United States
CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, Maryland 20814

MEMORANDUM

DATE: October 29, 2008

TO : EXC

Through: Todd A. Stevenson, Secretary, OS

FROM : Martha A. Kosh, OS

SUBJECT: Section 102 - Certificate Requirements

COMMENT	DATE	SIGNED BY	AFFILIATION
1	10/08/08	Jim Wu Import Director	Action Products International, Inc. 1101 N. Keller Rd, Suite E Orlando, FL 32810
2	10/09/08	Carter Keithley President	Toy Industry Assoc., Inc. 1115 Broadway, Suite 400 New York, NY 10010
3	10/09/08	Blair Schrader	E.J. Schrader Co, Inc. blair@scgraderbeds.com
4	10/09/08	Richard Timms Director	Troxel Company richardmtimms@gmail.com
5	10/09/08	Heather Despres Quality Assurance Manager	GoldBug, Inc. hdespres@goldbuginc.com
6	10/10/08	Colleen Loughman Director	Giddy Up An Elmer's Product Co. 3630 Plaza Drive Ann Arbor, MI 48176
7	10/11/08	Mike Singh President	SMR Electronics, Inc. 1522 Old Country Rd. Plainview, NY 11803
8	10/11/08	Francisco Vivar	ditex2@gmail.com
9	10/15/08	Zoran Madzar	Intex Recreation Corp. zmadzar@intexcorp.com
10	10/17/08	Larry Mahoney	Asia Direct Resource, Inc. Lmahoney-adr@yahoo.com

Section 102 - Certificate Requirements

11	10/17/08	Elinor Zellner	KidKraft, LP 4360 Olin Road Dallas, TX 75244
12	10/20/08	Steven Anzaroot Compliance and Safety Manager	Delta Children's Products 114 W 26th St. New York, NY 10001
13	10/20/08	Denise Attwood	Ganesh Himal Trading P.O. Box 342 Spokane, WA 99210
14	10/21/08	Roy Greebel Associate	Grunfeld Desiderio Lebowitz Silverman & Kelstadt LLP 399 Park Avenue, 25th Floor New York, NY 10022
14a	10/22/08	Roy Greebel	Address same as above
15	10/21/08	William Matthews President/CEO	Blaster Chemical Co., Inc. 8500 Sweet Valley Drive Valley View, OH 44125
16	10/21/08	Rob Harrington Ph.D	Blyth, Inc. 603 Kingsland Drive Batavia, IL 60510
17	10/21/08	Paul Hill Sr Vice President	The Yankee Candle Co, Inc. P.O. Box 110 South Deerfield, MA 01373
18	10/21/08	E.S. Piszynski Vice President	Bridgeview Aerosol 8407 S 77th Avenue Bridgeview, IL 60455
19	10/22/08	James Heidel Tech. Director R&D	Turtle Wax 625 Willowbrook Centre Pkwy Willowbrook, IL 60527
20	10/22/08	Larry Bryne Director of Manuf Information Systems	Carpenter Co. 5016 Monument Ave. Richmond, VA
21	10/23/08	C. Hudgins Vice President Gov. Relations & Policy	International Sleep Products Association 501 Wythe St. Alexandria, Va 22314

Section 102 - Certificate Requirements

22	10/23/08	James May Regional Manager	CrimsonLogic 100 York Blvd, Suite 260 Richmond Hill, Ontario Canada L4B 1J8
23	10/23/08	Richard Kelly Technical Manager Performance	Marvel Oil Company, Inc 625 Willowbrook Centre Willowbrook, IL 60527
24	10/24/08	Thomas Wu	California Gift Center, Inc CGCisland@aol.com
25	10/24/08	Wayne Morris Vice President Division Services	Association of Home Appliance Manufacturers 1111 19th St, NW, Suite 402 Washington, DC 20036
26	10/24/08	Scott Fink	BarryOwen@aol.com
27	10/24/08	Stacey-Ann Taylor Counsel, Govern. Affairs Div.	National Paint and Coatings Association 1500 Rhode Island Ave, NW Washington, DC 20005
28	10/24/08	Patricia Dennehy Traffic Manager	Bar TJ Holdings LLC pdenneht@fashionave.com
29	10/24/08	Steven Zelman	Stephen Zelman & Assoc. 888 Seventh Avenue Suite 4500 New York, NY 10106
30	10/24/08	Curtis Ley President/CEO & Richard Powers Chairman of the Board	Manufacturing Jewelers & Suppliers of America 45 Royal Little Dr. Providence, RI 02904
31	10/27/08	Steve Hansen	steven.w.hansen@swhlaw.com
32	10/27/08	Will Robinson	Yasutomo and Company 490 Eccles Avenue South San Francisco, CA 94080
33	10/27/08	Jenifer Pinkham	Schlossberg & Associates 35 Braintree Hill Office Park, Suite 204 Braintree, MA 02184
34	10/28/08	Jon Lloyd Reg. Affairs Manager	ColArt Fine Arts & Graphics Whitefriars Ave, Harrow, Middlesex HA3 5RH, England

Section 102 - Certificate Requirements

35	10/28/08	Ewa Zalewska Atty-Director	Tiffany & Co 600 Madison Ave New York, NY 10022
35a.	10/29/08	Ewa Zalwesak	Address same as above
36	10/28/08	Jeff Novak Vice President	Unique Industries, Inc jnovak@favors.com
37	10/28/08	Mike Rainville	Maple Landmark Woodcraft 1297 Exchange St. Middlebury, VT 05753
38	10/28/08	George Ravitz Scott Cohn	Arent Fox 1050 Connecticut Ave, NW Washington, DC 20036
39	10/28/08	Roxana Labiosa Regional Manager of the Americans	8300 NW 53rd Street Suite 400 Miami, FL 33166
40	10/28/08	Maurice Amiel	Topsville, Inc. 11800 NW 102nd Rd, Suite 2 Medley, FL 33178
41	10/28/08	Roy Greebel	Rgreebel@GDLSK.com
42	10/28/08	Ronald Sassoon Sr. VP	Townley 389 Fifth Ave, Suite 1100 New York, NY 10016
43	10/28/08	Jeffrey Cohen Director of Pre Production	Townley jeff@TownleyGirl.com
44	10/28/08	Cheryl Lowe Project Manager	Townley Cheryl@townleygirl.com
45	10/28/08	Antoinette Festino Director of	Townley toni@townleygirl.com
46	10/28/08	Sam Safdieh Acct. Executive	Townley
47	10/28/08	Irv Safdieh Acct. Executive	Townley
48	10/28/08	Michael Hester VP Operations	Townley
49	10/28/08	Princess Jackson Consumer Service	Townley
50	10/28/08	Shahid Abdullah Retail Planning Analyst	Townley

Section 102 - Certificate Requirements

51	10/28/08	Lisa Cesaro Vice President Of Merchandising	Townley
52	10/28/08	Jennifer Casiano Product Development	Townley
53	10/28/08	Marlene Perex Customer Service	Townley
54	10/28/08	L. Kirkland Accountant	Townley
55	10/28/08	Heidi Horn Director Regulatory Affairs	L.Perrigo Company 515 Eastern Ave. Allegan, MI 49010
56	10/28/08	E.H. Anderson Exec. VP	Personal Care Products Council 1101 17th St, NW Suite 300 Washington, DC 20036
57	10/29/08	Douglas Troutman Director Governmental Affairs	The Soap and Detergent Association 1500 K St, NW Suite 300 Washington, DC 20005
58	10/29/08	Fran Everts VP - Car Care & M.C. Mcmurray VP - Finance & Treasurer	Shell Oil Company One Shell Plaza, Rm 1170 Houston, TX 77002
59	10/29/08	Victoria Jones Vice President Govern. Affairs & Community Relations	The Clorox Company P.O. Box 24305 Oakland, CA 94623
60	10/29/08	Ann Clepper Marketing Manager	Legacy Classic Furniture 2575 Penny Road High Point, NC 27265
61	10/20/08	A. Jeknavorian Exec. Director of Operations	Stone Set Technologies LLC AAljack@aol.com
62	10/29/08	Daniel A Flynn Chairman	The Balloon Council 5000 E 29th St, North Wichita, KS 67220

63	10/29/08	Gretchen Miller	Greenberg Traurig, LLP 77 West Wacker Dr. Suite 3100 Chicago, IL 60601
64	10/29/08	Paul Nordt, III Chairman/CEO	John Nordt Co., Inc. 1420 Coulter Dr. Roanoke, VA 24012
65	10/29/08	Neil Karman Sales Director	J.K. Manufacturing NCAK@aol.com
66	10/29/08	Edward Audet President	Precision Polishing & Ornamentals, Inc. precpol@yahoo.com
67	10/29/08	Curtis Ley	MJSA 45 Royal Little Dr. Providence, RI 02904
68	10/29/08	krister Segerstad Manager, Product Safety and Compliance	IKEA NA Services 420 Alan Wood Rd. Conshohocken, PA 19428
69	10/29/08	Andrew Emmett Director for Science & Regulatory Affairs	Biotechnology Industry Organization
70	10/29/08	C.R. de Cotret	Arianne Lingerie crenedecotret@ariannelingerie.com
71	10/29/08	Robert Hess	Victor Settings 25 Brook Ave. Maywood, NJ 07607
72	10/29/08	Terry	Diamonds By Terry, Inc. diamondsbyterry@aol.com
73	10/29/08	J.T. Ouhrabka Executive VP	Providence Chain Co. 225 Carolina Ave. Providence, RI 02905
74	10/29/08	Barry Bly President	Zenobia Collections, Inc. 506-6300 Avenue du Parc Montreal, Cananda H2V 4H8
75	10/29/08	Sandy Rieger	Sandy's Jewel Box diamondsbyterry@aol.com
76	10/29/08	Edward Sultan President/CEO	Na Hoku, Inc. Ed@NaHoKu.com

77	10/29/08	Roger Ducharme Quality Control Manager	The Colibri Group 25 Fairmount Ave. Providence, RI 02914
78	10/29/08	Edward Audet Preident	Rain Forest Trading, SA eaaudet@cox.net
79	10/29/08	MaryAnn Hoff Manager, Environment, Health, Safety & Product Stewardship	PPG Industries, Inc. 4325 Rosanna Dr. Allison Park, PA 15101
80	10/29/08	Michelle Wells Regulatory Compliance Manager	Metro mwells@metrocb.com
81	10/29/08	Craig Marinovich President/CEO	Gem Shapes, Inc. 10192 Donner Pass Rd. Truckee, CA 96161
82	10/29/08	Gary Rowe	G.W. Rowe Corporation gary@gwrowe.com
83	10/29/08	Stephanie Lester VP International Trade	Retail Industry Leaders 1700 N. Moore St, Suite 2250 Arlington, VA 22209
84	10/29/08	Joan Lydon	Lydon Design lydondesign@peoplepc.com
85	10/29/08	Vicki Newby	EightSusquehanna vlnewby@eightsusquehanna.com
86	10/29/08	Julie Johnson	Johnson's Jewelry, Inc. Dayton, OH info@greatwings.com
87	10/29/08	Charles Ueng	Jye's International, Inc. jyescorp@yahoo.com
88	10/29/08	Valerie Cooper Executive VP	National Candle Association 1156 15th St, NW Suite 900 Washington, DC 20005
89	10/29/08	V. Minassian	Golden Link of NJ, Inc. 104 Hardenburgh Ave. Demarest, NJ 07627
90	10/29/08	Charles Keely Regulatory Technical Leader	Kimberly-Clark Corp. cckeely@kcc.com

91	10/29/08	Lori Prokes VP - Asst General Counsel	Newell Rubbermaid, Inc. 2707 Butterfield Rd. Suite 100 Oak Brook, IL 60523
92	10/29/08	Fred& Kate Pearce	Pearce Design Katepearce03@aol.com
93	10/29/08	Joselyn Belkin	Torgny & Co. Jewelers 2342 Thousand Oak Blvd. Thousand Oaks, CA 91362
94	10/29/08	Steven Davis	Toby Pomeroy steven@tobypomeroy.com
95	10/29/08	Richard Korwin President	Wideband & Richard Korwin Designs 39 West 29th St, 8th Fl New York, NY 10001
96	10/29/08	Gary Hill	Gary Hill Jewelers GHillOrng@aol.com
97	10/29/08	Joseph Segal	Tambetti, Inc. 509 Madison Ave. New York, NY 10022
98	10/29/08	Stephanie Jordan Owner	Adamas Jewerly Co 3677 College Rd, Ste #7 Fairbanks, AK 99709
99	10/29/08	Kevin Doane General Manager	Greystone and Company Newport Beach, CA 92660
100	10/29/08	Robert Hamilton Regulatory Policy Director	Access Business Group Mail Code 50-3P 7575 Fulton Rd, East Ada, MI 49355
101	10/29/08	Ralph Sardar	Quality Color Ralph@Qualitycolor.com
102	10/29/08	Kevin Burke President/CEO	American Apparel & Footwear 1601 North Kent St. Suite 1200 Arlington, VA 22209
103	10/29/08	Parag Ashar	ADNY Aarohi Diamonds NY 145 West 45th St. New York, NY 10036
104	10/29/08	Russ Nobbs Owner	Rings & Things Wholesale 304 E 2nd Ave. Spokane, WA 99201

105	10/29/08	Mayson Callaway CEO	Callaway Consolidated, Inc 1733 Montreal Circle Tucker, GA 30084
106	10/29/08	Deborah Fanning Executive VP	The Art and Creative Materials Institute, Inc. 1280 Main St, 2nd Fl P.O. Box 479 Hanson, MA 02341
107	10/29/08	Woodhall Stopford MD, MSPH	Duke University Medical Center, Dept of Community & Family Medicine Division of Occupational and Environmental Medicine Suite 4000 2200 W. Main St Durham, NC 27705
108	10/29/08	Consumers	Council for Responsible Nutrition, Consumer Healthcare Products Assoc., Consumer Specialty Products Assoc., Healthcare Distr. Management Assoc., National Assoc. of Chain Drug Stores Natural Products Assoc., Personal Care Products Council
109	10/28/08 **rec'd 10/30**	Daniel Hanrahan Sr. Products Counsel	Harley-Davidson Motor Co. 11800 W Capitol Dr Wauwatosa, WI 53222
110	10/29/08	James Calderwood	Zuckert Scoutt & Rasenberger, LLP Attorneys at Law 888 Seventeenth St, NW Washington, DC 20006
111	10/29/08	Robert Waller, Jr President	Juvenile Products Manufacturers Assoc., Inc. 15000 Commerce Parkway Suite C Mt. Laurel, NJ 08054
112	10/29/08	Laura Jones Exec. Director	US Association of Importers of Textiles and Apparel 1345 Ave. of the Americas New York, NY 10105
113	10/29/08	Steve Pfister Senior VP	National Retail Federation Liberty Place 325 7th St, NW, Suite 1100 Washington, DC 20004

114	10/29/08	Steve Slagle President/CEO	PPAI 3125 Skyway Circle North Irving, TX 75035
115	10/29/08	Lauren Perez	American Free Trade Assoc. 5200 Blue Lagoon Dr. Suite 600 Miami, FL 33126
116	10/29/08	Jane Wishneff Reg. Counsel Director Int'l Affairs	Consumer Specialty Products 900 17th St, NW, Suite 300 Washington, DC 20006
117	10/29/08	Sheila Millar	Keller and Heckman LLP 1101 G St, NW, Suite 500 W Washington, DC 20001
118	10/29/08	Christine Nelson	Christinen@manhattantoy.com
119	10/29/08	Kevin Nicholson VP Pharmacy Regulatory Affairs	National Association of Chain Drug Stores 413 North Lee St. P.O. Box 1417-D49 Alexandria, Va 22313
120	10/29/08	Eileen Moyer Director of Regulatory Relation	Reckitt Benckiser Inc. Eileen.Moyer@reckittbenckiser.com
121	10/29/08	Anita Ducca Sr Director Regulatory Affairs	Healthcare Distribution Management Association 901 North glebe Rd. Suite 1000 Arlington, VA 22203
122	10/29/08	Barbara Wierbicki Atty.	Tompkins & Davidson LLP 5 Hanover Square, 15th Fl New York, NY 10004
123	10/29/08	Robert Stack Atty.	Tompkins & Davidson LLP 5 Hanover Square, 15th Fl New York, NY 10004
124	10/29/08	Bob Kirke Exec. Director	Canadian Apparel Federation 504-124 O'Connor St Ottawa, ON K1P 5M9
125	10/29/08	E. DeCristofaro President	LDC Inc. 30R Houghton St. Providence, RI 02904

126	10/29/08	Franke Burke CFO	MJM Fashions, Inc. 9800 Cavendish, Suite 140 St. Laurent - Quebec H4M 2V9 CANADA
127	10/29/08	C. McLean Exec. Director	Consumer Electronics Retailers Coalition 317 Massachusetts Ave, NE Suite 200 Washington, DC 20002
128	10/29/08	Michael Akkaoui President/CEO	Tanury Industries 6 New England Way Lincoln, RI 02865
129	10/29/08	Brian Markwalter VP, Technology & Standards Richard Goss (ITI) Fern Abrams (IPC)	Consumer Electronics Assoc 1919 S Eads St. Arlington, VA 22202
130	10/29/08	Julie Mattern Compliance Supv. Product Dev.	Shogren, Inc. jmattern@shogrenindustries.com
131	10/29/08	Christian Roy VP, Legal Affairs & Corp. Secretary	GRG USA LLC c/o Groupe Dynamite Inc. 5592 Ferrier Town of Mount-Royal Quebec H4P 1M2
132	10/29/08	Randy Hyne Vice President General Counsel	Fossil Partners LP 2280 N Greenville Ave Richardson, TX 75082
133	10/29/08	T. Cavagnaro	Cadsmithing, LLC Cadsmith@cox.net
134	10/29/08	Deborah White Senior VP & Chief Legal Officer	Food Marketing Institute 50 F St, NW, 6th FL Washington, DC 20001
135	10/29/08	Robin Harvey Counsel for Ganz USA LLC	Baker Hostetler 312 Walnut St. Suite 3200 Cincinnati, OH 45202
136	10/29/08	Charina Fenton	Bijou Jewelers, Inc. 13801 Danielson St. Poway, CA 92064
137	10/29/08	Mark Hanna	Richline Group, Inc. mark@beloro.com

Section 102 - Certificate Requirements

138	10/29/08	Dan Fuhrman Vice President	La Zahav dan@lazahav.com
139	10/29/08	William Crosier	East West Imports WBCJewel@aol.com
140	10/29/08	Michael O'Rourke Atty	Rode & Qualey 55 West 39th St New York, NY 10018
141	10/29/08	David Lampert President	Lester Lampert, Inc. 57 E Oak St Chicago, IL 60611
142	10/29/08	Andrew Schildcrout	Hannah Rose Company, LP ASchildcrout@hannahrose.us
143	10/29/08	James Binnion Vice President	Extrusion Patterned Metals Corporation jim@xpmcorporation.com
144	10/29/08	Amy Bertelli	The Golden eye 115 Don Gaspar Santa Fe, NM 87501
145	10/29/08	Mark Hutto	Tizaworld, Inc. Medford, OR ahutto@charter.net
146	10/29/08	John Flynn President General Counsel	Rawlings Sporting Goods Co John.Flynn@jtsports.com
147	10/29/08	James Binnion	jbin@moukum-gane.com
148	10/29/08	Gary Dawson	Goldworks Jewelry Art Studio 169 E Broadway Eugene, OR 97401
149	10/29/08	Andrew Fish Senior VP	Consumer Healathcare Products Association 900 19th St, NW Suite 700 Washington, DC 20006
150	10/29/08	Tina Cornell	Jane Taylor Jewelry info@janetaylor.com
151	10/29/08	Peter Mangione President	Footwear Distributors and Retailers of America 1319 F St, NW Suite 700 Washington, DC 20004

152	10/29/08	Suzanne Hagen Manager Regulatory Affairs	The Dial Corporation 15501 North Dial Blvd Scottsdale, AZ 85260
153	10/30/08	Jeffrey Krasner Managing Director	The Rainbow Sapphire Collection marketing@rainbowsapphire.com
154	10/30/08	Lauren Perez Vice President Regulatory Affairs	Sandler, Travis & Rosenberg 5200 Blue Lagoon Dr. Suite 600 Miami, FL 33126
155	10/30/08	Arthur Haber	Rubin Arthur & Co. 2180 Park Ave, North #310 Winter Park, FL 32789
156	10/30/08	Jean Sousa Marketing Manager	Ballou Findings 800 Waterman Ave. East Providence, RI 02914
157	10/30/08	Kate Hines	Kate Hines, Inc. 150 Chestnut St. Providence, RI 02903
158	10/30/08	Morris Spil	Samuel Spil Company morriss@samuelspil.com
159	10/30/08	Robert Hamilton Regulatory Policy Director	Access Business Group Mail Code 50-3P 7575 Fulton Rd, East Ada, MI 49355
160	10/30/08	Peter Mayberry Exec. Director	Healthcare Compliance Packaging Council 131 E Broad St, Suite 206 Falls Church, VA 22046
161	10/30/08	Helen Burgos Operations Asst.	Townley 389 Fifth Ave., Suite 1100 New York, NY 10016
162	10/29/08 **Rec'd 10/30**	Walt Sanders VP Law & Government Affairs	Van Fleet Associates, Inc. 1800 Diagonal Rd. Suite 490 Alexandria, VA 22314
163	10/30/08	B.S. Rahardja General Manager	Jaguar Precision Manf. 307 W 36th St, 7th Fl New York, NY 10018
164	10/30/08	Josef Klein	Top Quality Setting Inc. JKTOPQ007@aol.com

165	10/30/08	R. Augustine CFO & Counsel	Dana Augustine, Inc. 300 Chastain Center Blvd Suite 315 Kennesaw, GA 30144
166	10/30/08	G. Marcondes Market Leader	Skillus Corp gilnei@skillus.com
167	10/30/08	N. Ladeluca	The Silver Dragon 100 Central St Warwick, RI 02886
168	10/30/08	Annie Chien	Emby Jewelry 592 Fifth Ave., 11th Fl New York, NY 10036
169	10/30/08	Robert Weiss President	A. Weiss & Son Inc. rweissohio@aol.com
170	10/30/08	Jennifer Dewey	Jenn Dewey Designs P.O. Box 4172 Telluride, CO 81435
171	10/30/08	Jed Furphy Sales & Marketing Director	InnovativeCad Tech. 612 Corporate Way Suites 6-7 M Valley Cottage, NY 10989
172	10/30/08	Keith Adwar Vice President	Adwar Casting Co. 120 South Long Beach Rd. Rockville Centre, NY 11570
173	10/30/08	Walter Aguirre President	JA Jewelry Manuf., Inc. jamfg@verizon.net
174	10/30/08	Shreyash Mehta	UNI-Creation, Inc. 592 Fifth Ave, 11th Fl New York, NY 10036
175	10/30/08	Joseph Brunais	Rhudy's Inc. joe@rhudysjewelry.net
176	10/30/08	Amit Shah Controller	Interjewel USA, I nc. 580 Fifth Ave, Suite 1512 New York, NY 10036
177	10/30/08	David DePorter General Manager	Zarlene Imports, Inc 1550 East Oakland Park Blvd Fort Lauderdale, FL 33334
178	10/30/08	B. Giovanello	The Marfo Company 799 N. Hague Ave. Columbus, OH 43204

Section 102 - Certificate Requirements

179	10/30/08	Joe Faella	Silverfield Mfg. Co, Inc 9 Woodvale Drive Johnston, RI 02919
180	10/30/08	Jonathan Cohen President	I.B. Goodman Co. 120 E Third St. Newport, KY 41071
181	10/30/08	Andrew Tessler	atessler@ix.netcom.com
182	10/30/08	John Chalson	Honora Industries 18 E 48th St, 3rd Fl New York, NY 10017
183	10/30/08	Vernon Kamath	DeBeers Finance 20 West 55th St, 7th Fl New York, NY 10019
184	10/30/08	Jim Eidson	Quality Assurance
185	10/30/08	Jeffrey Francer Asst. General	The Pharmaceutical Research & Manufacturers of America 950 F St, NW Washington, DC 20004
186	10/30/08	Egemen Barlas	DC Group DBA Unique Settings Of NY egemen@uniquesettings.com
187	10/30/08	Ronnie Robinson EVP Supply Chain	TweenBrands, Inc. 8323 Walton Parkway New Albany, OH 43054
188	11/02/08	Lee Edelman President	Marco Polo Precious Metals marcopolopm@verizon.net
189	11/03/08	Frank D'Angelo Chief Operating Officer	C&J Jewelry Co, Inc. 100 Dupont Dr. Providence, RI 02907
190	11/03/08	K. McEnery	The Bead Queen Thebeadqueen2004@yahoo.com
191	11/03/08	G. MacMillian Director	Aluma USA, Inc. 480 Tesconi Circle Suite B Santa Rosa, CA 94501
192	11/03/08	Adrian Gad President	ATG International & Co. agad@atginternationalandco.com

193	11/03/08	Warren Friedman Senior Advisor	HUD Office of Healthy Homes and Lead Hazard Control 451 7th St, SW Washington, DC 20410
194	11/04/08	Charles Lein President/COO	Stuller, Inc. P.O. Box 87777 Lafayette, LA 70598
195	11/04/08	Christina Jo	Agabang USA, Inc. 2710 South Broadway Los Angeles, CA 90007
196 **Ltr dated 10/24**	11/04/08	Marcy Cowan Asst. General Counsel	Bio-Lab, Inc. A Chemtura Company P.O. Box 300002 Lawrenceville, Ga 30049
197 **Ltr dated 10/28**	11/04/08	Robin Le Sage Compliance & Technical Info.	Recochem, Inc. 131 East Dr. Brampton, Ontario CANADA
198	11/04/08	John Wood Director Product Regist. & Compliance	Ecolab Inc. 370 Wabasha St, N St. Paul, MN 55102

Stevenson, Todd

From: Heh, Scott
Sent: Monday, November 03, 2008 2:52 PM
To: Stevenson, Todd
Subject: CPSIA comment

Todd,

This is an old comment that should be grouped with the other CPSIA comments.

From: emailform@cpsc.gov [mailto:emailform@cpsc.gov]
Sent: Tuesday, October 07, 2008 1:28 PM
To: Lab Accreditation Questions
Subject: Message from Email Form

10/07/2008 13:28:12

Name = DOROTHY JONES
Organization/Affiliation = MID-AMERICA OVERSES INC (BROKER)
Daytime Phone = 908-351-7150
E-mail address = DOROTHYJONES@MAOINC.COM

Message = In reference to the New Mandate CPSC Import Documentation Requirements Effecitve November 12,2008, After reviewing the web site the only information that I was able to locate for Certificates of Conformity for wearing apparel requirements are for Children apparel. Is this correct or is the new Requirement for all wearing apparel (mens/women clothing) Thank you

Sut 10

Stevenson, Todd

From: Jim Wu [jwu@apii.com]
Sent: Wednesday, October 08, 2008 4:52 PM
To: CPSC-OS
Cc: Terri Thilburg; Robert Zumbahlen; Jim Wu
Subject: New Mandatory CPSC Certificate of Conformity Requirements Effective November 12
Attachments: CPSC -certificate of conformity requirement.pdf

To the Office of Secretary, CPSC

We are a public company , a distributor and importer of toys , we have some questions regarding the Certificate of Conformity required by CPSIA (Consumer Products Safety Improvement Act), effective Nov. 12, 2008.

1. Format of this certificate of conformity

What is the format of this certificate? can it be on importer's letter head?

2. it is to be issued by manufacturer and importer jointly or separately, per the CPSIA

so this needs to be written and issued by both our factory and us? for each container shipment?

It can be issued jointly or separately? that is either one certificate issued by both factory and us, or two issued by each?

3. "this certificate should accompany product or shipment of product"

How is this certificate to accompany each product? attach it to each product? or accompany each shipment when it is imported into USA? to be submitted to customs broker?

4. " a separate certificate for each product in each container"

this means one certificate per product shipped in each container, correct?

5. who should this certificate be submitted to?

this certificate to be submitted to customs broker for import customs entry? or is it to be submitted to CPSC electronically?

6. " certificate of conformity must be based on reasonable testing program"

our products are mostly toys, so the reasonable testing program is ASTMF963-07e1, the latest standards for toy safety testing. correct?

7.content of this certificate of conformity

As I read this notice, content of this certificate should include the following: correct?

- contact information of manufacturer, importer

- contact information of person maintaining test results

- reference the specific standards (test standards/name)

- indicate place and date of manufacture

in addition, our product item# and description should be listed, certificate should include one item only or a group of items?

8. testing frequency

I believe CPSC requires one testing per each production lot, or per order, as place and date of production is required on each certificate. is this correct?

Please help provide explanation and answers for all above questions so we can get prepared in advance.

Thanks,

Jim Wu

Import Director
Action Products International, Inc.
1101 N. Keller Rd, Suite E
Orlando, FL 32810 USA
phone: 407-4818007 Ext. 7273
fax: 407-6503497
www.apii.com
email: jwu@apii.com

QUALITY BRANDS THAT EDUCATE AND ENTERTAIN

Sect 102
2

Toy Industry Association, Inc.

October 9, 2008

The Honorable Nancy A. Nord
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Dear Chairman Nord:

This letter is in immediate response to the October 8, 2008 CPSC Web site notice "Request for Comments and Information" regarding the general certification requirements of Section 102 of the Consumer Product Safety Improvement Act (CPSIA). It outlines the Toy Industry Association's (TIA's) proposal to comply, via a comprehensive, Web-based electronic system, with the general certification requirements of the CPSIA.

Given the urgent nature of this Section 102 (*i.e.*, the congressionally mandated deadline that all products subject to a mandatory standard and manufactured on or after November 12, 2008 be certified under the meaning and intent of that section), this letter also serves as a request for approval of our proposed means of certification. Timely review and approval of this proposal is therefore imperative since, as you know, supply chain logistical realities typically demand months, not weeks to make the type of adjustments in processes that any type of paper certification system would entail. Indeed, even the electronic system we are now proposing will take immediate, herculean efforts on the part of the TIA and its members to be in operation as close to the November 12 deadline as possible.

The TIA and its members, of course, desire fully to comply with all of the requirements of the new law, including those in Section 102. Thus, utilizing the infrastructure of its emerging Toy Safety Certification Program (TSCP), the TIA is prepared to facilitate conformance by toy suppliers with the requirements of Section 102 through a reliable, Web-based system, backed by reasonable testing programs and containing all the statutorily required information. Moreover, the TSCP will facilitate the efficient and effective enforcement of this section by the Consumer Product Safety Commission (CPSC) and by U.S. Customs and Border Protection (CBP).

The TSCP will enable suppliers to enter all of the data required by the CPSIA to be stored and readily observed, printed, downloaded, transferred, *etc.* into an electronic certificate located on the TSCP website. The requisite IT resources are right now being developed by the TIA/TSCP and an IT partner retained for this very purpose, and a briefing/presentation could be provided to you and/or CPSC staff to demonstrate exactly how we believe the TSCP will meet

the statutory requirements and make the agency's job of ensuring compliance with those requirements vastly more efficient than a paper-based system. Through such a briefing and/or otherwise, we and our IT partners are also eager to explore ways in which to operationalize the TSCP program in the context of both CPSC and CBP requirements and IT systems.

Essentially the TSCP will work as follows: upon satisfactory entry of all of the data in an electronic or "virtual" certificate, TSCP will issue to the supplier a unique certificate code that may then be entered on the TSCP website www.toycertification.org by CPSC and CBP inspectors to access the certificate. The certificate would "accompany the applicable product or shipment of products" via the code printed or stamped on the product package and/or shipping container along with the TSCP website address. CPSC and CBP personnel at U.S. ports of entry (and potentially anywhere else in the world) would know at once the Web location of the required certificate for any toy entering the U.S. and would be able to access the virtual certificate from any computer with an Internet connection to confirm that the supplier has met all of the certification requirements. Retailers and distributors could also be provided this same information to facilitate compliance with both the "shall accompany" and "shall be furnished" requirements of Section 102.

TIA is a not-for-profit trade association incorporated in New York State as a non-stock membership corporation with tax exemption under Section 501 (c)(6) of the Internal Revenue Code. TIA developed this certification mechanism through its TSCP as a service to companies in the toy industry and to help facilitate reliable compliance by the toy industry with the provisions of the CPSIA. This program is now and will continue to be open to TIA and non-TIA members alike.

However, in order to recover the costs of developing and maintaining this service, a modest certification fee will be charged to suppliers that utilize the system. Subsequently, to facilitate the compliance by toy suppliers with the more detailed requirements of Section 102(a)(2) *et seq.* relating to third party testing requirements for importing or distributing into commerce any children's product, the TSCP will provide enhanced certification requirements defining minimal testing protocols based upon the establishment of audited process controls in producing factories.

