



This document has been electronically approved and signed.

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

MEMORANDUM

DATE: Wednesday, May 6, 2020

TO : The Commission
Alberta E. Mills, Secretary

THROUGH: Mary T. Boyle, Executive Director
J. Gibson Mullan, General Counsel

FROM : Shelby Mathis, Small Business Ombudsman

SUBJECT : Burden Reduction Recommendations for Commission Consideration

I. Introduction

Pursuant to the Consumer Product Safety Commission's (CPSC) Fiscal Year (FY) 2020 Operating Plan, CPSC staff was required to "review comments received including, but not limited to, comments received in response to the June 16, 2017 *Request for Information on Potentially Reducing Regulatory Burdens without Harming Consumers* (2017 RFI), and develop [burden reduction] recommendations for Commission consideration." This memorandum provides an overview of completed and ongoing burden reduction work accomplished following the 2017 RFI, along with recommendations to effectuate further burden relief as appropriate.

II. Summary of Burden Reduction Work Since 2017 RFI

On June 16, 2017, the CPSC submitted a Burden Reduction RFI,¹ for which public comment closed on September 30, 2017. The CPSC received 42 comments in response to this request. In FY 2018, CPSC assembled an internal multi-office team that thoroughly considered each recommendation, to determine whether the proposed burden reduction idea could be effectuated without harming consumers. Submissions that met this criteria, as proposed, were included in a list of recommendations. For submissions that did not meet the criteria, the review team considered the burden identified, and where possible, attempted to address the burden in an alternative way. Staff included these alternative solutions in the list, as well. The list of recommendations from the FY 2018 internal burden reduction review team is included in the attached chart for your consideration.

¹ See 82 Fed. Reg. 27636.

The recommendations are divided into three main categories of burden relief: (A) Testing Requirements, (B) Detained Shipment Expenses, and (C) Administrative Burdens. Additional details on the burden reduction recommendation, including the statute(s)/regulation(s) involved, the burden reduced, and stakeholders who would benefit, are also included in the chart.

For many of the recommendations, the burden relief has been effectuated, or work is ongoing. For a few proposals, the burden reduction recommendation proved unfeasible after an in-depth internal review. An update on any work completed, to date, on each recommendation, is provided in the chart in bold.

III. Burden Reduction Work Completed/Ongoing, and Remaining Recommendations

A. Testing Requirements

Recommendations to alleviate testing burdens focused primarily on expanding testing exceptions or exemptions for certain categories of goods, simplifying compliance with a testing requirement, by unifying a standard, providing a sample testing manual, or reducing testing frequency.

Burden reduction work completed in this area is described below:

ASTM F963 Elements & Phthalates Testing – effective July 23, 2018, 16 CFR part 1252 provided ASTM F963 elements and phthalates testing exceptions for manufactured wood products. Additionally, work is ongoing to extend these two testing exceptions to unfinished manufactured fibers. The public comment period on the notice of proposed rulemaking on 16 CFR part 1253 closed on December 23, 2019. Staff sent a Final Rule Briefing Package on unfinished manufactured fiber products to the Commission on April 29, 2020.

16 CFR part 1610 - General Wearing Apparel Flammability Testing – work is ongoing on determining whether the list of flammability testing exemptions under 16 CFR §1610.1(d) can be expanded to include spandex. The Request for Information closed on June 24, 2019, and information provided in response is under consideration.

16 CFR parts 1632 and 1633 - Mattress Flammability Testing – stakeholders requested that the CPSC consider eliminating the smoldering test of 16 CFR part 1632, or consider combining 16 CFR parts 1632 and 1633 into one mattress flammability standard to simplify compliance. In FY 2020, EXHR is reviewing the 2005 advance notice of proposed rulemaking (to revoke or amend 16 CFR part 1632) to determine whether there are options to address known issues within part 1632, while maintaining the safety principles that the standard addresses.

