. Martin

June 14, 2010

58 Salem Circle Saline Michigan 48176

Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Consumer Product Safety Commission

I believe that by putting fines, inspections and possible company loss on company's that use lead in children's toys can be beneficial to the safety of the society. Many of the toys have lead and other toxins in them which can cause disease. By doing these inspections we can help stop company's from selling toys with lead in them.

Lead is a highly toxic metal, that can lead to many side affects of lead poisoning. Such as slowed growth, behavior/learning problems and damage to the brain and nervous system. Lead poisoning can also cause these in adults, along with high blood pressure, nerve disorders and memory/concentration problems(findlaw.com).

Lead poisoning has affected more than 310,000 american children, ages six and under. A four year old boy swallowed a charm that he received from a gumball machine, that charm had thirty nine percent lead in it(health.msn.com).

By taking lead out of toys, that number will drop. The toys sold in gumball machines will be safe for kids to play with a parents will feel more comfortable. Companies will have less toy recalls, and I believe that business will go up.

Sincerely,

A handwritten signature in black ink that reads "Emily E. Martin". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Emily E. Martin

PUBLIC SUBMISSION

As of: August 03, 2010
Received: August 03, 2010
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Posted: August 03, 2010
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Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0009
Comment from Bryan Rogers

Submitter Information

Name: Bryan Rogers
Address: United States,

General Comment

See Attached

Attachments

CPSC-2010-0037-0009.1: Comment from Bryan Rogers

Stevenson, Todd

From: Information Center
Sent: Monday, June 21, 2010 1:45 PM
To: Stevenson, Todd
Cc: Wolfson, Scott; Filip, Alexander; Fleming, Nychelle
Subject: FW: Message from Email Form

Todd,

Please note this information as comments.

Thank you,

Michael June

From: emailform@cpsc.gov [mailto:emailform@cpsc.gov]
Sent: Sunday, June 20, 2010 1:41 PM
To: Information Center
Subject: Message from Email Form

06/20/2010 13:41:14

Name = Bryan Rogers
Organization/Affiliation = Individual
Daytime Phone =
E-mail address = dumbluck_007@hotmail.com

Message = In regard to the proposed testing and certification rule and the proposed component parts rule, I, in some respects, agree with Commissioner Anne M. Northup. The imposition to regulate each part of a particular product at the level before the final piece is completed makes little sense. If there is a safety issue with any one part of a product then the entire product should be rejected. It is up to the maker of that product to get a safe final product. It would be unnecessary and far too cumbersome to expect that any government entity as a rule would need to micromanage each piece going into a product. While there may be some exception to this, a policy to do this with children's toys, which are usually far less complex than say, an automobile, would become a senseless and very difficult task. The standard of a final product needs to be met and is the responsibility of the manufacturer alone. Only the standard to meet and proper inspection of the end resulting product is the responsibility of this agency. The process to get that product is of less importance to the CPSC. This should force those would run businesses and commerce to compete and innovate to achieve the mandatory result. Let's not over regulate and miss the mark of assuring a safe toy for children. Thank you for your consideration of my comments.

PUBLIC SUBMISSION

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Submission Type: Web

Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0010
Comment from Joseph Ertl

Submitter Information

Name: Joseph Ertl
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Phone: 563-875-2436
Organization: Scale Models

General Comment

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

Attachments

CPSC-2010-0037-0010.1: Comment from Joseph Ertl

Corporate office of divisions:
**SCALE MODELS and
DYERSVILLE DIE CAST**

301 Fifth Street NW
PO Box 327
Dyersville, Iowa 52040-0327

phone 563-875-2436 fax 563-875-2753
www.scalemodeltoys.com
www.dyersvillediecast.com

August 3, 2010

TO: Consumer Products Safety Improvement Act

FR: Joseph L. Ertl, President
563-875-2436, x240
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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Tracking No. 80b27d9d
Comments Due: August 03, 2010
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Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0011
Comment from Marcia Kinter

Submitter Information

Name: Marcia Kinter
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SGIA
10015 Main Street
Fairfax, VA, 22031
Email: marcik@sgia.org
Phone: 703-359-1313
Organization: Specialty Graphic Imaging Association

General Comment

Comments submitted by the Specialty Graphic Imaging Association.

Attachments

CPSC-2010-0037-0011.1: Comment from Marcia Kinter



August 3, 2010

Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East West Highway
Bethesda, MD 20814

To whom it may concern:

RE: Docket No. CPSC-2010-0037

The Specialty Graphic Imaging Association (SGIA) respectfully submits the following comments on the Consumer Product Safety Commission's (CPSC) notice of proposed rulemaking on Conditions and Requirements for Testing Component Parts of Consumer Products published in the May 20, 2010, *Federal Register*. SGIA represents companies engaged in the production of children's products, including wearing apparel, via the screen and digital print technologies, including the associated supplier base.

SGIA supports the CPSC's proposal to incorporate and allow certification of consumer products based in whole or in part on the testing of component parts. The ability to utilize component testing is critical to allow small manufacturers to comply with this testing requirement. While we can agree that for certain component products, such as zippers, buttons, fasteners, the current proposal sufficiently addresses the issues, however, for liquid based components, such as inks used to create children's products, the proposal creates additional burdens.

It is important to note that these rulemakings will be critical to a facility's implementation of a final testing and certification program that will be required by Feb. 10, 2011. The scrutiny and interest on the part of the manufacturers of children's products by members of the Specialty Graphic Imaging Association attest to this fact. This rulemaking will shape the programs that will be required by final customers, i.e., retail stores, so it is critical that the CPSC understand issues surrounding the language used in this draft to those providing liquid based component products. For easy reference, our comments are provided section by section.

Section 1109.4, Definitions

Section 1109.11, Component part testing for paint and other surface coatings, references the part 1303. Part 1301 specifically states that inks are not considered surface coatings. Further, Part 1303 does indicate that if a surface coating is scrapable then, the requirements of Part 1303 apply. While we have been unable to substantiate, we believe that current CPSC policy defines the differences between scrapable and unscrapable coatings. And, that inks are included in this broad category of coatings. We agree that that the CPSIA does impact the use of inks on children's products, however, the treatment of ink systems under the current set of regulations and policies is confusing to those that both provide and use ink systems as a component of a children's product. SGIA reemphasizes the point that ink systems and surface coatings or paints are very different product lines manufactured by very different business

sectors. If the CPSC intends for the regulations to apply to the universe of ink systems, then the regulations need to clearly state that applicability.

Due to the perceived disconnect between the coverage of ink products under Part 1303, recommends that the following definitions be added to this section:

Ink: a pigmented, liquid or paste used for printing on children's products.

Base Colors: A range of stock colors with which, by intermixing in prescribed combination and amounts, an ink mixer can obtain a wide range of tints, tones, shadings, and intermediate hues.

Scrap able: Ink products that do not bond with the substrate and can be removed from the substrate without causing undue harm or damage to the underlying substrate. These inks are subject to the provisions of part 1303 of this chapter.

Unscrapable: Ink products that bond with the substrate and cannot be removed from the underlying substrate. Unscrapable inks are not subject to the provisions of part 1303 of this chapter.

Inclusion of these definitional terms will further clarify the provisions of Section 1109.11.

Section 1109.5, Conditions, requirements and effect generally

Overall, SGIA supports the elements of this section with the exception of certain provisions found in Section 1109.5(f), Documentation by testing party. The CPSC is undertaking a huge task of developing a specific regulatory approach for a wide variety and multitude of children's products. We agree that the testing needs to be documented, however, Section 1109.5(f), in the documentation requirements, specifically requests that a lot or batch number be used to identify the component material. The Commission must recognize that for certain lines of children's products, different approaches need to be developed that allow the industry to meet the requirements without an undue economic impact.

Section 1109.5(f) (2) requires identification by lot or batch number. For ink systems, lots or batch numbers are assigned each time a color is mixed. For some ink manufacturers, this could amount to over 1,000 tests per year depending on production schedules. Based on our review of the current language, each ink color used to create a children's product would require a separate certification test. It is not unheard of for a single children's printed garment to include 20 or more colors. We believe, based on the proposed language, that the customer base will require a separate test for each specific color rather than relying on the use of component tests for the base colors that are used to mix the entire color palette used. We find that the customer base, for liability reasons, uses a literal reading of the regulatory programs enacted by the CPSC in this area.

For printing ink systems, we recommend that ink manufacturers be allowed to group, test and certify product families for component testing. Product families represent the same core formula. Again, this approach has been deemed acceptable by OSHA when developing and disseminating MSDSs for the purposes of worker safety. The certification of any given component should remain relevant as long as the component formula, composition and manufacturing process do not change. We believe this process, as outlined, illustrates "due care" on the part of the manufacturer and provides a reasonable, economically viable, testing model for these ink manufacturers.

This is extremely critical as Section 1109.5(h) (2) requires the final product manufacturer to ensure that proper documentation is received from the component manufacturer. We do not disagree with the requirement for the verification, but again, the documentation requirements will place an undue burden on both the ink manufacturer as well as the final product manufacturer.

Further, we do not see the value of this element of documentation. We believe that the date or date range of when the component part was tested serves the same purpose for documentation purposes and thus recommend that item (f)(2) in Section 1109.5 be deleted from the final rule.

Section 1109.11, Component Part testing for paint and other surface coatings

As previously mentioned, the current definition of “paint” in the proposed text has been defined to mean any surface coating subject to Part 1303, and Part 1303 specifically exempts inks. There is confusion within the regulated community as to the applicability of the Part 1303 requirements to ink systems. We continue to believe that absent any guidance from the CPSC to the contrary, ink systems will by default, become subject to the component testing requirements for paints. Paints and inks are two very different products. They are not manufactured by the same companies, nor are they used in the same manner.

The inclusion of inks into Section 1099.11, Component Part Testing for Paint and Other Surface Coatings becomes problematic as it does not adequately address the unique issues surrounding ink systems. If the requirements for component testing are enacted without considering the implications for the ink industry, we foresee many problems and unnecessary costs occurring. Again, SGIA does not disagree that testing and certification is required for these ink systems.

We do not interpret the proposed language to allow the testing of the base colors that are used to create the over 250 ink colors used by the printing industry. Section 1109.11(3) specifically identifies color as an identifying characteristic by requiring that “each paint tested by color, location, specification number or other characteristic.” Section 1109.11(2) states that the tested paint must be identical in all material aspects to that used in production. And, the language included for test reports indicates that each test report must identify each paint tested by color. With the language as currently written, those facilities using ink systems to create children’s products will have to request a third party certification for each and every color. It has been estimated that the cost to test each color will be approximately \$150 per test. This includes not only the lab work, but shipping/handling as well as the associated paperwork by the ink manufacturer. An average textile screen printer can use up to 200 colors per week. The requirement to test each color coupled with the documentation requirement to include a lot or batch number greatly increases the number of tests and costs for the printing industry sector.

This proposed language also impacts those manufacturers of children’s products that mix their own ink colors. It is not uncommon for large printing establishments to purchase large amounts of base colors and mix their own colors as needed. Under the current language, each batch that is mixed would be required to be tested as it would be a new batch number even though they are mixed from a set of base colors that have already been certified.

We recommend that an entirely new section be created for ink systems that specifically states that component testing for inks can be both accomplished and documented through the testing of the base colors. Further, that the base colors would not need to be retested unless a new raw material was introduced into the manufacturing process. This new language would cover not only those inks used in textile screen printing, but all printing applications that would fall under this requirement for children’s products.

The issue of material change is paramount to the use of component testing. The CPSC needs to carefully consider the costs incurred by manufacturers when developing this regulatory approach. Changing production materials or the manner in which a product is produced might very well constitute a material change, depending on the situation. For example, if a product is produced via screen printing and the facility moves to employ digital imaging as the chosen imaging technology, then this would constitute a material change.

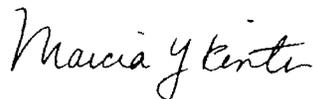
The example to illustrate material changes provided by the Commission in their *Federal Register* notice referred to paint colors. If the manufacturer receives certification from its supplier, we do not believe that changing ink colors, within that vendor's product family, constitutes a material change. The use of component testing, in this illustration, facilitates compliance by the product manufacturer without severe economic consequences.