We believe that Congress did not intend to impose a burdensome paper certificate requirement on commerce and trade in consumer products when it adopted the CPSIA. Indeed, as we observed in our letter to your staff on September 26, in Section 102(g)(4) of the CPSIA, Congress explicitly enables the CPSC by rule to allow "electronic filing" of the necessary certification after consultation with the Commissioner of Customs. The TSCP certification mechanism fulfills for toy suppliers the clear intent of Congress in a manner consistent with customary trade practices in the toy industry, and provides a convenient and reliable enforcement mechanism to CPSC.

We therefore again respectfully request that the CPSC indicate in an appropriate way that this proposal and system will meet at least the general certification requirements of Section 102, with the further expectation that the TSCP will ultimately provide the platform for meeting the additional testing requirements of the CPSIA. Toward that end, I and my/TSCP staff stand ready at your earliest convenience to answer any questions you or your staff may have about our proposal and request to move forward immediately to ensure both full compliance with the law and minimal disruption to the distribution and sale of compliant toys.

Sincerely,

Carter Keithley
President

cc: Office of the Secretary
Office of General Counsel
Office of Compliance and Field Operations

Stevenson, Todd

From: Stanton-Weekes, Angela [aweekes@toy-tia.org] on behalf of Keithley, Carter [ckeithley@toyassociation.org]

Sent: Thursday, October 09, 2008 10:48 AM

To: Nord, Nancy; CPSC-OS

Cc: Falvey, Cheryl; Mullan, John; Church, Colin

Subject: Response to October 8 CPSC Website Notice

Attachments: Nord letter (4).doc

Dear Ms. Nord,

Attached is a letter from Mr. Carter Keithley, President of the Toy Industry Association, in response to the October 8th CPSC Web site notice "Request for Comments and Information" regarding the general certification requirements of Section 102 of the Consumer Product Safety Improvement Act (CPSIA). . This letter will also be sent via Federal Express.

Regards,
Angela

Angela Stanton-Weekes
Executive Assistant to the President
Toy Industry Association, Inc.
1115 Broadway, Suite 400
New York, NY 10010
Tel: 646-520-4842 | Fax: 212-807-1854
Email: AWeekes@toyassociation.org

Mark your calendar now for our upcoming events:

Fall Toy Preview • October 14-17, 2008 • Dallas, TX
Toy of the Year Awards • February 15, 2009 • New York, NY
American International Toy Fair • February 15-18, 2009 • New York, NY
ToyCon 09 • May 6-8, 2009 • Wigwam Golf Resort & Spa, Litchfield Park, AZ

Visit our website for more information:
www.toyassociation.org

Please think of our environment.
Only print this email if necessary.

Sect 102 3

Stevenson, Todd

From: Blair Schrader [blair@schraderbeds.com]
Sent: Thursday, October 09, 2008 7:58 AM
To: CPSC-OS
Subject: Certification of matts

Please make this step as suitable as possible for us small manufacturers. You are loading us down with paperwork and causing significant hardship.

The backbone of our industry depends on small independent business people supplying jobs and taxes for all!!
MANY THANKS!
Blair J. Schrader
E.J. SCHRADER CO., INC.
SINCE 1956

Sect 102 4

Stevenson, Todd

From: richard timms [richardmtimms@gmail.com]
Sent: Thursday, October 09, 2008 6:09 PM
To: CPSC-OS
Cc: Joaquin, Shay; Garcia, Jorge; Boelhauf, Russ
Subject: Section 102 Certificate Requirements

re. For childrens and youth products, Troxel Company
In each 40 ft container there may be 10-20 SKUs and 4-8 different colors (paints). Some SKU's have more than one paint. It would be much more efficient & effective to have a list on file of each SKU with their paints and their corresponding tests. This list could be provided on call or sent in advance to a predetermined holding site in digital form for reference by the customs office or CPSC. This information would be available prior to the arrival of each shipment with its various SKUs.
Because of the changing varieties within containers and the cumbersome of including documents attached to each master carton, we prefer to handle this requirement in a separate, digital format.

Richard Timms
Dir. R&D & Chairman Troxel
richardmtimms@gmail.com
www.troxelhelmets.com
858 587 7722

Sept/02 5

Stevenson, Todd

From: Heather Despres [hdespres@goldbuginc.com]
Sent: Thursday, October 09, 2008 12:11 PM
To: CPSC-OS
Cc: Delfina Anderson; Will Gold; Tawna Schworm
Subject: Comments about Certification Requirements

As a manufacturer/importer of children's goods, we would like to submit the following recommendations about the certification process. We import children's socks, shoes, and hosiery. These items are packaged in small boxes that are then placed in larger boxes for transport. Because of the volume of boxes that are shipped to us in containers and the amount of labor that would be required to place a certificate into a box we feel that it would be too cumbersome for both our factories and for customs to place the requisite certificate into each box that is being transported and then to inspect each box that is being transported for the certificate. There is too much of a chance for human error with this method. Also, because the requirements for the certificate may potentially include listing each product that is compliant on said certificate it may be too confusing for the factory workers to keep each piece of paper separate, again leading to a larger chance for human error in this process. We would not want to have our goods held up at customs due to potential for human error in having to place a certificate into each box of product.

We feel that an electronic process would be a much better and more environmentally friendly way to keep all of this information organized since it would also reduce the amount of paper that would be used in this process. Were there a database where we could simply upload the certificates to, that could be sorted by importer/certificate number, the potential for human error would be greatly reduced. The inspector could then check the database against the style numbers listed on the shipping documents to ensure compliance. I believe that this would also save the inspectors time as they would not need to be physically looking for paperwork inside boxes and would therefore enable inspector to check more containers for potentially hazardous products.

Should retailers request the certificates they could also access this database, again reducing the amount of paper used, or request an electronic copy from us, the importer of record. This method would also be faster and more efficient in that there would be no chance for paperwork to be lost in the mail or in someone's office. This would also reduce the number of certificates required for a specific product. For example, we import certain licensed/private label goods, which, according to the legislation, would also be required to be certified by the licensor. However, the licensor will be asking us for testing reports to prove that the items meet the requirements for certification. So in essence, we would be creating 2 certificates for the same product. In the database there could be a line on the certificate indicating that the licensor has also approved the product and knows that said product meets all standards for certification. While this would take some time to sort out all of the details and to ensure that the licensor is signing off on the certificate, in the end it would be a much more efficient way to do this.

I hope that you find these comments and suggestions useful. If you have any questions or would like further explanation please don't hesitate to contact me.

Sincerely,
Heather Despres

Heather Despres
Quality Assurance Manager
GoldBug, Inc.
Phone: 303.576.4558
E-mail: hdespres@goldbuginc.com

Sen 102

6

Stevenson, Todd

From: Colleen Loughman [LoughmanC@giddyup.com]
Sent: Friday, October 10, 2008 10:29 AM
To: CPSC-OS
Subject: Certificates for Toy Shipments

Dear CPSC,

I would like to comment in regards to the certificate requirements. I will admit that I am very confused about how this will work exactly.

My company manufactures children's activity kits, which can contain dozens of components. Often, we manufacture these goods in a variety of configurations – kits with 12 marker pens, kits with 3 markers pens, kits with 1 marker pen, etc. But, they are all using the SAME marker pens – we have a stock set of markers made by the same manufacturer and used over and over again to create our various kits.

So, my concern about certification – I would like to obtain/provide a certificate for my pens, which can then be applied to the dozens of different configurations/kits that I manufacture. If this cannot happen AND I am going to have to obtain a 3rd party lab certificate for CPSIA 2008 everytime I ship various kits, then my company will no longer be profitable, because the testing will cost thousands of dollar for every type of kit that we make.

Assuming documentation would be flexible, it would not be problematic to direct my suppliers to keep our certifications on file, and provide them as part of the shipping documents packet, along with the commercial invoice, bill of lading, etc.

Best regards,
Colleen Loughman

Colleen Loughman
Director, R&D and Sourcing
Giddy Up, An Elmer's Products Company
3630 Plaza Drive
Ann Arbor, MI 48176
(734) 302-4444 x240
colleen@giddyup.com

7

Sat 102

Stevenson, Todd

From: smrelectronics@aol.com
Sent: Saturday, October 11, 2008 4:37 PM
To: CPSC-OS
Subject: CPSC Certificates of Conformity

Dear Sir/Madam
We are in the import business of Consumer electronics for 220Volts and Overseas use for the last 26years,Our clients are basically moving companies, TheFederal Govt,Employees of Big Corporations who are moving to locations outside the USA, our consumer products range from Color Tv sets,Plasma Displays,LCD Tv's,Vcr's,Stereos and Hifi equipment and these are all known manufacturer's or branded manufacturers such as Sony,Hitachi,Panasonic,Samsung,LG,JVC,Akai,Toshiba etc.We are a small distributors who imports these products from export houses from the overseas trading markets such as Singapore,Hongkong,Dubai(UAE) and sometimes from Europe.As the volume of our imports or purchases for such products is very small,we are only able to source it from distributors in the above countries as the original manufacturer will not entertain such small orders.Due to the new law passed by the CPSC to procure Conformity Certification for all imported items,it will close to impossible for u s to procure such certificates due to the fact that the manufacturers will not entertain any such request from us and there may be a case where the distributor whom we are procuring from may not be able to do so either as he may not be supposed to sell to these goods to the USA due to market protection policies of the original manufacturer.We are in situation due to this ruling where our entire business which is dependant on imports may be shut down and we could be out of business.We will need your agency to throw more light where importers like us can understand what to do and how to carryon with our regular business.Your reply to the above will be highly appreciated as importing the above mentioned goods is a regular activity for us to continue doing business.
Thanking you

Mike Singh
President
SMR Electronics Inc
1522 Old Country Road
Plainview,NY-11803

516 756 6000-Phone
516 756 3132 - Fax

McCain or Obama? Stay updated on coverage of the Presidential race while you browse - Download Now!

Sen 10 8

Stevenson, Todd

From: FRANCISCO X. VIVAR [ditex2@gmail.com]
Sent: Saturday, October 11, 2008 5:48 PM
To: CPSC-OS
Subject: FW: CPSC - New CPSIA Entry

-----Original Message-----
From: FRANCISCO X. VIVAR [mailto:ditex2@gmail.com]
Sent: Saturday, October 11, 2008 4:45 PM
To: 'Consumer Product Safety Improvement Act'
Subject: RE: CPSC - New CPSIA Entry

As Requested on this mail, I have some concerns in regards to this new regulation, how we are make it practical for us, and as well as effective for you.
We are a mattress factory, and deliver 30 to 40 deliveries a day to multiple customers locally. I understand in the case of imports is much simple because the shipment is one, and the certificate(s) can accompany the shipment which is one at the time. In our case, we will have to make one per invoice per customer 30 - 40 a day, 3 -30 pieces per invoice, multiple lots, based on prototypes tested, if we accompany each invoice will be a little more complicated, and gives more chances to confusion, as well as costs. If at least we would have the opportunity to send the certificate on shipments as stated, via e-mail, fax, or regular mail within a reasonable time limit
(12 24 48 hours after the shipment), I think It would help us to do it better, also because we have shipments that are not received in full, because the customer was not there, or did not have the money, is everyday business, and may be practical for big business or imports, but we sell small mom and pop stores, as well as medium size stores. Please let me know if any of this options is available in the law, as specifies "accompany", as we adjust to this new requirements.

Thank You,

Francisco X. Vivar

-----Original Message-----
From: listserv@cpsc.gov [mailto:listserv@cpsc.gov]
Sent: Wednesday, October 08, 2008 1:48 PM
To: FRANCISCO VIVAR
Subject: News from CPSC - New CPSIA Entry

The following new entry has been posted to the US Consumer Product Safety Commission's web page on the Consumer Product Safety Improvement Act (CPSIA) of 2008 located at http://www.cpsc.gov/about/cpsia/cpsia.html

Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"):
Requirements for certificates for conformity testing and third party testing
- Request for Comments and Information (pdf) www.cpsc.gov/about/cpsia/102rfc.pdf

---

You are currently subscribed to the email list "cpsia" as: ditex2@gmail.com

To unsubscribe, please do one of the following:
(1) go to https://www.cpsc.gov/about/cpsia/cpsialist.aspx and use the on-line form
(2) send a blank email to
leave-93417-364964.360e81d7c1c2009fc1e1f9114e4052de@list.cpsc.gov

This message is from the U.S. Consumer Product Safety Commission, an independent federal

regulatory agency, located at 4330 East West Highway, Bethesda, MD 20814 Toll-free hotline: (800) 638-2772

Thank you.

Sec 102
9

Stevenson, Todd

From: Zoran Madzar [zmadzar@intexcorp.com]
Sent: Wednesday, October 15, 2008 5:34 AM
To: CPSC-OS
Subject: Section 102 Certificate requirements

To whom it may concern:

Representing Intex, the largest manufacturer/distributor of inflatable pools and children's products, here are some of the comments related to certificates of conformity, which I hope will be considered within the rulemaking by the Commission.

We have been issuing such certificates of compliance already in Europe for many years and the certificates are handled as follows, which we believe to be a reasonable and appropriate way:

1. The manufacturer designs and makes a product according to applicable standards/requirements.
2. Product is tested to confirm the compliance (either within a reasonable testing program or 3rd party tested)
3. The certificate of compliance is issued by the manufacturer for that specific model, confirming compliance with all applicable standards.
4. The certificate is accordingly available for verification of compliance of that particular model/product at any time or per request: it can be sent electronically to the distributor or retailer or any organization which needs to verify the compliance of the product, or it can be made available online for download. This way the manufacturer can furnish anyone in the supply chain at any time, without issuing dozens of certificates with the same content.
5. It is especially not necessary to issue multiple certificates for every time the product is manufactured during the same season, with same specs. It is a redundant action and waste of paper to be issuing a new certificate every single day, to confirm the product with that particular date code is compliant, when in fact nothing has changed in material, specs or design of the product. It would therefore be our recommendation that the certificate be issued for the model year of the product and be electronically furnished (e-mailed, downloaded, etc) to the importer/retailer for shipments/imports of that model year, which would equal the "accompanying" of the shipment and can be presented on request.
6. The products are continuously tested by manufacturer as a part of the quality assurance system. The certificates of compliance can be re-issued and updated periodically within reason. A reasonable re-certification would be on a seasonal/annual basis, when product lines are reviewed, updated, specs may be changed etc.
7. Certificates may accordingly carry the model year of the product, indicating that the particular model being imported has been designed, spec'd and certified according to requirements. So every importer, distributor, retailer or customs official can verify that they are importing a compliant and certified product/model.
8. Repeating information on products that are exactly the same specs, design and model year as already verified and certified is truly redundant and would mean nothing more than the manufacturer taking the existing certificate and changing the date on it, which would be rather pointless. The applicable requirements remain the same, the specs of the product remain the same and accordingly it's compliance with the applicable requirements remains the same. It would be manufacturer's obligation to re-certify a product in case anything changes in specs or design of the product, as well as to ensure consistent compliance throughout the manufacturing season of

the specific model.

9. Example can be taken from the boat certification governed by the National Marine Manufacturers Association, which certifies boats per model year and requires re-certification only when something in the design or material of the boat is changed. Annual re-tests are conducted to assure continuous compliance.

I hope the Commission will evaluate a reasonable approach, eliminating redundant and meaningless copies of a certificate which can be made available from one source for any party involved and with reasonably timed updates.

Sincerely,

Zoran Madzar
Intex Recreation Corp.

Set 102

10

Stevenson, Todd

From: Larry Mahoney [lmahoney_adr@yahoo.com]
Sent: Friday, October 17, 2008 10:09 AM
To: CPSC-OS
Cc: bcoleman_adr@yahoo.com; debbiemoore@globalcontainerline.com
Subject: Comments/Reccomendation Regarding the Certification Reporting Procedure Associated with CPSIA-2008

Re: CPSIA-2008; Product Certification Reporting Procedure

I. Please note:
A. Asia Direct Resource is currently an active and experienced importer of Consumer Products
B. Asia Direct Resource will certainly comply with CPSIA-2008
C. Asia Direct Resource understands that the CPSC is interested in comments and suggestions from importers that may improve or otherwise enhance the ease and effectiveness of complying with CPSIA-2008

II. Therefore:
A. Presently there is a reporting system in place for all imports.
B. For every importation, all importers are required to supply to US Customs: Bill of Lading; Packing List; Invoice
C. The Importer of Record will typically provide this documentation to US Customs through the importers freight forwarder
D. Product Certification and Testing, as required by CPSIA-2008 should follow this exhisting reporting procedure; i.e.:
1. The completed Certificate and Test Reports, with required signatures from factory, importer and private labeler may be filed as electronic copies via e-mail or Fax. Documents may also be filed by courier, but this is not required.
2. It may not be in the best business interest of the importer to disclose the name and address of the factory to the private labeler. Therefore, it is acceptable that there may be seperate signature pages attached and specifically referenced to each importation.
3. Certificate, along with Test Reports will be provided by the factory to the importer and by the importer to the freight forwarder along with other required documentation, all to be sent by the freight forwarder to Customs.
E. ADDITIONALLY:
1. CPSIA-2008 presently calls for a seperate and unique Certificate for every product in the importation
2. CPSC should allow for one Certificate, carrying all required information, for multiple products in that importation, provided that all of the products on that Certificate belong to one and the same private labeler.
3. Grouping products this way, on one certificate will greatly simplify the process

while not compromising the requirements of CPSIA-2008.

I will greatly appreciate your feed-back.

Larry Mahoney
ADR, Inc
cell: 651-335-3467

102 11

Stevenson, Todd

From: Elinor Zellner [Elinor@kidkraft.com]
Sent: Friday, October 17, 2008 4:25 PM
To: CPSC-OS
Cc: Information Center
Subject: CPSIA COMMENTS - SECTION 102

Thank you for allowing us to comment on the new CPSIA requirements and definitions.
In response to your request for comments on Section 102, below are some brief questions and comments:

Regarding the November 12th Requirements:
1) Is this "certificate" similar to a letter of Guarantee? In other words, if independent tests have been completed for heavy metals, phthalates, etc., and the company wishes to give a letter of guarantee to customers, that would suffice?

Regarding the Third Party Test Requirements (Feb. 2009)
1) How long will third party test certificates be valid? It is cost prohibitive for importers who sell to hundreds of customers to perform full product testing for every single customer. Even heavy metals testing costs have risen due in part to the testing of ALL substrates.

2) How a certificate accompanies product or shipment
- Recommend that a certificate can be used over again for multiple shipments of same item
- Identify Item by Manufacturer's product item number
- Certificate can be electronically sent to customer before goods are allowed to ship.
- Certificate can also be electronically sent to freight forwarder as condition of container bookings prior to shipments

Note: If testing is required on every single item for every single shipment for every single customer, it will effectively put the US companies out of business.
- We test our products every year - but we do full scale testing and random heavy metals testing throughout the year. Our third party certificates are valid per our internal policies for toys for 1 year. For furniture it is 2 years. If factory is changed, or product is changed, the items are retested whether the certificate has expired or not.
- It would not be wise to involve a foreign government agency such as CCIB because of further confusion and lack of control.

3) Certificates can be made available to the CPSC from either retailer or importer electronically upon request. Or the CPSC can create an FTP where certificates can be uploaded to their own folders but will not be able to view others for confidentiality reasons.

General Comments
As a company that has been diligently testing for many years and is constantly striving toward product and supply chain improvements, I would like you to consider the ramifications of imposing so many new requirements on an industry at one time. Because we have already set up internal testing processes the limits set forth by the CPSIA for lead content is not something that is presenting a hardship.

The problems arise when there is vague language that can be "defined" differently by customers or labs. Please be sure that everything is very clearly defined in the requirements. Lab costs are climbing, thus product costs are climbing as well.

For example, we are currently dealing with new CARB requirements (California Air Resources Board) for formaldehyde emissions.
The bill did not take into full consideration the number of small importers affected by the new regulations. There will be a huge increase in product testing/compliance costs.

If CPSIA requirements are not worded properly, small businesses will end up performing multiple tests for multiple customers and in the end, even though the idea is a good one and we are all trying to protect the general public, the consumers will be the losers because either products will cost too much to manufacture and sell in the US, or only the conglomerates will remain in business.

Thank you for listening.

Elinor Zellner

KidKraft, LP
4630 Olin Road
Dallas, TX 75244 USA
Ofc Tel: 972-385-0100 x218
Fax: 972-385-0277
Mobile: 972-835-7292
elinor@kidkraft.com

Set 10 12

Stevenson, Todd

From: Steven Anzaroot [sanzaroot@DeltaEnterprise.com]

Sent: Monday, October 20, 2008 10:03 AM

To: CPSC-OS

Subject: comments on certificates of conformity

The new regulation stipulates that certificates must be issued by the manufacturer based on testing that was done at a certain time and location specified in the certificate. This certificate must then accompany each shipment to the retailer. However, when goods are received and placed into inventory they are essentially mixed with goods of the same style from previous shipments that would have been tested at other times or locations. When they are then shipped to the retailer it would be difficult to know which certificate to send to the retailer.

Certificates should be allowed to sent electronically to the retailer separate from the actual shipment.

Certificates issued to retailers should not be required to have the factory information which is confidential. This information should be allowed to be coded so that it would be available to CPSC personnel upon request but not readily available to others.

Steven Anzaroot
Compliance and Safety Manager
Delta Children's Products
114 W 26th St.
New York, NY 10001
212-736-7000 x 6514

Sent 102 13

Stevenson, Todd

From: ghimal@aol.com
Sent: Monday, October 20, 2008 1:53 PM
To: CPSC-OS
Subject: "Section 102 Certificate Requirements."

To Whom It May Concern at the Consumer Product Safety Commission,

I am writing today to express my grave concerns about the requirements of "new certificates of conformity" that are to be required for all imported goods as of Nov 12, 2008. It is my understanding that beginning on Nov 12, 2008 manufacturers and importers must have written certification provided by a third party that each product being imported comply with the CPSA and that the certificate for each product must be supplied to the final retailer. While I do not disagree with the fundamental premise underlying this decision, which would be to protect consumer safety, I do feel that this regulation and its immediate implementation will put an onerous burden on small scale producers and importers and potentially put them out of business unless there is significant help from the US government to help organize and implement the third party testing procedures.

For the past 24 years my husband and I have worked with women's development aid projects and cottage industries in the country of Nepal to help them to develop products that we import into the United States. Our main goal in this work has been to give these producers a fair wage and long term stable buying relationships so that they can create stability in their own lives, send their kids to school and help them develop businesses that will support them. Many of the people and projects we work with in Nepal represent marginalized workers, such a s women and minorities, who otherwise have little access to fair wages or export possibilities that allow them a livable wage and long term stable buying relationships. All of the producers we work with are small groups of people who create many different types of products. In our work with these producers we have always helped them to create the highest quality goods that they can be proud of and goods that will provide good quality choices to the buying public in the US. We have been members of the Fair Trade Federation www.fairtradefederation.org and as such work within a set of guidelines that promote fair trade, cultural awareness, human rights and environmental responsibility. Our main market in the US is through a small but growing network of stores who represent and promote the idea of Fair Trade with less empowered producer groups around the world.

My concern with the above regulations that are to go into effect on Nov 12 are twofold:
1) That the small businesses and development aid projects around the world that are involved in creating products for the Fair Trade market do not have the infrastructure available to them (nor the resources to develop that infrastructure) that is necessary to provide "third party testing certificates" for many multitudes of different products. It is impossible to do so by November 12, 2008. It is my belief that this is an onerous burden on them and that it could affect many of these producer groups in a very negative way, pe rhaps even putting them out of business. If such third party testing is required it must be phased in over a period of time and highlighting different categories at each phase in such a way that small producer groups can deal with such a huge burden.
2) That small scale fair trade importers in the United States such as myself do not have the resources that are available to large corporations to pay for third party testing (if it is even available in the areas we work). Fair Trade importers in the US work under guidelines that make trade fair for all. That includes fair wages to producers, fair pay to importers and fair prices to retailers and the ultimate consumers. As such Fair Trade importers are not working on the same high profit margins that many large scale

corporations do. Our vision is to provide good paying work to producers while making a living wage ourselves. We are not making a huge bottom line. For us to incorporate payment of third party testing into our marketing will be onerous on many of these small scale importers and again may put many of us out of business. If third party testing is to take place it must be first of all available in the countries we work within, secondly, affordable to the importer since our producers do not have the means to pay for this kind of service and again must be phased in in such a way as to not place an onerous burden on the small scale importer such that it places their business in jeopardy.

It is my recommendation that the CPSC work directly with small scale importers and particularly those within the Fair Trade Federation to help with the following:
1) creating legitimate third party testing programs in the developing countries where we work that are reasonably priced and available to all, not just the large scale corporations,
2) creating a timeline for phasing in these testing requirements that is reasonable and not onerous to the producers or to the importers,conceivably starting with those products that are most likely to have an adverse impact (i.e. consumables vs clothing) and,
3) allowing for web based or electronic versions of these certificates once they are developed so that the paper burden on the environment is lessoned.

I thank you for your time and consideration and look forward to your response.

Sincerely,
Denise Attwood
PO Box 342
Spokane, WA 99210
Ganesh Himal Trading
509-448-6561
www.ganeshhimaltrading.com
Member Fair Trade Federation, Fair Trade Resource Network and Coop America

Get informed! Read "The Conscious Consumer:Promoting Economic Justice Through Fair Trade" to order copies contact info@ganeshhimaltrading.com

Sect 102 14

Stevenson, Todd

From: Greebel, Rory G. [RGreebel@GDLSK.COM]
Sent: Tuesday, October 21, 2008 4:42 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

To Whom it May Concern:

These are our firm's questions/comments for submission as they relate to Section 102 Certificate Requirements:

1) The General Certification Rule states that a private labeler must issue a certification if a private label exists on the container or the goods themselves. If the importer is placing the private labels on the goods, can the importer provide the certification on behalf of the private labeler, or does that private labeler have to issue a certification independent of the manufacturer and importer? According to the morning presentation given on October 2, 2008, the Commission may relieve a party from having to issue a general certificate by way of Commission rule? Is that available in the scenario listed above? What process must the private labeler pursue in order for this exemption to apply?

2) The Commission provided a sample certificate during the October 2, 2008 presentation that outlined what information needs to be provided on a General Certification Form. However, can you provide more guidance on whether each certificate has to be signed by all parties if a given product has a manufacturer, importer, private labeler, etc. Will a statement of relevant parties involved suffice? More specifically, can one signature on each certificate be enough to pass muster with the Commission?

Best Regards,

Rory Greebel, Associate
Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP
399 Park Avenue
25th Floor
New York, NY 10022-4877
Direct Dial: 212-973-7761
Email: rgreebel@gdlsk.com

NOTICE: This e-mail, and any attachments thereto, are intended only for use by the
and any attachments thereto, is strictly prohibited. If you have received this e-mai

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulati
Internal Revenue Code or (ii) promoting, marketing or recommending to another party

Sut 102 1/2

Stevenson, Todd

From: Greebel, Rory G. [RGreebel@GDLSK.COM]
Sent: Wednesday, October 22, 2008 4:47 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

To Whom It May Concern:

1. Section 102 of the CPSIA requires that manufacturers issue general certifications for products that must follow CPSC mandated regulations. However, in certain situations a foreign seller may purchase merchandise from numerous manufacturers and ship those together in one large consolidated shipment to the U.S. buyer. It is feasible that a shipment could contain goods from 50 or more different manufacturers. These items are all subject to the same standard(s) and would potentially only need one certification verifying compliance. Can you please confirm whether that one shipment must contain general certificates from all manufacturers involved or can the foreign seller be identified as the manufacturer and produce one single certification. It is our contention that requiring a certificate from each manufacturer in this scenario is overly burdensome when one certificate (assuming the products are all subject to the same standards and have been tested separately) would suffice.

2. Often companies import mutilated samples that are not intended for sale or distributed into commerce. Mutilation prevents the sample from being sold or worn in order to qualify for a preferential tariff classification. Can you please confirm that these samples, if they are not intended to be sold or distributed into commerce, do not need to have a certification issued for flammability, etc.

Best,

Rory Greebel, Associate
Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP
399 Park Avenue
25th Floor
New York, NY 10022-4877
Direct Dial: 212-973-7761
Email: rgreebel@gdlsk.com

NOTICE: This e-mail, and any attachments thereto, are intended only for use by the
and any attachments thereto, is strictly prohibited. If you have received this e-mai

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulati
Internal Revenue Code or (ii) promoting, marketing or recommending to another party

HIGH PERFORMANCE CREATIVE CHEMISTRY

Blaster Chemical Companies, Inc.
8500 Sweet Valley Drive
Valley View, Ohio 44125
(216) 901-5800
1-800-858-6605
FAX: (216) 901-5801

October 21, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Gib:

The Blaster Corporation, located in northeast Ohio, is the manufacturer of the Blaster line of consumer chemical products. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

William D. Matthews
President / CEO

Cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
The Honorable George Voinovich, U.S. Senator
The Honorable Sherrod Brown, U.S. Senator
The Honorable Dennis J. Kucinich, U.S. Congressman
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

Sec 102 16

Rob Harrington, Ph.D.
Director, Regulatory & Safety
Blyth, Inc.
603 Kingsland Drive
Batavia, IL 60510

BLYTH

October 21, 2008

Nancy A. Nord
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Ms Nord:

Although my company supports the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires **all** consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- We believe that Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable. The lack of clear guidance and requirements of this regulation is causing severe confusion in the industry.

In addition, the existing regulations under the PPPA and FHSA already clearly require that all consumer products be in compliance with these regulations. To require certification for each and

every shipment is a completely useless and costly exercise and will not result in anything but an additional administrative burden and will not result in safer or better products.

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Rob Harrington, Ph.D.
Director of Regulatory and Safety

Cc: Gib Mullan, Assistant Executive Director, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission

Sub 102 17

YANKEE CANDLE®
a passion for fragrance™

The Yankee Candle Company, Inc.
P.O. Box 110
South Deerfield
MA 01373-0110

Corporate
413-665-8306
fax 413-665-4815

Wholesale
800-792-6180
fax 800-872-7905

Retail
413-665-8306
fax 413-665-8911

Catalog Sales
800-243-1776
fax 413-665-8321

www.yankeecandle.com

October 21, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Mr. Mullan:

I am writing on behalf of The Yankee Candle Company, Inc. We are a Massachusetts-based manufacturer, retailer and wholesaler of premium scented candles and other home fragrance products and accessories. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Paul Hill
Senior Vice President, Operations

cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
The Honorable Edward M. Kennedy, U.S. Senate
The Honorable John F. Kerry, U.S. Senate
The Honorable John Olver, U.S. House of Representatives
The Honorable Richard E. Neal, U.S. House of Representatives
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

BRIDGEVIEW
Aerosol
a USAerosols Company

708-598-7100 • www.bvaerosol.com
8407 S. 77th Avenue • Bridgeview, IL 60455 U.S.A.

October 21, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Gib:

Bridgeview Aerosol, LLC is a contract/private label packager of consumer products in aerosol package form. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Edward S. Piszynski

Edward S. Piszynski
Vice President
Laboratory Services

Cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
The Honorable Richard Durbin
The Honorable Barack Obama
The Honorable Daniel Lipinski
The Honorable Judy Biggert
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

SM 102 19

October 22, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Gib:

Turtle Wax, Inc. manufactures a wide range of automotive appearance aftermarket products including automotive waxes, polishes, washes, both interior and exterior rubber and vinyl dressings, and wheel cleaners. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a Certification of Conformity specifying all applicable CPSC requirements with which the product complies.
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products.
- Congress's intent was for children's products as it pertains to certification as Section 102 of the CPSIA is titled "Mandatory Third Party Testing for Certain Children's Products". Our products are not made for use by children.
- The new self-certification requirement will impose an unnecessary financial and resource burden on U.S. companies during a time when the economy is struggling and the financial markets are in disarray.
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

625 Willowbrook Centre Parkway, Willowbrook, IL 60527 Tel 1-630-455-3700 www.turtlewax.com

We urge the CPSC to focus on children's products as was the original intent. We also urge the CPSC to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Turtle Wax, Inc.

James P. Heidel
Technical Director, R&D
Corporate CSPA Executive Contact

cc: Nancy A. Nord, Acting Chairman,
Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel,
Consumer Product Safety Commission
Richard Durbin, Illinois Senator
Barack Obama, Illinois Senator
Judy Biggert, 13th District of Illinois Congresswoman
The Honorable John D. Dingell, Chair,
House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member,
House Energy & Commerce Committee

Sec 102

Request for Comments and Information*
Section 102 of the Consumer Product Safety Improvement Act ("CPSIA")
Requirements for certificates for conformity testing and third party testing
The Commission staff invites comments on Section 102 of the CPSIA, regarding the requirements for certificates for general conformity testing and third party testing. In particular, the staff is requesting comments on the use of electronic certificates as well as the issue of multiple certifications for the same product.

• Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal;

The company that issues the certification needs to hold the records in electronic form such as an archived image of the document that can be printed to emailed to CPSC on request.

• Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA;

If the requirement for production date is removed from the information required on the certificate then a generic certification document can be inserted as text on the packaging of the product or added as separate document inside of the product packaging. The requirement of production date forces the certificate to be produce daily with no real benefit to the enforcement process.

• Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise;

We would suggest that a certification letter be furnished to the retailer with the first shipment and at the point that the product has a new test done.

• Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products

Electronic transmission either by EDI or email
would be a better option than paper. But since the retailer has no requirement in the law to retain or take any action based on the certificate I doubt they will provide this option to the manufacturing company.

• Specific comments or concerns regarding multiple certifications by a Foreign manufacturer, importer and/or private labeler for the same product.

We ship to several major retail chains that have over 1,000 stores. It is normal to ship a single product to each of those stores in a week. As this process continues for a year we will end up sending 52,000 certificates with the shipments and then furnishing 52,000 certificates to the retailer. This seems to be an excessive amount of paper to be produced, stored and retained.

Comments to the Office of Secretary are requested by October 29, 2008. Comments may be filed by email to cpsc-os@cpsc.gov. Comments may also be filed by facsimile to (301) 504-0127 or by mail or delivery to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814. Comments should be captioned "Section 102 Certificate Requirements."

**This document was prepared by CPSC staff, has not been reviewed or approved by, and may not necessarily represent the views of, the Commission.*

Stevenson, Todd

From: Larry Byrne [larry.byrne@carpenter.com]

Sent: Thursday, October 23, 2008 1:03 PM

To: CPSC-OS

Subject: Request for Comments and Information Section 102 of the Consumer Product Safety Improvement Act

Attachments: Request for Comments and Information.doc

I have attached my comments on Section 102 of the Consumer Product Safety Improvement Act Requirements for certificates for conformity testing and third party testing

Larry Byrne
Director of Manufacturing Information systems
Carpenter Co.
5016 Monument Ave
Richmond Va
Cell Phone 804-304 0767

The information contained in this electronic communication may contain confidential business information belonging to Carpenter Co. or its subsidiaries and affiliates and is intended only for use by the person or entity named above. If you are not the intended recipient (or someone responsible for delivering it), you are hereby notified that any distribution or copying of this information is strictly prohibited. If you have received this communication in error, please reply to the sender that you have received this communication in error, then delete this information without copying or reading it. Thank you.

ISPA
INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

October 23, 2008

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

Re: Section 102 Certificate Requirements

The International Sleep Products Association (ISPA) submits the following comments on behalf of the mattress manufacturing industry in response to the Consumer Product Safety Commission's (CPSC) request for public comment on the following topics regarding the new certification requirements set by the Consumer Product Safety Improvement Act (CPSIA):[1]

> **Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal**

The mattress industry urges the Commission to take a flexible approach regarding this and the other certification issues on which it has requested public comment. Each mattress manufacturer and retailer has differing capabilities and preferences regarding the sending and receipt of paper or electronic documents like the certifications required by the new law. Therefore, rather than set detailed specifications for certifications that all manufacturers must meet, we urge the Commission instead to develop general system performance criteria that allow each manufacturer to determine the method(s) it considers appropriate to meet those criteria. In that way, the manufacturer may choose which methods are the most efficient for its business, and may modify those methods over time as technology improves and business practices evolve.

With specific regard to making the certificates available for Commission inspection, the guidelines or rules that the Commission adopts should reflect the different circumstances in which the inspection may occur (i.e., at the time of importation, during delivery of the products from the manufacturer to the retailer, after delivery has occurred, etc.) and the commercial role of the party subject to inspection (i.e., U.S. manufacturer, U.S. importer, private labeler, etc.). Accordingly, we urge the Commission to require the following:

- If the Commission or Customs and Border Protection (CBP) were to inspect a specific shipment while in transit between the manufacturer (domestic or foreign) and the retailer or distributor, the certificate accompanying that shipment shall be available for inspection. See below for comments on when an electronic certificate may "accompany" a shipment.

[1] Although technically beyond the scope of the Commission's request for comment, we reiterate our request that the agency conclude that mattress manufacturers are already in effect meeting the new certification requirements because much of the information that must be presented on the certificate is already provided on the product label required by 16 CFR Part 1633 and the remainder of that information is available upon request by the Commission.

501 Wythe Street ▪ Alexandria, Virginia 22314-1917 ▪ (703) 683-8371 ▪ Fax (703) 683-4503
www.sleepproducts.org ▪ info@sleepproducts.org

- In all other cases, the party subject to inspection must present a copy of the certificate upon the Commission's request.
- The certificate or copy presented for inspection may be in paper or electronic form.
- A U.S. manufacturer may maintain its certification records either at the place of manufacture or at another location.
- A U.S. importer shall be responsible for maintaining at a location in the United States all certifications issued by a foreign manufacturer whose products the U.S. party has imported and such certificates as the importer must issue.
- A private labeler shall be responsible for maintaining at a location in the United States certifications issued by a manufacturer (and importer, if the manufacturer is foreign) of the private labeler's products and that the private labeler itself must issue.
- The party subject to inspection may use a third party to store and maintain its certification records, provided that they are maintained in the United States.

Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA

Section 14(g) of the Consumer Product Safety Act (as amended by the CPSIA) provides that "[e]very certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate." We urge the Commission to interpret the word "accompany" to allow for the physical delivery of paper certificates or the electronic transmission of the certificate to the retailer (and distributor, if relevant), provided that any such electronic transmission occurs contemporaneously with the shipment.

By expressly allowing for the possibility of certificates being electronically filed with CBP as specified in the CPSIA, Congress recognized the efficiencies possible in using this form of delivery. Likewise, we urge the Commission to allow manufacturers, importers and private labelers to meet their duty to have the certificate "accompany" the shipment by electronically transmitting them to the retailer or distributor.

If the certifying party chooses to use the electronic transmission option, we urge the Commission to allow some indication or reference provided with the shipment to signify that the certificate is being transmitted electronically. Such indication may include, but not be limited to, a statement set forth on any papers that physically accompany the shipment, on the materials used to pack the products, or on the product itself, etc. This will inform any inspecting authorities (e.g., the Commission or CBP) that the shipment does not contain a paper certificate.

Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise

Section 14(g) of the Consumer Product Safety Act (as amended) also requires that "a copy of the certificate shall be furnished to each distributor or retailer of the product." Recognizing that the "accompany" requirement permits, at the certifying party's option, the electronic transmission of the certificate, we likewise urge the Commission to affirm such transmission to also meet the "furnished" requirement.

In this regard, we urge the Commission to adopt the requirement listed in the immediately preceding comment. In addition to transmitting the electronic certificate to the retailer or distributor that will receive the shipment to which the certificate corresponds, the certifying party should be permitted to transmit a copy of the electronic

certification to (as applicable) the headquarters offices of the retailer or distributor, or others designated by the retailer or distributor to receive copies of the certificate.

Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products

As noted above, flexibility is crucial in allowing for the electronic delivery of certificates as one option that certifying parties may use in meeting their legal obligations. The mattress manufacturing industry is comprised of businesses of every size, each with a different product mix, customer base, data processing capabilities and infrastructure. Likewise, a typical mattress manufacturer's customers may range from the electronically adept to those that are less technologically sophisticated.

Thus, while an electronic approach may be reasonable for some larger manufacturers in some circumstances, it may be problematic for smaller business which may not have the ability to send or receive electronic certificates. For these reasons, we urge the Commission to develop a system that permits each certifying party to use the technology and tools available to them and their retailer customers to meet the new certification requirements, either by use of paper or electronic documents.

If the certifying party opts to transmit its certificates electronically, it is important that the system used has integrity, and is not easily subjected to fraud or misuse. Provided that the certifying party can demonstrate such integrity, it should be the party's decision whether to use paper or electronic certificates.

In assessing both the "accompanying" and the "furnishing" requirements, the Commission should allow for various electronic and paper mechanisms to allow for evolving technological capabilities. For example, the Commission should consider a central, on demand, portal or database for retrieving certification information as one option that certifying parties and recipients may use to access certificates. Some businesses currently use web-based compliance databases for other applications. These systems allow for information retrieval according to a code that can be provided with a product. Such a database will allow for easy access by responsible parties, and have the potential added advantage of possibly allowing the Commission to "inspect" a certifying party's records electronically from a remote location.

From a cost perspective, many larger businesses have existing software or programs that will allow for the electronic distribution of information throughout the supply chain. These systems may be modified to permit the transmission of required certificates. Smaller businesses that do not have the capacity to institute such a system may prefer the simple emailing of information to the appropriate contacts which should suffice to meet the requirements.

The Commission should also offer guidance on what certifying parties should do should their electronic transmission system temporarily fail. For those small businesses without electronic back-up capabilities, paper records should remain an option.

Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product

In the case of imported products, it is our understanding that at least two – and possibly three – parties may have a legal duty to meet the certification requirements. These would include the foreign manufacturer, the U.S. importer and (if relevant) the private labeler. This possibility raises a number of logistical and legal issues that we urge the Commission to address.

First, the Commission should permit each party in the chain of commerce that must issue certificates to rely in good faith, when relevant, on the accuracy of information provided by other unrelated parties in the chain of commerce. In many cases, a certifying party will need to rely upon at least some data generated by an unrelated third party to issue its certificate. For example, if the foreign manufacturer, the importer and the private labeler in the above example were not related to each other, the private labeler would need to rely on test record data provided by the foreign producer to meet its own certifying duties.

It is also possible that a certifying party will have no contractual relationship or direct dealings with a party generating the data. For example, the private labeler might deal only with the importer, and have no business relationship with the foreign producer. Nevertheless, the private labeler will again need to use data generated by the foreign manufacturer to issue its certificate. Even if there were a contractual relationship between the private labeler and the foreign manufacturer, the private labeler may lack the ability to verify the accuracy of the data provided.

In each of these cases, we urge the Commission to allow the private labeler to issue its certificate based (where relevant) on its good faith reliance on information provided by the foreign manufacturer. Thus, the private labeler could include on its certificate the required test date and testing authority information based on its good faith reliance on the same categories of information provided by the unrelated foreign manufacturer on its separate certificate. The U.S. importer could make the same reliance in issuing its certificate.

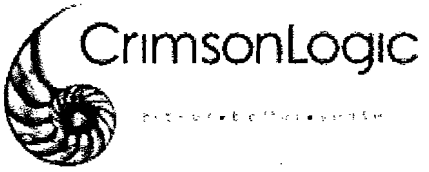
Second, the Commission should allow the parties in the chain of commerce the option of issuing a single certificate that meets the individual legal obligations of each of the parties. This option might be attractive in the type of import transaction described above if the identity of the retailer is known to all parties in the chain of commerce from the point of manufacture. Under those circumstances, it will be feasible for all parties (if they choose) to coordinate action and issue a single certificate.

* * *

Thank you for the opportunity to share our remarks. We stress that the certification deadline is only a few weeks away and our members are looking to Commission for further direction on this matter as soon as possible. We look forward to working with the CPSC as you implement the certification requirements and the CPSIA. Please feel free to contact me at 703-683-8371 or chudgins@sleepproducts.org if you have any questions.

Sincerely,

Christopher Hudgins
Vice President, Government Relations & Policy



James May
Regional Manager, North America
260-100 York Blvd.
Richmond Hill, Ontario
L4B 1J8

October 23, 2008

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

RE: Section 102 Certificate Requirements

CrimsonLogic (North America) Inc. is a SaaS (Software as a Service) company offering e-government solutions for our clients to connect to US and Canada customs. In North America, we have offices in the United States, Canada and Mexico.

The SaaS service offering allows traders and transportation carriers to connect to CBP (Customs and Border Protection) and CBSA (Canada Border Services Agency) to comply with electronic advanced reporting requirements such as ACE (Advance Commercial Information), AMS (Advance Manifest System) and ACI (Advance Commercial Information). The endorsement below (Annex 5) from US Customs is a testament to the dedication CrimsonLogic (North America) Inc. has to supporting government initiatives that expedite the movement of cargo across borders.

In addition to our government connectivity solutions CrimsonLogic (North America) Inc. offers other web-based solutions which can help collaboration of documentation information from various parties located globally and also include the integrity of printed documents with normal paper and laser printers. The key benefits of such a web-based solution which directly relate to the initiative of the Consumer Product Safety Act are as follows:

- Permit easy visual authentication of created documents
- Deter replication of original documents with optical watermark technology
- Control specified number of original documents within application control
- Ensure document authenticity and integrity

CrimsonLogic (North America) Inc. welcomes the opportunity to comment on Section 102 Consumer Product Safety Improvement Act (CPSIA) and additional information on the above.

There are several parties involved in the CPSC import documentation flow:

From the Exporting Country:

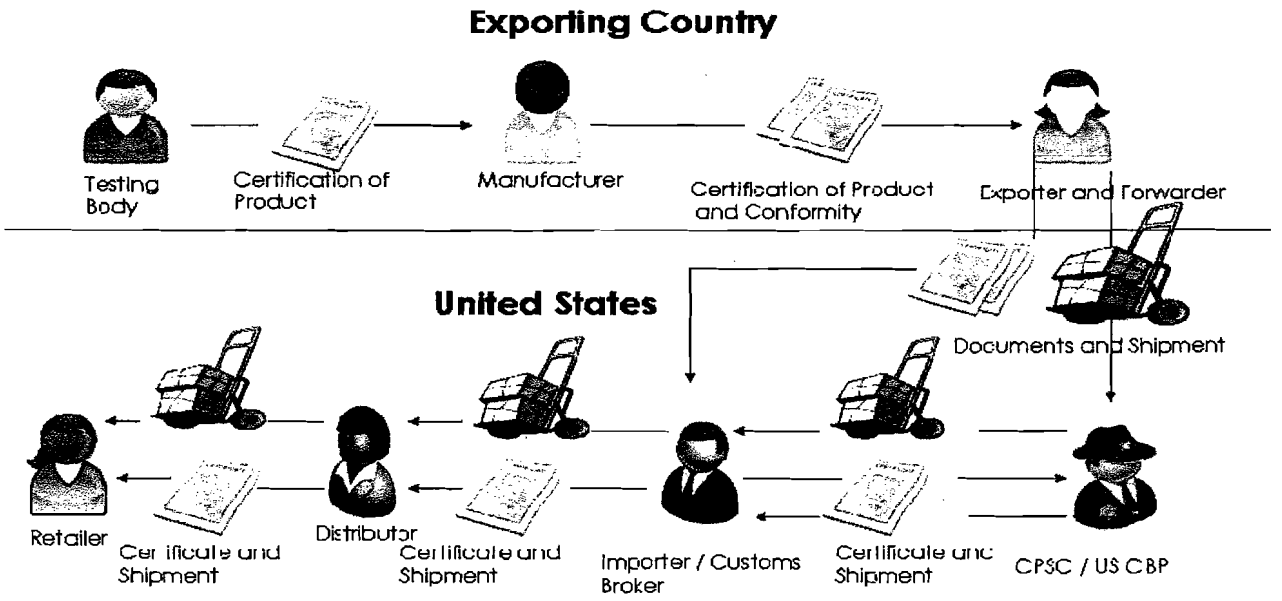
1. An approved testing or validating body that certifies that the product conforms to the rules, regulations and standards of the CPSC
2. The manufacturer of the product, who obtains the certificate from the testing/validating body
3. The exporter/forwarder who handles the shipment on behalf of the manufacturer

Within the US

1. The importer or customs broker who handles the inbound shipment and may need to present the certification to CBP/CPSC
2. The distributor of the product who needs to keep a record of the document
3. The distributor or retailer of the product who needs to keep a record of the certificate

A diagrammatic presentation of the above is given below:

Certificate of Conformity (COC) Diagram (Manual System)



A manual, paper based system involving several parties and of a cross-border nature can be cumbersome, cause delays at the border and inhibit the legitimate flow of trade. At the same time, a manual system does not lend itself to proper record keeping, generation of reports, risk management and more importantly tracking down and tracing goods that may have entered the commerce of the US that are suspected of being harmful to consumers.

It would therefore be in the interest of both CBP and CPSC to introduce a web based electronic certificate system that overcomes the abovementioned limitations of a manual system. A web-based system allows multiple parties to access and download the certificate anytime and anywhere. At the same time, there is technology available in a web based environment for controlled printing of original documents with embedded watermarking that can prevent the use of fraud and false certificates.

CrimsonLogic

Electronic Import Documentation

For the importation of CPSC regulated products, the following could be the process flow:

1. The importer/customs broker will make a one-time on-line registration with the CPSC.

2. Upon registration, the importer gains access to a web application that requires filling out of essential information required by the CPSC in mandatory fields (eg., overseas manufacturer, exporter/forwarder, distributor/retailer)

3. The web-based application allows for attachment of required supporting documents from CPSC approved overseas testing agencies

4. Once all essential data fields are completed, approval can be made automatic, and there is technology available to control the number of original copies of the certificate that can be printed through regular laser printers with appropriate watermarks that are fraud proof*

5. User alerts can be sent to relevant parties (eg., overseas exporters, importers, distributors, CBP border agents, CPSC and exporters) where the document can be viewed electronically or printed.

6. In addition, each original document that is printed with the watermark can have a unique URL which any of the interested parties can use to verify via the internet the veracity of the document; This serves as a second layer of check against fraud of documents submitted.

Public Key Infrastructure (PKI) technology can be used to ensure data security and authenticity.

A work-flow chart describing the above process is attached at Annex 1.

High volume importers requiring the processing of a large number of CPSC related documents can also benefit from the use of electronic systems to aid in the preparation of these documents. Common data required on the CPSC documents i.e overseas manufacturer, exporter/forwarder can be automatically imported from ERP systems populating into a web-based application which upon login can be matched up with supporting documents from overseas parties greatly reducing the time required to create these documents manually. Electronic processing also means having an audit trial for verifying the preparation and subsequent presentation to relevant parties when the document is downloaded and printed.

Benefits

For the private sector, (ie., importers, overseas exporters, distributors and retailers), these are the benefits of an electronic certification system:

1. There will be a single interface for electronic submission, receipt, amendment and retrieval of certificates.

2. It facilitates global trade transactions through secure on-line integration with other trading partners.

3. There is better control of information through system alerts when the certificates are approved, viewed and printed.

4. Reduction in paperwork through online data processing and integration.

5. Minimizes data inaccuracy through data sharing capability and the need to re-enter data.

For regulatory bodies like the CPSC and CBP, the benefits of an electronic certification system are:

1. Integrated approval and certification for better efficiency

2. Automated validation and approval

3. Reduction in paper work through on-line application and processing

4. Advanced visibility of products arriving in the US and greater ability to track and trace down products

5. Summary report generation possibilities for data analysis and risk management.

Sincerely,

James May

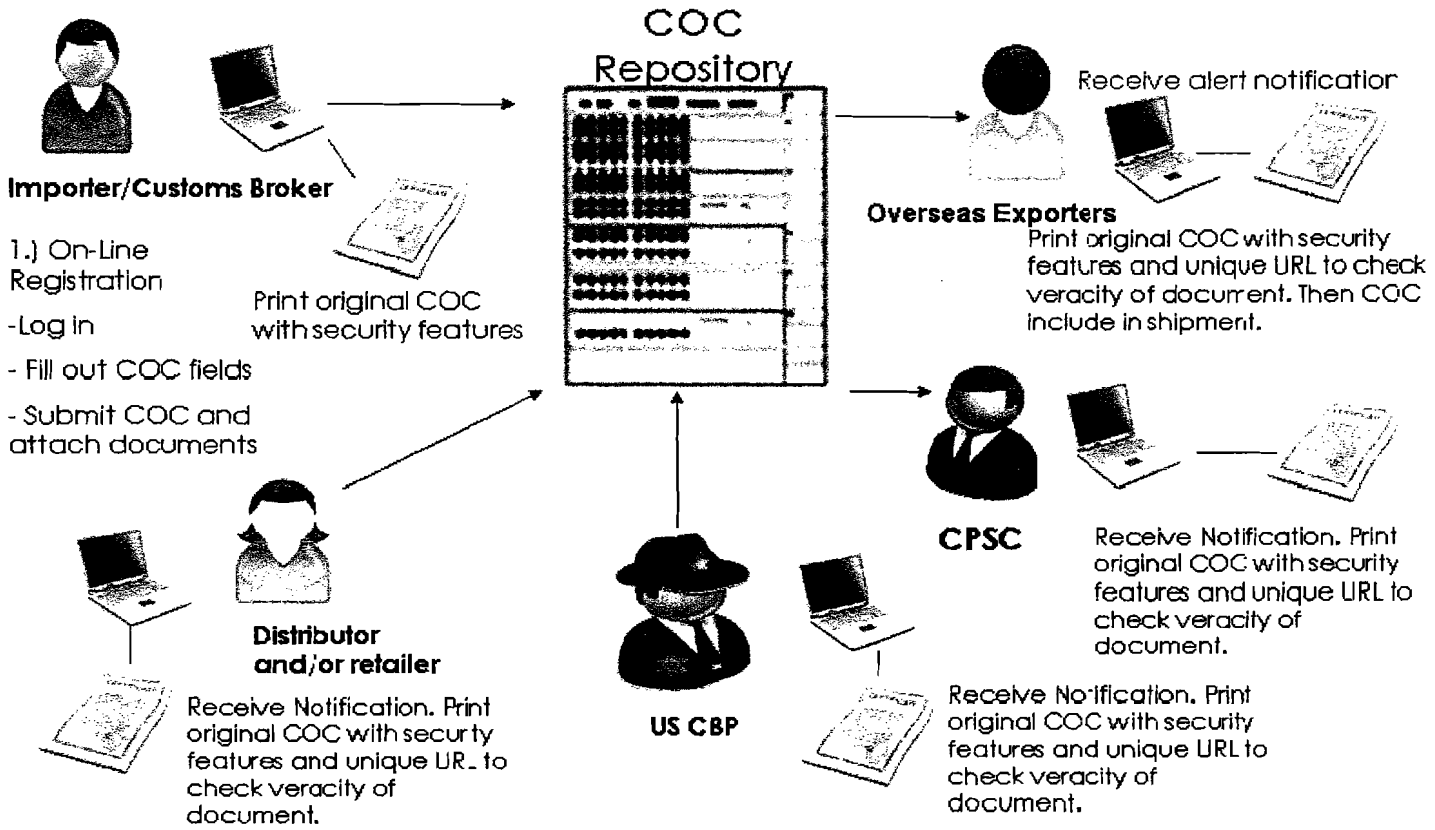
1-877-763-6887 ext. 224
jamesmay@crimsonlogic.com

CrimsonLogic

Annexes

Annex 1

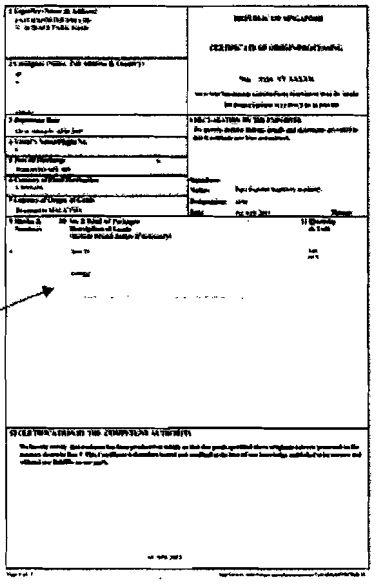
Certificate of Conformity (COC) Diagram (Web based System)



CrimsonLogic (North America) Inc.
100 York Blvd. Suite 260, Richmond Hill, Ontario, Canada L4B 1J8, www.crimsonlogic.ca

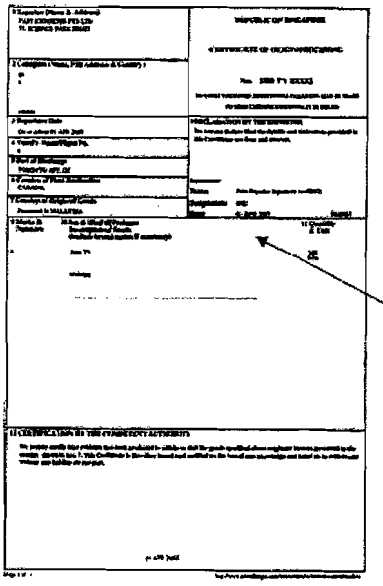
Annex 2

Optical Watermark



Visible watermark that deteriorates when photocopied

Original Document



Invisible watermark that appears when photocopied

Photocopy of Original Document

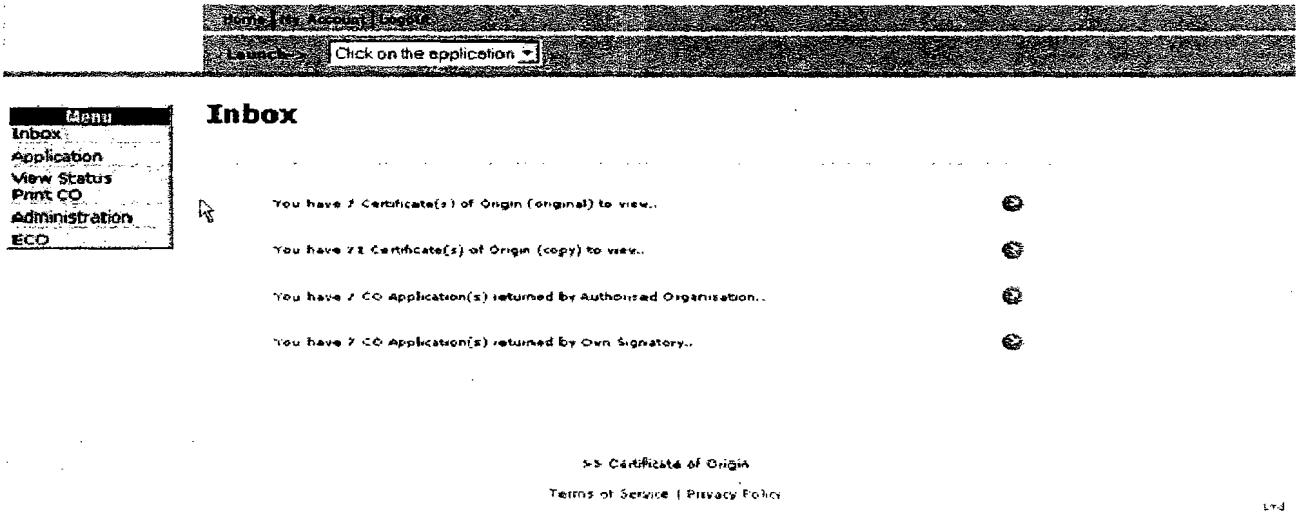
Watermarking Technology

- Protects printed document from unauthorized copying
- Allows for a transition state before a total paperless acceptance

CrimsonLogic

Annex 3

Alert Notification



- Messages Management
  - Users' Alerts
  - A typical screen for management of certificates

CrimsonLogic

Annex 4

Print Controls

Home | My Account | Logout

Launch > Click on the application

PRINT CERTIFICATE OF CONFORMITY

Print Original/Copy CO

Menu
- Inbox
- Application
- View Status
- Print CO
- Administration
- ECO

CO Printing

Please select a print option (Original or Copy) before clicking Print.

* *indicates mandatory field*

Test your printer : Test Print

S/No	Eco No	Eco Date	CO (Original) Status	CO (Original) Printed	CO (Copy) Status	CO (Copy) Printed	Print
1	SCCCI-713	10-01-2003 06:25:15	Ready	0/1			Original
2	SCCCI-714	10-01-2003 06:25:27	Ready	0/2	Ready	0/3	Original Copy
3	SCCCI-733	24-01-2003 11:57:26			Ready	0/1	Copy

WIP: Watermarking in Progress
DGIP: Document Generation in Progress

Print

- Remote Printing
  - Print controls functions included to limit copies
  - Printing can be used as an intermediary prior to pure electronic acceptance
  - Watermarking included

CrimsonLogic

Annex 5

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

James May
CrimsonLogic, Inc.
100 York Blvd. Suite 260
Richmond Hill, Ontario, CA L4B 1J8

Dear Mr. May,

This letter is to thank you for your continuing efforts and assistance in building support for the Automated Commercial Environment (ACE). Your participation in the ACE Exchange II conference in Tucson, Arizona, October 31-November 2, 2006, was invaluable in helping U.S. Customs and Border Protection (CBP) deliver the message about ACE.

Thanks to champions like yourself, CBP was able to host a successful, well-received, educational event for the trade community – drawing more than 600 participants. The feedback we have received from the participants has been overwhelmingly positive. Your participation demonstrates that ACE is a shared vision between Government and the trade community, and that together we are making ACE a reality.

Please accept our sincere thanks for taking the time to support and promote the ACE initiative.

Sincerely,

Louis Samenfink
Executive Director
Cargo Systems Program Office

SW 102 23

MARVEL OIL COMPANY, INC.

625 Willowbrook Centre
Willowbrook, IL 60527
Phone: (630) 455-3866 Fax: (630) 455-3868

October 23, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Gib:

Marvel Oil Company, Inc. is a manufacturer of various aftermarket fuel, oil and lubricant additives. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

MARVEL OIL COMPANY, INC.
625 Willowbrook Centre
Willowbrook, IL 60527
Phone: (630) 455-3866 Fax: (630) 455-3868

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Marvel Oil Company, Inc.

Richard P. Kelly
Technical Manager,
Performance Products

cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
Richard Durbin, Illinois Senator
Barack Obama, Illinois Senator
Judy Biggert, 13th District of Illinois Congresswoman
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

24

Stevenson, Todd

From: CGCisland@aol.com
Sent: Friday, October 24, 2008 8:00 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements (comment)

Dear Sirs,

In regards to the Section 102 Certificate Requirements, this will place a huge hardship on all importers, wholesalers and manufacturers (domestic and import) to comply with the requirements of
the general conformity certificate. This requirement will add on a lot of extra paperwork on each shipment. The difficult part of this is the need to send the retailers a general conformity certificate for each item shipped. An invoice can sometimes have anywhere up to 50-60 items or even more. Each time a retailer receive his invoice, he will also get a book of Certificates for items he reorders regularly.

A solution to this issue would be to have the importer certify on the invoice that they have a general conformity certificate for each item. To send a general conformity certificate to every retailer on every shipment is simple not practical.

Sincerely,

Thomas Wu
California Gift Center, Inc.

Play online games for FREE at Games.com! All of your favorites, no registration required and great graphics – check it out!

AHAM
ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

1111 19th Street NW • Suite 402 • Washington, DC 20036
• 202.872.5955 • 202.872.9354 www.aham.org

By Email and Telefax

October 24, 2008

Mr. John G. Mullan
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Subject: CPSC Request for Information on General Conformity Certificates

Dear Mr. Mullan:

The Association of Home Appliance Manufacturers represents companies who produce major, portable and floor care appliances for the U.S. market. In particular, AHAM represents manufacturers of household refrigerators which are covered by the 1956 Refrigerator Safety Act (RSA).

Refrigerator manufacturers have been in full compliance with the important safety requirements of the RSA since its inception, over 50 years ago. In the 1960's, the requirements in the RSA were incorporated in the U.S. safety standards of ANSI/UL 250 for Refrigerators, Section 8. All of our member companies produce refrigerators that are 3rd party safety certified by a Nationally Recognized Testing Laboratory (NRTL) to this U.S. standard. Each of these products bears a safety certification mark from one of the NRTL organizations which effectively "certifies" compliance by the manufacturer and private labeler.

Although the provisions of the Consumer Product Safety Improvement Act (CPSIA) Section 102 contain new legal requirements for refrigerators, this does nothing to enhance safety. We respect that the Commission must uphold the law, but we urge discretion in interpretation and application that would favor reasonable proposals to lessen costs and burdens. We request that the Commission exercise its discretion in favor of a certification method that is flexible, effective and economical.

We acknowledge that, unfortunately, CPSC does not consider the presence of a mark of safety certification to be sufficient for compliance with Section 14 (g) of the CPSA, and that manufacturers and importers must provide some additional "certificate" of compliance. The AHAM proposal we are presenting satisfies the requirements of the law while mitigating somewhat the financial and logistical burdens on our manufacturing members. We propose that companies be allowed to use, and we ask that you acknowledge the sufficiency of using, modern

electronic methods to "accompany" and "furnish" the certificates which are in common use, including the instant availability of certificates upon demand via email or fax.

We ask you to acknowledge that as long as the required information is available upon demand and downloadable or deliverable directly and reasonably immediately to the trade or the government, it satisfies the requirements of the statute. Of course, the CPSC is always free to modify and specify the method of compliance as we gain experience over time. But, at this point, reasonable and commonly used modern methods of communication should be allowed.

In the Request for Information, CPSC has requested answers to the following items:

1. **Specific recommendations for supply of the certificates**

Different manufacturers will have different approaches to providing the information for the certificate based on their manufacturing, distribution, and transportation needs. For example, similar products are aggregated for shipment from a factory but are commonly separated into smaller groups as product moves down the chain of distribution from manufacturer to the retail floor. Cartons are often removed and product re-boxed, which could require the re-issuance of new certificates. And, accompanying this, there are many varieties of shipping documentation.

Companies also need to have the ability to change their methods over time just as CPSC may restrict or expand options with experience, time and technology development. As long as the required data is readily available and downloadable, company approaches should be acceptable. Some manufacturers may provide a detailed paper certificate similar to the "sample" certificate suggested by the CPSC for each refrigerator.