Remaining work in this area that could provide additional burden relief is described below:

Creation of a Stuffed Toy Testing Manual for Small Batch Manufacturers – this manual would enable qualifying, registered Small Batch Manufacturers to conduct first-party testing to ASTM F963-17 in accordance with Sec. 14(a)(1) of the CPSA.²

Testing Frequency – stakeholders requested that the CPSC consider reducing testing frequency in two ways: (1) by allowing stakeholders with the technology available in-house to conduct periodic first-party testing using HDXRF to meet total lead content and ASTM F963 elements certification requirements, and (2) to set a low-volume periodic testing exemption for small and micro businesses. Both of these testing frequency modifications under 16 CFR §1107.21 could apply to products already in continuous production with initial passing testing results, where no material changes were made to the product between testing intervals.

Information & Education Campaigns – several outreach topics that could help alleviate testing burdens include: effective use of component part testing under 16 CFR part 1109, creation of a sample production testing plan under 16 CFR §1107.21 (to mirror the sample certificates available online at cpsc.gov), and educational outreach on the benefits of becoming a CPSC-accepted laboratory, along with CPSC-accepted test methods that offer cost-effective alternatives to traditional wet chemistry (e.g., use of HDXRF technology for lead and ASTM F963 elements testing.)

B. Detained Shipment Expenses

Burden reduction recommendations in this area focus on reducing the overall detention time of shipments held for examination by the CPSC. Detained shipments must often be held in private warehouses at the importer's expense while they await examination and an ultimate determination by the CPSC on whether the shipment is violative.

Burden reduction work completed in this area is described below:

Allow detained shipments to be tested at a CPSC-accepted lab to determine compliance – currently, if the CPSC collects samples from a detained shipment, those samples are sent to the agency's testing facility in Rockville, MD, to determine compliance. Depending on the location where the samples were collected, this can result in a few days elapsing while the physical samples are in transit. In response to the 2017 RFI, a stakeholder suggested that allowing samples collected from detained shipments to be tested at the nearest CPSC-accepted laboratory may shorten this timeline, thereby lowering private warehouse fees incurred. Under the FY 2019 Operating Plan, an internal burden reduction team examined this issue in depth and evaluated policies to reduce the time and cost of determining regulatory compliance in these detained shipments. The team found that more than 80 percent of samples collected from detained shipments were violative, and further found

² See www.cpsc.gov/smallbatch for the list of Group B requirements, including ASTM F963-17, which qualifying, registered small batch manufacturers may first-party test to in order to certify compliance in a Children's Product Certificate.

that there was no evidence that use of alternate laboratories would reduce transit or testing times. Although the reviewing team did not find this suggestion feasible, as proposed, the Office of Import Surveillance (EXIS), under the FY 2020 Operating Plan, is currently identifying possible process improvements related to product sampling and testing for more timely release of non-violative products that could reduce this burden in an alternative way.

Conditionally release detained shipments to firm's own facility – most shipments that are detained for CPSC examination must be held in private warehouses, at the importer's expense, until the shipment can be made available. To reduce this burden, a stakeholder suggested that CPSC consider releasing the detained shipments to the importer's own facilities while they await exam. EXIS does allow conditional releases in very limited circumstances. As previously mentioned, an in-depth review of internal data revealed that 80 percent of samples collected from detained shipments were violative. Thus, the 2019 burden review team determined that expanding the scope of conditional releases to the importers' facilities would pose too high a risk of violative products entering the market.

C. Administrative Burden Reduction Opportunities

Recommendations in this category focus on reducing burden in the following administrative areas: General Certificates of Conformity (GCC) or Children's Product Certificates (CPC), internal recordkeeping requirements, recall notification obligations, and substantial product hazard reporting processes.

Burden reduction work completed in this area is described below:

Refrigerator Safety Act GCC Enforcement Discretion - effective August 2, 2019, the Commission issued guidance that the CPSC would not pursue manufacturers, importers, or private labelers of household refrigerators for failure to issue, provide, or make available to the Commission a GCC, provided that the product bears an appropriate safety certification mark indicating compliance with UL Standard 60335-2-24, saving an estimated \$51-\$103 in time spent generating and providing a GCC for each refrigerator model.