Conclusion

The Specialty Graphic Imaging Association supports the proposal to allow the use of component testing for final product certification. However, we have severe reservations regarding the current language as it relates to the testing and certification of ink products. We recommend that definitional terms be included to further clarify the applicability of the sections to ink products. In addition, the ability to certify ink products on base colors produced rather than individual ink colors supplied to the end user.

Thank you for the opportunity to provide comments on this very important rulemaking. If you have any questions, I can be contacted directly at marcik@sgia.org or 703-359-1313.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Y. Kinter".

Marcia Y. Kinter
Vice President – Government & Business Information

PUBLIC SUBMISSION

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0012
Comment from Gene Rider

Submitter Information

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Phone: 630-481-3100
Fax: 630-481-3101
Submitter's Representative: Quin Dodd
Organization: Intertek

General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0012.1: Comment from Gene Rider



2107 Swift Drive, Suite 200
Oak Brook, IL 60523

Telephone: (630) 481-3100
Fax: (630) 481-3101
www.intertek.com/consumergoods

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 Commissions’ 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,

A handwritten signature in cursive script that reads "Gene Rider". The signature is written in black ink and is positioned above a horizontal line.

Gene Rider
President,
Intertek Consumer Goods, NA

PUBLIC SUBMISSION

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Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0013
Comment from Alan Kaufman

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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0013.1: Comment from Alan Kaufman



August 3, 2010

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

RE: CPSC Docket No. CPSC-2010-0037

Dear Sir or Madam:

Consistent with Toys“R”Us, Inc’s commitment to children’s product safety, we are writing to you to provide our comments regarding certain aspects of component testing of consumer products (and more specifically, children’s products) pursuant to the proposed Title 16, Code of Federal Regulations, Part 1109. We very much appreciate the opportunity to provide you with input on this important topic.

We believe strongly that the language of the Consumer Product Safety Act (CPSA) modifications embodied in the Consumer Product Safety Improvement Act of 2008 (CPSIA) leaves considerable latitude for differing interpretations of whether, when, and how an entity may rely on the testing of other entities, component testing, and other strategies for the purposes of assuring and certifying compliance with the requirements applicable to a given item. We also believe emphatically that, while the safety of children who use these products cannot be compromised, the Commission has clearly attempted to assure their safety while promoting sensible testing methodologies and protocols which do not create needless cost within the product supply chain, thus ultimately benefiting consumers.

CPSA and CPSIA impose duties for third-party testing and certification on importers of children’s products as if the importer is the manufacturer of such items. While this is as it should be in the case of private-label or other items where the importer has significant control over the design and manufacture of the item and is the sole purchaser from an offshore entity, this requirement is more problematic where multiple importers (typically retailers) purchase and import identical “national-brand” product produced offshore by a US-based brand. We find ourselves in substantial agreement with the Commission that the current system of sometimes redundant third-party testing and certification of such products can be partially replaced by certifications of the finished product which may be based in part on appropriate component certifications.



Our specific comments follow:

A) Reliance on Finished Product Certifications of Others as well as Component Certifications of Others for Certification Purposes - §1109.5

The Commission has very reasonably proposed that finished products be certified by wholly or partially relying upon the component certification of another entity. We believe that it is a logical extension of this to also explicitly allow certification of a finished item based on an appropriate finished product certification of another entity; this would be especially valuable in the case discussed above, where multiple importers (typically retailers) purchase and import identical "national-brand" product produced offshore by a US-based brand. By making this practice explicit, an importer could, using due care choose to rely upon the finished product certification of the brand in cases where additional importer testing is deemed redundant. Importers will likely choose to continue to perform much of their own testing. However, the ability to rely where appropriate on the certifications of other entities (absent information that these are not reliable or representative) -- including those certifications which are based upon component testing (so long as the requisite degree of traceability exists and in the absence of information which would indicate potential material change in the component as incorporated into the finished item) or on finished product certifications -- will provide much-needed flexibility and ultimately reduce costs for consumers without compromising compliance.

Permitting importers to rely on a manufacturer's finished product certification would also be helpful in the case of a product which is sold as a "bundle" at retail, and is composed of two or more finished items for which valid certificates exist individually; the bundled item could be certified based at least partially upon the finished product certifications of the items making up the bundle.

B) Finished Product Certification Duties - §1109.5

The proposed §1109.5(h)(3), states that any certification of a finished product based on component testing must: (ii) "Certify that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product's ability to comply with all applicable rules, bans, standards, and regulations."

While this makes sense when applied to a manufacturer relying on a component certification in order to certify the finished product, it places an undue burden on importers who also are required to certify a finished product. This language seemingly requires the US importer to do precisely what it cannot do in any *specific* case, i.e., "certify" that *every* tested component part for each and every product is what actually was used in the finished product. It is beyond the importer's ability to reach back into the supplier's and sub-supplier's manufacturing and transport processes to detect whether there was a substitution or a material change in a component. To do so would require chain of custody verification procedures at each step in the pipeline, which the proposed rules do not impose. The most that importers can do is establish audit or control processes that provide a reasonable assurance, i.e. exercise "due care".



We therefore request that CPSC replace the text in subsection (h)(3)(ii) with the following language: "Attest that due care was taken to ensure that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product's ability to comply with all applicable rules, bans, standards, and regulations." This is supported by the earlier language in 1109.5(a)(2) which states that "A certifier must exercise due care to ensure that no change in the component parts has occurred that would affect compliance". As the term "certifier" has been defined in the proposed rule to mean either a finished product certifier or a component part certifier, the appropriate standard of conduct has already been set, and the Commission-proposed language in subsection (h)(3)(ii) is inconsistent with this standard of conduct.

C) Recordkeeping Requirements - §1109.5

We find the proposed recordkeeping requirements at proposed 1109.5(i) to be potentially unclear and/or unduly burdensome in two respects: that the records must be "available" in the English language, and must be maintained at a location within the United States. The Commission clearly has a strong interest that such records be provided to it within a reasonable time period upon request, and that any records submitted to CPSC be in English. Yet, since much manufacturing of consumer products occurs outside the United States, we believe that allowing maintenance of records in a local language at an offshore location (so that they will be of greatest utility to local compliance staff) should be allowed, subject to a reasonable requirement for production of those records in English to CPSC staff upon request. Further, neither the regulation cited in proposed §1109.5(i) (16 C.F.R. §1110.11(d)) nor CPSA §14(g) requires that the test records upon which certificates are based be maintained in the United States.

We once again thank you for the opportunity to comment, and recognize that the Commission has a very difficult task as it works to assure the safety of children's products while attempting to also accommodate the needs of multiple stakeholders and supply chains. We thank you also for your continued partnership in the effort to improve children's product safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan P. Kaufman".

Alan P. Kaufman
Vice-President-Global Product Safety, Quality Assurance, and Compliance
Toys"R"Us, Inc.

PUBLIC SUBMISSION

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0014
Comment from Stacey-Ann Taylor

Submitter Information

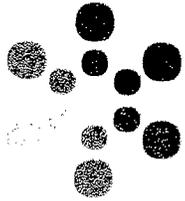
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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0014.1: Comment from Stacey-Ann Taylor



AmericanCoatings
ASSOCIATION

August 3, 2010

Office of the Secretary
Consumer Product Safety Commission (CPSC), Room 502
4300 East West Highway
Bethesda, MD 20814

**RE: Consumer Product Safety Commission – Conditions and Requirements for
Testing Component Parts of Consumer Products
Docket No. CPSC – 2010 – 0037**

Dear Sir/Madam:

The American Coatings Association represents a \$20 billion dollar industry in the United States, operating in all 50 states, and employing over 60,000 people engaged in the manufacture and distribution of paints and coatings. Annually over 706 million gallons of industry products are sold for application on architectural surfaces, in homes, offices and public buildings, by professional applicators and by homeowners and property owners who subscribe to the “do-it-yourself” approach. Not widely known but a fact of commercial production and manufacturing of consumer goods, the coatings industry’s products are applied to over 70 percent of the U.S. Gross National Product. From automobiles and appliances, to toys and electronic components, the continued availability of paints and coatings to protect and enhance these consumer products is critical to a large segment of the U.S. economy.

As described in the May 20, 2010 Federal Register notice, the Consumer Product Safety Commission (CPSC) issued a notice of proposed rulemaking regarding the conditions and requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards and regulations: to support a general conformity certificate or a certificate for a children’s product.

In reviewing the proposed rule, we see that the CPSC has wisely chosen to allow component part testing. We appreciate the CPSC providing manufacturers with this option. We support this decision and note that the CPSC’s analysis of the reliability of component part testing is sound. Our members would be able to get testing data from suppliers and use that data to certify products are in compliance with all CPSC rules, bans, standards, and regulations. Although some of our members will choose to rely on their own testing data to their produce compliance certificates, some of our members will certainly choose the option of using supplier testing data instead. By providing this type of flexibility to manufacturers, CPSC has taken a positive step toward making it easier for industry to comply with the very complex law that is the CPSIA.

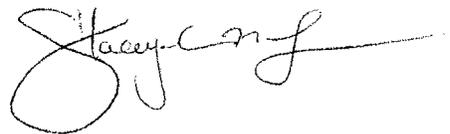
ACA appreciates the attention of the Commission to these issues and encourages the Commission to continue its dialogue with stakeholders even after the rule is finalized. Should you or your staff require further assistance please contact us at (202) 462-6272.

Sincerely yours,



Stephen R. Sides
Vice President
Science, Technology and Environmental Policy

Comments submitted online via regulations.gov



Stacey-Ann M. Taylor
Counsel
Government Affairs

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Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0015
Comment from Allan Adler

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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0015.1: Comment from Allan Adler



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August 3, 2010

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

Submitted Electronically

RE: Comments on NPRM Docket Nos. CPSC-2010-0037 & CPSC-2010-0038

These Comments are submitted on behalf of the Association of American Publishers (“AAP”), the Book Manufacturers’ Institute, Inc. (“BMI”), and the Printing Industries of America (“PIA”) in joint response to both the Notice of Proposed Rulemaking (“NPRM”) on “*Conditions and Requirements for Testing Component Parts of Consumer Products*,” Docket No. CPSC-2010-0037, and the NPRM on “*Testing and Labeling Pertaining to Product Certification*,” Docket No. CPSC-2010-0038, that were published by the Consumer Product Safety Commission (“CPSC”) in the Federal Register, 75 FR 28208 and 75 FR 28336 (daily edition, February 26, 2009), respectively.

AAP is the principal national trade association of the U.S. book publishing industry, and represents some 300 member companies and organizations that include most of the major commercial book and journal publishers in the United States, as well as many small and non-profit publishers, university presses and scholarly societies. AAP members publish literary works in hardcover and paperback formats in every field of human interest, including trade books of fiction and non-fiction; textbooks and other instructional materials for the elementary, secondary, and postsecondary educational markets; reference works; and scientific, technical, medical, professional and scholarly books and journals. In addition to publishing in print formats, AAP members are active in the ebook and audiobook markets, and also produce computer programs, databases, Web sites and a variety of multimedia works for use in online and other digital formats.

BMI is a leading nationally recognized trade organization whose members are book manufacturers and companies that provide materials, equipment, and services to that industry. Our member companies produce the great majority of the books ordered by the U.S. publishing industry.

PIA is the world's largest graphic arts trade association, representing an industry with approximately one million employees. It serves the interests of more than 10,000 member companies involved in every stage of the printing industry from materials to equipment to production to fulfillment. General commercial printing--magazines, books, brochures, advertisements, and more--comprises the largest segment of the printing and graphic communications industry. Packaging printing, ancillary services, and digital printing also round out the industry's diverse product line.

Introduction

The submitters of these Comments recognize and greatly appreciate the efforts of the CPSC and its staff to implement the "children's product" testing and certification requirements of the Consumer Product Safety Improvement Act ("CPSIA") through rules that provide the manufacturers and private labelers of such products with the ability to reasonably avoid unnecessary costs and burdens while complying with CPSIA's purpose of ensuring the safety of such products before they are imported for consumption or warehousing, or distributed in commerce.