"Sample Certificate

1. Identification of the product(s) covered by this certificate:
2. Citation to each CPSC product safety regulation to which this product is being certified:
3. Identification of the foreign manufacturer certifying compliance of the product:
4. Identification of the U.S. importer certifying compliance of the product:
5. Identification of the private labeler certifying compliance of the product (if any):
6. Contact information for the individual maintaining records of test results:
7. Date and place where this product was manufactured:
8. Date and place where this product was tested for compliance with the regulation(s) cited above:
9. Identification of any third-party laboratory on whose testing the certificate depends:"

From PowerPoint Slides of John G. Mullan, October 2, 2008

Other manufacturers may wish to use data entry and tracking to produce the required information on an existing document form that provides both a statement of compliance as well as tracking mechanisms when it is requested.

AHAM Proposal

AHAM believes that a product container, packaging, or shipping documentation form could contain the following statement (or equivalent):

AHAM Proposed CoC
CERTIFICATE OF CONFORMITY **This product complies with Section 14 (a) (1) of the Refrigerator Safety Act 16 CFR Part 1750. Call 1-800 XXXXXX (or log on to www.____) to obtain all information required by Section 102 of the CPSIA.** **Code XXX or Model Number and Serial Number**

Upon electronic or telephonic request, and after being provided the model/serial number of the product or a unique identifier code, the manufacturer would provide all the information required by Section 102 almost instantly. In this alternative to the full certificate, the code or model number, for example, would allow access to a web portal that would contain the necessary information on manufacturer, importer, private labeler, date of manufacture, testing, and the location of test data. The code or model number may be used to restrict access to only those required by law. The web address (accessed by code or directly) can be used to protect the manufacturer's confidential business information by additional access restrictions when the webpage is accessed.

We believe this alternative method and reasonable variations are equally valid and allow companies to choose the method that best meets the realities of product distribution while satisfying the law.

2. Specific recommendations on how the certificates would accompany the shipments.

In the case of the first "full paper certificate" example, manufacturers should be permitted to make the certificate available with normal shipping documents, bills of lading, customs declaration forms, or in-transit documents that will tie the specific units in the shipment to the forms. Some manufacturers may decide to print the required information on the retail carton or affix it to the retail carton.

In the case of the AHAM Proposal (above), we believe that the shipping carton or shipping documents can contain a statement of compliance and a clear reference to a one-step process to obtain automatically all information required by Section 102.

In either case, the full certificate will be quickly provided to Customs and Border Protection, CPSC inspectors, or to retailers and distributors upon request.

3. Specific recommendations on how the certificates could be made available to the retailers or distributors.

In the case of providing a full certificate, the certificate itself would be furnished to the retailer or distributors with the standard shipping documents or affixed to the retail carton. In the AHAM Proposal (above), the information can be faxed, emailed or downloaded from any standard PC or wireless device with Internet capabilities.

4. Specific comments or concerns with paper certificates.

While some manufacturers may opt to continue to supply paper certificates, many manufacturers rely exclusively on electronic document development, storage, and retrieval with electronic customs clearance (ACE) forms provide instant updates with the shipments. As noted above, shipments are often brought into the U.S. through a Port of Entry and then shipped to a distribution center where the larger shipment is broken down and consolidated for shipment to a specific retailer or distributor. Shipping cartons can be removed and new boxes substituted. Thus, the shipment and containers that arrive from overseas may not be the same as containers that leave the distribution center. Shipment lots are broken down further as the products move down the distribution chain, such that the truckload that reaches the retailer usually consists of mixed models of different appliances (ranges, refrigerators, dishwashers, etc.) Finally, document management processes are variable. It is important that such varying methodologies of expedited shipping and handling be accommodated in order to reduce cost and delays to the consumer.

AHAM members also have a significant concern with Confidential Business Information (CBI). The name and address of the specific manufacturing site and/or private labeler and brand owner is often CBI. While we understand the need of CBP and CPSC to have access to the information, our members consider this to be highly confidential and not to be made public. We therefore request that CPSC acknowledge and maintain the confidentiality of this information and that manufacturers be permitted to use reasonable methods to allow access to the information for those parties required under Section 102 without making this information easily accessible to the public.

5. Specific concerns about multiple certificates.

Requiring multiple certificates is burdensome, provides little or no value, and will make it more likely that information is inaccurate, lost, or omitted. The end product manufacturer or brand owner is the responsible party and has a business relationship with the importer and the retailer. The brand owner or manufacturer is responsible for testing and certifying the product and shipping it to the retailer. Therefore, the brand owner or the manufacturer can provide all of the information required by Section 102 on a single certificate.

In summary, we believe that by providing the "certificate" on the product, with shipping documents, and through web/phone addresses "certificate" will be available to those required to have or to review the "certificate". AHAM members request that for U.S. Customs & Border Protection entry, only the manufacturer or importer or the private labeler should be required to provide the "certificate" with the understanding that the others have the certificate information available electronically in the event that it is required or requested. AHAM members request that provision be made to protect the confidential business information of the manufacturer. AHAM also believes that CPSC needs to make this guidance available very quickly for manufacturers.

Thank you for the opportunity to comment on this regulation. If we can answer any questions on this proposal, please contact Charles Samuels or myself.

Sincerely.

Wayne E. Morris
Vice President, Division Services

Cc: Ms. Cheryl Falvey, General Counsel, CPSC

Stevenson, Todd

From: Morris, Wayne [WMorris@AHAM.org]
Sent: Friday, October 24, 2008 4:07 PM
To: Mullan, John; CPSC-OS
Cc: Falvey, Cheryl; Samuels, Chuck
Subject: AHAM Comments on Section 102 Certificate Requirements
Attachments: AHAM Submittal_GCC_102408.pdf

Attn: Gib Mullan

The Association of Home Appliance Manufacturers (AHAM) wishes to present comments on and a proposal in answer to the CPSC Request for Information on the General Conformity Certificate. Please see enclosed. If you have questions, please contact Charles Samuels or myself.

Thank you for the opportunity to comment on the Request for Information.

Best regards,

Wayne Morris
Vice President, Division Services
1111 19th St. NW, Suite 402, Washington, DC 20036
t 202.872.5955 ext313 *f* 202.872.9354 *e* wmorris@aham.org
www.aham.org

AHAM
ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

Leadership • Knowledge • Information

STATEMENT OF CONFIDENTIALITY: The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s). If you are not the intended recipient, or the person responsible for delivering the e-mail to the intended recipient, be advised you have received this message in error and that any use, dissemination, forwarding, printing, or copying is strictly prohibited. Please notify The Association of Home Appliance Manufacturers at (202) 872-5955 or unsubscribe@aham.org, and destroy all copies of this message and any attachments.

Section 26

Stevenson, Todd

From: BarryOwen@aol.com

Sent: Friday, October 24, 2008 6:30 PM

To: CPSC-OS

Subject: GENERAL CONFORMITY CERTIFICATE

It will place a huge hardship on all importers.wholesalers and manufactureres(domestic and import)to comply with the requirements of the general conformity certificate.The requirement will add extra paperwork on each shipment that will be very difficult to comply with.The difficult part of this requirement is the need to send the retailers a general conformity certificate for each item shipped.A solution to this issue would be to have the importer certify on the invoice that they have a general conformity certificate for each item.To send a general conformity certificate to every retailer on every shipment is not practical.
Thanks,
Scott Fink

National Paint & Coatings Association

October 24, 2008

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

Re: Section 102 Certificate Requirements of the Consumer Product Safety Improvement Act of 2008

Dear Sir/Madam:

We are writing on behalf of the National Paint & Coatings Association, Inc. (NPCA), a voluntary, nonprofit, trade association representing some 400 manufacturers of paints, coatings, adhesives, sealants, and caulks, raw materials suppliers to the industry, and product distributors. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on those legislative, regulatory, and judicial issues at the international, federal, state, and local levels that affect our members. We write to you today on the Consumer Product Safety Improvement Act (CPSIA). The CPSIA will undoubtedly increase the ability of the CPSC to protect the nation's children from potentially harmful toys and children's products. This is a laudable objective. However, we believe that the CPSC must use its discretion in interpreting the language found in Section 102 of the CPSIA to avoid causing U.S. manufacturers of consumer products and the global supply chain to be excessively burdened by the General Conformity Certification requirements in this new law. The CPSC needs to take action to ensure that this does not occur.

Scope of General Conformity Certification

We have heard that the CPSC is considering drafting CPSIA regulations, or providing other guidance, that would reduce the scope of the General Conformity Certification provision as it pertains to the Federal Hazardous Substances Act (FHSA) regulations and the Poison Prevention Packaging Act (PPPA) regulations. It is our understanding that the CPSC now believes that Congress did not intend to include these particular regulations in the General Conformity Certification requirement. If that is the case, then we strongly urge the CPSC to draft and implement CPSIA regulations as soon as possible confirming the Congressional intent to exclude FHSA and PPPA regulations from the scope of the General Conformity Certification provision.

We believe that the CPSC should apply the same logic to the ban of extremely flammable contact adhesives (16 C.F.R. Part 1302) and the ban of consumer patching compounds

coatings care®

1500 Rhode Island Avenue, NW · Washington, DC 20005-5597 · Phone: 202-462-6272 Fax: 202-462-8549
E-mail: members@paint.org (NPCA Members); or npca@paint.org (general public) Web Site: www.paint.org

containing respirable free-form asbestos (16 C.F.R. Part 1304) because these long-standing bans have been complied with by the members of the paint and coatings industry for over 30 years without incident. If this logic is not applied to these products, the end result will be that retailers and distributors will be flooded with hundreds of thousands, if not millions, of certificates which certify compliance with bans that have been in existence for many years. Indeed, one of NPCA's member companies, after evaluating the General Conformity Certification provision and the number of products that are subject to it, has estimated that it will generate more than 6,350,000 certificates per year. This is nonsensical to say the least, and an intolerable burden on our economic system.

Confidential Business Information

Virtually all companies consider the name of the manufacturer of a product bearing a private label to be confidential business information. In such situations, we recommend that a coded identifier available only to the CPSC should be used to identify such proprietary information, since such information is confidential. In addition, when the identification of a "responsible individual" is required, reference to a title rather than an individual should suffice. The CPSC must respect the right of the manufacturer of a product baring a private label not to be named.

Form of Certification

We believe that Section 102's new certification requirements for products subject to CPSC rules, bans, standards, or regulations can be handled in a variety of ways. In some cases, existing product safety requirements already mandate the information required by the new CPSIA to be available under longstanding provisions in the original CPSA. Methods of identifying this information can appear on a product via label, certification mark or other marking or certification requirements. In our complex economy, manufacturers, importers, distributors and retailers need to have input as to the form of certification and the method of transmittal, regardless of the time required to properly implement.

We believe that it was not the intent of Congress to create a procedurally burdensome, industry-strangling certification process, or that such certification is required to be paper-based only. Procedures adopted also need to be consistent with the Paperwork Reduction Act. We believe this is clearly recognized in the congressional directive in Section 102(g)(4) providing for electronic filing of information related to imported products. Therefore, we urge the CPSC to accept a flexible scheme of regulation that fully recognizes the complexity of logistics which vary among product categories and businesses. The CPSC should allow manufacturers to comply with the general conformity certification requirements by **any** method that permits efficient effective flexible ways to identify information by easy reference (including seamless electronic data formats). Otherwise, such obligations could result in burdensome, environmentally unsound policies that confuse businesses and unduly impede commerce.

Acceptance of Electronic or Web Based Data Essential

The CPSC should issue clear guidance on what information must be provided and to whom and in what form. The CPSC should also allow for this information to be provided through alternative and electronic formats in **all** cases. The reality of today's marketplace is that it largely already involves electronic filings. We urge the Commission to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

An internet-based electronic certification system keyed to production dates by coding (i.e. UPC codes) should be permitted. Codes could be entered into a template so the company could obtain and provide the required information, thereby rendering the need for any printed documentation obsolete and unnecessary. These electronic certifications could be maintained by industry, distributors and/or retailers. Similarly, some industries that already use RFID technology in their products for inventory, distribution, and sales management could encode information as part of existing protocols. Both could be used in conjunction with a continuing certification approach or even used separately.

Certification "Seals" or "Markings" to Denote Compliance

Some industry segments use existing conformity assessments marks that are attached to products as part of a voluntary certification program. These programs often incorporate ASTM, ANSI or internationally recognized standards that necessarily incorporate applicable mandatory U.S. regulatory requirements, standards or regulations, and require records of testing to be maintained by the manufacturer, safety laboratory and/or accrediting body. For example, CPSC currently recognizes ASTM-4236 as the standard for the Labeling of Hazardous Art Materials Act (LHAMA). The CPSC should recognize the accreditation mark as denoting "Certification" for purposes of the CPSIA. Many of these regimes incorporate conformity assessment production sampling of components and/or finished production samples and recognize that any substantive change to the design of the product results in required re-certification by the laboratory or accrediting body. In such cases, no further issuance of a certificate would be necessary and CPSC and U.S. Customs officials should be permitted to rely upon the presence of the certification mark as evidence of compliance with Section 102(g).

NPCA's *Industry Labeling Guide*

NPCA has a unique guidance document that is available to all members. The NPCA *Industry Labeling Guide*, now in its fifth edition, provides extensive guidance to members on how to comply with FHSA, LHAMA, and PPPA regulations. Since our industry is "label driven", we would like to work with the CPSC to revise the *Industry Labeling Guide* and develop a new label format that would give manufacturers the option of printing general conformity assessment information on the product label itself.

Flexibility is Essential

As CPSC considers implementing regulations for the CPSIA, it is essential that an integrated systematic approach to regulation be worked out between CPSC and the manufacturers impacted by Section 102, with due recognition of existing CPSA statutory language and requirements. Substance needs to take precedence over form. We believe that Congress recognized the need for systemic integration and flexibility. Failure to adequately recognize the burdens the Section 102 certification process places on manufacturers could result in severe supply chain disruption. The real economy necessitates that a variety of means to denote certification should be recognized by the CPSC.

We are trying to consider the various nuances as we work to comply with the new law, but it is inevitable that not all manufacturers will have the means, technology or wherewithal to comply at the outset with either the general conformity certification or third-party testing certification requirements. The CPSIA simply does not allow sufficient time to properly implement this certification process through the complex system of the suppliers' and retailers' distribution channels. We respect that the Commission must uphold the law, but where there is discretion in interpretation and application, the CPSC should accept reasonable proposals that attempt to lessen costs and burdens. Therefore, we feel it is important that the Commission be explicit in stating that it will exercise its inherent discretion and will not enforce the law immediately upon its effective date, particularly for manufacturers that are making good faith efforts to comply.

NPCA thanks the CPSC for the opportunity to provide comments on Section 102 of the CPSIA. We look forward to continuing to provide all the assistance possible to the agency. If you have any questions concerning these comments, please contact either of the undersigned. We may be reached at (202) 462-6272 or at staylor@paint.org or ssides@paint.org.

Sincerely,

//s//

Stacey-Ann Taylor
Counsel, Government Affairs Division

//s//

Steve Sides

Vice President, Environmental Health and International Affairs

Stevenson, Todd

From: Stacey-Ann Taylor [staylor@paint.org]
Sent: Friday, October 24, 2008 7:09 PM
To: CPSC-OS
Cc: Mullan, John
Subject: Section 102 Certificate Requirements
Attachments: NPCA CPSIA Sec 102 Comments Final.doc

Dear Sir/Madam:

I have attached comments on CPSIA Section 102 Certificate Requirements from the National Paint and Coatings Association. Thank you.

Stacey-Ann M. Taylor, Esq., LEED AP
Counsel, Government Affairs Division
National Paint and Coatings Association
1500 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 462-6272 x. 248
(202) 462-8549 (fax)
staylor@paint.org

Stevenson, Todd

From: Stacey-Ann Taylor [staylor@paint.org]

Sent: Friday, October 24, 2008 7:13 PM

To: CPSC-OS

Cc: Mullan, John

Subject: Section 102 Certificate Requirements

October 24,
2008

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

Re: Section 102 Certificate Requirements of the Consumer Product Safety Improvement Act of 2008

Dear Sir/Madam:

We are writing on behalf of the National Paint & Coatings Association, Inc. (NPCA), a voluntary, nonprofit, trade association representing some 400 manufacturers of paints, coatings, adhesives, sealants, and caulks, raw materials suppliers to the industry, and product distributors. As the preeminent organization representing the coatings industry in the United States, NPCA's primary role is to serve as ally and advocate on those legislative, regulatory, and judicial issues at the international, federal, state, and local levels that affect our members. We write to you today on the Consumer Product Safety Improvement Act (CPSIA). The CPSIA will undoubtedly increase the ability of the CPSC to protect the nation's children from potentially harmful toys and children's products. This is a laudable objective. However, we believe that the CPSC must use its discretion in interpreting the language found in Section 102 of the CPSIA to avoid causing U.S. manufacturers of consumer products and the global supply chain to be excessively burdened by the General Conformity Certification requirements in this new law. The CPSC needs to take action to ensure that this does not occur.

Scope of General Conformity Certification

We have heard that the CPSC is considering drafting CPSIA regulations, or providing other guidance, that would reduce the scope of the General Conformity Certification provision as it pertains to the Federal Hazardous Substances Act (FHSA) regulations and the Poison Prevention Packaging Act (PPPA) regulations. It is our understanding that the CPSC now believes that Congress did not intend to include these particular regulations in the General Conformity Certification requirement. If that is the case, then we strongly urge the CPSC to draft and implement CPSIA regulations as soon as possible confirming the Congressional intent to exclude FHSA and PPPA regulations from the scope of the General Conformity Certification provision.

We believe that the CPSC should apply the same logic to the ban of extremely flammable contact adhesives (16 C.F.R. Part 1302) and the ban of consumer patching compounds containing respirable free-form asbestos (16 C.F.R. Part 1304) because these long-standing bans have been complied with by the members of the paint and coatings industry for over 30 years without incident. If this logic is not

applied to these products, the end result will be that retailers and distributors will be flooded with hundreds of thousands, if not millions, of certificates which certify compliance with bans that have been in existence for many years. Indeed, one of NPCA's member companies, after evaluating the General Conformity Certification provision and the number of products that are subject to it, has estimated that it will generate more than 6,350,000 certificates per year. This is nonsensical to say the least, and an intolerable burden on our economic system.

Confidential Business Information

Virtually all companies consider the name of the manufacturer of a product bearing a private label to be confidential business information. In such situations, we recommend that a coded identifier available only to the CPSC should be used to identify such proprietary information, since such information is confidential. In addition, when the identification of a "responsible individual" is required, reference to a title rather than an individual should suffice. The CPSC must respect the right of the manufacturer of a product baring a private label not to be named.

Form of Certification

We believe that Section 102's new certification requirements for products subject to CPSC rules, bans, standards, or regulations can be handled in a variety of ways. In some cases, existing product safety requirements already mandate the information required by the new CPSIA to be available under longstanding provisions in the original CPSA. Methods of identifying this information can appear on a product via label, certification mark or other marking or certification requirements. In our complex economy, manufacturers, importers, distributors and retailers need to have input as to the form of certification and the method of transmittal, regardless of the time required to properly implement.

We believe that it was not the intent of Congress to create a procedurally burdensome, industry-strangling certification process, or that such certification is required to be paper-based only. Procedures adopted also need to be consistent with the Paperwork Reduction Act. We believe this is clearly recognized in the congressional directive in Section 102(g)(4) providing for electronic filing of information related to imported products. Therefore, we urge the CPSC to accept a flexible scheme of regulation that fully recognizes the complexity of logistics which vary among product categories and businesses. The CPSC should allow manufacturers to comply with the general conformity certification requirements by **any** method that permits efficient effective flexible ways to identify information by easy reference (including seamless electronic data formats). Otherwise, such obligations could result in burdensome, environmentally unsound policies that confuse businesses and unduly impede commerce.

Acceptance of Electronic or Web Based Data Essential

The CPSC should issue clear guidance on what information must be provided and to whom and in what form. The CPSC should also allow for this information to be provided through alternative and electronic formats in **all** cases. The reality of today's marketplace is that it largely already involves electronic filings. We urge the Commission to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

An internet-based electronic certification system keyed to production dates by coding (i.e. UPC codes) should be permitted. Codes could be entered into a template so the company could obtain and provide the required information, thereby rendering the need for any printed documentation obsolete and unnecessary. These electronic certifications could be maintained by industry, distributors and/or retailers. Similarly, some industries that already use RFID technology in their products for inventory,

distribution, and sales management could encode information as part of existing protocols. Both could be used in conjunction with a continuing certification approach or even used separately.

Certification "Seals" or "Markings" to Denote Compliance

Some industry segments use existing conformity assessments marks that are attached to products as part of a voluntary certification program. These programs often incorporate ASTM, ANSI or internationally recognized standards that necessarily incorporate applicable mandatory U.S. regulatory requirements, standards or regulations, and require records of testing to be maintained by the manufacturer, safety laboratory and/or accrediting body. For example, CPSC currently recognizes ASTM-4236 as the standard for the Labeling of Hazardous Art Materials Act (LHAMA). The CPSC should recognize the accreditation mark as denoting "Certification" for purposes of the CPSIA. Many of these regimes incorporate conformity assessment production sampling of components and/or finished production samples and recognize that any substantive change to the design of the product results in required re-certification by the laboratory or accrediting body. In such cases, no further issuance of a certificate would be necessary and CPSC and U.S. Customs officials should be permitted to rely upon the presence of the certification mark as evidence of compliance with Section 102(g).

NPCA's *Industry Labeling Guide*

NPCA has a unique guidance document that is available to all members. The NPCA *Industry Labeling Guide*, now in its fifth edition, provides extensive guidance to members on how to comply with FHSA, LHAMA, and PPPA regulations. Since our industry is "label driven", we would like to work with the CPSC to revise the *Industry Labeling Guide* and develop a new label format that would give manufacturers the option of printing general conformity assessment information on the product label itself.

Flexibility is Essential

As CPSC considers implementing regulations for the CPSIA, it is essential that an integrated systematic approach to regulation be worked out between CPSC and the manufacturers impacted by Section 102, with due recognition of existing CPSA statutory language and requirements. Substance needs to take precedence over form. We believe that Congress recognized the need for systemic integration and flexibility. Failure to adequately recognize the burdens the Section 102 certification process places on manufacturers could result in severe supply chain disruption. The real economy necessitates that a variety of means to denote certification should be recognized by the CPSC.

We are trying to consider the various nuances as we work to comply with the new law, but it is inevitable that not all manufacturers will have the means, technology or wherewithal to comply at the outset with either the general conformity certification or third-party testing certification requirements. The CPSIA simply does not allow sufficient time to properly implement this certification process through the complex system of the suppliers' and retailers' distribution channels. We respect that the Commission must uphold the law, but where there is discretion in interpretation and application, the CPSC should accept reasonable proposals that attempt to lessen costs and burdens. Therefore, we feel it is important that the Commission be explicit in stating that it will exercise its inherent discretion and will not enforce the law immediately upon its effective date, particularly for manufacturers that are making good faith efforts to comply.

NPCA thanks the CPSC for the opportunity to provide comments on Section 102 of the CPSIA. We look forward to continuing to provide all the assistance possible to the agency. If you have any

questions concerning these comments, please contact either of the undersigned. We may be reached at (202) 462-6272 or at staylor@paint.org or ssides@paint.org.

Sincerely,

//s//

Stacey-Ann Taylor
Counsel, Government Affairs Division

//s//

Steve Sides

Vice President, Environmental Health and International Affairs

Stevenson, Todd

From: Chris Hudgins [CHudgins@sleepproducts.org]
Sent: Monday, October 27, 2008 8:54 AM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: ISPA Comments on Certification.pdf

Please see the attached comments from ISPA regarding the certification requirements under the CPSIA.

Regards,

Chris Hudgins
Vice President, Government Relations & Policy
International Sleep Products Association
501 Wythe Street
Alexandria, VA 22314
Ph: (703) 683-8371 x1113
Fax: (703) 683-4503
www.sleepproducts.org
"Start Every Day With a Good Night's Sleep ™"

Sect 102

Stevenson, Todd

From: Patricia Dennehy [pdennehy@fashionave.com]
Sent: Friday, October 24, 2008 12:33 PM
To: CPSC-OS
Subject: SECTION 102 CERTIFICATE REQUIREMENTS (comments)

Dear Sir or Madam:
1) This new requirment is causing a lot of confusion in the importing community. Since the Office of the Secretary
is seeking comments from the public (up to Oct 29,2008) they too recognize this fact and therefore its requested
that the implementation date of this certification be extended until such a time all the details are worked out so
importers/manufacturers and govt bodies have a clear understanding on how to proceed with this new requirement.
2) Certification on an Annual or bi annual basis instead of a per shipment basis:
Re: Ladies wearing apparel using Class 1 fabrics which are exempt from flammability testing but is part of a
standard (fabric flammability act).
Instead of issing a certificate per shipment perhaps the importer/ manufacturer can
issue a annual certificate to the CPSC when Class 1 fabrics are used in the production of apparel.
Sincerely
Patricia Dennehy
Traffic Manager
Bar TJ Holdings LLC..

Sec 102 29

Stevenson, Todd

From: stevezelman@aol.com
Sent: Friday, October 24, 2008 2:30 PM
To: CPSC-OS
Subject: Section 102 Certification Requirements

STEPHEN ZELMAN & ASSOCIATES
888 Seventh Avenue
Suite 4500
New York, New York 10106
T and F.: (212) 245-6100
E-mail: SteveZelman@aol.com

Office of the Secretary
Consumer Products Safety Commission, Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Section 102 Certification Requirements

Dear Sirs:

We submit these comments on behalf of our client, Elie Tahari, Ltd., an importer of high-end ladies' wearing apparel. This submission is made pursuant to the Commission's invitation for comments on the requirements in Section 102 that general compliance certificates must "accompany" import shipments and be "furnished' to the retailer or distributor.

During the October 2nd seminar given by the CPSC, its staff indicated that its thinking was that "accompany" meant that a paper certification is to be physically present along with the consumer product it covers, available on the opening of the container or package containing the merchandise. The CPSC indicated that "furnishing" of the certificate to the distributor or retailer entailed something less, but that it must be available to the distributors or retailers if requested by CPSC inspectors. It does not appear that in the latter case, the CPSC envisions that certificate must be immediately available from the particular distributor or retailer. During the question and answer period, it was mentioned that the certification could be supplied to the headquarters of a retailing chain, provided that the store managers know where to go to obtain it if requested.

General Conformity Certificate:

Multiple Certificates:

Our client's merchandise is covered by the rules and regulations under the Flammable Fabrics Act and thus general conformity certificates must accompany its shipments and be furnished to its customers who sell at retail. The fashion industry being what it is, our client imports a large and ever changing number of styles that differ as to design, fiber content, and construction. It

will accordingly have to prepare numerous general conformity certificates, one for each style and order (if re-ordered.) It would not appear to be necessary to require multiple certificates for the same style or, as many of its styles are identical as to all aspects of the garment except styling details that could have no effect on the garment's flammability, style groupings (where the test for one would be sufficient for all others in the group.) Yet as presently envisioned, separate paper certificates for separate shipments of identical merchandise are required for each shipment.

Electronic Filing:

While the CPSA does not require filing of the certificates with any government agency, it would be most efficient if, at the importer's option (as it must be as filing is not required under the law), the general compliance certificates could be filed with the CPSC at a website it designates. CPSC investigators could readily access the certificate by doing a search simply by inputting the style and order number as these will invariably appear on the invoices.

This would result in considerable cost savings both to the industry and to the CPSC. It is without doubt that on occasion certifications physically transported in the same container or carton with the merchandise it covers will not be immediately obvious to the CPSC or Customs inspectors when an international freight container is opened. There are countless ways of packing goods for international shipment and it will be difficult to standardize placement. Many styles are often shipped to our client in a single shipment; they are often shipped on hangers and not in boxes. Certificates might be put in a location obvious to the shipper but not so obvious to the Customs or CPSC inspector. Tape attaching the certificates to the container might fail; jostling during transport could dislodge them from the location where they were placed. Leakage could destroy them. In any such case and certainly other scenarios, the best an importer could hope for would be delayed Customs clearance as the certificates are located. If they are not, the law provides for destruction unless the CPSC allows re-export.

These and similar problems could be eliminated by electronic filing. The intent of the law is clearly to enhance industry consciousness of the rules, regulations, standards, etc. to which it is subject and to make CPSC enforcement capabilities more efficient. Industry consciousness will not be lessened by electronic filing. CPSC and Customs efficiency in assuring that the certificates cover the goods before Customs clearance will be enhanced as accessibility will be considerably increased. The physical presence of a document mixed up in a shipment of merchandise lessens rather than increases accessibility

Alternate to Electronic Filing: Certificate Accompanying Shipping Documentation

We fully appreciate that the first line of defense against the distribution of imported, non-conforming products to consumers is at our borders. Other shipping documents that are absolutely required for Customs clearance need not be and in fact cannot be physically present alongside merchandise they cover. (Some such as the visa, are transmitted electronically.) Yet they nevertheless "accompany" the goods in the sense that are required for Customs clearance or for the preparation of the Customs entry that is needed for Customs clearance. It would not be inconsistent with the meaning of the word "accompany" to interpret it as meaning "readily available at the time of importation." If not so available, there is no implication that an importer could rectify the discrepancy by preparing the certificate only after it had been requested, which could subvert an aim of Section 102. The penalties for not having a previously prepared and valid certificate at the time it is demanded would remain applicable in such a case.

Given the short time frame we have left before the certificates are required and the fact that electronic filing, if acceptable to the CPSC, might not be established by the time the certificates are required, providing them with the other documents covering shipment and needed for Customs clearance--or at least for the Customs broker to prepare the entry--is a viable alternative.

Thus:

The certificate could "accompany" a shipment by its electronic filing at a site designated by the CPSC should (as the law does not require this) the importer so opt. If it does not so opt, the certificate could accompany the other documents needed by the Customs broker to make entry or, if not, be physically present in the shipment. Either of the first two alternatives would be cost efficient. The CPSC staff would not have to search within a container for the certificates. Certificates would not be misplaced or destroyed. Further, electronic filing would also eliminate the need for multiple certificates when the same style is shipped a number of times, which is often the case. This would certainly lead to increased efficiency and cost savings.

Furnished to Distributors and Retailers

A certificate could be furnished to the distributors or retailers "on request." There is nothing in the statute that implies that the certificate must be supplied to the distributors/retailers as a matter of course--though clearly it must be available to them in order to supply it to the CPSC if requested. In this regard, it is a boilerplate clause in purchase orders issued by domestic distributors and retailers that the wearing apparel ordered conforms to the Flammable Fabrics Act and regulations; no independent certificate needs to be examined to corroborate this contractual requirement as it is virtually self-enforcing. Why defer providing it until requested? Aside of reduction in paperwork and associated costs, one must appreciate that the certificate contains what is undeniably proprietary information--the name and address of the manufacturer. Our client has spent a good deal of time and effort to locate and develop its sources of supply. Their identities are clearly business proprietary information. Section 102 of the CPSA explicitly requires that this information appear on the certificate and therefore we cannot take issue with that. However, to the extent possible this confidential information must be protected and a step in this direction would be to allow the importer to refrain from providing it to its customers until they have received a request to provide it to the CPSC. It is at all times nevertheless "furnished" as it is at all times available.

We also suggest that it would be appropriate for the certificate to bear the legend, "This document contains business confidential/proprietary information which may not be used except to confirm conformity with CPSC-enforcement" and request the CPSC to endorse this as a reminder that the provision of this information is for CPSC enforcement purposes and for no other use.

Conclusion:

Of course the requirements in Section 102 must be interpreted in a manner consistent with legislative intent. We do not believe any of our comments are inconsistent with the sound functioning of the CPSA. Rather, we suggest that in these times in particular, when US companies are under tremendous economic pressure to reduce costs, a meaning be accorded that is also mindful of economic realities. In the case of interpreting the words 'accompany"

and "furnish" this can be done as outlined above.

Respectfully submitted,
Stephen M. Zelman
Stephen M. Zelman

MJSA

2008 OCT 30 A9:11
FREEDOM OF INFORMATION

MJSA's Responses to Questions Posed By the CPSC Regarding the Consumer Product Safety Improvement Act

Manufacturing Jewelers & Suppliers of America

October 24, 2008

The Consumer Product Safety Commission has asked the business community for comments on testing and product certification requirements under the Consumer Product Safety Improvement Act. The following responses from Manufacturing Jewelers & Suppliers of America, the industry's trade association, are based on the expertise of its technical expert, Howard Schachter, and reference a quality control program that the association has created to assist members in detecting and correcting lead levels that exceed the new standards. An accredited facility—ESS Laboratory in Cranston, Rhode Island—will test products, and Schachter will provide a critique of the results and, if needed, advice on addressing problems.

CPSIA Staff Request: Specific recommendations for how the compliance certificates for products distributed by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal.