Internal Recordkeeping Requirements – a stakeholder requested that the Office of Compliance (EXC) review whether language referencing the potential for litigation (and the recordkeeping requirement that this language imparts) were appropriate in all EXC notification communications to firms. EXC considered this recommendation and modified outgoing close letters and CAP-accept/close letters to remove this language.

Recall Notification Flexibility – a stakeholder requested flexibility for retailers and firms regarding the methods they use to notify consumers of recalls when in a store. EXC is updating their Recall Handbook, with an anticipated completion date in FY 2020. The updated Handbook considers this recommendation and provides best practice guidance on ways to notify consumers of recalled products.

Improve Substantial Product Hazard reporting process – in the FY 2020 Mid-Year Funding Request, EXC submitted a request to redesign the online portal through which firms report substantial product hazards. That request was approved and is awaiting availability of funds, and will seek to address this recommendation and improve the online reporting process.

Information & Education Campaign – the FY 2018 Burden Reduction review team saw value in providing overall outreach on certificate requirements, in general. In September 2018, the Small Business Ombudsman hosted a webinar discussing the requirements for both Children’s Product Certificates and General Certificates of Conformity. Approximately 150 people attended the webinar live, and the webinar has received more than 1,000 views on CPSC’s YouTube channel.

Develop Commission policy on certificate requirements for products where on-product certification is required by regulation – this recommendation was included in the list of feasible burden reduction ideas by the FY 2018 review team. As part of the FY 2019 Operating Plan, this idea was explored in more depth, and it was determined not to be feasible because the number of product categories that could benefit was extremely limited, and the burden reduced would be minimal because it would not reduce the testing, labeling, and certification requirements required for all children’s products to meet the Consumer Product Safety Improvement Act (CPSIA). Additionally, the GCC and CPC provide valuable information that CPSC relies on and that is not provided by the on-product certification.

CPSC BURDEN REDUCTION RECOMMENDATION SUMMARY

	Recommendation (Update on Actions Taken)	Statute/ Regulation Involved	Burden Reduced	Benefited Stakeholders
Testing Requirements				
1.	Manufactured woods exceptions for ASTM F963 elements and phthalates (Rulemaking Completed - 16 CFR part 1252 – Effective 7/23/18)	16 CFR part 1250 16 CFR part 1307 ASTM F963	ASTM F963 Elements & Phthalates testing	Toy Industry & Makers of Childcare Articles containing manufactured wood components
2.	Unfinished manufactured fibers exceptions for ASTM F963 elements and phthalates (Work Ongoing – 16 CFR part 1253 –Final Rule Briefing Package to the Commission on 4/29/20)	15 U.S.C. § 1278a 16 CFR part 1307 16 CFR part 1250 ASTM F963	ASTM F963 Elements & Phthalates testing	Textile-based Toy & Durables Industry
3.	Add Spandex to list of fibers exempt for flammability testing (Work Ongoing – RFI Comment Period Closed 6/24/19)	16 CFR part §1610.1(d)(2)	General Wearing Apparel Flammability testing	Adult & Children’s Apparel Industry
4.	Consider eliminating part 1632 and/or unifying parts 1632/1633 into a single mattress standard (Work Ongoing under FY 2020 Op Plan – EXHR activity includes 16 CFR part 1632 ANPR Follow-up Rule Review)	16 CFR part 1632 (smoldering test) & 16 CFR part 1633 (open-flame test)	Mattress Flammability testing	Mattress Industry