After participating in last December's Public Workshop on Product Testing and reviewing the NPRMs, the submitters have a better understanding of the complicated challenge the CPSC is confronting in attempting to develop requirements for the testing and certification of *all* products subject to *any* applicable safety rules, bans, standards, or regulations under the Consumer Product Safety Act ("CPSA") or any other statute it enforces. The submitters agree with CPSC "that it is difficult to develop rigid protocols for testing across all categories of products, manufacturers, and importers," 75 Federal Register at p.28339, and they applaud CPSC for acknowledging that "no one-size-fits-all testing program will be sufficient for all manufacturers." *Id.* at p.28342.

For these reasons, the submitters have reviewed the NPRMs with great sensitivity toward the expressed efforts of CPSC and its staff to find reasonably flexible, common-sense ways to implement the *intent* of Congress in imposing these requirements, especially where that intent would not be accurately reflected by a literal implementation of the statutory language Congress used to enact them. Indeed, as even leading Democrat and Republican sponsors of the legislation in both the House and Senate have publicly acknowledged, a literal implementation of CPSIA's statutory language would impose unanticipated and unworkable consequences in the form of unnecessary and excessive regulatory obligations on the manufacturers and importers of many children's products. See, e.g., *Letter of January 21, 2009 to Hon. Henry Waxman from Reps. Joe Barton and George Radanovich* ("[I]t is becoming clear that, without the rapid application of some common sense, the new law also holds potential to impose vast economic hardship without actually protecting anyone."). Short of amending CPSIA, legislators have called upon CPSC and its staff to avoid such consequences by finding practical, common-sense approaches for implementing the testing and certification requirements. See, e.g., *Letter of January 26, 2009 to Acting Chairman Nancy Nord from Senator Amy Klobuchar* ("I urge the Commission, once again, to implement pragmatic, common sense regulations that both ensure children's safety and spare countless businesses unnecessary disruption.")

In these Comments, the submitters have focused primarily on those parts of the proposed rules that would implement the CPSIA provisions which may embody the greatest risk of such unanticipated and unworkable consequences: the requirements for testing and certifying the total lead content in a children's product under Section 14(a) and (d) of CPSA, as amended by Section 102(b) of CPSIA. Specifically, the submitters ask CPSC and its staff to carefully consider how practical interpretation of certain provisions in the proposed rules, plus a few relatively modest changes in them, could result in a reasonably flexible, common-sense application of these requirements to an **"ordinary children's book"** (previously defined by the submitters and CPSC and its staff as "one that is made of paper and/or cardboard that is printed with inks or toners and bound and finished using a conventional method"), and to other **"children's paper-based, printed products"** that are comprised of the same raw materials and made by the same manufacturing process. Examples of other children's paper-based, printed products include flashcards, posters, bookmarks and worksheets.

The submitters ask CPSC and its staff to note that, in seeking a practical, common-sense regulatory approach for total lead content testing and certification of the children's products described above, the submitters are in no way abandoning their assertion, or waiving their right to seek a determination, that such products should be excluded from such testing on the grounds that the component materials that comprise them do not, by their nature and as treated in the manufacturing process, exceed the total lead content limits specified in Section 101(a) of CPSIA. See *"Children's Products Containing Lead; Determinations Regarding Lead Content Limits on Certain Materials or Products; Final Rule*, 74 Federal Register 43031 (daily edition, August 26, 2009). While certain key component materials of such products have already been the subject of such affirmative exclusion determinations by CPSC, *id.*, the submitters are continuing to work with the suppliers of other component materials that did not qualify for exclusion determinations to compile additional technical data to present to CPSC in support of a request for reconsideration of the status of each of those component materials.

Discussion

As a threshold matter, the submitters understand that, under the critical requirement of Section 14(a)(2)(A) of CPSA, as amended by Section 102(a) of CPSIA, an ordinary children's book or other children's paper-based printed product, as a "children's product" subject to CPSIA's total lead content limitations, must be certified as complying with those limitations through the testing and certification of sufficient samples of the product by an accredited "third-party conformity assessment body."

However, the submitters agree with and support the central premise of the NPRM in Docket No. CPSC-2010-0037, *i.e.*, that reliance on the testing and certification of the *component materials* comprising a children's product – including when these activities are performed by the manufacturer or supplier of the component materials, rather than by the manufacturer or private labeler of the finished product – can be a reasonably cost-effective way for the manufacturers and private labelers of the finished product to certify the product's compliance with consumer product safety rules, including CPSIA's requirements relating to total lead content.

The submitters understand and support that, in some cases, the required certification for a children's product can be based on component materials testing, rather than testing of the finished product, if the component materials are tested by a third-party testing conformity assessment body. Since the proposed rules under Docket No.CPSC-2010-0038 would permit the private labeler importer of a children's product to base their product certification on a certificate provided by a foreign manufacturer if the latter certificate were based on testing conducted by a third-party conformity assessment body, it follows that such an importer may also rely on component materials testing conducted by the foreign manufacturer of the product or by the foreign suppliers of the component materials as the basis for their final product certification, provided that such component material certification is based on testing conducted by a third-party conformity assessment body. *Id.* at p.28337. It should similarly follow that a non-exempt component of a component material, which is combined with other elements in new ratios to create variations of the component material (e.g., such as the pigmented inks that serve as a mixing base which, in similar base formula combinations, can create a variety of spot ink colors), can itself be the subject of component material testing that would permit certification of both the tested component and the larger component material of which it is an element.

The submitters also understand, appreciate and support that the proposed rules for product testing and certification would permit the manufacturer to voluntarily establish a "reasonable testing program" ("RTP") if they think their children's product could safely be subject to the requirement for third-party conformity assessment body testing only once every two years, rather than annually. *Id.* at p.283348-28349.

While the submitters appreciate and support these proposals to help reduce the substantial costs entailed in annual third-party conformity assessment body testing, they believe the flexibility that CPSC and its staff have tried to build into the proposed rules to help minimize testing and certification costs and burdens can be reasonably enhanced by the acceptance of practical interpretations and applications of certain aspects of the proposed rules and, perhaps, a few targeted practical revisions in them.

"Ordinary Children's Books" as "Products" for Testing and Certification Purposes

The statutory definition of "children's product" in Section 3(a)(16) of the CPSA may provide a useful (albeit overbroad) set of criteria for determining what consumer products are subject to CPSIA's total lead content limitations, but it is unhelpful in determining how CPSIA's total lead content testing and certification requirements should be implemented in practice by the manufacturers and private labelers of the thousands of diverse "children's products" that are subject to those requirements.

In the submitters' discussions with CPSC and its staff regarding the definition of "ordinary children's book" or "other children's paper-based printed product" for CPSIA purposes, all parties have acknowledged that what constitutes a "book" or such other "printed product," as well as what distinguishes one "book" or such other "printed product" from another for CPSIA purposes, must focus on the nature of a "book" or such other "printed product" strictly in manufacturing terms, rather than in terms of its authorial content or any other intellectual characteristic. In other words, the usual means of distinguishing one unique "book" or "other

children’s paper-based printed product” from another by reference to their respective authors, publishers, subject matter, and manner of content presentation have no meaning or utility for CPSIA’s testing and certification purposes, where distinguishing one children’s “product” from another depends entirely on the nature of the component materials that comprise the finished “product” and the nature of the manufacturing process that produces the finished product from those component materials.

While the proposed rules speak of “samples” and “units” of children’s products in setting forth protocols for the total lead content testing and certification of such products, there is no guidance in either CPSIA or the proposed rules regarding how or even whether a manufacturer or private labeler can or should distinguish one “ordinary children’s book” title or “other children’s paper-based printed product” from another for purposes of “product” compliance. At the heart of the issue is that each “ordinary children’s book” title or “other children’s paper-based printed product” is manufactured in the same manner from a core set of component materials that are simply combined in a different product design.

The assignment of a unique International Standard Book Number, or “ISBN,” to each individual book title also identifies the publisher of that particular edition of the book title and thus serves as the conventional marketplace way to distinguish one individual book title “product” from another for purposes of doing business in the publishing industry’s supply and distribution chain. However, an ISBN is of little help in performing the function of determining what constitutes the specific “children’s product” for CPSIA purposes of total lead content testing and certification. Unique ISBNs may apply to separate book titles which are manufactured in exactly the same manner using component materials that are the same in all material respects, or they may apply to separate book titles that look very similar but in fact are the result of different manufacturing processes using different component materials; either way, the unique ISBNs assigned to each book title will not signify anything about whether any two individual book titles are identical or different “children’s products” in terms of their respective component materials and manufacturing processes.

The marketplace role of ISBNs in distinguishing one individual book title “product” from another argues for their use in CPSIA total lead content compliance *certification*, as the publishing industry’s supply and distribution chain already utilize this form of individual product identification for children’s books as they do for books in general. It also makes sense under the proposed rules, including from the consumer’s perspective, as a way of directly linking compliance issues to a specific children’s title.

However, for purposes of conducting total lead content compliance *testing*, using ISBNs is not the preferable way to distinguish one individual ordinary children’s book title “product” from another. Many different ISBNs may in fact be the same “product” in all material respects – they only differ in elements that are irrelevant to lead testing (such as in the words on the page) or in other immaterial respects. Accordingly, submitters believe that having accredited third-party conformity assessment body testing for a finished book would constitute finished product testing for all ISBNs that do not materially differ from the tested book with respect to compliance with CPSC safety standards. This approach is supported by the NPRM, which states that samples need to be “identical in all material respects,” and defines that phrase as meaning that there is “no

difference with respect to compliance to the applicable rules between the samples and the finished product.” Proposed rule section 1107.2.

During the period between required accredited third-party conformity assessment body testing of such ordinary children’s book products or other children’s paper-based printed products (i.e., two years under the proposed rules), the manufacturer or private labeler could rely upon those test results for certification of the subsequently manufactured book titles or other children’s paper-based printed products, provided that each manufacturer had established a reasonable testing program consistent with proposed rule section 1107.10(e) and there were no “material changes” in the product design or manufacturing process with respect to non-exempt component material elements, including the sourcing of non-exempt component materials, that could affect the ability of those books or other children’s paper-based printed products to comply with the total lead content rules. Of course, if such a “material change” were to occur during those subsequent two years, then each manufacturer implicated by the change would be responsible for exercising “due care” to ensure that reliance on anything other than retesting of the finished product would not allow a noncompliant ordinary children’s book or other children’s paper-based printed product to be distributed in commerce.

Such an approach to product testing involves substantially fewer tests (and related costs) than the “test each ISBN” approach, and it properly bases the definition of “product” for testing purposes on those component materials that have not yet been determined by CPSC to qualify for an exclusion from total lead content testing requirements (i.e., spot inks; saddle stitching wire; metal and plastic coil bindings; stamping foils; accessible non-animal-based adhesives; and film or other laminates). As CPSC and its staff are aware, the other component materials comprising ordinary children’s books and other children’s paper-based printed products have been determined by CPSC to not be subject to such testing requirements (i.e., paper; four-color CMYK process inks; varnish, water-based or UV-cured coatings; book binding threads; animal-based glues; tanned and dyed leather; textiles; and non-accessible adhesives/binding materials).

The submitters believe that CPSIA and the proposed rules would allow manufacturers and private labelers of ordinary children’s books or other children’s paper-based printed products to implement a testing scheme as outlined above. It is critical that this be permitted in order to mitigate the costs attendant to the massive amount of testing that could be mandated by CPSIA in connection with these children’s products.

Apparently, CPSC and its staff, in examining the impact on manufacturers of the proposed rule on product testing for purposes of the Regulatory Flexibility Act, did not include the book publishing and printing industries represented by the submitters in the relevant table (Table 2 – Manufacturers) published as part of the NPRM, *id.* at p.28353. The submitters urge CPSC to revise their table and the resulting calculations of costs attributed to CPSIA testing requirements in order to better appreciate the potential impact on the book publishing and printing industries, which are represented by the NAICS codes 511130 and 323117, respectively. According to the most recent available data from the same source used by CPSC and its staff, i.e., the U.S. Census Bureau, some 2,965 small book publishers (out of a total of 3,052 firms) and 477 small book printers (out of a total of 498 firms), for a combined total of 3,442 small firms out of a combined total of 3,550 firms), need to be added to CPSC’s previous totals to include the small

manufacturers represented by the submitters. See “*Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the U.S., All Industries: 2007*,” http://us_6digitnaics_empl_2007.xls, at U.S. Census Bureau, Statistics of U.S. Businesses (SUSB), Latest SUSB Annual Data 2007, www.census.gov/econ/susb/.