MJSA Comment: Under our QC program, all components will be tested using CPSC protocols and results then electronically transmitted in a PDF file to the producer and all recipients that the company designates, including the CPSC. The standard turnaround time will be five days. Test results are

MANUFACTURING JEWELERS & SUPPLIERS OF AMERICA INC.
45 ROYAL LITTLE DRIVE, PROVIDENCE, RI 02904 | 401.274.3840 | 800.444.6572 | F 401.274.0265 | INFO@MJSA.ORG

proprietary, so the format in which they are displayed will be at the discretion of the producer.

CPSIA Staff Request: Specific recommendations for how the certificates, electronic or paper, can "accompany" product shipments such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA.

MJSA Comment: As outlined above, test results under MJSA's QC program will be distributed electronically to designated recipients. Physical copies of the certificates will accompany the actual shipments to distributors or retailers at the discretion of the producer.

Electronic and physical certificates will be provided for and clearly identify each component within a specific shipment, as required by the CPSIA.

CPSIA Staff Request: Specific recommendations for how the certificates should be "furnished" to the distributors or retailer of the product, electronically or otherwise.

MJSA Comment: Electronic delivery of test results via PDF file is rapid, accurate, confidential, and tamper proof—a PDF file is "read-only." Under MJSA's QC program certification can be shared with both consumers and regulatory agencies instantly as soon as it's available.

CPSIA Staff Request: Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products.

MJSA Comment: MJSA has no problem with a paper certificate accompanying products. However, that paper must be a reproduction of an

original electronic certificate generated by a neutral, accredited laboratory utilizing the PDF format for confidential file transmissions.

CPSIA Staff Request: Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

***MJSA* Comment:** We believe that multiple certifications for the same product could be misleading and confusing. There is no international standard for laboratories and procedures, and the CPSC has no certification protocol in place for neutral laboratories.

However, multiple certificates would be acceptable if the laboratories issuing them all used the EPA's 3050B Method digestion test and were aligned with the standards set forth by the National Environmental Laboratory Accreditation Conference (NELAC), which is a co-operative association of state and federal agencies. The conference has set performance standards for laboratories doing work related to public health and environmental management.

Any testing laboratory that is accredited by NELAC will be well qualified to provide testing. MJSA made NELAC accreditation one of its requirements in selecting a third-party lab for its QC program. We also required alignment with Health and Safety Code #252M.1 – 252M.4.2.

Curtis Ley
President/CEO

Richard Powers
Chairman of the Board

Sub 31

Stevenson, Todd

From: Law Offices of Steven W. Hansen [steven.w.hansen@swhlaw.com]
Sent: Monday, October 27, 2008 3:39 PM
To: CPSC-OS
Cc: Lee, Matthew; Amodeo, Vincent
Subject: Section 102 Certificate Requirements --10/29/08

Dear CPSC:

With respect to your RFP on the "Section 102 Certificate Requirements", I offer the following suggestion. This is just my own idea and I am not submitting this on behalf of any particular company.

There really is no question that this process needs to be web based. This would allow access by everyone in the chain of distribution/importation/manufacture and allow people to print the certificates and file if they so desired. It would also allow test labs and others to upload the certificates as needed (world wide) as the testing was completed on one or more parts of the bike. As I envision it each bike box would have an SKU or UPC. That SKU (or UPC) would be tied to one or more certificates from one or more manufacturers. For example say a bike brand has an SKU of 12345678 which only pertains to that model and all its component parts. The box has that SKU on it. The retailer, if they so desired, or the cpsc or customs for that matter could go to a universal URL that all brands or manufacturers would have like www.BikeBrandName.com/cpsc-certs.html etc. Each manufacturer or distributor would have a similar section with the same URL and structure. Once there you type in the SKU and all the certificates related to that bike (1 or 100) are listed there as needed in a pdf or excell format or some universally readable format (even html). Then certificates would be archived for some predetermined about of time. The sites could be password protected as (if) needed.

Again this is just a suggestion but it seems to me that paper certificates will be too onerous, especially if each bike will have more than one certificate. Another complicating factor is say one of the bike's component manufacturers/distributors (say for a wheel on the bike) also needs a certificate. That wheel (if sold aftermarket or to a complete bike manufacturer/distributor) would have an SKU that would lead to its certificate. To look for it you could go to www.WheelMaker.com/cpsc-certs.html Depending on the CPSC's requirements that wheel certificate could also be incorporated in the SKU for the bikes it is used on or not. That would be a much more complex system; typing in one SKU and tying in all the SKU's used in the bikes assembly (such as the "WheelBrand" wheel model SKU). That could be done technologically but could be a massive expenditure in terms of database management and coordination. Having more than 5 certificates per bike would likely be too cumbersome, however I think this system could accommodate unlimited certificates should the need arise. Also I dont think one universal website (like www.CPSCTestCerts.com) for test certificates will work. Its just too cumbersome and there is no one to maintain it or coordinate it. I also think filing (with the CPSC for example) requirements would be too cumbersome. Quite frankly with a web system like the one I proposed there would be no need for filing.

Steve Hansen

~~~~~~

CPSC Seeks Input on New Testing Process

BETHESDA, MD (BRAIN)The Consumer Product Safety Commission is soliciting ideas on how best to facilitate a new third-party testing requirement for children's products, which includes bicycles.

Starting Nov. 12, manufacturers will be required to issue a certificate showing that the product complies with the rules laid out in the new Consumer Product Safety Information Act.
~~~~~~

The Commission is requesting comments on the use of electronic certificates, versus paper, and the issue of multiple certificates for the same product.

At two recent CPSC public meetings, participants raised issues concerning the difficulty of providing paper certificates to accompany shipping containers and the products inside and furnishing paper to each distributor or retailer of the product. Concerns were also raised about multiple certifications for the same product.

The Commission staff is interested in comments regarding how the certificates for products distributed by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account timing and cost; how certificates, electronic or paper, can accompany the shipment of products so that they can be available for immediate inspection and can be tied to specific shipments of products; how certificates for the products should be furnished to the distributors or retailer of the product, electronically or otherwise; comments or concerns regarding the provision of either a paper or electronic certificate accompanying products; and comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

Comments to the Office of Secretary should be submitted by Oct. 29 and may be filed by email to cpsc-os@cpsc.gov. Comments may also be filed by fax to (301) 504-0127 or by mail to Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814. Comments should be captioned "Section 102 Certificate Requirements."

Steve Hansen

Law Offices of Steven W. Hansen
direct phone 562.866.6228 (9-5 M-F Pacific)
mailto:steven.w.hansen@swhlaw.com
www.swhlaw.com
Skype call user name: "swhlaw"

The information contained in this email and any attachments to it (hereinafter "communication") is confidential and may also contain privileged attorney client information or work product. It is intended only for the use of the recipients(s) to whom it is originally addressed by swhlaw.com. If you are not the original intended recipient, or the agent or employee responsible to deliver it to the original intended recipient, you are hereby notified that any use, dissemination, copying or the taking of any action in reliance upon the contents of this communication is strictly prohibited. If you have received this communication in error (or by unauthorized re-transmission), please immediately forward the entire communication to the address at swhlaw.com from where it originated, permanently destroy all paper and electronic copies, and confirm in your message that such destruction and/or deletion have been accomplished. This firm has no obligation to take any action on behalf of any person or entity until an attorney client fee agreement is signed. This communication in and of itself, does not create an attorney-client relationship between this firm and any person or entity.
~~~
~~~

Sat 32

Stevenson, Todd

From: Will Robison [will@yasutomo.com]
Sent: Monday, October 27, 2008 4:28 PM
To: CPSC-OS
Subject: Comments on Section 102(a)(1) implementation

To whom it may concern;

I have read the regulations as best I can and have tried to understand them. The shortness of actual implementation time aside (less than two weeks actual time once formal guidelines are established) I have a major concern about the certification process as I currently understand it.

The requirement that importers issue certificates to all our distributors and retailers from the manufacturers of products is very bad for importers. Generally, the names and addresses of manufacturers is considered proprietary information by importers. With such information, in this new global economy, distributors and retailers can (and do) go around importers and strike more beneficial deals with the manufacturers, thus importing the products themselves and cutting the importer out of the process. In general, this would have a serious impact on importers in the United States. Specifically, it would be extremely detrimental to my own business.

I have a suggestion that is hopefully not to onerous and might help in implementation. If a third party is already used to test such products in the United States, might they not also keep and certify such certification without the specific information being given to every single distributor and retailer in the country. Might it not create far less paperwork if a seal of approval were attached to every product rather than providing up to date certificates every time a product ships to every single distributor or retailer. This seal would, in effect, provide that the product was certified according to the rules and regulations laid out by the CPSIA. Any further questions about the products safety and certification could then be addressed to the CPSC or the certifying body, as opposed to the manufacturer themselves.

We are strongly opposed to the idea that as of November 12th, we will be required to reveal the names, addresses, and contact information of all our manufacturers especially as its been our practice to never provide this information to anyone unless accompanied by an official request from a government agency such as the FBI or a testing authority, and even then only after a confidentiality agreement has been signed. This type of propietary information is what keeps us in business and we will need to defend the release of the information for as long as possible.

Thank you,

Will Robison
Yasutomo and Company
490 Eccles Avenue
South San Francisco, CA 94080
(650) 737-8888

SCHLOSSBERG & ASSOCIATES P.C.
Counsellors at Law

Jeffrey M. Schlossberg
George W. Skogstrom, Jr.
David B. Titus
Scott I. Wolf*
Michael T. O'Neil**
Brett A. Kaufman
Jenifer M. Pinkham
J. Keith Phifer
Marissa N. Soto-Ortiz

OF COUNSEL
Hon. Lewis L. Whitman (Ret.)

*also admitted in Florida
**also admitted in Rhode Island

Confidential pursuant to Section 6(a)(3)

VIA FACSIMILE ONLY

October 27, 2008

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

Re: Lemax, Inc.
25 Pequot Way
Canton, MA 02021

Dear Sir or Madam:

Please be advised that we represent the above referenced company, Lemax, Inc. (hereinafter "Lemax"). On October 16, 2008, Lemax, a manufacturer and distributor of lighted villages, notified US Consumer Product Safety Commission (hereinafter "CPSC") that one of its products, which was shipped to Lowe's, was randomly tested and it slightly exceeded the lead content limit.

Since that time, Lowe's has tested the entire Lemax product line (Seventy-Eight (78) items) that Lemax manufactured and distributed to Lowe's. All were within acceptable limits and all tests were satisfactory, except one. One item tested slightly exceeded the lead content limit (610 ppm).

Lemax disputes the validity of the test results, and is currently investigating this product and the test results. This particular item was tested before it was shipped to the United States, and the lead content was within acceptable limits.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Jenifer M. Pinkham

Jenifer M. Pinkham

cc: Gaston Lee, President
Michael R. Daglio, Esquire

O:\CLIENTS\Lemax-LJ046\GCA-001\Letters\CPSC102708.doc

35 Braintree Hill Office Park
Suite 204
Braintree, MA 02184
Tel: 781 848 5028
Fax: 781 848 5096

369 Wareham Street
Unit 1
Marion, MA 02738
Tel: 508 748 2052

email@sabusinesslaw.com

SCHLOSSBERG & ASSOCIATES P.C.

Counsellors at Law

Jeffrey M. Schlossberg
George W. Skogstrom, Jr.
David B. Titus
Scott I. Wolf*
Michael T. O'Neil**
Brett A. Kaufman
Jenifer M. Pinkham
J. Keith Phifer
Marissa N. Soto-Ortiz

OF COUNSEL

Hon. Lewis L. Whitman (Ret.)

* also admitted in Florida
** also admitted in Rhode Island

FACSIMILE TRANSMISSION

Date: October 27, 2008

Recipient: U.S. Consumer Product Safety Commission

From: Jenifer M. Pinkham, Esquire
Schlossberg & Associates, P.C.

Number of pages ***including*** this transmittal form: **2**

Facsimile Number: **301-504-0124/301-504-0025**

RE: LJ046-001

MESSAGE:

Please see the attached letter.

Thank you.

CONFIDENTIAL
The information contained in this facsimile message is attorney privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original message to us at the address above via the United States Postal Service. Thank you.

35 Braintree Hill Office Park
Suite 204
Braintree, MA 02184
Tel: 781 848 5028
Fax: 781 848 5096

369 Wareham Road
Unit 1
Marion, MA 02738
Tel: 508 748 2052

email@sabusinesslaw.com

ColArt
Fine Art & Graphics
Whitefriars Avenue, Harrow,
Middlesex HA3 5RH, England
Telephone: +44 (0)20 8424 3200
Facsimile: +44 (0)20 8863 7177
Website: www.colart.com
ColArt Fine Art & Graphics Limited. • Registered in England No. 16193 • Registered Office: Whitefriars Avenue, Wealdstone, Harrow, Middlesex HA3 5RH

Consumer Product Safety Commission,

Room 502,

4330 East West Highway,

Bethesda,

Maryland, 20814. 28th October 2008

"Section 102 Certificate Requirements."

Dear Sir or Madam,

I write with respect to the recent request for comments on section 102 of the CPSIA.

Firstly thank you for giving us the opportunity to comment.

ColArt are manufacturers of fine art and graphic materials. All our manufacturing sites are located outside of the United States of America. Our products include ranges of colours and art materials that are made for use by adults and children and so are regulated under the requirements of the Labelling of Hazardous Art Materials Act (LHAMA). Those products that are considered to require assessment for chronic health effect are tested in conformity to ASTM D-4236 through a program administered by the Art and Creative Material Institute (ACMI). In addition the ACMI assesses for conformity to the requirements of PPPA and other federal and state regulations. We strongly support the ACMI in their proposal to have LHAMA and the art material exemptions in CPSIA, to exempt all art materials from all of CPSIA and/or to have ACMI certificates or seals serve as indication of compliance.

ColArt also manufacture or distribute product lines that do not carry an ACMI seal e.g. easels and canvases. These are adult products that require no certification under CPSIA. Given the tens of thousands of products that we distribute, we are concerned that the document covering shipment of product from our 4 manufacturing facilities and made available to the CPSC, distributors and retailers should relate only to products that fall within the scope of CPSIA.

Should CPSC decide that the ACMI logo or additional marking is insufficient evidence for exemption from the requirements of CPSIA, we request that the document for shipping that needs to be made available for the CPSC, customs, distributors and retailers relates only to general product categories. We request a broad category listing for our adult products lines is documented, for example "art material and art material products" and checked against

regulations that apply i.e. LHAMA and PPPA, rather than a full listing of every range of product included in the shipment.

For those products that are intended for children we request that documents and certificates for our product ranges are located centrally on our website with access by password for CPSC, customs, distributors and retailers.

We also ask that products intended for use by children that are known to contain no listed phthalates, should be exempt from requiring testing for phthalates. This may apply to, for example, pencils that are coated with a cellulose lacquer or plastic materials made of polypropylene. We request that such products are self-certified as not containing resins that include additions of phthalates.

ColArt undertakes in-house testing for heavy metals in order to conform to the requirements of toy safety legislation in the USA and the EC. We have an exemplary record for product safety. Since our products are made by batch processing, the requirement from CPSIA for independent third party testing is a financial burden. We consider that we are being penalised unfairly for the poor performance record for product safety of other manufacturers. One consequence of the measures taken by CPSIA is that responsible companies may withdraw products from the market that are safe because of the onerous cost of testing by independent testing houses. We ask that those manufacturers who screen their products for heavy metal content as an internal discipline should be allowed to support a lesser certification regime. As part of this we ask that CPSC confirm that it will allow lead testing to be carried out by X-Ray Fluorescence (XRF).

There has been much recent debate within the ACMI regarding a definition of a product and whether packaging that comes in to intimate contact with a product should be considered as being a component of the product itself. This matter has been raised by the ACMI with the CPSC. ColArt consider that all packaging, whether it is in intimate contact with a product or not, is a separate component than the product and so should not be considered as part of the evaluation of the safety of a product. We consider that this uncertainty should be cleared up before CPSIA is introduced.

Finally, we comment on the impact the timeline for certification has on our business. The regulations that apply to our products we manufacture are:

12th November 2008 – requirement for document to confirm certification is in place for all affected products. [Documentation indicating compliance with LHAMA, PPPA for adult products and LHAMA, ASTM F963 and phthalates ban for children products and toys.]

21st December 2008 – Products classed as toys must be certified by a third party testing house [document indicating compliance to LHAMA, ASTM F963 and phthalates].

10th February 2009 – no children's product to include lead at >600 ppm – reduced to 300 ppm on 14th August 2009 and 100 ppm on 13th August 2011.

10th February 2009 – phthalates ban for toys.

13th August 2009 – children's products and packaging must be marked with tracking labels that indicate the source of the product to consumers (content to be finalised).

12th December 2008 – toys will be required to include in any advertising on our website precautionary statements that may apply. This extends to catalogues and printed material by 10th February 2009.

Clearly the 2008 timelines are unachievable, especially since CPSC are still seeking comments for implementation of documents until the end of October 2008. We consider that the timeline is unreasonable and ask for you to consider extension of the transition period.

I remain

Yours sincerely

Jon Lloyd

(Regulatory Affairs Manager at ColArt).

Stevenson, Todd

From: Jon Lloyd [j.lloyd@colart.co.uk]
Sent: Tuesday, October 28, 2008 4:51 AM
To: CPSC-OS
Cc: Lynn Pearl; Richard Goodban; Paul Aston; Richard Llewellyn; Alan Dewsnup (China); Ian Garrett; Virginie Girard; Gilles Gomas; Virginie Girard; Jacqueline Rickard; Helen Chang; Deb Gustafson; Steve Chamberlain
Attachments: Letter to CPSC re CPSIA 281008.doc

Dear Sir or Madam

Thank you for inviting our comments regarding the CPSIA. Please find our comments attached.

Yours truly

Jon Lloyd

This message contains confidential information and is intended only for the individual named. Access to this e-mail by anyone else is unauthorised. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as a solicitation or offer to buy or sell any products or services. ColArt Fine Art & Graphics Limited is a limited company registered in England and Wales, registered number 00016193, our registered office is Whitefriars Avenue, Wealdstone, Harrow, Middx, HA3 5RH. ColArt Fine Art & Graphics Limited reserves the right to monitor emails in accordance with The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

34

Stevenson, Todd

From: Jon Lloyd [j.lloyd@colart.co.uk]
Sent: Thursday, October 30, 2008 4:30 AM
To: CPSC-OS
Cc: Paul Aston; Richard Goodban; Lynn Pearl
Subject: RE:

Dear Todd

We are OK for the comment to be made public.

In addition we comment that it is impossible to track our products through to the retail store by date of manufacture for each of the many thousands of SKUs per shipment and ask that you clarify that the "date and place of manufacture" is meant to be the "date of shipment and place of manufacture" on the certificate.

Thanks once again for giving us the opportunity to comment. We respect the need for increased product safety measures, but hope that the needs of our industry can be accommodated within the measures taken.

Jon Lloyd

From: CPSC-OS [mailto:CPSC-OS@cpsc.gov]
Sent: 28 October 2008 16:07
To: Jon Lloyd
Subject: RE:

Is your comment meant to be confidential? We intended to make public all comments.

Todd Stevenson
Director, Office of the Secretary
Division of Information Management
Office of Information and Technology Services
US Consumer Product Safety Commission
(301) 504-6836, Fax (301) 504-0127

From: Jon Lloyd [mailto:j.lloyd@colart.co.uk]
Sent: Tuesday, October 28, 2008 4:51 AM
To: CPSC-OS
Cc: Lynn Pearl; Richard Goodban; Paul Aston; Richard Llewellyn; Alan Dewsnup (China); Ian Garrett; Virginie Girard; Gilles Gomas; Virginie Girard; Jacqueline Rickard; Helen Chang; Deb Gustafson; Steve Chamberlain
Subject:

Dear Sir or Madam

Thank you for inviting our comments regarding the CPSIA. Please find our comments attached.

Yours truly

Jon Lloyd

This message contains confidential information and is intended only for the individual named. Access to this e-mail by anyone else is unauthorised. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The

sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as a solicitation or offer to buy or sell any products or services. ColArt Fine Art & Graphics Limited is a limited company registered in England and Wales, registered number 00016193, our registered office is Whitefriars Avenue, Wealdstone, Harrow, Middx, HA3 5RH. ColArt Fine Art & Graphics Limited reserves the right to monitor emails in accordance with The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
*****!!! Unless otherwise stated, any views or opinions expressed in this e-mail (and any attachments) are solely those of the author and do not necessarily represent those of the U.S. Consumer Product Safety Commission. Copies of product recall and product safety information can be sent to you automatically via Internet e-mail, as they are released by CPSC. To subscribe or unsubscribe to this service go to the following web page: https://www.cpsc.gov/cpsclist.aspx *****!!!
This message contains confidential information and is intended only for the individual named. Access to this e-mail by anyone else is unauthorised. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message which arise as a result of e-mail transmission. If verification is required please request a hard-copy version. This message is provided for informational purposes and should not be construed as a solicitation or offer to buy or sell any products or services. ColArt Fine Art & Graphics Limited is a limited company registered in England and Wales, registered number 00016193, our registered office is Whitefriars Avenue, Wealdstone, Harrow, Middx, HA3 5RH. ColArt Fine Art & Graphics Limited reserves the right to monitor emails in accordance with The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

From: Zalewska, Ewa [Ewa.Zalewska@Tiffany.com]
Sent: Tuesday, October 28, 2008 11:01 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the CPSIA, regarding the requirements for certificates for general conformity testing and third party testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC.

Tiffany & Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories (intended for adults) and made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such product should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Tiffany & Co. respectfully requests the Commission's further guidance as to whether watches and clocks (intended for adults) are subject to the CPSIA testing requirements and general conformity certificate requirements.

3. Tiffany & Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments

Respectfully yours,

Ewa M. Zalewska
Tiffany & Co.

Ewa M. Zalewska
Attorney - Director
TIFFANY & CO.
600 Madison Avenue
New York, New York 10022
ph.212-230-5351
fax.212-230-5323
Ewa.Zalewska@Tiffany.com

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure, dissemination of or reliance upon this communication by persons other than the intended recipient may be subject to legal restriction or sanction. If you think that you have received this E-mail message in error, please reply to the sender and delete this email promptly.

35a

Stevenson, Todd

From: Zalewska, Ewa [Ewa.Zalewska@Tiffany.com]
Sent: Wednesday, October 29, 2008 4:46 PM
To: CPSC-OS
Subject: RE: Section 102 Certificate Requirements

Dear Sir or Madam,

Further to my initial comments below sent to the Commission on Tuesday, October 28, 2008, I would like to add the following comment:

1. Tiffany & Co. respectfully requests that ALL jewelry and accessories made exclusively of precious metals or made exclusively of precious metals and gemstones (both intended for adult use or use by children) be excluded specifically from lead testing requirements and certificate requirements specific to lead testing as may be required by the CPSIA.

We ask that the Commission provide further guidance regarding lead testing requirements for consumer goods made exclusively of precious metals or precious metals and gemstones.

Thank you for your kind attention to our comments.

Respectfully yours,

Ewa M. Zalewska
Tiffany & Co.

Ewa M. Zalewska
Attorney - Director
TIFFANY & CO.
600 Madison Avenue
New York, New York 10022
ph.212-230-5351
fax.212-230-5323
Ewa.Zalewska@Tiffany.com

Ewa M. Abrams
Director - Attorney
TIFFANY & CO.
ewa.zalewska@tiffany.com

-----Original Message-----
From: Zalewska, Ewa
Sent: Tuesday, October 28, 2008 11:01 PM
To: cpsc-os@cpsc.gov
Subject: Section 102 Certificate Requirements

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the CPSIA, regarding the requirements for certificates for general conformity testing and third party testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC.

Tiffany & Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories (intended for adults) and made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such product should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Tiffany & Co. respectfully requests the Commission's further guidance as to whether watches and clocks (intended for adults) are subject to the CPSIA testing requirements and general conformity certificate requirements.

3. Tiffany & Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments

Respectfully yours,

Ewa M. Zalewska
Tiffany & Co.

Ewa M. Zalewska
Attorney - Director
TIFFANY & CO.
600 Madison Avenue
New York, New York 10022
ph.212-230-5351
fax.212-230-5323
Ewa.Zalewska@Tiffany.com

The information contained in this email message may be privileged, confidential, and protected from disclosure. Any unauthorized use, printing, copying, disclosure, dissemination of or reliance upon this communication by persons other than the intended recipient may be subject to legal restriction or sanction. If you think that you have received this E-mail message in error, please reply to the sender and delete this email promptly.

3.

Stevenson, Todd

From: Jeff Novak [jnovak@favors.com]
Sent: Tuesday, October 28, 2008 9:48 PM
To: CPSC-OS
Subject: Attn Office of Secretary Ref: comments on section 102

The requirements of Section 102(b) of the CPSIA are extremely unreasonable.

First, the deadline date of November 12, 2008 is absurdly short; it does not provide enough lead time, particularly where a company like ours has thousands of SKUs.

Second, the requirement that paper certificates must be provided with each shipment creates unnecessary waste and cost. Multiple certifications for the same product should not be necessary; but if they are required, then at least allow for the electronic option. Companies should be allowed to create the certificate in Microsoft Word, and then have the manufacturer prepare and convert to a PDF file – which avoids paper waste. If the CPSC requires them, they will be issued at that time via e-mail attachment.

Third, the CPSC cannot expect compliance where key issues have not been resolved (i.e. CPSC has not defined what is meant by a reasonable testing program).

Fourth, the requirement to identify by month and year is too narrow; the products we sell do not lend themselves to identification with such specificity.

Fifth, manufacturers' identities considered trade secrets, and are treated as confidential information. Our company should not be required to include this on a document that is, essentially, required to be publicized.

As to the specific issues below:

- Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal. **RECOMMENDATIONS:** *See Second suggestion above. In the alternative, U.S. Customs has an electronic document-clearing system called ACE. This system could be shared with the CPSC. It is anticipated that minimal additional cost and time would be necessary to add the product-certification documents to this system, and the certificates in compliance with these requirements could be submitted with other customs-clearance documents.*

- Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA. **RECOMMENDATIONS:** *The documents should not be required to accompany, but should be made available upon request. In the alternative, based on the recommendation set forth above, ACE system enables immediate review of documents, and is tied to specific shipments. Another alternative is allowing the certificates to be posted on a FTP portal or website.*

- Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise. **RECOMMENDATIONS:** *Certificates should not be perpetual; but they should have long-standing life (a year or more). The duration of the Certificate's validity should be tied to what the CPSC finds to be a reasonable testing program. "Furnished" should be broadly construed to allow purely electronic submissions. In an era of electronic compliance, CPSC's proposals all create more (and unnecessary) paperwork.*

- Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products. **RECOMMENDATIONS:** *See above responses – certificate should not have to accompany; but should be available upon request; anything beyond the above is unduly burdensome.*

- Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product. **RECOMMENDATIONS:** *See above responses; anything beyond the above is unduly burdensome.*

Jeff Novak

V.P. Quality Assurance

Unique Industries Inc.

jnovak@favors.com

37

Stevenson, Todd

From: Michael Rainville [mike@maplelandmark.com]
Sent: Tuesday, October 28, 2008 9:05 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

I would like to pose some questions / comments regarding the toy testing and certification requirements that are upon us.

As background, though my company is one of the largest domestic wooden toy manufacturers, we are still a small company. We serve well over 2250 retail stores with approximately 500 toy SKUs (we make non-toys as well). A typical wholesale order is $200 dollars and is compromised of a dozen line items. On the production side, we don't make large, distinct batches of product. Our products are designed to have a lot of shared / similar parts so final product assembly happens on a near-continuous basis on, or just ahead of, demand. We currently ID mark most of our products but specific date coding is difficult because because the marking happens at the component stage, well ahead of completion, at a point when there is no predictable completion date, nor idea as to what final product the part will be a part of. Final-step coding isn't possible when we complete them in small batches.

My issues -

1) What are the options for issuing certificates so that we aren't generating a sheet of paper for every $10-$25 line item on a shipment? Must continuous reorders (every couple of weeks) require certificates every time? Can we simply have the certificates posted online for download? Can we supply all on a CD (one a year)?

2) Must we date / batch mark both the packaging and the product or will one be sufficient? If the process doesn't lend itself to permanent on-product marking at the end of the process, what are our options?

3) How do we on-product label small items, such as tops or yo-yo's?
If these small items are also sold without packaging what are our options? Today's environmentally conscious store keepers, and their customers, are demanding less and less packaging. Can the information be presented on point of purchase displays?

4) As to testing frequency, I hope the commission is taking into account the small manufacturers who produce in very small quantities, perhaps only hundreds of units per year - a few at a time. Frequent, or batch-based, testing would put these sorts of products off the market. Indeed, when tests can cost $300 to $1500 per item, it takes a lot of sales volume to absorb the cost. Not every company follows a "import large quantities from China" business model. Current state-of-the-art manufacturing procedures, due to efficiencies and economics, indicate continuous flow processes, not batch processes.

5) I hope there will be the ability to separate mechanical testing from chemical testing. For example, if a company produces 12 distinct product configurations and each offered in 6 different paint colors, there would be 12 mechanical tests and 6 chemical tests, rather then 72 complete tests. This distinction could be make or break for many small companies.

I fully understand the pressure the CPSC, and toy industry, is under to prevent a repeat of past events. I also hope that domestic producers, who tend to be smaller, are not driven from business by the bad acts of the larger importers. All toys must be safe no matter where they are made but there are a wide variety of business models at play and I am afraid all too often notions are based on the big importer model.

Thank you,

Mike Rainville
Maple Landmark Woodcraft
1297 Exchange St.
Middlebury, VT 05753
(802)388-0627 / Fax (802)388-0761
mike@maplelandmark.com
www.maplelandmark.com

Arent Fox

RECEIVED
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION
2008 OCT 30 A 9:31

October 28, 2008

Georgia C. Ravitz
Attorney
202.857.8939 DIRECT
202.857.6395 FAX
ravitz.georgia@arentfox.com

Scott A. Cohn
Attorney
516.626.1286 DIRECT
202.857.6395 FAX
cohn.scott@arentfox.com

VIA FEDERAL EXPRESS AND ELECTRONIC-MAIL

The Honorable Nancy Nord
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as seasoned practitioners in the product safety bar with a combined experience of over 25 years during which we have handled many matters before the Consumer Product Safety Commission (CPSC). We sincerely value the opportunities we, and our clients, have had to partner with the CPSC and its staff over the years in compliance, as well as the occasional enforcement matters. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative—the General Conformity Certificate (GCC) requirements scheduled to go into effect on November 12, 2008. In this regard, based on comments we have received from our extensive client base representing a variety of consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

We certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products. There are serious concerns, however, on the part of industry and the product safety bar in connection

with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. The purpose of this letter is to advise you and the Commission of these concerns. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products.*** Industry initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that additional regulated consumer products may be affected.

    - ***Scope Should Be Limited to Children's Products.*** Prescription and over-the-counter drug products, dietary supplements, cosmetic and personal care products, refrigerators, household cleaning products, and a long list of other products that are not defined as "children's products" under the CPSIA should not be subject to the GCC requirement.

    - ***If Scope is Broadened, Industry Needs Time to Comply.*** Formal clarification from Congress and CPSC is necessary in order to confirm whether or not the Act was intended to cover more than children's products. If it is determined that the GCC requirement applies to all regulated consumer products, it would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Both industry and the product safety bar fully acknowledge that this sweeping legislation has burdened CPSC with an enormous regulatory task. Part of that task involves providing essential guidance to industry with respect to interpretation of, and compliance with, many key provisions, including the GCC requirements. Unfortunately, such guidance has not yet been provided as noted below.

---

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products..."; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

- ***CPSC Guidance and Advice Has Not Been Timely***. CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool, and due to the myriad of questions, guidance simply has not been given in a timely fashion to assist industry entities seeking compliance.

- ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance***. Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

- ***Insufficient Regulatory Guidance on Specific Testing Standards***. There has been insufficient guidance on specific regulations, bans and standards for certain products, such as wearing apparel that is subject to 16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing as is permitted under Part 1610 currently?). Compliance by November 12th in the absence of such guidance is essentially impossible.

- ***Uncertainties About Voluntary Standards That May Require GCC***. While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not at all clear whether products covered by certain voluntary standards that may be used by CPSC as policy guidance (such as ASTM F1816-97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear) might, in fact, require a GCC. Such guidance is critical in order for industry to comply with the GCC rules.