	Recommendation (Update on Actions Taken)	Statute/ Regulation Impacted	Burden Reduced	Impacted Stakeholders
Testing Requirements				
5.	Create a Stuffed Toy Testing Manual for small batch manufacturers to reference	16 CFR part 1250	Testing for Registered Small Batch Toy Manufacturers	Small Batch Toy Manufacturers
6.	Explore use of HDXRF to conduct first-party periodic testing for lead and ASTM F963 elements to meet certification requirements	15 U.S.C. §1278a 16 CFR §1107.21 16 CFR part 1250 ASTM F963	Testing frequency for businesses with HDXRF technology in-house, products in continuous production, with initial passing test results and no material changes	Toy Industry with HDXRF technology available in house
7.	Low volume periodic testing exemption for small and micro businesses	16 CFR §1107.21	Testing frequency for small or micro businesses, products in continuous production, with initial passing test results and no material changes	Small batch manufacturers
8.	I&E Campaign on Production Testing Plan	16 CFR §1107.21	Testing frequency if no material changes	All industry
9.	I&E Campaign on Component Part Testing	16 CFR part 1109	Product or component part retesting where component parts have already been tested separately	All industry
10.	I&E Campaign on benefits of being a CPSC-Accepted Testing Lab, and available testing methods (ex: HDXRF for lead and F963 heavy metals vs. wet chemistry)	16 CFR §1112.15	Retesting if children's product already tested by CPSC-Accepted Lab & Testing expense if less expensive methods are used	Testing Labs; Smaller importers and manufacturers of children's products

	Recommendation (Update on Actions Taken)	Statute/ Regulation Impacted	Burden Reduced	Impacted Stakeholders
Detained Shipment Expenses				
11.	<p>Allow detained shipments to be tested at a CPSC accepted lab to determine compliance</p> <p>(Not Feasible and not found beneficial as proposed based upon FY 2019 internal review; however, alternatives are being explored under FY 2020 Op Plan – EXIS is identifying possible process improvements related to product sampling and testing for more timely release of non-violative products to reduce this burden in an alternative way)</p>		<p>Import detention costs from private warehouse fees;</p> <p>Reduction in overall Import Detention Time</p>	Importers
12.	<p>Conditionally release detained shipments to firm’s own facility</p> <p>(Program already exists and is in use, where applicable. Expansion Not Feasible or recommended based upon FY 2018 internal review – risk of violative products entering the market is too high)</p>		Import Detention Costs from private warehouse fees	Importers

	Recommendation (Update on Actions Taken)	Statute/ Regulation Impacted	Burden Reduced	Impacted Stakeholders
Administrative Burdens				
13.	GCCs for Refrigerators (Completed - Enforcement Guidance issued following Commission Vote 8/2/19)	16 CFR part 1110 16 CFR part 1750 15 U.S.C. 2063(a)(3)(E)	Certificate Burden	Refrigerator Retailers/ Importers and Manufacturers
14.	Remove language stating “reasonably anticipated litigation” from Compliance letters to firms, as appropriate, to lessen recordkeeping burden (Completed – EXC has removed language from close letters and CAP-accept/close letters)		Recordkeeping in anticipation of litigation	Industry receiving Compliance letters
15.	More flexibility for in-store notifications of recalls in lieu of posters (Work Ongoing - EXC updating Recall Handbook in FY 2020 to provide best practice guidance for in-store notifications)	N/A, See Recall Handbook	Recall Notification Costs	Brick & Mortar Retailers; Industry participating in a recall
16.	Modernize 16 CFR part 1115 by, for example, improving efficiency of on-line product hazard report filing (FY20 Mid-Year Project - EXC Fast Track Portal redesign project will seek to streamline online reporting process)	16 CFR part 1115	Potential Substantial Product Hazard reporting	Industry reporting substantial product hazards to CPSC

	Recommendation (Update on Actions Taken)	Statute/ Regulation Impacted	Burden Reduced	Impacted Stakeholders
Administrative Burdens				
17.	<p>I&E Campaign on Certificate requirements in general</p> <p>(Completed – Webinar on Certificates was conducted by SBO in September 2018)</p>	16 CFR part 1110	Certificate Burden	Regulated Products industry
18.	<p>Develop Commission policy on certificates required for products where on-product certification is required by regulation</p> <p>(Not Feasible or recommended based upon FY 2019 Burden Reduction Team Review - product categories which could benefit from reducing the certificate obligation are extremely limited, burden reduced would be minimal, and GCC and CPC provide valuable information that CPSC relies on and that is not provided by the on-product certification.)</p>		Certificate Burden	Manufacturers & Importers of products which require on-product labeling