Reasonable Testing Program

The submitters appreciate and intend to take advantage of the opportunity to establish “reasonable testing programs” (“RTP”) as a way to bring their own knowledge and control of the manufacturing and importing of ordinary children’s books and other children’s paper-based printed products to bear on the problem of minimizing their costs and burdens in complying with CPSIA’s total lead content testing and certification requirements.

The submitters agree with CPSC and its staff that, “[b]ecause the requirement for a reasonable testing program would apply to a wide variety of product types and manufacturing processes, it [should be] designed to be scalable to production volumes and adaptable to the specifics of the product.” *Id.* at p.28345. And because, in the case of children’s products, the establishment of an RTP would be a *voluntary* undertaking by the manufacturers, the submitters fully endorse CPSC’s view that “[a] manufacturer may develop the scope and details of each element of a reasonable testing program based on the manufacturer’s knowledge and expertise regarding the product and its manufacturing processes.” *Id.* At minimum, the submitters understand this to mean that “[a] manufacturer may tailor the tests to the needs of the individual product, and the tests do not need to be the same tests that are specified in the applicable rules. The proposed rule would leave decisions on procedures such as the number of samples to test, up to the manufacturer provided that the testing plan provides a high degree of assurance that noncompliant products are not introduced into the stream of commerce.” *Id.* at p.28339.

Similarly, the submitters understand that, in meeting the “product specification” requirement for an RTP, the manufacturer may utilize vendor certifications and other forms of documentation to describe the product in sufficient detail to both identify the product and distinguish it from other products made by the manufacturer. *Id.* at p.28345. Such materials can also support the “production testing plan” that is required for each manufacturing site as part of an RTP. The specific technology used to support a production testing plan would be within the manufacturer’s discretion, exercising “due care” under the proposed rules, and such plans can include the use of process management techniques with nondestructive measurement methods that are “tailored to the needs of an individual product,” instead of conducting recurring product performance tests, under proposed rule section 1107.10(b)(3).

With those views in mind, the submitters offer the following suggestions regarding RTPs:

Duty of “Due Care” – Both sets of proposed rules in the two NPRMs refer to a duty of “due care” defined as “the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.” The proposed rules in each docket, however, target this “duty” to only a few of the aspects of their provisions that call for the manufacturer to exercise judgment or discretion based on the manufacturer’s knowledge of the product and manufacturing process. See, e.g., proposed sections 1107.10(b)(2)(ii) and

1107.23(a) regarding “material change” in the product’s design, manufacturing process, or sourcing of component parts; proposed section 1107.10(b)(4)(i) regarding “remedial action” deemed appropriate by the manufacturer to assure compliant products in response to a sample’s failed test; proposed section 1109.5(h)(1) regarding reliance by finished product certifiers on a component part certificate or component part test result.

In some instances, this defined duty of “due care” is coupled with a CPSC-created standard of “high degree of assurance,” which is defined as “an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture,” and is linked to a number of proposed provisions, including its application to the various elements of a “reasonable testing program” under proposed section 1107.10 and the various requirements for certification of children’s products.

The submitters appreciate CPSC’s recognition that both the “due care” standard of conduct and the “high degree of assurance” standard for compliance are anchored in the judgment and knowledge of the manufacturer. For that reason, both standards should have general applicability to all elements of compliance with the proposed rules for implementation of CPSIA’s testing and certification requirements. Manufacturers should not be left to wonder whether more than their exercise of reasonable judgment and practice, based on their manufacturing experience and sound knowledge of the product, is required for those aspects of the rules that do not explicitly reference these standards.

Frequency of Accredited Third-Party Conformity Assessment Body Testing – As noted earlier in these Comments, manufacturers that voluntarily establish an RTP “consistent with” Subpart B of the proposed rules in Docket No. CPSC-2010-0038 would have to submit their children’s product for third-party conformity assessment body testing at least once every two years, rather than annually. *Id.* at p.28348-28349. The submitters appreciate the recognition by CPSC that the establishment of an RTP would provide sufficient additional safety compliance testing to warrant some relaxation in CPSIA’s general requirement for *annual* third-party conformity assessment body testing in the absence of such an RTP. However, the submitters urge CPSC to consider that the costs involved in establishing and maintaining an RTP reasonably warrant more of a relaxation of that testing frequency standard, particularly where – as with ordinary children’s books and other children’s paper-based printed products – the product has no history of presenting safety issues involving total lead content and the manufacturing process inherently results in uniform production, with very little variability in the composition or quality of the finished product.

CPSC has already acknowledged that Section 14(d)(2)(B)(i) of the CPSA, which requires “periodic testing” of children’s products for compliance with all applicable children’s product safety rules, including CPSIA’s total lead content rules, does not require all such periodic testing to be conducted by a third-party conformity assessment body. *Id.* at p.28348. It has also acknowledged that the appropriate periodic testing interval “may vary for a manufacturer depending on the manufacturer’s knowledge of the product and its manufacturing processes.” *Id.* at p.28349. Moreover, in proposing relief for “low-volume manufacturers,” which would include many of the submitters’ members, CPSC has already acknowledged that a periodic testing frequency standard is not essential to the safety scheme by dispensing with periodic testing

altogether in the case of manufacturers that produce or import no more than 10,000 units of a product. See proposed rule section 1107.21(d).

In light of these considerations, the submitters urge CPSC to permit a manufacturer with an RTP in place to rely upon knowledge of their own product and manufacturing process to determine when to obtain third-party conformity assessment body testing of ordinary children's books or other children's paper-based printed products under a testing frequency standard of at least once every four years. Assurance against abuse of the manufacturer's duty of "due care" under such a standard would be provided by the proposed rule implementing Section 14(d)(2)(B)(i) of CPSA, as amended by Section 102(b) of CPSIA, which would require third party conformity assessment body testing to occur in response to a "material change" in the product design or manufacturing process, including the sourcing of component parts, that could affect the product's compliance, regardless of when such a change occurs.

Random Samples – While recognizing that "there are alternative approaches for deciding whether something represents a 'random' sample, *id.* at p.28349, CPSC nevertheless has proposed to implement the requirement for testing "random samples" of children's products in a manner that requires each manufacturer to have a selection process that assigns each sample in the production population an equal probability of being selected for testing. Apparently, CPSC proposed this requirement on the basis of reference to a single dictionary definition of "random sampling," *id.* at p.28340, and its belief that, "[i]f the products selected for testing are not randomly selected, there is no statistical basis for inferring the compliance of the untested products." *Id.* at p.28349-28350.

The "random sampling" presentation at the CPSC Staff Public Workshop on Product Testing last December demonstrated how incredibly complicated this approach to testing random samples will make compliance for many manufacturers. However, it is not at all clear that such a difficult requirement is mandated by or even consistent with Congressional intent in the statutory requirement to establish protocols and standards "for the testing of random samples to ensure continued compliance." Section 14(d)(2)(B)(ii) of CPSA, as amended by Section 102(b) of CPSIA.

Given its most straightforward reading, the statutory requirement for the "testing of random samples to ensure continued compliance" seems to be simply concerned with using some form of blind sampling to determine whether the selected samples themselves are compliant with CPSIA, not with determining a "statistical basis for inferring the compliance of the untested products." If Congress had intended this far more complicated reading of the statutory requirement, it would have used more specific language to make that intent unmistakably clear, given alternative approaches that exist for simply ensuring that the selection of samples is not intentionally manipulated to produce a certain result or representation regarding the product being tested.

But, even if CPSC were correct about the intent of Congress in requiring the "testing of random samples to ensure continued compliance" regarding the untested products, CPSC should allow manufacturers to exercise "due care" judgment in utilizing alternative approaches to such testing in light of the wide differences in practical capabilities for compliance that exist among the numerous manufacturers of the thousands of children's products subject to CPSIA's

requirements. While the proposed rules would define the “production population” for purposes of such testing and allow manufacturers to use a procedure that randomly selects items from a list to determine which samples are the random samples for testing before production begins, CPSC also notes that manufacturers “may select additional samples based on the manufacturer’s knowledge of the product and its production to provide greater assurance of compliance.” *Id.* at p.28350. The submitters believe this is a sensible idea which CPSC and its staff should develop further to permit alternative approaches to selecting “random samples” for testing.

Undue Influence – While acknowledging the value of requiring manufacturers to establish procedures to safeguard against the exercise of “undue influence” by a manufacturer over a third-party conformity assessment body, the submitters urge CPSC to drop its proposed requirement for appropriate staff to receive “annual training” on avoiding such undue influence. Proposed rule section 1107.24(b)(1). Given current economic circumstances and the significant additional costs and burdens that the proposed rules will generally impose upon manufacturers of children’s products, the “annual training” mandate, along with its participation attestation requirement, are unnecessary and excessive elements that should be eliminated from the proposed rules.

Requirements for Children’s Product Certificates and Recordkeeping – The statutory requirements for certificates in Section 14 of CPSA, as amended by Section 102(b) of CPSIA to incorporate a new subsection (g), imposes strict and detailed requirements for both the *contents* and *availability* of certificates of conformity that document compliance of a children’s product with CPSIA total lead content limitations as demonstrated through test results. Although those statutory requirements were enacted without consideration of component materials testing, which was not specifically addressed by CPSIA and would only be permitted pursuant to adoption of CPSC’s proposed rules, CPSC has proposed rules regarding the content and availability of certificates that follow the strict requirements of CPSIA as these would be made even more complicated by the need to address component material test results and certificates as the basis for finished product certificates.

As a result of CPSC’s helpful effort to formally permit component material testing as a basis for certification of conformity for the finished children’s product, the certificate based on accredited third-party conformity assessment body testing, which must be issued by the manufacturer and private labeler of any children’s product that is subject to CPSIA’s total lead content testing requirements, must not only comply with the requirements of Section 102(g) of CPSIA but also with the requirements for a finished product certifier’s reliance on component materials testing certification.

Thus, a finished product certifier could rely on a test report showing passing test results for one or more component materials used in the product, based on accredited third-party conformity assessment body testing conducted by another person. However, the requirements for the issuance of component materials certificates, with detailed information regarding the underlying component materials testing results, to be added to the other information required for inclusion in the certificate accompanying the finished children’s product would create logistical nightmares for the manufacturers and private labelers of children’s products, including ordinary children’s books and other children’s paper-based printed products.

While the submitters do not object to the proposed “recordkeeping” requirements in section 1107.26 of the proposed rules in Docket No. CPSC-2010-0038, they would strongly urge CPSC to note that compliance with these requirements should make it unnecessary for the manufacturer or private labeler of the finished children’s product to ensure that every certificate required under Section 102 of CPSIA (notably component materials testing certificates, in certain cases) accompanies the product or shipment of products and is furnished to each distributor or retailer of the product.

Although the wording of Section 102(g) of CPSIA regarding requirements for certification differs from that of Section 103 of CPSIA regarding requirements for tracking labels, the submitters urge CPSC to adopt certificate requirements that reflect the key concept in the tracking label provisions, which require that the manufacturer (as well as the “ultimate purchaser”) of the finished children’s product should be able to “ascertain” certain information similar to that required to be included in certificates of conformity.

Thus, instead of actually having to include within the accompanying certificate the date and place of manufacture, the date and place where the product was tested, each party’s name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results, plus a list of each component material that was tested, by material number or other specification, along with identification of the corresponding test report or component material certificate on which a certification for the finished children’s product is based, the certificate could, like the “tracking labels” mandated for children’s products under Section 103 of CPSIA, use codes or other means to point all interested parties to a source where such information can readily be found. This could be contact information for the manufacturer or private labeler (which, in the case of ordinary children’s books, would be the publisher), including a URL for the publisher’s or manufacturer’s web site where the information could be accessed.