- ***Private Labelers Have No Guidance***. Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can), and whether or how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC just issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should

Arent Fox

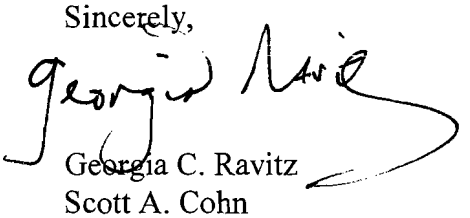
physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

- ***Request for Delay in Implementation of Lead Standards***. Though not directly related to the GCC requirements, the overwhelming regulatory burden being placed on the industry in terms of GCC's and other testing requirements has created further difficulties in terms of compliance with other CPSIA provisions that become effective in 2009. Specifically, our clients have informed us that the implementation of the Section 101 lead standards that become effective for all goods in commerce as of February 10, 2009 are likely to create a significant financial hardship in terms of inventory control, testing, and possible removal. Accordingly, we respectfully request that the CPSC consider a similar delay in the implementation of the new lead standards so as to allow the industry to transition through the GCC requirements and the restrictive lead standards in a less disruptive manner.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the scope of the GCC requirements and specific key elements of these requirements, we respectfully urge CPSC to consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any accidental violations of portions of the law related to GCC paperwork during a reasonable transition period after implementation. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Sincerely,



Georgia C. Ravitz
Scott A. Cohn

Arent Fox

cc: The Honorable John D. Dingell, Chairman
The Honorable Joe Barton, Ranking Member
U.S. House of Representatives Energy and Commerce Committee
Washington, DC 20515

The Honorable Daniel Inouye, Chairman
The Honorable Kay Bailey Hutchison, Ranking Member
U.S. Senate Commerce Committee
Washington, DC 20510

Intertek Electronic Certificates

Proposals under section 102 of the Consumer Product Safety Improvement Act

Summary

Intertek has a solution to secure electronic certificates that allows client certificates to be sent by email or fax, but prevents them from being falsified. This solution can be used to satisfy the Commission's requirement for secure authentication of certificates sent electronically. The system is already used to securely prepare Product Conformity Certificates. Uniquely, the system can operate both electronically (as a pdf) but can also be printed (as paper) – with high levels of security in *both* formats.

Intertek is one of the world's largest Product Conformity testing and certification groups, with offices and laboratories in over 100 countries. We are the world's largest tester of toys.

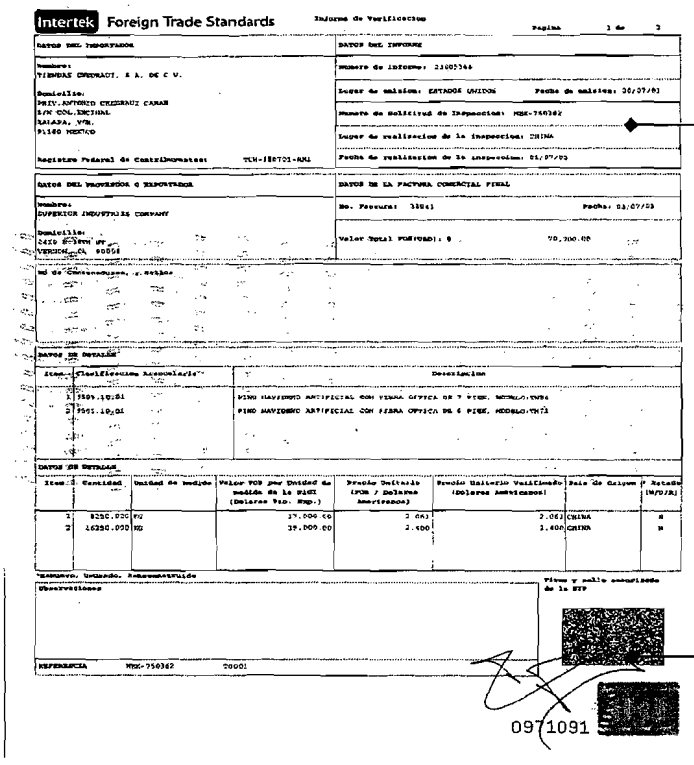
Key features
The main features of the Intertek solution include:

- Certificates can be automatically e-mailed in standard Adobe Acrobat .pdf file format.
- Clients can print certificates out on a standard laser printer on plain paper, dispensing with the need for highly secure specialist certificate paper. Although where the use of security paper is still a requirement, this can still be used.
- The certificate contains full details (e.g. inspection / test results).
- Key data from the certificate is encrypted in a highly secure graphic image. If anyone then attempts to forge the certificate they can only change the text on the document – but they *cannot* change the encrypted image.
- If a client needs to verify the authenticity of their certificate then they can use any conventional scanner, (including hand-held wand scanners), to read (or decode) the image, along with the appropriate decryption software. Scanning takes just a few seconds, and provides for immediate confirmation of the validity of the certificate.
- Using this technology it is also possible to automatically load all of the key certificate data into a client system – automatic uploading makes the process faster and more accurate.
- Certificates can be distributed and forwarded with e-mail speed.
- Even a faxed copy of the certificate can be successfully scanned and decoded.
- Each encrypted image has an element of redundancy built in ensuring a high degree of accuracy in the decoding process even if the image is partially damaged.
- Any file type can be encrypted into the image, from data to graphics.

The technology is highly secure, and can be used to guarantee the integrity of a certificate. Companies generating the certificates would need the encryption software installed on a PC or server, and Officials responsible for reviewing the certificates would need a scanner and the decryption software (plus unique keys).

Alternatively, for small scale users, the user could log onto a custom designed website, enter the details of the tests completed, and the website would then automatically issue the electronic certificate by email to the nominated email address.

Example Certificate



The electronic certificate printout contains all the usual certificate data: importer details, exporter details, value of shipment etc.

All the key information on the certificate is also encrypted in a secure block of code. This code can be scanned to validate the certificate and can automatically upload all the key data into the Customs system

Technology

- Any standard scanner can be used for reading images. We can recommend low cost scanners that work particularly well.
- Decryption software can be run on any PC, all that is needed is to install a Windows DLL file and a small VB program
- Encryption software can be installed on a PC, server, Unix system as required
- The DLL is called from within a program. The DLL call passes the data to be encoded, and the DLL returns a TIF image object which is then placed on the printed output from the program.

Usage

The Intertek system is currently in use for Product Conformity and other certificates in several countries, including Mexico, on a shipment by shipment basis.

Comments as requested by the Commission:

1. Recommendations for certificates to be made available to the CPSC for inspection and validation

The Intertek system can issue certificates:

- As an added service following the completion of independent Intertek testing
- Alternatively, the encryption software can be made available to Manufacturers through a secure web portal. Manufacturers then simply upload data (which could be automated to prevent re-keying), and specify the email address to which the certificate should be sent. Clearly this is simply a method of creating uniform certificates for the CPSC to review, and does not seek to validate or authenticate the data.

These certificates can then be supplied to the CPSC for review. This review could itself be electronic – and automated. A CPSC web portal could be set up by Intertek, to which Importers and Domestic Manufacturers submit their pdf certificates. The website would automatically validate the certificates submitted, and present any non-valid details for follow up. In addition, the system would be capable of automatically generating reports of all certificates submitted, on a daily basis, for review by CPSC staff. The certificate submission website could be branded as CPSC if appropriate.

2. Recommendations on how certificates can "accompany" shipments
The proposed certificate preparation website can include a requirement on the shipper to specify the method of shipment, port of destination, and the Bill of Lading. This means that this information will be available to the CPSC when reports are prepared, or queries are run.

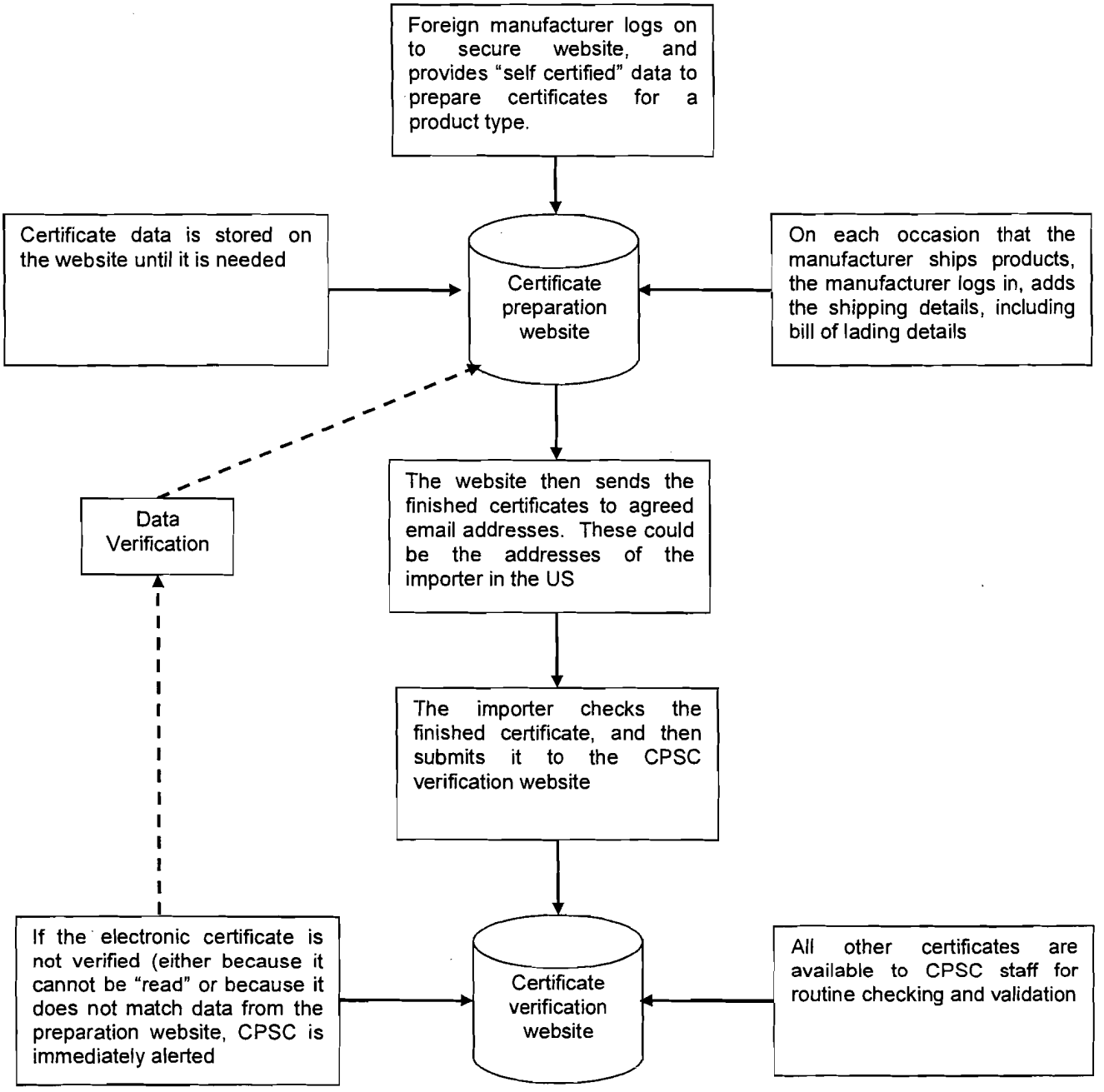
In addition, we would also recommend that a soft (or paper) copy of the certificate is submitted as a part of routine set of documents required for customs clearance. The CBP could then validate the soft copy (using a software decoder) or the hard copy (using a scanner).

3. Recommendations for how certificates should be "furnished" to distributors
We recommend that the only practical approach is for distributors and importers to make the provision of certificates a commercial requirement, as a part of the transaction. The ability of the CPSC to legislate for overseas shippers to provide this information is inevitably more limited. It is our experience in operating many mandatory product conformity programmes in the EU and elsewhere, that such commercial requirements very quickly become "de facto" requirements, and that international sellers and exporters soon learn to provide the necessary information.

4. Comments regarding paper or electronic certificates
Clearly both paper and electronic have their benefits and disadvantages. Overwhelmingly it would be the view of most commentators that electronic certificates are far more flexible and appropriate to the twenty first century. However, there are circumstances and procedures where paper may be more appropriate. The unique Intertek approach means that the same certificate can exist in electronic or paper form – with equal levels of security.

5. Multiple certifications by a foreign manufacturer for the same product
This is a common situation which is already addressed by many international test and certification bodies such as Intertek. Where requested by the original manufacturer, Intertek will issue certificates with alternative model names and numbers, provided that these are clearly declared and evidenced to us. We would propose that the same approach is taken with CPSIA certificates. The certificate preparation website can be designed to allow foreign manufacturers to enter multiple brands and model numbers, if required. They then receive multiple electronic certificates which can then be emailed to the appropriate recipients.

Proposed Workflow



Stevenson, Todd

From: Roxana Labiosa Intertek [roxana.labiosa@intertek.com]
Sent: Tuesday, October 28, 2008 3:24 PM
To: CPSC-OS
Subject: Proposal Under Section 102 of the CPSA
Attachments: Electronic Certificates.txt

To Whom It May Concern:

Please review attached document that brings a proposal under the Consumer Product Safety Improvement Act.
If you wish to discuss further the attached proposal, please do not hesitate to contact me at your earliest convenience.

Best Regards;

Roxana Labiosa

Regional Manager of the Americas
8300 NW 53rd Street
Suite 400
Miami, Florida 33166
Ph: 305-513-2854
Fax: 305-513-2990

CONFIDENTIALITY NOTICE

This e-mail may contain confidential or privileged information, if you are not the intended recipient, or the person responsible for delivering the message to the intended recipient, then please notify us by return e-mail immediately. Should you have received this e-mail in error then you should not copy this for any purpose nor disclose its contents to any other person.

CONFIDENTIALITY NOTICE

http://www.intertek.com

4 102 4C

Stevenson, Todd

From: Maurice Amiel [maurice@topsville.com]
Sent: Tuesday, October 28, 2008 12:51 PM
To: CPSC-OS
Subject: comments on Section 102 of the CPSIA, regarding the requirements for certificates for general conformity testing and third party testing

I am commenting on the use of electronic certificates as well as the issue of multiple certifications for the same product. As an importer, I have serious concerns regarding the section 14(g)(3) that requires that every certificate
1) "shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product."
As a practical matter, I don't see how it would be possible or feasible to have an actual certificate physically accompany the product or shipment. You must realize that importers shipments are containerized. I may have a shipment of 1 particular product that is shipped to me in 3 to 4 containers depending on the size of the orders. Containers are shipped on vessels and some containers are loaded in the vessel, some on top of the vessel exposed to the elements. How would we possibly be able to have a certificate adhere to the out side of a container?? Even if we could, which we couldn't, the elements in transit would surely cause it to be lost, detached from the shipment, weather deteriorated to be unreadable, etc.
The only way I think that the certificate can accompany a shipment is in an electronic format and transmitted either to the CPSC or directly to US Customs when an entry is filed. Certainly, the US Customs option would seem to make more sense as this option would insure that all shipments entering US Commerce has a certificate of conformity. This would be similar to the electronic transmittal of a manifest 24 hrs prior to shipment. I don't know if US Customs is capable of handling such a requirement, but this is the only way I can see it working effectively.

2) Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal;

The way I see it, if the certificate needs to be made available to the CPSC for inspection can be done electronically either by the importer or manufacturer going to a CPSC FTP site or e mailing it to the CPSC in PDF format. Mind you, my company will keep every certificate in a binder. At anytime, we can produce at a moments notice any certificate requested.

3) Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.
I see a major problem in this event. We ship multiple shipments of the same product or style #. So a conformity certificate should apply to the whole product for that lot or PO. When we test product, we do so for the actual product/Style, however it is shipped in multiple shipments for a variety of reasons. Therefore, no doubt a conformity certificate for a product that has multiple shipments should be issued once, and should be allowed to be applicable to all shipments of the similar style.

I would be more then happy to discuss this with anyone .
Best regards,
Maurice

Maurice Amiel
Topsville, Inc.
11800 NW 102nd Road, Suite 2
Medley, Fl 33178
Tel: 305-883-8677
Fax: 305-888-3727 or 1365
e mail: maurice@topsville.com

Sec 102 41

Stevenson, Todd

From: Greebel, Rory G. [RGreebel@GDLSK.COM]
Sent: Tuesday, October 28, 2008 2:23 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

To Whom it May Concern:

1. The General Certification Requirement (Section 102) goes into effect on November 12, 2008 which is just over two weeks away. However, the comment period regarding Section 102 ends on October 29th and companies are concerned that inquiries regarding the certification will either not be sufficiently addressed by the CPSC or answered with enough time to comply with the deadline. Companies need additional time to develop the procedures necessary to implement new testing policies for self-certifications and "reasonable testing programs". The Consumer Product Safety Improvement Act also expands the General Certification Requirement to now include children's products and will continue to be more expansive as new children's product laws go into effect in future months. The Consumer Product Safety Commission should take into account that many companies are having trouble implementing appropriate testing regimes due to the lack of clarity in Section 102. If possible, the CPSC should delay the effective date, or alternatively, delay enforcement of this requirement to allow companies sufficient time to comply with the new rules.

2. The new accredited third party testing requirements are onerous, especially on small businesses. As a result of this new requirement, small businesses are faced with increased testing fees as labs have driven up prices. These companies are concerned that these new costs could drive them out of business. How does the CPSC plan on addressing this matter?

Best Regards,

Rory Greebel, Associate
Grunfeld Desiderio Lebowitz Silverman & Klestadt LLP
399 Park Avenue
25th Floor
New York, NY 10022-4877
Direct Dial: 212-973-7761
Email: rgreebel@gdlsk.com

NOTICE: This e-mail, and any attachments thereto, are intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by telephone and permanently delete the original and destroy any printout thereof.

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department regulations, we inform you that any U.S. federal tax advice contained in this correspondence (including any attachments) is not intended or written to be used, and cannot be used for the purpose of (i) avoiding penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

42

Townley®

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11:59

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Ronald Sassoon
Vice-President

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11: 58

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Jeffery Cohen
Creative Director

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

October 28, 2008

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

Re: Section 102 Certificate Requirements: Request for Clarification and Delayed Implementation

To Whom It May Concern:

Townley, Inc. is responding to the Consumer Product Safety Commission's (CPSC) request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our comments and concerns in connection with the Section 102 General Conformity Certification (GCC) requirements that are scheduled to go into effect on November 12, 2008. In addition to our comments, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

We have serious concerns in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children's products, we would like to highlight just a few of the many significant concerns that we have about the GCC requirements:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products***. Our company, along with countless others, initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that additional regulated consumer products may be affected.

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products..."; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

Townley

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

If it is determined that the GCC requirement applies to all regulated consumer products, it would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Essential guidance to industry with respect to the interpretation of, and compliance with, many key provisions, including the GCC requirements of the CPSIA, has not yet been provided as noted below.

    - ***CPSC Guidance and Advice Has Not Been Timely.*** CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool.

    - ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance.*** Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

    - ***Insufficient Regulatory Guidance on Specific Testing Standards.*** There has been insufficient guidance on specific regulations, bans and standards for certain products, and compliance by November 12th in the absence of such guidance is essentially impossible.

    - ***Uncertainties About Voluntary Standards That May Require GCC.*** While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not at all clear whether products covered by certain voluntary standards that may be used by CPSC as policy guidance might, in fact, require a GCC.

- ***Private Labelers Have No Guidance.*** Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can) or whether they must conduct their own testing, and whether or how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

    - Private Labelers who operate solely as trademark owners/licensors and are not involved in any aspect of manufacturing, importing, distributing, or retailing, should not be required to issue a GCC at all.

    - If Private Labelers who are trademark owners/licensors are required to issue GCC's, but they are not in the chain of distribution, they should be permitted to

Townley

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

rely on other GCC's from other parties in the actual chain of distribution. To require such Private Labelers to somehow insert themselves into the distribution chain in order to physically remove samples of product for testing, and to conduct independent testing, is an unconscionable burden on such licensors and is certainly not what Congress intended. This would irreversibly alter the manner in which licensors may have to conduct business (e.g., would licensors be required to take possession of shipments under this scenario?).

- If Private Labelers are required to issue GCC's, and they are not in the distribution chain, how and when would they be required to furnish the GCC's to retailers? How would they correlate and time the furnishing of the GCC's to specific shipments sent by distributors to retailers?

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC just issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

- ***Protection of Proprietary Manufacturer Information Not Yet Addressed by CPSC.*** Companies consider the names and addresses of manufacturers to be highly proprietary business confidential information that is rarely disclosed to distributors or retailers. Alternate methods of designating this information on the GCC (e.g., confidential codes assigned by CPSC, etc.) have not been addressed by CPSC and we are very concerned about being required to disclose this information to third parties without adequate regulatory protection.

Our concerns have been somewhat exacerbated by the Commission's lack of clear guidance on the implementation of Section 102. We fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task. However, CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain, with only a single means of inquiry via the online tool, and due to the myriad of questions, guidance simply has not been given in a timely fashion to assist industry entities seeking compliance.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC delay its

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge the Commission to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If you believe that you do not have the existing authority to take such action, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Sincerely,

Project Manager

Stevenson, Todd

From: Cheryl Lowe [cheryl@townleygirl.com]
Sent: Wednesday, October 29, 2008 6:02 PM
To: CPSC-OS
Subject: CPSIA OF 2008
Attachments: CPSC EX (2).DOC

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11: 58

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

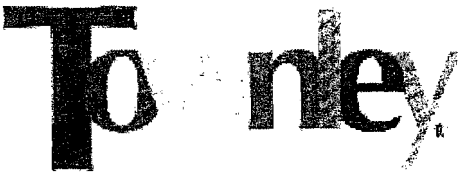
compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Antoinette Festino
Director of Safety

76



389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212 779-0544
Fax: 212-779-4192
www.townicygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Sam Safdich
Account Executive

Stevenson, Todd

From: Sam Safdieh [sam@TownleyGirl.com]
Sent: Thursday, October 30, 2008 8:21 AM
To: CPSC-OS
Subject: New Regulations
Attachments: Townley Inc.pdf

To Whom It May Concern:

Please see my attached letter regarding the new regulations that are about to be put in place.

Sincerely,

Sam Safdieh
212-779-0544 x 136
Sam@TownleyGirl.com

****This email is intended only for the use of the party to which it is addressed and may contain information that is privileged, confidential, or protected by law. If you are not the intended recipient, you are hereby notified that any dissemination, copying or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify the sender immediately by replying to the message and deleting it from your computer.****

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11:59
FREEDOM OF INFORMATION

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Irv Safdieh
Account Executive

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11:58

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Michael Hester
VP Operations

Townley®

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

2008 OCT 30 A 11:58
SECRETARY
FREEDOM OF INFORMATION

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Princess Jackson
Customer Service

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

2008 OCT 30 A 11:58
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Shahid Abdullah
Retail Planning Analyst

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

2008 OCT 30 A 11:59
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Lisa Cesaro
VP of Merchandising

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11: 59

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Jennifer Casiano
Product Development

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11:59

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Marlene Perez
Customer Service

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

The Honorable Nancy Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

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

2008 OCT 30 A 11:58
OFFICE OF THE SECRETARY
RECEIVED

Re: Section 102 Certificate Requirements: Urgent Request for Delayed Implementation

Dear Chairman Nord and Secretary of CPSC:

We are writing to you as concerned manufacturers in the cosmetics field with a long history of making safe children's products. The CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has given us another opportunity to communicate openly with the Commission in connection with an extremely important new initiative. In this regard, based on comments we have received from our extensive client base representing multiple consumer product industries, we are filing this urgent request for a delay in the implementation of the GCC requirements for the reasons outlined below.

The purpose of this letter is to advise you and the Commission that there are serious concerns on the part of industry in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly acknowledge that the enactment of the CPSIA will be a welcome and major step forward in the protection of consumers, especially children, from hazardous products, we would like to enumerate many of these serious concerns about this specific part of the CPSIA. The following points summarize these concerns and form the basis for our request for delayed implementation of the GCC requirement:

- We initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products) and has only recently been advised that all consumer products may be affected. Clarification from Congress and CPSC confirming such a sweeping requirement is necessary. This will even more overburden the mandated testing centers creating an even longer delay for getting our product tested.

- Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

389 Fifth Avenue - Suite 1100
New York, NY 10016
Tel: 212-779-0544
Fax: 212-779-4192
www.townleygirl.com

- While it appears that voluntary safety standards do not require GCC's, it is not at all clear whether certain voluntary standards that may be used by CPSC as policy guidance might require a GCC.

- There is insufficient guidance on specific regulations, bans and standards for certain products that have never required certification, such as wearing apparel that is subject to

16 CFR Part 1610: Standard for the Flammability of Clothing Textiles (e.g., does finished apparel now require testing, or can companies rely on pre-production fabric testing?).

- Trademark owners that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test

results (as importers can), or whether and how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- CPSC guidance is difficult to obtain with only a single means of inquiry via the online tool, and guidance cannot be given in a timely fashion to assist industry entities seeking

compliance. We have attended seminars, conferences, read the website extensively and retained counsel and the answer we usually get is nobody really knows yet. However the deadline is only weeks away and we have to meet it without the time, direction and clarification we need.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC where the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC consider an immediate pronouncement of a delay in its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement. Alternatively, we urge you to make clear that CPSC will recognize good faith efforts made to comply with the law and will focus on any accidental violations of portions the law related to GCC paperwork in its first few months in effect. If you believe that you do not have the existing authority to do this, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Sincerely,

Lashawnder Kirkland
Accountant

PERRIGO®

October 28, 2008

Office of Secretary
Consumer Products Safety Commission
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Re: Section 102 General Conformity Certification Requirements

Dear Sir or Madam:

L. Perrigo Company (Perrigo) appreciates the opportunity to provide comments regarding Section 102 of the Consumer Product Safety Improvement Act (CPSIA).

Perrigo is the nation's leading private label over-the-counter (OTC) drug and dietary supplement manufacturer. It also manufactures and distributes approximately 450 drug and 260 dietary supplement products in a variety of sizes for about 45 private label distributors such as CVS, Wal-Mart, Rite Aid and Target. Many of Perrigo's products are subject to the Poison Prevention Packaging Act (PPPA).

1) More time is needed to provide meaningful comments to questions raised by the Consumer Product Safety Commission (CPSC)

As the nation's largest private label OTC drug and a leading dietary supplement manufacturer, Perrigo has particular interest in responding to the questions regarding multiple certifications and viable electronic solutions. The answers to the questions raised by the CPSC are critical to developing an efficient, effective and transparent program for compliance. However, more time is needed to thoroughly assess the application of the expanded "general conformity certification" requirements to the company's products and provide meaningful comments. Perrigo is therefore requesting an additional 60 days to supply comments.

2) More time is needed to design and implement a compliant program

The short 90-day timeframe from enactment to effective date for implementation of the certification requirements by November 12th, 2008 is unreasonable. Many open questions remain, particularly for a company like Perrigo that manufactures numerous products that have not previously been subject to such certification requirements, and for which the CPSC has not yet had an opportunity to issue specific guidance or regulation. Therefore, Perrigo is requesting a formal stay of enforcement for at least 6 months beyond the effective date to allow time to implement an effective compliance program.

515 Eastern Avenue
Allegan, Michigan 49010
(269) 673-8451

Perrigo thanks the CPSC for the opportunity to provide these comments.

Sincerely,

Heidi Horn

Heidi Horn
Director, Regulatory Affairs
L. Perrigo Company

Stevenson, Todd

From: Heidi Horn [Heidi.Horn@perrigo.com]
Sent: Wednesday, October 29, 2008 6:35 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act - Comments
Attachments: CPSIA Comments.pdf

Dear Sir or Madam:

Thank you for the opportunity to submit comments. Please see attached document. If you have any questions or need further information please feel free to contact me.

Sincerely,

Heidi Horn
Director, Regulatory Affairs
L. Perrigo Company
(269) 673-7612
hhorn@perrigo.com

<<CPSIA Comments.pdf>>

Personal Care Products Council
Committed to Safety, Quality & Innovation

October 28, 2008

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

RE: Consumer Product Safety Improvement Act of 2008, Pub. Law 110-314

To Whom It May Concern:

The Personal Care Products Council (the Council) hereby submits this request to the Consumer Product Safety Commission to stay enforcement of section 102(a)(1) of the Consumer Product Safety Improvement Act of 2008 (CSPIA) that contains a general conformity certification requirement. The Council is the national trade association representing the personal care products industry. Founded in 1894, we represent approximately 600 members involved in the manufacture and distribution of cosmetics, toiletries and fragrances domestically, and in many cases, globally.

We are writing to underscore the concerns set forth in the letter submitted to you by a coalition of industry trade associations of which the Council is a member, regarding the implementation of the CSPIA's requirements. Specifically, the November 12, 2008 deadline for compliance with the general conformity certification is exceedingly short, and there appears to be legitimate confusion over the scope of the general conformity certification and third party testing requirements in section 102(a). Accordingly, we request that the Commission clarify publicly that it will stay enforcement of this provision until such time as the Commission can provide additional guidance on the interpretation of this provision, among others, and our member companies are able to better assess the statute's implications for their respective businesses and products.

Respectfully submitted,

Elizabeth H. Anderson

Elizabeth H. Anderson, Esq.
Executive Vice President – Legal and General Counsel

1101 17th Street, N.W., Suite 300 | Washington, D.C. 20036-4702 | 202.331.1770 | 202.331.1969 (fax) | www.personalcarecouncil.org

Personal Care Products Council
Committed to Safety, Quality & Innovation

FAX

FAX NUMBER: 202/331-1969

Date: Oct 29, 2008

To: Office of Secretary

Company: CPSC

From: Frances Wu

Re: Section 102 Certificate Requirements

Total number of pages (including this one) 2

Fax number called 301 504 0127

Please call 202/331-1770 if there is a problem with this transmission.

Hard copy sent via mail and email.

Thank you.

1101 17th Street, N.W.
Suite 300
Washington, D.C. 20036-4702
202/331-1770
202/331-1969 (fax)

www.personalcarecouncil.org

56,02

SDA The Soap and Detergent Association

VIA ELECTRONIC MAIL
cpsc-os@cpsc.gov

October 29, 2008

The Honorable Nancy Nord
Acting Chair & Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Section 102 Certificate Requirements of P.L. 110-314
Consumer Product Safety Improvement Act

Dear Commissioner Nord:

The following is in response to the CPSC staff request for comment on the above-mentioned section.

The Soap and Detergent Association (SDA) is a one-hundred plus member trade association. SDA members include the formulators of soaps, detergents and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. Throughout our 82 year history, sound technical, risk-based research by SDA and its members has demonstrated the benefits of cleaning products and their ingredients. SDA and its members are dedicated to improving health and the quality of life through sustainable cleaning products and practices. SDA's mission is to support the sustainability of the cleaning product and oleochemical industries through research, education, outreach and science-based advocacy.

As set forth in the posted CPSC comment request, Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC. The certificate must be based on a test of each product or on a reasonable testing program. This requirement is effective November 12, 2008. In addition, Section 102(b) adds section 14(g)(3) that requires that every certificate "shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product."

Cleaning Products and P.L. 110-314 Section 102 Certification Requirements

As legislatively titled, this section addresses mandatory third party testing for certain children's products. SDA urges the Commission to view the section and policy goals in this context. Moreover, as the CPSC develops procedures and implementing regulations, it is important that existing statutory language and requirements be taken into consideration. In some cases, existing product safety requirements already mandate the information required to be available under longstanding provisions. Methods of identifying this information can appear on a product via a

1500 K Street, N.W., Suite 300, Washington, D.C. 20005 • (202) 347-2900 • (202) 347-4110 • www.cleaning101.com

label, certification mark or other marking or certification requirements. Cleaning products are subject to various federal requirements including labeling requirements under the Federal Hazardous Substances Act (FHSA). FHSA sets forth stringent requirements for consumer product labeling that serve as a statement of compliance by the manufacturer to the public and to the Commission. The label in and of itself is a method of product certification and any further certification requirement would be duplicitous and redundant without achieving any further consumer product safety goals.

Certification Requirement – Consideration & Content

In the global economy, with its reliance on real-time communications and electronic information, failure to account for the realities of the marketplace will result in severe process and information bottlenecks. The marketplace requires and accepts a variety of means to accomplish certification requirements via marks, statements, or other devices (e.g. sophisticated electronic information systems). In general, SDA urges the CPSC to accept a flexible scheme that fully recognizes the complexity of logistics which vary among product categories and businesses. As identified above, existing marking or labeling requirements which indicate certification should also be deemed acceptable to meet requirements.

SDA urges the Commission to respect manufacturers' need to protect their confidential business information in this competitive global economy. The location of manufacturing facilities, product component origination or other carefully structured business details could be jeopardized. To that end, SDA urges the consideration and acceptance of, among other options, coded identifiers and other devices to protect confidential business information.

SDA strongly urges the consideration of these comments and requests the Commission exercise its full and complete authority to delay implementation of Section 102 until further guidance can be developed.

Thank you for the opportunity to provide comment on this matter. Should you or your staff require further assistance please contact me at dtroutman@sdahq.org or (202) 662-2508.

Sincerely yours,

Douglas Troutman
Director, Government Affairs

cc: Commissioner Thomas Moore

Stevenson, Todd

From: Douglas Troutman [DTroutman@sdahq.org]
Sent: Tuesday, October 28, 2008 4:26 PM
To: CPSC-OS
Cc: Douglas Troutman
Subject: Section 102 Comments: P.L. 110-314
Attachments: sda sec102 cpsc cmts 102908.pdf

TO: CPSC Office of the Secretary

Please find attached comments from The Soap and Detergent Association on the above mentioned matter.