This “ascertainable information” approach to ensuring the public availability of safety information needed to determine the origins of a particular children’s product relevant to a product recall has already been authorized by Congress and CPSC for “tracking label” purposes. Viewed in terms of the comprehensive recordkeeping requirements in section 1107.26 of the proposed rules in Docket No. CPSC-2010-0038, compliance with the important requirement for component materials testing “traceability,” which underlies the ability of a finished product certifier to rely on component materials testing certification, would be workably assured and an “ascertainability” standard for the availability of required information would provide a more reasonable way of facilitating transparency and disclosure in the service of children’s product safety compliance.

Component Material Testing and Traceability

With respect to requirements for documentation by a component materials testing party other than the finished product certifier, the submitters note that the proposed rule would require such documentation to include “identification of a lot or batch number for which the testing applies.” Proposed rule section 1109.5(f)(2). The submitters urge that this requirement should be understood to allow a component certification to apply to all of the same materials from a

particular supplier, rather than just the tested lot or batch, unless and until there is a material change in the tested materials that requires further testing. The certification would thus represent the product line as produced by the manufacturer, rather than just those units produced by a particular lot or batch.

Conclusion

The submitters would be happy to respond to any questions that CPSC and its staff may have regarding these Comments.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Allan R. Adler".

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Conditions and Requirements for Testing Component Parts of Consumer Products

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Comment from Donald Mays

Submitter Information

Name: Donald Mays

Organization: Consumers Union

General Comment

Comments attached.

Attachments

CPSC-2010-0037-0016.1: Comment from Donald Mays

***Consumers Union * Consumer Federation of America*
* Kids In Danger * Public Citizen*
* U.S. Public Interest Research Group *
* National Research Center for Women and Families ***

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Docket No. CPSC-2010-0037

**Comments of Consumers Union, Consumer Federation of America, Kids In
Danger, Public Citizen, the U.S. Public Interest Research Group, and the
National Research Center for Women and Families to the U.S. Consumer
Product Safety Commission
on
“Conditions and Requirements for Testing Component Parts of Consumer
Products”**

Introduction

Consumers Union of U.S., Inc. (CU), Consumer Federation of America (CFA), Kids In Danger, Public Citizen, the U.S. Public Interest Research Group, and the National Research Center for Women and Families (jointly “We”) submit the following comments in response to the U.S. Consumer Product Safety Commission (“CPSC” or “Commission”) in the above-referenced matter (“Notice of Proposed Rulemaking”).¹ The CPSC has issued this Notice of Proposed Rulemaking pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)). In this Notice, the CPSC publishes the proposed rule for the conditions and requirements for testing component parts of consumer

¹ “Conditions and Requirements for Testing Component Parts of Consumer Products”; Notice of Proposed Rule Making, Part 1109 of Title 16, Code of Federal Regulations” as established by the Consumer Product Safety Commission,” Vol. 75, No. 97 Federal Register pg. 28208 (May 20, 2010).

products where such testing is intended to demonstrate compliance with any rule, standard, ban, or regulations enforced by the Commission under section 14 of the CPSA. We submit these comments in response to the CPSC's Notice of Proposed Rulemaking.

Background

Section 14(a) of the CPSA requires manufacturers and private labelers whose products are subject to a consumer product safety rule (including bans, standards and regulations) enforced by the CPSC to issue a certificate indicating the products comply with all relevant CPSC rules. The manufacturers of children's products must submit samples of their products to third-party conformity assessment bodies accredited and approved by the CPSC to conduct compliance testing. In response to concerns raised over the burden of cost to conduct certification testing, as well as cost of the destruction of multiple product samples in the process, the CPSC has developed a program by which, under certain conditions, component parts that are used in those products may be independently certified. Under this program, component parts certification would make it unnecessary to test multiple finished products if certified components are used in the manufacture of each of those products. The program would require the certifier of the finished product to rely on the integrity of the certification of component parts. Section 14(a) of the CPSA does not specifically address component parts testing.

The Commission invites comments on the proposed rule as they apply to the conditions and requirements for testing component parts as a surrogate for testing finished product samples.

Comments

The proposed rule laying out the conditions and requirements for testing and certification of component parts is well thought out and wholly appropriate. We are encouraged by CPSC's ability to establish the appropriate checks, balances, and controls needed to assure that manufacturers and primary and secondary (subordinate) conformity assessment bodies do not jeopardize the integrity of the conformity assessment and certification process. We particularly appreciate the traceability requirements detailed in the proposed rule. Tracing non-compliant, unsafe component parts back to their origin provides the CPSC with a new tool that enables the staff to search for any product that may be using unsafe components. This is particularly important when the same components are shared among different manufacturers.

We recommend that the Commission approve the proposed rule as written.

Respectfully submitted,

Donald L. Mays
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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001

Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0017

Comment from Steve Pfister

Submitter Information

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Submitter's Representative: Jonathan Gold

Organization: National Retail Federation

Government Agency Type: Federal

Government Agency: CPSC

General Comment

Attached please find the comments of the National Retail Federation regarding the Conditions and Requirements for Testing Component Parts of Consumer Products (CPSC Docket No. CPSC-2010-0037).

Attachments

CPSC-2010-0037-0017.1: Comment from Steve Pfister



August 3, 2010

Todd A. Stevenson
Secretary
Consumer Product Safety Commission
4330 East-West Highway
Room 502
Bethesda, MD 20814

RE: Conditions and Requirements for Testing Component Parts of Consumer Products (CPSC Docket No. CPSC-2010-0037)

Dear Mr. Stevenson:

The following comments are submitted on behalf of the National Retail Federation (NRF) in response to the Consumer Product Safety Commission's Federal Register notice – Conditions and Requirements for Testing Component Parts of Consumer Products (CPSC Docket No. CPSC-2010-0037). NRF strongly supports and encourages the CPSC to allow for the use of third party component testing. We believe this will not only allow companies to truly focus on the areas of concern, but will also do so in a manner that is economically feasible.

As the world's largest retail trade association and the voice of retail worldwide, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2009 sales of \$2.3 trillion.

We appreciate the decision that the CPSC has agreed to allow testing of component parts to serve as the basis for third party testing. As NRF pointed out in previous comments filed with the CPSC, a certification process that relies upon component part testing with a strong chain of custody which demonstrates that the tested component part was used in the final product will provide just as much, if not better, assurance that the products are safe rather than testing a few samples of finished products. As part of this strong chain of custody, many retailers are using "designated" suppliers who have technical support for good manufacturing processes. With component testing and a strong chain of custody, retailers can ensure their products are compliant without the need for testing the final product. Testing after the fact on the final product is too late. Companies do not want to waste time and resources manufacturing a product which does not comply with the law.

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We remained concerned that §1109.5(h)(3)(ii), if taken literally, imposes a duty that a retailer/importer could not honestly fulfill. This section states that in any certification of a finished product based on component testing, the certifier must:

(ii) **“Certify that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product’s ability to comply with all applicable rules, bans, standards, and regulations.”**

The problem is that a retailer/importer cannot *certify in each specific case* that at each and every step of the supply chain prior to their taking custody, there was no change-out of parts, substitution (for good or ill), i.e., that the tested component was actually used. To legally certify that, the importer would have to have a perfect chain of custody including all transit steps. The CPSC has not tried to impose such a chain of custody requirement. We do not believe this could be realistically achieved or cost-effectively put into place. We fully support and believe that this section should be made more consistent with companion sections that emphasize “due diligence” instead specific certification.

NRF welcomes the opportunity to share our thoughts on allowing the use of component testing. We fully believe that this will help achieve the goal of CPSIA of ensuring product safety while allowing companies to comply with the new requirements in a reasonable way.

We appreciate the opportunity to provide input on this important issue. If you have any questions, please contact Jonathan Gold (goldj@nrf.com), NRF’s Vice President, Supply Chain and Customs Policy in the NRF office.

Sincerely,

A handwritten signature in black ink that reads "Steve Pfister". The signature is written in a cursive, flowing style.

Steve Pfister
Senior Vice President
Government Relations

PUBLIC SUBMISSION

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0018
Comment from Ed Desmond

Submitter Information

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Organization: Toy Industry Association

General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0018.1: Comment from Ed Desmond



Toy Industry Association, Inc.

www.toyassociation.org

August 3, 2010

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

**RE: TIA COMMENTS NOTICE OF PROPOSED RULEMAKING (“NPR”):
Testing of Component Parts; 75 Fed. Reg. 28208, to be codified as 16 CFR Part 1109:
CPSC DOCKET Number: 2010–0037**

Dear Mr. Stevenson:

We appreciate the opportunity to comment on the Consumer Product Safety Commission’s (“CPSC” or “Commission”) proposed rule that would establish requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations: to support a general conformity certificate or a certificate for a children’s product pursuant to section 14(a) of the Consumer Product Safety Act (CPSA); as part of a reasonable testing program pursuant to section 14(a) of the CPSA; as part of the standards and protocols for continued testing of children’s products pursuant to section 14(d)(2) of the CPSA; and/or to meet the requirements of any other rule, ban, standard, guidance, policy, or protocol regarding consumer product testing that does not already directly address component part testing. These comments are providing our views on the proposed requirements of 16 CFR Part 1109. TIA reserves the right to supplement or amend its comments as appropriate.

In General

We fully support CPSC’s adoption of a regulatory regime that permits component testing in lieu of complete product testing for certification of Compliance to requirements of the CPSA. Clearly, component testing in lieu of complete product testing for certification is more efficient and cost effective for manufacturers and can provide protection to consumers that is comparable to testing complete products. The Commission’s effort in taking the initiative to issue this important rule is to be applauded. This is a welcome effort to reduce the heavy cost burden of congressionally mandated testing on small businesses.

TIA recognizes that the CPSC staff cannot assume complete responsibility for ensuring that component part suppliers are complying with the applicable rules. Proposed 16 CFR Part 1109 appropriately places the responsibility on a finished product certifier for assuring that supplier certified components are used in finished goods production. Domestically located manufacturers and brand owners are willingly assuming these responsibilities. TIA recognizes it would be impractical for the CPSC to launch investigations into globally situate suppliers of component parts. Such an effort would not provide much benefit to anyone in the supply chain, including consumers as most component parts suppliers have non disclosure agreements with their

customers. Investigations of this sort should be the responsibility of the manufacturers who already have the responsibility for certifying their products compliance to CPSC, distributors and retailers, upon demand.

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. This also permits flexibility in development of record keeping requirements. Such flexibility is essential since different quality assurance processes are employed by different industries in diverse ways depending upon the industry, the product, and the materials involved with production of particular product. Requirements to integrate multiple systems to compile data points across hundreds of thousands of products should be avoided so long as companies can provide reasonable data customary in a particular industry ‘upon request’, so as to verify that certified components were used in finished production. With reasonable process controls in place to avoid substitutions of certified parts on the production line, the need for burdensome record keeping and reporting requirements can be avoided or reduced. With this in mind, we offer the following suggestions:

I. General Conditions & Requirements

As regards, the definition of “*Identical in all material respects*” (§ 1109.4(i)), we have similar concerns as expressed on the definition of this term in the proposed rule on testing and labeling (16 CFR 1107.2) and incorporate them by reference since we are submitting comments on the proposed test rule (**CPSC DOCKET Number: 2010–0038**) contemporaneously with these comments:

1. We note that under the *Test methods and sampling protocol* (§ 1109.5(c)), it is proposed that “*Regardless of which entity performs component part testing or selects samples for component part testing, both certifiers and testing parties must ensure that the required test methods and sampling protocols, as set forth in part 1107 of this chapter . . . are used to assess compliance of the component part.*” (Emphases added.) This provision could be read as charging testing parties with ensuring that certifiers comply with provisions, such as those regarding sampling, that otherwise would not be part of the charge of a testing body—perhaps even second-guessing a manufacturer’s reasonable testing program or periodic testing plan. If so, such a requirement would apply across the board, including testing for lead in paint, lead content, and phthalates pursuant to proposed Subpart B. We assume that that is not the Commission’s intention, as any such requirement would serve no legitimate purpose, is not similarly imposed under the current proposed rule on testing and labeling (16 CFR 1107, et seq.); and, such a construction would undermine the intent of the rule to reduce test burdens on small businesses. In addition, the Supplementary Information does not suggest such a view (See Vol.75 No.9 Reg. at 28210). We would recommend that the Commission simply clarify this section to avoid unintended confusion. One option is to replace “*both certifiers and testing parties*” with “*certifiers (and, as to test methods for tests they conduct, testing parties).*”
2. Under the proposed provision governing *Documentation by testing party* (§ 1109.5(f)(7)) our understanding of what the Commission meant to provide in § 1109.5(c) is reinforced. It requires third-party conformity-assessment bodies to certify “*that all testing was performed in compliance with section 14 of the CPSA and part 1107 of this chapter.*” (Emphasis added.) Here, the Commission refers only to “testing,” not to sampling or any

3. Under *Traceability* (§ 1109.5(e)), the proposed paragraph restricts certifiers from relying “on component part testing conducted by another testing party unless such component parts are traceable.” We understand this to require only traceability to the source of the tested component part itself (“such component parts”), not to the source of the pieces of that component part. This is consistent with other provisions that reinforce this understanding. For example, the Commission defines “component part” (§ 1109.4(b)) with reference to a part’s separate testing; the definition of “traceable” in § 1109.4(m) focuses on the supplier and manufacturer of the component part that is being certified, rather than on the supplier or manufacturer of whatever goes into that component part; and the discussion pursuant to the Paperwork Reduction Act describes the rule as requiring “certifiers to maintain records of the source of component parts tested for compliance to ensure traceability of component parts,” Vol.75 No.9 Reg. at 28217. Given this, we think the requirement of § 1109.5(e) is fairly clear, but further clarification would be helpful given the large costs that would result from any different understanding.
4. Under *Certification by Finished Product Certifiers* (§ 1109.5(h)(3)) it is required, among other things, that a certification of a finished product based on component-part testing “[i]dentify . . . the corresponding documentation required in paragraph (f) of this section.” The reference to “identify” is ambiguous. Does it require the finished product certification to contain all of the “documentation” that § 1109.5(f) requires a testing party to provide? If so, then a final product certification based on component-part testing promises to be hopelessly long and complex. This is clearly not the preferred reading, given the text of § 1109.5(h) as well as complementary requirements in Subpart B (§§ 1109.11(a)(3) (paint), 1109.12(d) (lead content), and 1109.13(d) (phthalates)). If this is the case, however, it is not clear what suffices for a certification to “identify” “documentation” that, in turn, identifies extensive other information. Thus, the Commission should clarify that it is sufficient for the finished-product certification to “identify” the testing party’s compliance with § 1109.5(f) by generally referring to the testing party’s having provided the required documentation to the finished-product certifier. We have similar concerns with the *Recordkeeping requirements under* (§ 1109.5(i)), that we had on corresponding passages in the proposed rule on testing and labeling (§§ 1107.10(b)(5) & 1107.26). Our comments on that rule, which we are submitting contemporaneously with these comments are hereby incorporated by reference.

II. **Conditions & Requirements for Specific Consumer Products, Component Parts, and Chemicals**

Finally we believe there would be a benefit in clarifying the Commission’s position on *Traceability regarding testing of paint* (§ 1109.11(c)(3)). This provision requires a certifier of a product to “be able to trace each batch of paint that is used on the product to the paint supplier and, if different, the paint manufacturer.” (Emphasis added.) If the point is to ensure that, for “each batch of paint” that a manufacturer uses on its products, the manufacturer can show the

source of that batch, then the requirement makes sense and is unobjectionable. Such a reading of the text would be consistent with the more general definition and requirement of traceability in Subpart A, §§ 1109.4(m) & 1109.5(e). But the reference in § 1109.11 to each batch used on "the product" might be read to indicate that a manufacturer must be able to trace back from a particular item of a finished product to the batch of paint used on that product. For example, if a question arises as to one particular doll, a manufacturer would be expected to identify the batch(es) of paint (and supplier and manufacturer of those batches) used on that particular doll. *This* kind of tracing exceeds existing capacity, and creating such a capacity would be onerous and serve no clear purpose. (It would not, for example, be needed to facilitate recalls.) The Commission should therefore clarify that it is not required for component part testing of paints.

Again, we fully support permissive reliance upon certified testing of component parts and are simply suggesting that clarifications in the body of the rule can help avoid confusion and unintended consequences as businesses continue to struggle to develop suitable alternative quality assurance processes on their production lines and in their supply chains. Thank you for the opportunity to comment. Please also refer to our related comments on **CPSC DOCKET Number: 2010-0038**.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Desmond". The signature is fluid and cursive, with a large initial "E" and "D".

Ed Desmond,
Executive Vice President, External Affairs

F.B. Locker, Esq., Counsel

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0019
Comment from James Reed

Submitter Information

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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0019.1: Comment from James Reed



August 3, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 820
4330 East West Highway
Bethesda, Maryland 20814

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

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 regulations and need not be repeated here

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.

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.

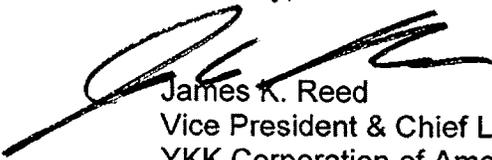
YKK only purchases base paints that contain less than 90 ppm of lead. As a result, YKK can ensure that no matter what the paint mix is, it will not exceed 90 ppm of lead. YKK also engages in internal testing to ensure the quality of those base paints. Finally, YKK ensures the paint is not contaminated 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.

Thank you for the opportunity to comment.

Sincerely,



James K. Reed
Vice President & Chief Legal Counsel
YKK Corporation of America

PUBLIC SUBMISSION

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Docket: CPSC-2010-0037

Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001

Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0020

Comment from Jim Neill

Submitter Information

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General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0020.1: Comment from Jim Neill



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August 3, 2010

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

Re: Component Part Testing of Consumer Products (Docket No. CPSC-2010-0037)

Dear Secretary Stevenson:

The Retail Leaders Industry Association (RILA) appreciates the opportunity to comment on the Proposed Rule (16 CFR Part 1109) regarding "Conditions and Requirements for Testing Component Parts of Consumer Products." The members of RILA also want to thank commission staff for the meeting of June 1st, where the proposed rule was discussed.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

RILA members are committed to placing the highest priority on the safety and quality of the products they sell to their customers. RILA has joined with the British Retail Consortium (BRC) in developing and supporting the *Global Standard for Consumer Products Issue 3*. The Global Standard for Consumer Products sets out requirements for factories to adhere to in order to consistently produce safe, legal consumer products to the quality required by the retailers.

COMPONENT TESTING AND CERTIFICATION OF FINISHED PRODUCT

1. In §1109.5 (h) (3), the Proposed Rule states that any certification of a finished product based on component testing must: (ii) "Certify that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product's ability to comply with all applicable rules, bans, standards, and regulations."

This language seemingly requires the US importer to do precisely what it cannot do in any *specific* case, i.e., "certify" that *every* tested component part for each and every product is what actually was used in the finished product. It is beyond the importer's ability to reach back into the supplier's and sub-

suppliers manufacturing and transport processes to detect whether there was a substitution or a material change in a component. To do so would require chain of custody verification procedures at each step in the pipeline, which the Proposed Rules do not impose. The most that importers can do is establish audit or control processes that provide a reasonable assurance.

We request that CPSC replace the above text in subsection (h)(3) with the following language: “**Due care was taken** to ensure that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product’s ability to comply with all applicable rules, bans, standards, and regulations.”

This then becomes consistent with the existing language in subsection (a)(2) which states “A certifier must exercise due care to ensure that no change in component parts after testing and before distribution in commerce has occurred that would affect compliance”

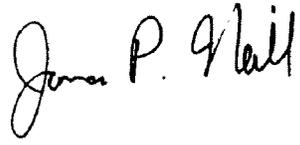
RELIANCE ON OTHER TYPES OF CERTIFICATIONS

In the introduction to the proposed rule in 65 CFR 1109, the staff invites comments on whether or not a final product certifier should be able to rely on other types of certifications from other interested parties other than component part certifiers. We suggest that 65 CFR 1109 allow finished product certifiers, who exercise due care, be permitted to rely on product certifications provided by other appropriate interested parties. We believe that such reliance will result in no significant impact on the safety level of the final product. For example:

- 1) For logistics purposes, multiple importers will import identical product. In many cases these are nationally branded items simply imported separately by multiple retailers for convenience. Without the ability to reference another “master” certificate, each importer/retailer would needlessly have to follow the process to independently generate its own certificate.
- 2) Occasionally two certified products are bundled together for retail sale as a single sellable unit. As with the previous example, a retailer/importer would needlessly have to follow the process to certify the bundled product unless the retailer/importer were permitted to rely upon the certificates for each of the two bundled products.
- 3) Certifications of raw materials may extend to end products generated by many suppliers. The final product certifier should be able to rely on certifications from raw materials suppliers for some aspects of compliance, where processing of the materials does not affect the attribute being certified.

Thank you for allowing RILA the opportunity to comment on this important rule. If you would like to discuss further, I can be reached at 703-600-2022 or jim.neill@rila.org.

Sincerely,

A handwritten signature in black ink that reads "James P. Neill". The signature is written in a cursive style with a large initial "J" and a distinct "P" and "N".

Jim Neill
Vice President, Product Safety

PUBLIC SUBMISSION

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Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0021
Comment from Michael Gidding

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Submitter's Representative: Michael Gidding
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General Comment

Attached please find a comment on component testing from one of our client who manufactures and imports consumer products.

Attachments

CPSC-2010-0037-0021.1: Comment from Michael Gidding

**Comments Regarding Proposed Rule – 16 CFR Part 1109
CPSC Docket No. CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer
Products**

1. **Section 1109.4 Definitions** – There seems to be confusion between the definition of a finished product certifier and the importer of the product. There needs to be clarification that the importer can accept the certificate of a finished product certifier to certify their product coming into port.
2. **Section 1109.5 (e) Conditions, requirements, and effect generally – Traceability** - The finished or component product certifier will need guidance to be able to trace the batch of paint that is used on a product. Guidance will need to be provided so that the certifier understands how to manage the lot/batch management detail in their systems. While some certifiers have sophisticated tracking systems, many certifiers do not and will require a template to guide them.
3. **Section 1109.5 (i) Conditions, requirements, and effect generally – Recordkeeping** - The document retention for 5 years is excessive especially if you manufacture hundreds of SKU's per year. Since annual testing is required, 2 years should be a sufficient amount of time to retain paperwork.

Not all documents may be available in the English language for CPSC review. It is difficult for some documents to be produced in any language other than country's primary language. For example, a Bill of Material (BOM) may only be in Mandarin for the supplier manufacturing a product in China. If the third party test lab can certify or validate the language and technical content is accurate then a BOM should be available in the country of manufacture's language.

4. **Section 1109.11 (a)(1) Component part testing for paint and other surface coatings** - Small quantity of paints and coatings that are insufficient to test should be allowed to use XRF technology for lead testing compliance. The primary manufacturer has difficulty obtaining the ink itself from their secondary or tertiary suppliers especially if they are sourcing a finished component such as a pen barrel that has labeling on it. With the recent adoption of ASTM F2853 as an approved method for utilizing XRF technology, we ask the Commission to consider approval of ASTM F2853 for testing insufficient coatings.

5. **Section 1109.14 Composite part testing** – It is agreed that composite testing is the most cost efficient way to test. However, when failures occur, it is not clear as to whether wet chemistry is the only suitable retest method or if there are other options available. Wet chemistry for retests can add 2-3 day in addition to the normal testing cycle. For lead, a suitable method such as ASTM F2853 (XRF) could be used as confirmation so as to reduce the timing in obtaining results for lead and heavy metals. FTIR (Fourier transform infrared spectroscopy) should also be considered as a way to quickly determine which component failed for phthalates as well as phthalate type and level.