[cc: SDA Government Affairs Committee & Legal Committee]

Douglas Troutman
SDA Government Affairs
1500 K Street, NW Ste. 300
Washington, DC 20005
(202) 347-2900 (o)
(202) 347-4110 (f)

dtroutman@sdahq.org
www.cleaning101.com

This email and its attachments are intended solely for the use of the named recipient(s) and SDA member companies. It may contain confidential, proprietary or otherwise private information. If you are not the intended recipient, any use, disclosure, dissemination, copying, printing or distribution of this email or its contents is strictly prohibited. If you have received this message in error, please notify the sender immediately and delete it from your computer.

SOPUS Products
P.O. Box 4427
Houston, Texas 77210-4427
Internet http://www.shell.com

October 29, 2008

By e-mail (cpsc-os@cpsc.gov)

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

Re: Comments on Section 102 General Conformity Certification

Dear Secretary:

Introduction

SOPUS Products, a worldwide leader in the marketing and sale of consumer vehicle care and maintenance products, submits these comments in response to the "Request for Comments and Information, Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"), Requirements for certificates for conformity testing and third party testing," issued by the U.S. Consumer Product Safety Commission ("CPSC").[1] The comments are directed to a specific aspect of section 102(a) of the CPSIA (H.R. 4040) which, as interpreted by the CPSC staff, would require all non-children's products subject to labeling and packaging rules under the Federal Hazardous Substances Act ("FHSA") and Poison Prevention Packaging Act ("PPPA") to comply with the general conformity certification ("GCC") requirement of the CPSIA.[2]

SOPUS Products respectfully submits that the CPSC staff should carefully reconsider whether application of the GCC requirements to non-children's products subject to FHSA or PPPA labeling

---

[1] SOPUS Products is the business entity resulting from the acquisition of Pennzoil-Quaker State Co. by Shell Oil Co. Combining the Shell U.S. lubricant product line with the Pennzoil-Quaker State line of motor oils and portfolio of car-care products, SOPUS Products markets and sells a broad range of consumer car-care and maintenance products under numerous product brand names such as Pennzoil, Shellzone, ROTELLA, Rain-X, Black Magic, Coral, and Gumout, among others.

[2] SOPUS Products joins and supports the comments submitted on this issue by the Chemical Specialty Products Association, of which SOPUS is a member.

and/or packaging requirements is consistent with the language, intent, and policy objectives of the CPSIA. At a minimum, the staff should expressly defer any enforcement of GCC requirements with regard to these categories of products beyond the November 12 GCC effective date and until such time as the agency has had the opportunity fully to assess whether GCC requirements should apply to these products and, if so, how the requirements may be applied without imposing undue burdens on the product supply chain.[3]

Background

In its presentation of October 2, 2008, the CPSC staff expressly articulated its position that the GCC requirement in section 102(a) would apply to any product subject to FHSA labeling rules and PPPA special packaging and labeling rules adopted by the Commission. For the reasons discussed below, we respectfully submit that an interpretation of the CPSIA that subjects these labeled and packaged products to additional certification requirements under section 102(a) is overbroad and unnecessary and would sweep within GCC requirements literally millions of products which are not children's products and which have no connection to CPSC enforcement other than labeling and packaging requirements relating primarily to chemical composition and characteristics. To the best of our knowledge, the CPSC staff's statements in the October 2 public meeting represented the first time the staff had issued an explicit written articulation that non-children's products subject to labeling and packaging rules would be encompassed by the GCC requirements. Since these requirements take effect on November 12 and apply to all subject products manufactured on or after that date and imported or distributed in U.S. commerce, the imposition of such certification requirements across the enormous spectrum of chemical products potentially affected poses a severe and we believe unwarranted burden.[4]

---

[3] Reference to the Federal Trade Commission's October 22 decision to suspend enforcement of so-called Red Flags rules is informative. Although the FTC for five months or more had been conducting educational efforts to apprise industry and the public regarding the scope of its rules implementing the Fair and Accurate Credit Transactions Act of 2003, which established time deadlines for the effective date of such FTC rules, the agency announced that it was suspending for six months the November 1, 2008 enforcement date under the rules because, among other things, the agency had decided that continuing "confusion and uncertainty" made the enforcement date inequitable. *See* www.ftc.gov/opa/2008/10redflags.shtm. SOPUS submits that deferral of any enforcement is all the more necessary and appropriate here where there are substantial, unresolved legal issues regarding the intent and scope of the CPSIA GCC requirements and the staff's preliminary interpretation of those requirements.

[4] In its October 2 presentation, the staff stated that the GCC requirements would not apply to "bans defined solely by statute (banned hazardous substance by definition)", but would apply to "FHSA bans and requirements adopted by the Commission" and "FHSA labeling rules adopted by the Commission." General Conformity Certification, Oct. 2, 2008, Staff presentation, p. 6. Considering the breadth of the regulatory requirements imposed by CPSC rules (*see, e.g.*, 16 CFR Part 1500), the distinction drawn by the staff would appear to offer little relief for the countless chemical products subject to such regulations. Moreover, given the complex interrelationship of FHSA statutory bans and bans and rules adopted by the Commission (including where the CPSC by rule has adopted, incorporated, or supplemented FHSA statutory definitions), the purported distinction is needlessly confusing and easily subject to good faith misinterpretation and misapplication.

CPSIA Language and Legislative History

There is little or no legislative history that illuminates Congress's intent in expanding the current section 14 of the Consumer Product Safety Act ("CPSA") to include standards, bans, rules, or regulations under other statutes enforced by the Commission. For example, in the House Report on H.R. 4040, the discussion of section 102 refers entirely to certification of children's products. In pertinent part, the discussion states that the bill "makes *technical* changes to ensure that all rules and standards enforced by the CPSC under any of the acts the agency enforces are covered by the *testing requirement*." H. Rep. 110-501, 110th Cong., 1st Sess. 31, 32 (Dec. 19, 2007)(emphasis added). The reference to "testing" refers back to the third-party testing for certification of children's product compliance. Similarly, the Joint Conference Report discussion of section 102 in H.R. 4040 refers solely to required third-party testing of certain children's products. *See* Joint Explanatory Statement of the Comm. on Conference, July 28, 2008, at 2.

The language in the Act itself is largely unhelpful in ascertaining the intent of section 102(a) with respect to non-children's labeled or packaged products. The statute variously refers to "similar rule, ban, standard, or regulation" (§ 102(a)(1)) or "similar standard, regulation, ban, or rule" (§ 102(f)). In the latter section, the Act refers to only one example - "including a rule declaring a consumer product to be a banned hazardous product or substance." The CPSIA contains no specific reference to including FHSA labeling or PPPA packaging or labeling rules within the contemplation of the CPSIA's certification requirements. Given the onerous implications of extending the certification requirements to this vast range of chemical products, the absence of any such explicit discussion in the Act itself or its legislative history is significant.

Application of the GCC requirements to these categories of products also appears to be inconsistent with the language of the certification requirement itself. Section 102(a) requires that the manufacturer certify, "based on a *test* of each product or upon a reasonable *testing program*," that its product "complies with all rules, bans, standards, or regulations applicable to the product ...." CPSIA, § 102(a)(1); *see also* "CPSIA Summary – Section 102," www.cpsc.gov/about/cpsia/102brief.html ("[c]ertification must be based on a test of the product or a 'reasonable testing program'").[5] In some instances, FHSA labeling is not based on any test or test requirement (e.g., FHSA special labeling for certain chemical content in 16 CFR Part 1500.14). In other instances in which a label is based on the results of testing, the label itself serves to reflect the product's compliance with the testing and labeling requirements. To require a certification in such cases, in addition to the label already placed on the product and/or packaging, would effectively require certification of a certification. Nothing in the CPSIA suggests such a duplicative application of GCC requirements.

In addition to specific content-related label requirements, labels must also comply with the placement, conspicuousness, and prominence requirements of 16 CFR 1500.121. It should also be noted that these types of products often are subject to various safety labeling and packaging requirements of

---

[5] In its October 2 presentation, the staff suggested that GCC requirements would apply even if testing were not required by the CPSC rule. This interpretation is facially inconsistent with the language of section 102(a)(1).

other agencies with respect to their contents, handling, etc. These may include requirements of the Environmental Protection Agency, Occupational Health & Safety Administration, and Department of Transportation. These products also typically have Material Safety Data Sheets available to the supply and distribution chain which are designed to inform recipient companies of the toxicity or other hazards associated with the product and related health and safety information.[6] The presence of all of this safety-related information in the chain of distribution further undercuts any need for a supplemental safety certification and additionally suggests that Congress could not reasonably have intended such a certification requirement to apply so broadly.

Burden of Imposing GCC Requirements

The CPSC also should consider the burden to be imposed both on individual industries and commerce generally by an over-extension of ambiguous certification requirements. Section 102(a) requires that certificates accompany all product shipments, with copies to be furnished to all distributors or retailers. In many cases, with sufficient lead times, careful coordination with U.S. Customs and Border protection, and flexible, commercially reasonable approaches regarding dissemination of certificates to downstream commercial customers, GCC requirements may be satisfied by companies that are striving diligently and in good faith to meet these requirements. The CPSC should recognize, however, the dramatic expansion of the scope of GCC application that will occur if the vast range of labeled and packaged chemical products are brought within GCC requirements.

Other than children's products subject to CPSC bans and standards, relatively few categories of products currently are subject to CPSC-enforced standards, bans, or certification requirements. Adult-use products subject to certifications of compliance under current law consist of a fairly small group of product categories. *See, e.g.,* 16 CFR Part 1200. In these instances, certification, labeling or related requirements are the result of extensive rulemaking proceedings to determine the appropriateness of such requirements with respect to a specific category of product. *See, e.g.,* 16 CFR Part 1633 (mattress flammability requirements, including compliance-certification labels).

Extending compliance-certification requirements to an entire class of diverse, adult-use chemical products subject to CPSC-regulated labeling or packaging, however, would bring millions of products under new certification requirements not on the basis or with the benefit of a rulemaking, but rather based on unexplained and unclear statutory language with no underlying expression of legislative intent or legislatively perceived need to cast such a wide, catch-all certification net.

The effect of such a dramatic expansion of GCC requirements is readily evident. A single petroleum company, for example, may have many automotive-care product SKUs subject to CPSC-enforced labeling and packaging requirements. SOPUS, for example, has identified approximately thirty broad product categories (e.g., coolants/antifreezes, lubricants, car-care aerosols) that would be so affected. Within these categories, an estimated 500 SKUs would be subject to GCC requirements under the staff's expansive reading of section 102(a). These SKUs would trigger an estimated 500,000 to 750,000 certificates for shipments of hundreds of millions of products to thousands of retail outlets.

---

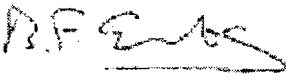
[6] *See, e.g.,*www.pennzoil-quakerstate.com/techdata.

Major automotive suppliers that sell similar product lines would be similarly impacted. Multiply these examples by the thousands of companies – manufacturers, importers, distributors, and retailers - that sell these products and the enormous array of household chemical products subject to CPSC-regulated labeling and packaging requirements – *all of whom would be swept under the GCC umbrella* - and the breadth and severity of the overall impact of applying GCC requirements to these companies and products becomes strikingly apparent. It seems doubtful that Congress, in a statute intended primarily to require testing and certification of children's products, ever contemplated, much less intended, such a result.

Conclusion

Given the imminence of the November 12 effective date for GCC, the CPSC staff should promptly and fully consider all comments received regarding application of GCC requirements to the vast range of non-children's products subject to precautionary labeling or packaging requirements enforced by the Commission. The Office of the General Counsel should issue a detailed legal opinion regarding application of GCC requirements to such products, analyzing in particular the legal basis for any such claimed application. The agency should also allow further comment by affected parties following issuance of its enforcement position. In the interim, the agency should expressly defer any enforcement so that this important issue can be thoroughly evaluated and brought to a fair and reasonable conclusion consistent with the true intent of the CPSIA.

Respectfully submitted,



Frans Everts
Vice President - Car Care

Michael C. Mcmurray
Vice President - Finance and Treasurer

Rodgers, Amy N SHLOIL-LEGAL

From: Rodgers, Amy N SHLOIL-LEGAL
Sent: Wednesday, October 29, 2008 3:59 PM
To: 'cpsc-os@cpsc.gov'
Subject: Comments on Section 102

Submitted on behalf of SOPUS Products

Comments on Section 102.zip (C...

2008 OCT 30 P 3:33
SECRETARY
FREEDOM OF INFORMATION

Amy Nicolle Rodgers
Senior Attorney
Shell Oil Company
One Shell Plaza, Room 1170
Houston, Texas 77002
United States of America
Telephone: +1 (713) 241-7210
Facsimile: +1 (713) 241-1444
E-mail: amy.rodgers@shell.com <mailto:amy.rodgers@shell.com>
Internet: www.shellus.com <http://www.shellus.com>

This message and all attachments may be confidential and protected by the attorney-client and other privileges. Any retention, review, use, dissemination, forwarding, printing, copying, disclosure or distribution by persons other than the intended recipients is prohibited and may be unlawful. If you have received this communication in error, please contact the sender and delete this message and any copy of it (in any form) without disclosing it. Unless expressly stated in this email, nothing in this message should be construed as a digital or electronic signature. Thank you for your cooperation.

The Clorox Company

October 29, 2008

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

Re: Section 102 Certificate Requirements

To Whom It May Concern:

The purpose of this letter is to express our serious concerns with the Commission's recent interpretation of the Consumer Product Safety Improvement Act to require certifications of conformity for all consumer products subject to CPSC regulations or similar requirements under any of the other Acts administered by the CPSC.

The Clorox Company, with world headquarters in Oakland, California is a manufacturer and marketer of many well-known consumer products, including our namesake bleach and disinfectant cleaning products, Green Works® natural cleaning products, Armor All® and STP® auto-care products, Fresh Step® and Scoop Away® cat litter, Kingsford® charcoal and barbecue products, Hidden Valley® and K C Masterpiece® dressings and sauces, Brita® water-filtration systems, Glad® bags, wraps and containers, and Burt's Bees® natural personal care products. The Clorox Company is strongly committed to maintaining the safety of our products and minimizing the impacts of our products and manufacturing processes on the environment, as well as understanding the public health benefits that our products provide. As such, Clorox is fully aware of and complies with the spirit and letter of all laws.

We support and commend the important mission of the Consumer Product Safety Commission. However, we are not in agreement with the above interpretation and believe that Congress intended the requirement to only apply to children's products and did not intend to impose such a burdensome and onerous financial requirement on the entire consumer products industry. With respect to Clorox's products, we believe the Commission already has appropriate processes and systems in place to properly protect the public's health and safety. In fact, Clorox's products are not intended for use by children and have appropriate cautionary text on our labels.

Based on the information recently provided by the Commission, Clorox anticipates a significant financial investment in order to generate the certificates required by this interpretation. As noted above, our products are fully tested and already meet existing regulatory requirements. To the extent that certificates must "accompany" each shipment, we are very concerned about the cost and also the environmental impact of doing so.

We would, therefore, urge the Commission to focus on children's products and to issue a memorandum of understanding to delay implementation until further clarity and direction on the new safety certification requirements can be provided. We appreciate the opportunity to comment on this important public policy issue. Please do not hesitate to contact Robin Geritz, Manager, Government Affairs, (510) 271-7081, if we can provide additional information.

Sincerely,

Victoria Jones

Victoria Jones
Vice President, Government Affairs and Community Relations

c: Nancy A. Nord, U.S. Consumer Product Safety Commission
Cheryl A. Falvey, U.S. Consumer Product Safety Commission
Gib Mullan, U.S. Consumer Product Safety Commission
The Honorable John D. Dingell
The Honorable Joe Barton
The Honorable Daniel K. Inouye
The Honorable Ted Stevens
The Honorable Mark Pryor
The Honorable John Sununu

P.O. Box 24305
Oakland, California
94623-1305

Stevenson, Todd

From: robin.gentz@clorox.com
Sent: Wednesday, October 29, 2008 4:40 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: Sec 102 Cert Requires Cmts.pdf

Please see attached comments.

Robin Gentz
Manager, Government Affairs
The Clorox Company
P.O. Box 24305
Oakland, CA 94623
510-271-7081 tel
510-271-6583 fax
robin.gentz@clorox.com

This e-mail (including any attachments) may contain information confidential to The Clorox Company and is intended only for the use of the intended recipient(s). If the reader of this message is not the intended recipient(s), you are notified that you have received this message in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error, please delete this message and notify the sender immediately.

Legacy CLASSIC FURNITURE

Response to CPSIA Section 102
Request for Comments and Information

1. How can certificates be made available to CPSC?

   Electronic certificates can be included with standard documents for imports and as part of the standard bill of lading with domestic orders.
   -Retailers are sent a copy of our invoice/packing list/bill of lading.
   -We internally keep a database of all import documentation and could make it available as needed to CPSC.

   Concern: Import shipments can span multiple containers. This means 500 items+ could be included on a shipment and are pulled from inventory of different ages. And domestic shipments come from various manufacturing locations. Do we list manufacturing dates/locations for each item (bed, night stand, dresser, etc) on the shipment certificate? The manufacturer dates and location are included on each item as part of QC procedures. Can we simply indicate the manf dates/locations are noted on the individual items?

   OR- if the invasive provision about including an employee's email and phone can be relaxed, a certificate label included on the carton or product might be a better option. But a label would allow the certificate to specify the manufacturing date, location, and the other required components. Perhaps the info of the testing holder can be coded but we cannot include specific contact info that would be visible to all consumers on every piece.

2. How can certificates accompany the shipments?
   We recommend electronic certificates be tied to the bill of lading number.
   a. If an import shipment spans multiple containers (common), the bill of lading number is used to tie the containers together.
   b. A bill of lading number could also be used for domestic shipments.

   We recommend the certificates be treated like other standard custom documents for import shipments.
   a. Our broker currently coordinates import documentation and shares it with US
      customs for clearance.

2575 Penny Road - High Point, NC 27265
Phone: 336-449-4600 Fax: 336-899-2150

b. We additionally keep an electronic library of past documents on hand in our office and could easily add the certificate.
c. We do not currently keep a similar database for domestic shipments but could start one with certificates.
d. We could pull them for audit for CPSC as needed but they are not web based so total visibility to CPSC is not possible.

3. How should the certificates be furnished to the retailers?
   We recommend including the electronic document with the bill of ladings which get distributed to the retailers with the shipments.

4. Paper or electronic?
   Paper is difficult to manage and expensive to transfer globally. Given the recent movements to move towards "greener" paperless business (especially in a global environment), electronic documents are preferred and must be considered not only a viable option but the preferred option.

5. Multiple certificates for the same product
   We are vertically integrated and intend to pass the same single document from manufacturer to importer to retailer.

   Concern: we object to the requirement that private labelers must disclose their manufacturing locations. Free trade is built on innovation and competitiveness. It currently can take months to years to learn where a competitor is sourcing. By forcing disclosure, these closely guarded secrets will be available to the trade. Additionally, the private label brands (example: at Costco or Sams) that have been created expressly to shield the fact that common manufacturing facilities are used will be useless. There must be a way to maintain compliance yet withhold this information.

2575 Penny Road - High Point, NC 27265
Phone: 336-449-4600 Fax: 336-899-2150

Stevenson, Todd

From: Ann Clepper [annc@legacyclassic.com]
Sent: Wednesday, October 29, 2008 4:45 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: Section 102 Cert Requirements.doc

To whom it may concern,

Thank you for this opportunity to provide feedback. Our responses are attached from our experience as a leading furniture importer with domestic US warehouses also.

Regards,

Ann Clepper

Legacy Classic Furniture | Marketing Manager

336.449.4600 Ext. 205 | annc@legacyclassic.com

www.legacyclassickids.com | www.legacyclassic.com

Stevenson, Todd

From: AAljack@aol.com
Sent: Wednesday, October 29, 2008 4:47 PM
To: CPSC-OS
Subject: section 102

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Stone Set Technologies LLC respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Stone Set Technologies LLC respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Allen Jeknavorian

Allen Jeknavorian
Executive Director of Operations
Stone Set Technologies LLC.
email: aaljack@aol.com
www.unilock.us

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

THE BALLOON COUNCIL

EXECUTIVE COMMITTEE:
Dan Flynn
Pioneer Balloon Company
Chairman
Jim Plutt
Anagram International

PUBLIC AFFAIRS DIRECTOR
Dale J. Florio
Princeton House
160 West State Street
Trenton, NJ 08608
(800) 233-8887
Fax: (609) 989-7491

Affirming America's Ongoing Love Affair With Balloons

Wednesday, October 29, 2008

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

Re: Section 102 Certificate Requirements: Request for Comments and Information

The Balloon Council is pleased to submit to the Consumer Product Safety Commission (CPSC) the following comments in response to the request for comments and information related to Section 102 of the Consumer Product Safety Improvements Act (CSPIA).

About The Balloon Council

The Balloon Council (TBC) is a trade and advocacy group representing the interests of manufacturers, distributors, and retailers of balloons, including latex balloons. Balloons are part of a $1.1 billion industry in the United States in terms of retail sales. Overall, employment related to balloon commerce is estimated to be between 40,000-50,000 people in the United States.

Comments on Section 102 Certificate Requirements

TBC wishes to express several concerns about the implementation of Section 102 and its application to balloon products. Compliance related to Section 102 could result in both one-time and ongoing costs related to the certificate process and procedures that may potentially have a devastating effect on the low-margin balloon industry.

First, TBC is concerned that application of the Section 102 certificate requirements to balloon products creates a duplicative process which is costly but does little to enhance consumer safety. While latex balloons are exempt from the small parts regulations because they cannot be manufactured in a way that would prevent them from breaking into small parts when subjected to use and abuse testing, latex balloons are required to carry cautionary labels related to choking and suffocation for children under 8. It is our understanding that this cautionary statement labeling requirement would trigger certifications to accompany any balloon product when it is shipped from a manufacturer to a distributor or from a distributor to a retailer. Because the certification itself only re-affirms that the product complies with the requirement that its packaging bears a cautionary statement – something that is self-evident and already subject to enforcement and sanction by CPSC for noncompliance – TBC believes any benefit that may accrue from this certification is limited at best.

In contrast to the limited potential benefit to be realized from inclusion of certificates for balloon products, there are several ways in which compliance with the Section 202 requirements will force balloon companies to incur tremendous costs. For example, most balloon companies produce thousands of variations of balloon products which bear unique SKU numbers. In an average order, a manufacturer might send 40-50 different balloon products to a distributor, and orders containing over 100 different SKU's of balloons products are not unusual. If a manufacturer is required to produce a different certificate for each SKU of balloons on the invoice associated with each shipment, they will incur several kinds of costs, including:

- One-time costs associated with information technology and changing inventory and logistics systems to ensure that a certificate can be associated with each product in the shipment;
- One-time costs associated with creation of websites or other means of making certificates available for inspection, if permitted by the CPSC;
- Recurring costs related to the employees that will need to be added to the payroll to track and correlate batches of products and production dates with each shipment when it is processed and sent to a distributor or retailer;
- Recurring costs associated with enclosing appropriate certificates as part of invoices that will have to be greatly expanded to cover the new information that must be furnished to distributors or retailers, which increase associated paperwork by a factor of 2 or 3 times over current efforts;

Because this requirement could significantly increase the amount of precision reporting and tracking on thousands of products by each manufacturer and would so dramatically alter the way the product is sold today, it is difficult to quickly quantify the costs of implementation. Together, the costs of compliance would easily be as great as tens of thousands of dollars and more likely hundreds of thousands of dollars per manufacturer or distributor. Once again, in a high-volume, low-margin industry, the additional burden that compliance costs may place on manufacturers and distributors could sincerely be crippling in nature. To reduce these compliance costs and simplify these efforts, TBC strongly urges the CPSC to allow a blanket certificate for each shipment that affirms that all of the products in that shipment comply with the cautionary labeling requirement.

TBC also believes that CPSC must clarify what the date of manufacture refers to in order to allow for full compliance with the Section 102 regulations. For example, one color of latex balloon could be "dipped" on one date, then shipped in bulk to a plant for additional printing, before being shipped to a warehouse where it could be inventoried along with balloons of the same color or mixed with balloons of other colors as part of an assortment that is then packaged as one product. CPSC must clarify whether the date of production refers to the date on which the individual or batch of balloons was created from the raw latex or the date on which it became part of the assortment or final package in which it will be

shipped to distributors in order to give manufacturers the information necessary to ensure full compliance. Even with this clarification, of course, the complexity of conforming to the regulations is considerable and should be taken into account as the CPSC issues final regulations.

Thank you for the opportunity to comment on this important issue and we look forward to working closely with the CPSC to ensure the highest level of compliance with the lowest level possible of unnecessary costs and burdens that do not enhance consumer safety.

Respectfully submitted,

Daniel A. Flynn
Chairman

The Balloon Council
5000 E. 29th Street North
Wichita, Kansas 67220
316-688-8630
danf@qualatex.com

Stevenson, Todd

From: Dan Flynn [danf@qualatex.com]
Sent: Wednesday, October 29, 2008 4:52 PM
To: CPSC-OS
Cc: Rob Zucker
Subject: Section 102 Certificate Requirements
Attachments: BalloonCouncilCPSCSec102PrelimComments.pdf; ATT00001.htm

Re: Section 102 Certificate Requirements: Request for Comments and Information

I am respectfully submitting comments for The Balloon Council, an association representing the balloon industry, in the attached documents.

Daniel A. Flynn
Chairman
The Balloon Council
316.688.8630

63

Greenberg Traurig

Gretchen N. Miller
Tel. 312.456.6583
Fax 312.456.8435
MillerG@gtlaw.com

October 29, 2008

VIA EMAIL: cpsc-os@cpsc.gov

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

Re: Section 102 Certificate Requirements

To Whom It May Concern:

On behalf of several clients, I write in response to the Commission's Request for Comments and Information regarding Requirements for Certificates for Conformity Testing and Third Party Testing pursuant to Section 102 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). Among others, the Commission has requested the following comments as they relate to Section 102 certification requirements:

- Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA; and

- Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

Greenberg Traurig's clients include private labelers and importers of various types of children's and adult consumer products, which include toys, apparel, footwear and musical instruments. Each of our clients have been working hard to ensure compliance with this new requirement, but have expressed several concerns regarding the feasibility of various aspects of the requirements. Although in different industries, the recommendations and concerns expressed by each of these clients regarding the above issues are universal. We, therefore, are providing you their comments in a consolidated response as outlined below.

ALBANY
AMSTERDAM
ATLANTA
BOCA RATON
BOSTON
BRUSSELS*
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN*
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SILICON VALLEY
TALLAHASSEE
TOKYO*
TYSONS CORNER
WASHINGTON, D.C.
WEST PALM BEACH
ZURICH
*Strategic Alliance
Tokyo Office: Strategic Alliance

A. Specific Recommendations For How the Certificates, Electronic or Paper, Can "Accompany" the Shipment of Products

Section 102 contains three requirements with respect to the availability of conformity certificates: 1) that the certificate accompany the product or shipment of products; 2) that the certificate be furnished to each distributor and retailer of the product; and 3) that manufacturer or private labeler issuing the certificate furnish a copy of the certificate to the Commission upon request.

During its October 2, 2008, Conference regarding Testing and Certification, the Commission's staff expressed opinions suggesting that the word "accompany" in this section requires that a paper copy of the certificate must physically accompany each shipment of products, and therefore must be physically affixed to or inserted into each shipping container that contains consumer products. On October 28, 2008, the Commission published its FAQ, indicating that an electronic certificate would satisfy these requirements, so long as the URL or other unique identifier that provides access to the general conformity certificate is "available" with the shipment.

Although we applaud the Commission for considering more flexible options with respect to the manner in which a certificate may accompany a shipment, we continue to have concerns regarding the feasibility for many companies, including small businesses, to develop a system that requires a document or label with a URL or identifying marker to be physically attached to the shipping cartons. Such a requirement would result in a major overhaul of the current shipping and import practices of most companies in the United States. It would be a departure from the current policies of U.S. Customs and Border Protection ("Customs") and other federal agencies that require documentation for incoming shipments, and the common understanding as to how documents "accompany" their shipments in customs practices today.

Currently, pursuant to 19 U.S.C. § 1509(a)(1)(A), all necessary documentation regarding import shipments are transmitted (usually electronically) to the importer, customs broker or freight forwarder, who possesses all necessary documentation for each shipment at the time they file the shipment for entry into Customs. This "(a)(1)(A)" documentation includes records required by various federal agencies, including the Animal Plant Health Inspection Services, U.S. Coast Guard, Food and Drug Administration, and Federal Wildlife Services. Once the goods arrive at the port, the importer, customs broker or freight forwarder is responsible for marrying the documentation with the proper shipment, and presenting the documentation to Customs at the time of entry, if requested.

At any point in this process, once the goods have arrived at the entry port, the documents are readily available for viewing by Customs at its request. Under this system, each shipment's (a)(1)(A) documentation is considered by the industry and Customs to accompany the shipment.

Because the Consumer Product Safety Improvement Act (CPSIA) provides no definition of the term "accompany," it is entirely reasonable for the Commission to interpret the term consistently with current Customs practices, rather than in contradiction to current practices. As the Commission has verified, the CPSIA does not require the certificate for the entry of goods. Rather, the certificate must be accessible to the Commission or CPSC should they wish to inspect it. If the importer, customs broker or freight forwarder possesses all of the necessary documentation by the time the goods arrive at the entry port and can present those documents to Customs and the CPSC immediately upon request, the intent of the statute is served.

We, therefore, request that the Commission consider adopting the following policy:

> As long as a conformity certificate has been received, and is in the possession, of the importer of record or the importer's customs broker or freight forwarder at the time that entry of goods is made, the importer will be deemed to be in compliance with section 14(g)(3) of the CPSA, requiring that the conformity certificate "accompany" the applicable product. To satisfy this requirement, the importer of record, either individually or through a customs broker, shall be required to furnish to the Commission or Customs the required conformity certificate(s) for a particular shipment within two hours (or such other time as the Commission determines reasonable) of receipt of a request of the certificate from the Commission or Customs.

B. Specific Comments or Concerns Regarding Multiple Certifications by a Foreign Manufacturer, Importer and/or Private Labeler for the Same Product

Under the Commission's current interpretation of the Act, the foreign manufacturer, importer and private labeler (if any) must independently issue certifications for each product. Many clients have expressed multiple concerns regarding multiple certifications for a single product, particularly as it relates to imported products:

1. It is unclear at what point in the supply chain each party is required to issue its certification.

For foreign products in particular, it is unclear whose certifications must be included when a product reaches the entry port. If the CPSC requires that a product have certifications from the importer or private labeler at the time it reaches the entry port, it will be requiring parties to certify products that they have not yet received.

Many of our clients are private labelers who import the majority of their products to the United States themselves through the use of brokers and agents. However, these private labelers also purchase some of their products from vendors on a Land and Duty Paid basis (LDP). The LDP transactions involve a separate company that is responsible for contracting for the manufacture of the goods and importing them into the United States.

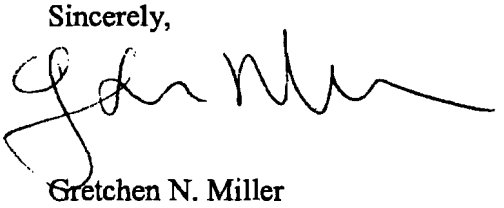
Once the products have cleared customs, they are then sold to the private labeler. As a private labeler, the CPSC requires the company to issue an independent certification of the imported products. If the CPSC were to require that the products be certified by the private labeler before clearing through Customs, however, the private labeler would be forced to certify products that it does not yet own.

In light of these concerns, we request that, if the Commission continues to require multiple certifications, the Commission consider clarifying its certification requirement to make clear that parties (particularly importers or private labelers) are not required to certify their products until they own or come into possession of such products.

2. Multiple certifications will result in duplicative, burdensome paperwork.

Even though each product will be certified by multiple parties, the certifications from each party will rely upon the same information source – test results obtained by the manufacturer of the product. The creation of multiple certifications does not generate any additional information regarding the compliance of the product. Rather, each party will ultimately rely upon the information provided by the entity that is testing the products. Because the requirement of multiple certifications will not result in any new or additional substantive information regarding the compliance of the product, we believe that the requirement creates an unnecessary burden on the industry. Pursuant to the Federal Paperwork Reduction Act, 44 U.S.C. §§ 3501, *et seq.*, federal agencies should endeavor to minimize the burden of collection of information on the public. The requirement for multiple certifications does not accomplish this goal, and we request that the Commission consider limiting the certification process to one party.

Sincerely,



Gretchen N. Miller

GNM
#57551310v1

Stevenson, Todd

From: MITCHELLR@gtlaw.com
Sent: Wednesday, October 29, 2008 4:52 PM
To: CPSC-OS
Cc: MillerG@gtlaw.com
Subject: Letter to the Office of the Secretary-CPSC: Re: Requirements for Certificates for Conformity Testing and Third Party Testing Pursuant to Section 102 of the CPSC Improvement Act of 2008
Attachments: Document.pdf

Sending the attached on behalf of Gretchen N. Miller. Thank you.