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Docket: CPSC-2010-0037
Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0022
Comment from Kyra Mumbauer

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Submitter's Representative: Kyra Mumbauer
Organization: Society of the Plastics Industry, Inc. (SPI)

General Comment

See attached file(s)

Attachments

CPSC-2010-0037-0022.1: Comment from Kyra Mumbauer



Via Federal eRulemaking Portal: <http://www.regulations.gov>

August 3, 2010

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

Re: CPSC Docket No. CPSC- 2010-0038; CPSC Docket No. CPSC-2010-0037

Dear Mr. Stevenson:

The Society of the Plastics Industry, Inc. (SPI) is pleased to submit these comments in response to the above-referenced requests for comments relating to 1) testing, certification and labeling of certain consumer products pursuant to section 14 of the Consumer Product Safety Act (CPSA), and 2) testing of component parts of consumer products. *See* 75 Fed. Reg. 28336 (May 20, 2010) and 75 Fed. Reg. 28208 (May 20, 2010). SPI previously submitted comments in connection with an earlier invitation to comment, which it incorporates here by reference. *See* 74 Fed. Reg. 58611 (November 13, 2009), CPSC Docket No. CPSC- 2009 -0095. Founded in 1937, The Society of the Plastics Industry, Inc. is the trade association representing the 3rd largest manufacturing industries in the United States. SPI's members represent the entire plastics industry supply chain, including processors, machinery and equipment manufacturers and raw material suppliers. The U.S. plastics industry employs 1.1 million workers and provides more than \$374 billion in annual shipments.

SPI's members include resin suppliers, who sell plastic resins used to fabricate consumer products or components of such products, and processors who make consumer products or components. SPI's members also include suppliers of equipment used to fabricate components and products made of plastics. As indicated in SPI's earlier comments, testing and certification obligations not only affect consumer product producers, but upstream suppliers, who are often being asked to test and certify products or raw materials, especially as to lead and phthalate limits. The Consumer Product Safety Commission (CPSC or Commission) has authority to adopt reasonable rules to implement the provisions of the Consumer Product Safety Improvement Act of 2008 (CPSIA) under Section 3 of the CPSIA. SPI urges the Commission to use this authority to further modify and clarify the certification and testing rule to reduce testing burdens, and to clarify the voluntary nature and limitations of component testing. SPI also urges the Commission to conduct a full cost-benefit analysis of these two related rules.

Role of supplier certifications in a reasonable testing program. The proposed rule requires five mandatory elements of a "reasonable testing program," and a regime of third-party

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Orange County Convention Center
Orlando, Florida

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testing for compliance with a “children’s product safety rule.” SPI again urges the Commission to utilize its authority to implement the law in a common sense manner that minimizes undue testing costs and burdens. SPI noted in its previous comments that it is common for customers who make various types of consumer products to specify use of “food-grade” materials. Suppliers of resins routinely provide supplier certificates or other assurances that materials meet federal Food, Drug and Cosmetics Act (FDCA) requirements and also requirements for limits on specific heavy metals (lead, mercury, cadmium and hexavalent chromium, i.e. CONEG certification) in materials used for packaging, materials that are often used to make consumer products. We believe that these types of assurances, along with tests such as gas chromatography mass spectrometry (GC-MS), mass balance or similar analyses of raw materials, should be recognized to form a part of a consumer product manufacturer’s “reasonable testing program” as indicating, with a high degree of assurance, that products as produced would meet relevant requirements. Such assurances can also be utilized, consistent with the Commission’s authority under Section 3 of the CPSIA, to reduce the burden of testing on manufacturers of consumer products. Since the Commission acknowledges that children’s product manufacturers who implement a reasonable testing program have a reduced third-party test burden from the standpoint of third-party production testing, such compliance assurances can also be incorporated in a program for children’s products as well. Providing for added flexibility to use these types of assurances and non-destructive testing is also important from the standpoint of component testing, and will help reduce the cost and burden of testing.

Random testing. Proposed §1107.22 requires that periodic testing of children’s products be conducted on “random samples,” a term the proposed rule defines as the selection of samples using a process that assigns each sample in the production population an equal probability of being selected. SPI agrees that it is important to assure that testing involves actual products, not “golden samples,” but does not believe that Congress intended to mandate a statistical approach. Many companies do not operate using the type of statistical method of sample selection proposed. We urge the Commission to adopt a common sense approach to random sampling consistent with the intent to assure that products will meet applicable requirements. Here, the role of quality control testing, mass spectrometry, mass balance, and other types of testing can be evaluated as part of the reasonable testing program and reduce the burden of third-party testing of “random samples,” a point SPI urges the Commission to address in a final rule.

Material changes. The proposed rule addresses examples of a “material change” in a manufacturing process, such as new solvents used to clean equipment or a new mold for an accessible metal component part of a children’s product. *See* 75 Fed. Reg. at 28350. SPI believes that this type of expansive interpretation would pose undue burdens on manufacturers without advancing safety goals. To require companies to develop new product specifications for every new solvent used in a facility, or installation of a new mold made to exact specifications as a prior mold, is overly burdensome. In the case of a children’s product, the proposed rule also requires new third-party certifications in light of any “material change.” Congress cannot have intended that every change in cleaning solutions used in a factory producing children’s products requires new third-party testing. Similarly, typically companies molding plastic products or components will conduct test runs to assure that quality specifications are met; to mandate that use of a new mold invariably constitutes a “material change” and necessitates developing new product specifications and retesting will impose significant burdens on companies. It should be

left to the consumer product manufacturer to assess whether changes are likely to affect the ability of the particular product to meet a specific standard, ban, rule or regulation.

Phthalates testing. SPI agrees that many plastic resins do not contain phthalates in excess of the specified limit and should be excluded from all testing requirements for toys and child care articles. We support the Commission's desire to avoid burdensome and costly testing of materials that will not contain restricted substances in excess of specified amounts.

The Commission has acknowledged that some plastic materials will not contain phthalates in excess of the specified limit, but many plastic materials fit this description, such as:

- Polyethylene-based materials (including low density and high density polyethylene and linear low density polyethylene)
- Polyethylene terephthalate
- Polypropylene
- Polystyrene
- Acrylonitrile butadiene styrene
- Polyamide
- Polycarbonate
- Polylactic Acid
- Butene-ethylene copolymers
- Butadiene-ethylene resins
- Propylene-ethylene
- Polybutene
- Ethylene copolymers
- Ethylene-propylene
- Ethylene vinyl acetate copolymers
- Ethylene vinyl alcohol
- Polybutylene Terephthalate
- 1,3,5-Trioxane, polymer with 1,3-dioxolane (Polyoxymethylene Copolymer)
- Polyphenylene Sulfide
- Polytetramethylene glycol-dimethyl terephthalate-1,4-butanediol copolymer
- Liquid Crystal Polymers (Hydroxybenzoic acid copolymers)

In addition, rigid plastic materials also fall in this category. SPI would be pleased to discuss the available technical information with CPSC staff in more detail in the interest of reducing unnecessary testing costs. SPI again urges the Commission to adopt an inaccessible components exclusion for phthalates in toys and child care articles using its general authority under Section 3 of the CPSIA. Limits on three phthalates subject to the interim ban of Section 108 of CPSIA apply only to toys that can be mouthed or child care articles. The limited nature of the restriction to toys that can be mouthed suggests that Congress recognized that with toys, a broad exemption similar to the exemption for inaccessible components in children's products, should apply.

Test variability and remedial action. The proposed rule does not address normal variability in test results, a critical oversight that has major implications for the costs and burdens of testing. Instead, the proposed rule can be read to suggest that any failure in *any* test, no matter how trivial, triggers the need for remedial action. It is normal and predictable for some variability in test results to occur, particularly since many required third-party tests include a human element that will entail natural variability, like drop testing, for example. Even with certain laboratory tests, changes in equipment calibration may result in some inter-laboratory differences in test results that should be accommodated. The role of quality control testing also must be evaluated. We urge the Commission to recognize that there is a normal amount of statistical uncertainty and inter-laboratory variations in many types of tests that may create differences in results. Establishing tolerances to address these differences is a critical need to help both minimize test costs and minimize the burden of remedial action requirements in a way that nevertheless assures safety. Quality control methods and Statistical Quality Control should be utilized to determine the number of statistically significant testing anomalies that would constitute a failure and trigger requirements for remedial action.

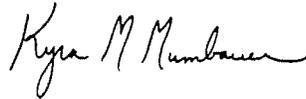
Children's product safety rule. The Commission has also recently sought comments on accreditation standards for carpets and rugs, and vinyl plastic film. SPI will separately submit comments in those proceedings, but disagrees that a standard of general application to all consumer products in a category should be considered a "children's product safety rule" for purposes of CPSIA. Such an interpretation will expand testing burdens in an unwarranted way, posing difficulties for all participants in the supply chain and potentially resulting in elimination of some products from the children's category due to added test costs. We urge the Commission to consider this issue in the context of this rule.

Component testing. Suppliers who do not produce consumer products, like most plastic resin producers, cannot be required to provide certifications. The final rule should clarify that component testing is *entirely voluntary* on the part of the upstream suppliers. SPI members are concerned that raw material or component certifications for materials such as plastic resins might be misused. Raw material or component producers who voluntarily agree to provide such certifications should be entitled to include relevant limitations on the certification form to avoid any confusion about the scope of the certification. While the proposed rule indicates that the finished product certifier must exercise due care to ensure that no change in the component parts after testing and before distribution in commerce has occurred that would affect compliance, since certificates must be furnished to the Commission, component or raw material certifications should include a specific disclaimer about the scope, and the obligation to furnish such certificates in connection with the final consumer product should rest with the consumer product manufacturer, not the component or raw material supplier. Component suppliers who may be subject to the jurisdiction of agencies such as U.S. Food and Drug Administration (FDA) or the Environmental Protection Agency (EPA) and which do not directly make consumer products subject to CPSC jurisdiction, may ultimately be unwilling to do testing and offer certifications under the component testing proposal. These companies are unlikely to voluntarily subject themselves to the jurisdiction of an agency that otherwise has no jurisdiction over the products they produce. As noted above, these companies do commonly offer assurances of compliance with FDA regulations or state toxics in packaging limits.

Cost/benefit analysis. The Commission has not conducted a full cost-benefit analysis on the rule. It is clear that the testing obligations are certain to constitute a major rule. Costs of complying with the testing and certification rule, in combination with other requirements under other provisions of CPSIA and other rules administered by the CPSC, will be a major rule with major implications to consumer product manufacturers, particularly children's product manufacturers, as well as to the entire supply chain. It is not completely clear how, and to what extent, component testing will actually minimize test costs through the supply chain. The Commission has the opportunity to adopt revisions to these rules that will minimize these burdens, as described here and in SPI's earlier comments, but SPI urges the Commission to examine in much more detail and to quantify the full cost and burden of these rules.

SPI appreciates this opportunity to submit these comments. If you have any questions or require additional information, please do not hesitate to contact me via phone at 202-974-5214 or via e-mail at kmumbauer@plasticsindustry.org.

Respectfully submitted,

A handwritten signature in black ink that reads "Kyra M. Mumbauer". The signature is written in a cursive style with a large, prominent "K" and "M".

Kyra M. Mumbauer
Director, Industry Affairs - Food, Drug and
Cosmetic Packaging and Consumer Issues

cc: Randy Butturini

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Conditions and Requirements for Testing Component Parts of Consumer Products

Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0023
Comment from William Chiasson

Submitter Information

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Organization: ETA Cuisenaire

General Comment

Please find attached my comments for Docket No. CPSC-2010-0037 Conditions and Requirements for Testing Component Parts of Consumer Products.

Thank you,

Bill Chiasson
Executive Vice President, COO
ETA Cuisenaire

Attachments

CPSC-2010-0037-0023.1: Comment from William Chiasson

Todd A. Stevenson
Director, Office of the Secretary
Room 820
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Agency: Consumer Product Safety Commission (CPSC)

Re: Docket No. CPSC–2010-0037 Conditions and Requirements for Testing Component Parts of Consumer Products.

Dear Mr. Stevenson,

I appreciate the opportunity to submit comments in response to CPSC Docket No. CPSC-2010-0037, Conditions and Requirements for Testing Component Parts of Consumer Products published in the Federal Register on May 20, 2010.

While there has been some public debate about the pros and cons of component testing; most notably at the CPSC December 10th and 11th workshop at which I served as a panelist, there has not been much progress in getting to the root problem of the CPSIA. Until the CPSIA is completely overhauled using scientific research and commonsense to address product safety, rulings on processes, such as component parts testing, is like putting a band-aid on a gaping wound. Yes, some aspects of component part testing will help reduce the cost of testing for some products, however, the conditions/restrictions that accompany the proposed rule does not provide material relief for small and medium-sized companies who manufacture, import, or assemble thousands of different products, using tens of thousands of different components that are consumed at very small volume.

To best illustrate how Component Part Testing as proposed in this docket will not provide relief for the majority of business owners, lets start with the most obvious flaws in the proposed rule first and work our way down to the least intrusive:

1. **Traceability** - proposed 16 CFR 1109.5(e) states:
Certifiers must not rely on component part testing conducted by another testing party unless such parts are traceable.

This requirement renders the entire Component Part Testing “idea” an exercise in futility. Not only is it not practicable, it will be virtually impossible for any company with an operating budget smaller than the DOD. My company has already spent in excess of \$100,000 in programming a database to track test reports for *finished* goods. I can not fathom how we could implement a tracking system for plastic resin supplied by a factory upstream in the manufacturing process that occurs 8,000 miles away. The Federal Registered cited an example

of how a manufacturer or importer can use component testing for plastic resin (pellets) and colorant if they are used across multiple products. Where do we put a tracking number on plastic pellets that are then melted into a finished product? We already have tracking numbers, warning labels, country of origin, trademarks, bar codes, and item numbers on our product. Would we then have to add lot tracking numbers onto finished goods for each batch of “ingredients” (resins, colorants, and other materials) used in the molding of that finished product? Even if traceability was plausible (which it obviously isn’t), the “*Certifier*” would then have to overcome the pressure of making a mistake and wonder if the CPSC is going to be merciful when doling out penalties and potential criminal charges.

Recommendation: Traceability requirements for component part testing should be abolished. Since businesses already have to provide lot tracking for the finished product, remove the redundancy of more lot tracking and let them use their current processes as part of their reasonable testing program.

2. **Certification by Finished Product Certifiers** – proposed CFR 1109.5(h) through (i):

Section (h) states that the Certifier must exercise “*due care*” in its reliance on a certificate for a component part. How can a business build a process where the CPSC can pass judgment on whether or not the business exercised due care which can result in enduring penalties of unknown scope? The legal fees a business will incur just to “*build*” a process makes component testing an unattractive and uneconomical choice.

Section (i) requires the Certifier to keep tracking records for as long as the corresponding product is produced or imported *plus* 5 years. This is the equivalent overkill as having 3 consecutive life sentences. The board game *Monopoly* has been mass marketed since 1935. Can you imagine how many component part pieces have been manufactured over the last 75 years?! While my company would love to have a product as successful as that game, we do have over a thousand finished goods that contain thousands of components that have been manufactured and distributed for over 30 years. Doing some quick math, I come up with a VERY conservative 720,000 individual records for only 1,000 finished goods that we would have to be archiving in the event the CPSC requests evidence of our “*due care*”. When you consider ALL 8,000 finished goods we sell in our catalog and website, the number balloons into the millions. All these transactions for a company whose revenue is less than revenue produced by Monopoly, worldwide.

Recommendation: Remove the complexity of all these rules and the onerous wording that asserts the will of the CPSC on business owners and let the businesses managers use reasonable judgment in the manufacturing and importing of safe product. The extraordinary levels of complexity created by the CPSIA and all the Proposed Rules that followed have not made products “*more safe*”. It has

only resulted in loss of jobs, reduction in commerce, and more expenses at the CPSC. In fact, one can argue that the general population is “less safe” due to CPSC resources being pulled away from attending to actual potential hazards (car seats, helmets, pools, spas, blinds) due to the distractions caused by the CPSIA.

3. **Composite Part Testing** – proposed CFR 1109.14

This was a thoughtful attempt at reducing testing costs whose idea was raised months after the CPSIA first passed in August of 2008. The problem with the wording in this proposed rule is that it basically creates a “zero risk” policy.

Consider the mathematics. My company produces a lot of colorful product. Finished goods often contain 6 or more colors and that doesn’t even count the multiple substrate materials. If 6 paint colors are tested compositely for lead, then, based on the proposed rule, the results of the test must not exceed 15ppm. (90ppm/6 colors). Even if you reduce the test to 3 colors, the result still must be below 30ppm to pass. So, like component testing, composite testing is of no benefit to most businesses given these strict guidelines.

Recommendation: Measure overall concentration in composite testing to determine if the product passes or fails.

In summary, the proposed rules for component part testing provide very little relief for most businesses. If component testing is allowed as part of a reasonable testing program with a much simpler approach per the aforementioned recommendations, then it has the potential to reduce both testing and administrative costs and, perhaps, save some U.S. workers their jobs.

Thank you for your consideration.

Sincerely,

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Comment On: CPSC-2010-0037-0001
Conditions and Requirements for Testing Component Parts of Consumer Products

Document: CPSC-2010-0037-0024
Comment from Albert Mauro

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General Comment

Please see the attached comments on the proposed rule.

Attachments

CPSC-2010-0037-0024.1: Comment from Albert Mauro



Comments of Hallmark Cards, Incorporated files in response to the Notice of Proposed Rulemaking, “Conditions and Requirements for Testing Component Parts of Consumer Product,” published in 75 FR 28208, Thursday, May 20, 2010.

While Hallmark is generally supportive of a rule allowing the use of component testing to alleviate the cost and complexity of final product testing for each product, the rule as proposed introduces considerable operational complexities that make it seriously difficult to implement.

The commission has promulgated a rule that requires a level of detail and documentation that is more appropriate for food, drugs or even nuclear material than for the broad spectrum of “childrens products” that are broadly covered by CPSC rules. Such complex, one size fits all procedures would be appropriate for materials or products posing a risk of acute toxicity or a serious risk of injury, but are simply overkill for assuring compliance with the lead content, lead paint and phthalate rules.

The Commission has proposed a set of rules around process and documentation that represents an idealized state of manufacturing and process control that do not reflect the capabilities of most manufacturers and many procurement models. If a company were to build IT, quality, procurement and manufacturing systems from scratch, the rules might be easily attainable. However, most companies must deal with a complex combination of interdependent systems and processes that have grown over time – systems that are not easily reconfigured to collect and present data in the way the CPSC has envisioned it. The proposed rule appears to require recordkeeping and document generation obligations that will require enormous resources to implement, and requires redesign of long-standing and often limited systems which do not allow the flexibility the new rule requires. Hallmark submitted comments to the OMB demonstrating that the CPSC estimates of the recordkeeping burden imposed by this rule are seriously underestimated.

Hallmark makes thousands of individual products many of which are print products such as greeting cards, paper plates, cups and napkins, as well as party favors, which are made of a basic set of materials (some exempt, some not), but due to design differences in each individual product, cannot use the same finished product test. While component testing presents a potentially attractive approach, the rigid structure in the proposed rules may not be possible in the context of modern supply chains.

For example, the rule, read in conjunction with the proposed 1107(b)(1)(ii) requires that the product specification identify any component parts that may be tested separately from the finished good. If this requirement only requires the “identification” of the component, then the rule can be reasonably applied. However, some labs and commentators on the proposed rule have interpreted 1109 in conjunction with 1107 to require the product specification to identify a component part and further list all the certification information regarding that component part.

While the definition of a reasonable testing program requires a product specification, it does not require that the specification include a detailed bill of materials. These requirements imposed on components would go one step beyond a detailed bill of materials to identify the actual source of each product that will be intended to be used as a component, and have in hand before the product is sent to manufacturing, component certification information. This requirement creates a “chicken and the egg” dilemma. The requirement of this level of detail in the specification is completely unnecessary for any reasonable purpose. It does not increase the safety of the component included in the end item, for the component must satisfy strict requirements to alleviate the need for testing as part of the finished product. This is an overly rigid paper-generating exercise that unduly burdens the ability of companies to create products. It would also require constant updating of product specification software systems to maintain nearly real-time data regarding components available from the supply chain.

The same difficulty is also raised with regard to the finished product certifications required when component testing is employed. Proposed Section 1109(h)(3)(1) requires that a finished product certificate that relies on a component testing must “identify” the documentation required to be provided under Section 1109(f) and any third party test report. If this provision requires the actual information to be stated, rather than simply identifying a document that contains such information, then this provision is very problematic. The level of detailed information required to be assembled and presented on the certificate itself, beyond identifying the component and the component test report, will require complex information systems to gather and assemble the information from disparate sources and data formats. All this additional information gathering and presentation on the certificates does not increase the reliability or usefulness of the certificates themselves, or the safety of the products. It only adds enormous data complexity to an issue that is already extremely complex. The certifier is required to maintain this documentation – what purpose does it serve to require its inclusion on the certificate?

It is Hallmark’s understanding from various statements made by the CPSC that they anticipate that the component certification rule will greatly reduce the burden of third party testing of children’s products as suppliers of components for children’s products will uniformly conduct testing and offer certifications for the components they provide.

Hallmark has informally surveyed a large number of suppliers of component parts, from raw materials to sub-units of finished products, and found little, if any, awareness of the CPSC’s component testing proposal or interest in routinely conducting such tests and certifications.

For a number of product formats, such as greeting cards or party plates, cups and napkins, the product formats use basic raw materials and components that are suited for general purpose products. The suppliers of these components do not view their materials as specifically designed to be part of a children’s product, and thus are reluctant to design and implement burdensome testing procedures (requiring random sampling, periodic testing, third party testing, high level of assurance, etc) where it is the end manufacturer who decides that the material should become

part of a childrens product. Thus, they are not inclined to offer such a certification for only a small part of their business.

If a supplier or manufacturer of components does not conduct testing and offer certifications itself, Hallmark understands that the proposed rule would allow the end product manufacturer to conduct (or have conducted by a third party assessment body), testing on any or all components to allow certification of the finished product. The proposed rule appears to clearly provide that the certifying party, including a finished product certifier, must fulfill all the requirements of Section 1107 in sampling and testing of the certified component. The proposed rule should more specifically address issues particular to component parts, such as how requirements for periodic testing and random sampling are to be applied in the context of components or raw material inputs.

With regards to the CPSC requirement of traceability for any component parts, Hallmark believes that the rule should include flexibility for a finished product certifier to issue a certificate that covers a related set of products that may be composed of multiple combinations of less than all of a fixed set of components. For example, Hallmark manufactures a large assortment of greeting cards. The cards consist of exempt materials (paper and CMYK ink), but also a variety of secondary printing processes, such as metal foil of different colors, flitter, flock, raised print, etc. To the extent that some greeting cards may be considered children's products, Hallmark likely will test the raw material components of each type of foil, each type of flitter, etc. in order to certify the end product, and monitor the processing lines to ensure that no lead is introduced into the production. Due to the very high number of different card designs, creating unique certificates for each different greeting card will pose a significant information technology challenge required to tie each combination of certified elements to the exact combination of elements present on an individual card design. Hallmark proposes that the rule allow flexibility for a certificate to be overinclusive of the components (and component certifications) that may be used on that actual product, so long as all components in a product are covered by at least one of the certifications, and all other conditions of the rule are met.

Hallmark also proposes that the traceability provisions of the rule allow for flexibility where there may be multiple sources for a single component, but each source is independently certified and listed on the certificate. Thus, for a particular product covered by the certificate, a single component may be from Source A, Source B or Source C, but the components from all three sources have been certified and all are listed on the finished product certificate. In many cases, a manufacturer may have multiple sources of supply to meet demand (or to assure redundant sources of supply). So long as all sources meet the requirements of this Section, and are identified, it should be permissible to have a single certificate cover the source variations, as the product is still assured to meet the applicable CPSC rules, such as for lead content.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert P. Mauro, Jr.", written in a cursive style.

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