Rita G. Mitchell
Assistant to Francis A. Citera
Assistant to Gretchen N. Miller
Assistant to Bevin M. Brennan
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
(312) 456-8423 Telephone
(312) 456-8435 Facsimile
mitchellri@gtlaw.com

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to mailto:postmaster@gtlaw.com.

64

Stevenson, Todd

From: Paul Nordt III [paul.nordtIII@jcnordt.com]
Sent: Wednesday, October 29, 2008 4:52 PM
To: CPSC-OS
Subject: Comment - CPSC Section 102

Office of the Secretary - CONSUMER PRODUCT SAFETY COMMISSION Room 502 4330 East-West Highway Bethesda, MD 20814

Dear Commissioners:

Please include these comments among the responses regarding Section 102 of the Consumer Product Safety Improvement Act, regarding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA ro require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

John C. Nordt Co. Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1) Precious metal jewelry products manufactured in the United States are inherently free of contamination from LEAD. LEAD, in any measurable amount, embrittles the material properties of precious metal to the
extent that they cannot be fabricated into jewelry. Precious metal
jewelry should properly be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2) John C. Nordt Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your consideration of these comments.

Sincerely,

Paul W. Nordt III
Chairman & CEO
John C. Nordt Co. Inc.
1420 Coulter Drive
Roanoke, Virginia 24012

65

October 29, 2008

Office of the Secretary
Consumer Product Safety Commission, Room 502
4330 East West Highway
Bethesda, Maryland 20

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing. Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC. JK MFG, respectfully submits the following comments and requests the following guidance from the Commission: 1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust), such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements JK MFG, respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements. Thank you for your kind attention to our comments. Precious metals used in jewelry are lead-free and serve no purpose in the manufacture of jewelry.

Respectfully yours,

Neil Karman
Sales Director

Stevenson, Todd

From: NCAK@aol.com
Sent: Wednesday, October 29, 2008 4:55 PM
To: CPSC-OS
Subject: CPSC
Attachments: cp-sia letter.doc

Dear Sir or Madam,

Please read the attached letter. Lead has no part in precious metal jewelry and should not be part of the CPSIA Section102(a)

Neil Karman
Sales Director
J K MFG
954-722-8573 tel
954-597-9438 fax
954-234-7745 cell

CONFIDENTIALITY NOTICE: This e-mail message(including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure dissemination, copying, forwarding or distribution is prohibited. If you are not the intended recipient, please contact the sender immediately by reply e-mail and destroy all copies of the original message.

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

Stevenson, Todd

From: Precision Polishing [precpol@yahoo.com]
Sent: Wednesday, October 29, 2008 4:56 PM
To: CPSC-OS
Subject: Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.
Precision Polishing & Ornamentals, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Precision Polishing & Ornamentals, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
Edward A Audet
President
Precision Polishing & Ornamentals, Inc.

67

Stevenson, Todd

From: Dawn Britland [Dawn.Britland@mjsa.org]
Sent: Wednesday, October 29, 2008 4:56 PM
To: CPSC-OS
Subject: sent on behalf of Curtis A Ley of BA Ballou

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act regarding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

B.A. Ballou respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. B.A. Ballou respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Signature

Curtis A Ley
B.A. Ballou

Dawn Britland
Assistant Controller/IT Coordinator
MJSA
45 Royal Little Drive
Providence, RI 02904
Direct Line: 1-401-427-1281
Toll Free: 1-800-444-6572, ext. 3027
Fax: 1-401-274-0265
E-mail: dawn.britland@mjsa.org
Web site: www.mjsa.org

Save the Date!

March 8-10, 2009

MJSA Expo New York

Jacob K. Javits Convention Center, New York City
For more information or to register, visit www.mjsa.org.

68

Stevenson, Todd

From: KRISTER HÅRD AF SEGERSTAD [KRISTER.HARDAFSEGERSTAD@MEMO.IKEA.COM]
Sent: Wednesday, October 29, 2008 5:49 PM
To: CPSC-OS
Cc: NEIL.MORGAN@MEMO.IKEA.COM; HANNA.GARLIN@MEMO.IKEA.COM; KARIN.WINNERHOLT@MEMO.IKEA.COM; MARYLOU.FRANCIS@MEMO.IKEA.COM; MALIN.NASMAN@MEMO.IKEA.COM
Subject: IKEA Comments to CPSIA Sec.102 Gen. Conf. Certificates
Attachments: Certification and General Statement of Conformance Comments (0843).doc

--- Received from IKEA2.KRISTER 6108340180X5314 08-10-29 16.49 --

Gentlemen,

Please see below and in attachment, comments from IKEA North America, LLC to Section 102 of the CPSIA.

Comments to Certification and General Declaration of Conformity.

Number of Certification Documents

Given the fact the IKEA as a Private Labeler exercises full responsibility over its products, being the designer, developer, manufacturer, importer, wholesaler and retailer, IKEA proposes/requests that only one (1) Certificate be issued and accompany the shipment.

Identification of the foreign manufacturer, importer and private labeler certifying compliance of the product
---
Given the fact the IKEA as a Private Labeler exercises full responsibility over its products, being the designer, developer, manufacturer, importer, wholesaler and retailer, IKEA proposes that all certificates will identify IKEA of Sweden as the Manufacturer, IKEA Wholesale, Inc. as the Importer and IKEA of Sweden as the Private Labeler.

Contact information for the individual maintaining records of test results
---
All certificates will identify IKEA North America Services, LLC (IKEA US head office) as the entity maintaining copies (electronically) of all relevant documentation.

Date and place where this product was manufactured.

IKEA proposes that the certificate identifies week and year of manufacture (YYWW) the IKEA unique 5-digit supplier code and the ISO country code abbreviation (e.g. 0847 18365 CN). Complete manufacturer information can always be accessed by contacting the IKEA US head office, IKEA North America Services, LLC.

Short Term Access to Certificates for Customs Clearance

In the short term, IKEA cannot link a specific certificate to the shipment.information required to clear a container through Customs. IKEA is working on finding an electronic solution for this. A particular container/shipment may contain one or more articles from one

or more manufacturer and one or more dates of production. Each article/manufacturer/date combination will have a unique certificate on file. The certificate will identify the product by a unique SKU code, supplier identification number and date stamp, all of which information appears on each product. Upon request from CPSC/Customs, if furnished with these details, IKEA can and will provide on demand, electronic certificate/s specific to that shipment, Because the manufacturing date is not directly accessible through the clearance documentation and not required for general Customs clearance, this will necessitate a physical check of the contents of the container for product "date stamps" to identify each document in question.

Krister Hård af Segerstad

Manager, Product Safety & Compliance
IKEA NA Services, LLC
420 Alan Wood Road
Conshohocken, PA 19428

Phone: +1 (610) 834-0180 x/5314
Fax: +1 (610) 834-0872
e-mail: krister@memo.IKEA.com

Confidentiality Statement:
This message contains confidential information. This communication may contain information that is proprietary, privileged or confidential, or otherwise legally exempt from disclosure. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information.

If you have received this message in error, please advise me, Krister Hård af Segerstad immediately at 610-834-0180 or return it promptly by mail.

---- 08-10-29 16.49 ---- Sent to ----------

-> cpsc-os@cpsc.gov
CC:

-> IKEA1.NEIL	NEIL MORGAN 24/46 1688	IDC L&S
-> IKEA1.HANX	HANNA GÅRLIN	IOS BA40
-> IKEA1.KARQ	KARIN WINNERHOLT	IOS BA40
-> IKEA2.MLOU	MARY LOU FRANCIS	DS-COMPL
-> IKEA2.MNNN	MALIN NÄSMAN	L&S NA

Certification and General Declaration of Conformity.

Number of Certification Documents

Given the fact the IKEA as a Private Labeler exercises full responsibility over its products, being the designer, developer, manufacturer, importer, wholesaler and retailer, IKEA proposes/requests that only one (1) Certificate be issued and accompany the shipment.

Identification of the foreign manufacturer, importer and private labeler certifying compliance of the product

Given the fact the IKEA as a Private Labeler exercises full responsibility over its products, being the designer, developer, manufacturer, importer, wholesaler and retailer, IKEA proposes that all certificates will identify IKEA of Sweden as the Manufacturer, IKEA Wholesale, Inc. as the Importer and IKEA of Sweden as the Private Labeler.

Contact information for the individual maintaining records of test results

All certificates will identify IKEA North America Services, LLC (IKEA US head office) as the entity maintaining copies (electronically) of all relevant documentation.

Date and place where this product was manufactured.

IKEA proposes that the certificate identifies week and year of manufacture (YYWW) the IKEA unique 5-digit supplier code and the ISO country code abbreviation (e.g. 0847 18365 CN). Complete manufacturer information can always be accessed by contacting the IKEA US head office, IKEA North America Services, LLC.

Short Term Access to Certificates for Customs Clearance

In the short term, IKEA cannot link a specific certificate to the shipment.information required to clear a container through Customs. IKEA is working on finding an electronic solution for this. A particular container/shipment may contain one or more articles from one or more manufacturer and one or more dates of production. Each article/manufacturer/date combination will have a unique certificate on file. The certificate will identify the product by a unique SKU code, supplier identification number and date stamp, all of which information appears on each product. Upon request from CPSC/Customs, if furnished with these details, IKEA can and will provide on demand, electronic certificate/s specific to that shipment, Because the manufacturing date is not directly accessible through the clearance documentation and not required for general Customs clearance, this will necessitate a physical check of the contents of the container for product "date stamps" to identify each document in question.

Stevenson, Todd

From: KRISTER HÅRD AF SEGERSTAD [KRISTER.HARDAFSEGERSTAD@MEMO.IKEA.COM]
Sent: Thursday, October 30, 2008 9:02 AM
To: CPSC-OS
Subject: RE: IKEA Comments to CPSIA Sec.102 Gen. Conf. Certificates

--- Received from IKEA2.KRISTER 6108340180X5314 08-10-30 08.02 ----------
---

Good morning Todd,

Thanks for checking back.

There is nothing in our comments that IKEA considers proprietary or confidential.

Best regards,

Krister

Krister Hård af Segerstad

Manager, Product Safety & Compliance
IKEA NA Services, LLC
420 Alan Wood Road
Conshohocken, PA 19428

Phone: +1 (610) 834-0180 x/5314
Fax: +1 (610) 834-0872
e-mail: krister@memo.IKEA.com

Confidentiality Statement:
This message contains confidential information. This communication may contain information that is proprietary, privileged or confidential, or otherwise legally exempt from disclosure. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information.

If you have received this message in error, please advise me, Krister Hård af Segerstad immediately at 610-834-0180 or return it promptly by mail.

****
****
****
*****

From: CPSC-OS@cpsc.gov
To: KRISTER.HARDAFSEGERSTAD@MEMO.IKEA.COM
Date: Thu, 30 Oct 2008 08:56:16 -0400
Subject: RE: IKEA Comments to CPSIA Sec.102 Gen. Conf. Certificates

Is your comment meant to be confidential? We intended to make public all comments.

Todd Stevenson

1201 Maryland Avenue SW, Suite 900, Washington, DC 20024
202-962-9200, www.bio.org

October 29, 2008

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

Re: Section 102 Certificate Requirements

Dear Sir/Madam:

The Biotechnology Industry Organization (BIO) thanks the Consumer Product Safety Commission (CPSC) for the opportunity to submit comments on implementation of the requirements for certificates for conformity testing and third party testing under Section 102 of the *Consumer Product Safety Improvement Act of 2008* (CPSIA, P.L 110-314). BIO shares CPSC's commitment to ensuring that consumer products are of the highest quality and purity. However, unlike most consumer products intended for children, such as toys, jewelry, or cribs, biopharmaceuticals are subject to stringent Food and Drug Administration (FDA) regulations governing manufacturing, quality testing, packaging, and import and are dispensed by licensed healthcare professionals. In order to reduce duplication with existing FDA regulations and minimize any unnecessary reporting burden, we ask CPSC to exempt pharmaceutical products from the Section 102 general conformity certification requirement.

BIO represents more than 1,200 biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products, thereby expanding the boundaries of science to benefit humanity by providing better healthcare, enhanced agriculture, and a cleaner and safer environment.

BIO and its member companies have worked closely with the FDA to ensure that the United States' drug supply is safe, secure, and reliable, and that Americans can be confident that when they use an FDA-approved prescription drug or biologic, the

medicine will be safe and effective and work as intended. FDA's regulatory standards are among the most rigorous in the world and BIO's members will continue to comply with the requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) that ensure the safety of prescription drugs. For example, the FFDCA requires that all new prescription drugs be approved by FDA as safe and effective for their intended use prior to marketing and distribution. In addition, our members' facilities that manufacture prescription drugs and biologics for the U.S. market must comply with FDA's current Good Manufacturing Practice (cGMP) requirements to ensure that the manufacture of their prescription drugs and biologics can be reproduced consistently and in accordance with the agency's quality standards. Our members are responsible for ensuring the safety of both the domestic and foreign-manufactured ingredients used for their prescription drugs and biologics. BIO members that are U.S. manufacturers of finished dosages that use imported ingredients test and validate the safety, purity, and consistency of those ingredients that they use in the manufacture of their products.

While pharmaceutical products packaging is extensively regulated by the FDA, some elements of the product packaging fall under the jurisdiction of the CPSC. The Poison Prevention Packaging Act (16 C.F.R. 1700.14) requires that certain orally administered human drugs and controlled substances be packaged in child-resistant containers. This regulation is undoubtedly in the best interest of the public health. The *Consumer Product Safety Improvement Act of 2008* adds new requirements. It states that "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation...shall certify, based on a test of each product or upon reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission". The language could be interpreted to require that orally administered pharmaceutical products intended for children must be accompanied by a certification upon entering the country. BIO is concerned that this would create a significant reporting burden without a significant health benefit, and believes that it would be appropriate to exempt pharmaceutical products from the general conformity certification requirement.

Should the above requested exemption not be granted, we ask that CPSC clarify that any bulk drug product (i.e., unpackaged final product) provided by the manufacturer to a pharmacist that is packaged and distributed by the pharmacist in child-resistant packaging be exempt. For example, many small and large sized pharmaceutical containers are shipped to the pharmacist, who then dispenses the drug to the patient in child-resistant bottles or packaging. The following pharmaceuticals containers should be exempted from the import certification process because the child safety aspects of packaging are already fully addressed for these products and the certification would add additional burden without providing additional protection of public health.

- Small containers filled by the pharmaceutical manufacturer;
- Small-count pharmaceutical product containers;
- Large-count pharmaceutical product containers.

CONCLUSION:

BIO appreciates this opportunity to comment on the requirements for certificates for conformity testing and third party testing under Section 102 of the *Consumer Product Safety Improvement Act of 2008.* We would be pleased to provide further input or clarification of our comments, as needed.

Sincerely,

/S/

Andrew J. Emmett
Director for Science and Regulatory Affairs
Biotechnology Industry Organization

Stevenson, Todd

From: Andrew J. Emmett [aemmett@bio.org]
Sent: Wednesday, October 29, 2008 4:57 PM
To: CPSC-OS
Subject: BIO Comments on Section 102 Certificate Requirements
Attachments: 2008-10-29 BIO CPSIA Certification Comments - FINAL.pdf

The Biotechnology Industry Organization (BIO) thanks the Consumer Product Safety Commission for the opportunity to submit comments on implementation of the Section 102 Certificate Requirements of the Consumer Product Safety Improvement Act of 2008. BIO's comments can be found in the attached PDF file. Please feel free to contact me if you have any questions.

Best Regards,
Andrew Emmett

Andrew J. Emmett, M.P.H.
Director for Science and Regulatory Affairs Biotechnology Industry Organization (BIO)
1201 Maryland Avenue SW, Suite 900
Washington, DC 20024
(202) 962-9516
Fax: (202) 488-6301
aemmett@bio.org

70

Stevenson, Todd

From: Christina Rene de Cotret [crenedecotret@ariannelingerie.com]
Sent: Wednesday, October 29, 2008 4:58 PM
To: CPSC-OS
Cc: Akeela Khodadin
Subject: Comments - Consumer Product Safety Improvement Act

Comments submitted by Collection Arianne Inc. Canadian Manufacturer and US IOR of Ladies Apparel:

1. If the Raw Material suppliers are certifying/testing the fabric (which comprises more than 95% of the finished garment) for FHSA and FFA standards, could the certification by the manufacturer be based on these tests?
2. If the Raw Material suppliers are certifying the component/fabric to OEKO-TEX standards, could the certification by the manufacturer be based on these tests?
3. If all the components of a finished garment are tested at the component level and not the finished garment level, could these tests be used for the certification? I.e. If the fabric supplier certs the fabric, the trim supplier certs the trim and the accessory supplier certs the accessory, can the manufacturer of the end product then use these tests and information for their certification?

Thank you,

Christina Rene de Cotret
ARIANNE
Tel: 514-385-9393 ext. 293
Toll Free: 1-888-239-8165 (North America Only)
Fax: 514-385-9281
crenedecotret@ariannelingerie.com
www.ariannelingerie.com

71

25 Brook Avenue
Maywood, NJ 07607

Victor Settings

October 29, 2008

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

Subject: Section 102 of the Consumer Product Safety Improvement Act

To Whom It May Concern:

The Commission staff has invited comments on Section 102 of the consumer Product Safety Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a) (1)amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSIA.

Victor Settings respectfully submits the following comments and requests guidance from the commission.

1) We are a manufacturer of precious metal settings for the jewelry industry. Precious metal alloys by their nature are lead free as the contamination with lead above trace amounts causes the metal alloys to crack and become unusable. Therefore such products should be excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2) Victor Settings respectfully requests the commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for considering our comments.

Sincerely,

Robert Hess
Victor Settings
(201) 845-5203

Stevenson, Todd

From: Robert Hess [rob@victorsettings.com]
Sent: Wednesday, October 29, 2008 4:57 PM
To: CPSC-OS
Subject: cpsia requirements
Attachments: 20081029165704242.pdf

This E-mail was sent from "RNPD5A6F0" (Aficio MP 4000).

Scan Date: 10.29.2008 16:57:04 (-0400)
Queries to: ricoh@victorsettings.com

Stevenson, Todd

72

From: Diamondsbyterry@aol.com
Sent: Wednesday, October 29, 2008 5:08 PM
To: CPSC-OS
Subject: Emailing: Office of the Secretary
Attachments: OFFICE~1.DOC

The message is ready to be sent with the following file or link attachments:

Office of the Secretary Oct

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

Office of the Secretary Oct.30,2008

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC. Diamonds By Terry Inc respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Diamonds By terry Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Terry

Diamonds By Terry Inc.

PROVIDENCE CHAIN CO.

October 29, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Providence chain Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust), such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Providence Chain Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

J. Timothy Ouhrabka
Executive Vice President
Providence Chain Co.

manufacturers for over fifty years
225 Carolina Avenue • Providence, Rhode Island 02905 • telephone 800.783.1499 • 401.781.1330 • fax 401.941.7932

Stevenson, Todd

From: J. Timothy Ouhrabka [timo@providencechain.com]
Sent: Wednesday, October 29, 2008 5:13 PM
To: CPSC-OS
Subject: CPSIA
Attachments: CPSIA Lead Letter.jpg

ZENOBIA

October 29, 2008

VIA E-MAIL – (Cpsc-os@cpsc.gov)
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Request for Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

Zenobia, established in 1993, is a designer, manufacturer, importer and distributor of high-end designer women's coordinated apparel. The vast majority of the goods which we sell are manufactured in Canada, with the balance made in Italy. Because of our position as a fashion house, Zenobia makes use of hundreds of fabrics annually from around the world to make a unique line of many different styles, each season. As a result, each of our shipments to the United States is likely to consist of a large number of styles shipped is smaller quantities and made up of coordinates consisting of many different fabrics from as many as 25 different suppliers. Clearly, we support the purposes behind the Consumer Products Safety Improvement Act, but worry that as currently interpreted, it will make it almost impossible for a relatively small business like ours to meet all of the requirements expected of us.

Summarily, Zenobia wishes to submit the following comments:

- **Conformity Certification Issued by Zenobia should enable entry and distribution of any such regulated products;**
- **Electronic Access to Certifications Requires Clarification and a Delay in Enforcement; and**
- **Confidential and Proprietary Business Information Must be Unambiguously Protected By the CPSC**

ZENOBIA appreciates the opportunity to submit these comments and confirms its on-going commitment to ensure American consumers the safety of imported consumer goods.

I. Conformity Certification Issued by Zenobia should enable entry and distribution of any such regulated products

ZENOBIA COLLECTIONS INC
506 - 6300 avenue du Parc, Montreal, QC, CANADA H2V 4H8
T 514.272.6300 F 514.272.6903 W zenobia.ca

A. To condition entry of foreign-manufactured goods upon issuance of a conformity certification from both the importer and the manufacturer violates WTO's national treatment guarantees

Paragraph 4 of Article III of GATT 1994 states the following: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* Article III was designed to eliminate discrimination between imported goods and domestically produced goods. Technical standards, such as the certification requirements set forth in Section 201, even if only inadvertently, necessarily act as discriminatory trade barriers, in favor of domestic producers.

Although Section 102 of the CPSIA applies equally to domestically manufactured and foreign produced consumer goods, domestically produced goods only require certification by the manufacturer and the private labeler while the CPSC is requiring that foreign manufactured goods be accompanied with certification by the manufacturer, the private labeler AND the importer. The additional certification requirement imposed only upon foreign manufactured consumer goods, together with the duplicative product testing programs described above, increases the cost of market access for imported goods and unnecessarily obstructs international trade in lawful and safe consumer products, for the benefit of only domestic producers. This violates of the National Treatment guarantees provided under GATT 1994 and creates a very real risk of challenge from U.S. trading partners.

B. HR 4040 does not require certification by both the manufacturer and the importer

There is no evidence that Congress intended the CPSIA certification requirements found in Section 102 to apply to manufacturers, private labelers ***and*** importers. Although Section 201 of the CPSIA describes required certification requirements imposed upon a single manufacturer and a single private labeler (without once using the word "importer"), section 3(a)(11)of the CPSA confirms that a "manufacturer" is "any person who manufactures **or** imports a consumer product"

a. Section 102(a)(1)(A) indicates that "every *manufacturer* of a product...which is imported for consumption or warehousing or distributed in commerce (*and the private labeler* of such product)..."

b. Section 102(a)(2) states that "...before importing for consumption or warehousing or distributing in commerce any children's product....*every manufacturer of such children's product (and the private labeler of such children's product)...*"

c. Section 102(a)(2)(B) states that "*a manufacturer or private labeler* shall issue either a separate certification for each children's product..."

d. And, Section 102(g)(1) states that "every certificate required...shall identify *the manufacturer or private labeler....*"

There is no basis for the CPSC to have interpreted Section 201 to require conformity certification from a manufacturer, a private labeler ***and*** a product importer. If the U.S. importer performs product testing and certifies product conformity pursuant to CPSC regulations, such certification must be sufficient to permit product entry.

II. Electronic Access to Certifications Requires Clarification and a Delay in Enforcement

A. Permitted CPSC Access to Electronic Conformity Certifications Improves Upon Previous Rulemaking, but remains ambiguous and unclear

Recently, the CPSC indicated that so long as each required certification bore a unique identifier and was accessible to the Agency via the World Wide Web, that certification will be considered to have appropriately "accompanied" the shipment. While this is certainly an improvement over required paper documentation verifying conformity of each and every separate consumer product contained within a single shipment, ambiguity remains as to both the nature of the unique identifiers and as to how notification of those unique identifiers should, instead of the certifications themselves, actually "accompany" the product/shipment.

B. CPSC Access to Electronic Conformity Certifications requires expensive and time consuming upgrades to existing IT systems mandating an enforcement delay until November 12, 2009

The CPSC has numerous times represented to industry stakeholders that it is more committed to ensuring compliance with the CPSIA than with enforcing the penalties and forfeiture provisions of the Act. While access to electronic certifications is a "smarter" solution for compliance with Section 102(g)(3), creating such an electronic password protected database (necessary to maintain confidentiality of proprietary business information) will be both expensive and time consuming. In order to facilitate implementation of secure and

comprehensive IT systems able to track product conformity certifications through entire product life cycles, the CPSC must delay enforcement of the Act until at least November 12, 2009.

The programming required for the type of system needed to track the goods being shipped will be expensive and time consuming. Under the very best of circumstances, these necessarily comprehensive IT systems may not be realized for at least a calendar year after the November 12, 2008 effective date.

Because the alternative to electronic access proposes unreasonable commercial practices (e.g. literally stuffing shipping containers with possibly thousands of pages of certifications in order to "accompany" the hundreds of different products contained within a single shipment), it is incumbent that CPSC delay full enforcement of Section 102(g)(3) until at least November 12, 2009, in order to provide certification issuers sufficient opportunity to design and install IT systems to handle these new requirements

III. Confidential and Proprietary Business Information Must be Protected

A. Proprietary Business Information

All, or most of the information listed below is a proprietary trade secret and/or fits within the definition of confidential business information. Nevertheless, Section 102(g)(1) of the CPSIA requires that all of this information be included within a certification required under the Act, and that copies of all such certifications be "furnished" to each distributor and retailer.

a. The date and place of manufacture;
b. The date and place where the product was tested;
c. Each party's name, full mailing address and telephone number (manufacturer, importer and private labeler); and
d. Contact information for the individual responsible for maintaining records of test results.

B. Disclosure of Identified Confidential Business Information Contained Within A Conformity Certification Must Be Prevented

Recognizing the confidential and proprietary nature of the information contained within submissions to the CPSC, Section 6 of the CPSA prohibits the CPSC from disclosing any such identified confidential information submitted to the Agency by virtue of the CPSA. This same confidential business information must be protected regardless of to whom it is furnished or submitted.

Certificate issuers must be permitted to redact identified confidential business information from the copies of certifications required to be furnished to distributors and retailers under Section 102(g)(3) of the Act. The clear intention of Section 102(g)(3) of the CPSIA, which requires that certifications be furnished to distributors and retailers, is to enable downstream conformity verification. Such an objective does not depend upon disclosure of confidential trade secrets nor is it, to any degree, compromised by protection of that same proprietary business information.

C. Special Protections Must Be Required to Protect the Information Contained within Electronic Certifications

For all of the reasons described above, the content of required certifications under Section 201 must in all events be considered confidential and barred from disclosure. It is difficult, however, to protect the confidentiality of such information in the event of electronic certification. Zenobia believes that the CPSC should require that electronic certifications be made available to the CPSC only on password protected websites, providing exclusive access to such site only to the CPSC.

It seems clear that, at the very least, the first few months after the effective date of these changes will be chaotic to the entire business community, as well as the CPSC. Therefore, we believe that a delay in the enforcement of these requirements is critical to prevent a complete breakdown in the current system of importation and domestic distribution of consumer products.

CONCLUSION

Zenobia supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that resulting rulemaking recognize commercial realities and appreciate the benefits provided to American consumers because of the great variety of product supply chains and distribution routes. It is sincerely hoped that comments and suggestions contained within this communication, and as summarized below, are fairly considered and implemented.

- The certification requirements of Section 102 of the CPSIA must be satisfied by conformity certification issued exclusively by an importer.
- Certificate issuers must be permitted to furnish copies of certifications to distributors and retailers with all identified confidential trade secrets duly redacted; and

- the CPSC must delay full enforcement of the Act for a period of at least one calendar year to permit creation of databases and computer programs able to facilitate compliance with all such requirements.

Zenobia looks forward to being a part of continuing CPSC efforts to consult with industry members and stakeholders about the most effective means of implementing the CPSIA. Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or its counsel, Gerald B. Horn, Esq. (ghorn@strtrade.com) directly at any time.

Sincerely,

ZENOBIA

By: Mock for Larry Bly
Controller President

cc: Gerald B. Horn, Esq.
Lauren V. Perez

Stevenson, Todd

From: Jacky [jacky@zenobia.ca]
Sent: Wednesday, October 29, 2008 5:09 PM
To: CPSC-OS
Cc: Gerald Horn; Barry Bly
Subject: letter
Attachments: 1.jpg; 2.jpg; 3.jpg; 4.jpg; 5.jpg; 6.jpg

Thank you,

J Roch, controller

Z E N O B I A
514-272-6300 x 32

What is beautiful is not always good, but what is good is always beautiful.

Office of the Secretary Oct.30,2008

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC. Sandy's Jewel Box respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Sandy's Jewel Box respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Sandy Rieger

Sandy's Jewel Box

Stevenson, Todd

From: Diamondsbyterry@aol.com
Sent: Wednesday, October 29, 2008 5:12 PM
To: CPSC-OS
Subject: Emailing: Office of the Secretary sandy
Attachments: OFFICE~1.DOC

The message is ready to be sent with the following file or link attachments:

Office of the Secretary sandy Oc1

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

Stevenson, Todd 76

From: Ed@NaHoku.com
Sent: Wednesday, October 29, 2008 5:14 PM
To: CPSC-OS
Subject: comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Na Hoku, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Na Hoku, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Ed Sultan
Edward D. Sultan
President, CEO
Na Hoku, Inc.

77

Stevenson, Todd

From: Ducharme, Roger [RDucharme@colibri.com]
Sent: Wednesday, October 29, 2008 5:16 PM
To: CPSC-OS
Cc: Flinn, Ed; Gallogly, Tim; Sylvia, Stephen
Subject: COMMENTS REGARDING THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008 (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

The Colibri Group respectfully submits the following comments and requests the following guidance from the Commission:

Jewelry and accessories made exclusively of precious or inert metals (including karat gold, sterling silver, rhodium, platinum, palladium and stainless steel) and gemstones are by their nature lead-free and should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.
This exemption has been successful as part of a consent agreement reached between the state of California and several U.S. jewelry manufacturers and retailers that had been sued under Proposition 65. This agreement specifically lists these metals as Class 1 materials that are inherently lead-free, and exempt from lead testing requirements.

Creating a list of exempt materials that are proven safe makes it much easier and less expensive for companies to comply. Adoption of such a list, including precious metals, for CPSIA purposes would do the same on a national scale.

The Colibri Group respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Best regards,

Roger R. Ducharme
Quality Control Manager
The Colibri Group
25 Fairmount Avneue
Providence, RI, USA 02914
401.330.4715

Use of Email is inherently insecure. Confidential information, including account information and personally identifiable information, should not be transmitted via email or email attachment. The Colibri Group does not guarantee the accuracy of any email or email attachment that an email will be received by The Colibri Group or that The Colibri Group will respond to any email. This email message is confidential and/or privileged. It is to be used by the intended recipient only. Use of the information contained in this email by anyone other than the intended recipient is strictly prohibited. If you have received this message in error, please notify the sender immediately and promptly destroy any record of this email.

Stevenson, Todd

78

From: eaaudet@cox.net
Sent: Wednesday, October 29, 2008 5:18 PM
To: CPSC-OS
Subject: Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.
Rain Forest Trading, S.A. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.
2. Rain Forest Trading, S.A. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
Edward A Audet
President
Rain Forest Trading, S.A.

79

PPG Industries

PPG Industries, Inc.
4325 Rosanna Drive
Allison Park, PA 15101 USA
Telephone (412) 492-5620
Fax (412) 492-5377
hoff@ppg.com

MaryAnn Hoff, CIH
Manager Environment, Health, Safety &
Product Stewardship
Performance Coatings

October 29, 2008

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

Re: Section 102 Certificate Requirements of the Consumer Product Safety Improvement Act of 2008

Dear Sir/Madam:

On behalf of PPG Industries, Inc., I am writing to you today regarding the Consumer Product Safety Improvement Act (CPSIA). We applaud the initiative to further protect the health and well being of the nation's children. However, we ask the CPSC to take action to ensure the General Conformity Certification requirements do not excessively overburden the U.S. manufacturer's global supply chain. Below are our comments regarding the requirements under section 102, as we understand them.

General Conformity Certification
We believe that the new "Certificate of General Conformity" requirement as written, mandating every shipment of paint to carry a paper copy of the shipment's content, by product quality and conformance to all CPSC requirements, is in conflict with the Paperwork Reduction Act and will cause undue complications at various stages of the supply chain. Rather than include paper certificates with each shipment, we ask CPSC to consider a letter of notification from the manufacturer directly to the CPSC stating that General Conformity Certificates can be found on the manufacturer's website (each manufacturer to develop and maintain their own consumer product information). Another option would be to allow for a general statement of conformance to be printed on the purchase order or bill of lading directing the customer to the manufacturer's website for certification information. In either case, we ask that you work with us to develop a flexible and logistically feasible approach to help us meet our legal obligations.

Given the short notice and far reaching implications of this new law, we request an opportunity to be engaged in additional dialog on this subject.

Thank you for considering these comments. We look forward to working with you on implementation of this very important legislation.

Sincerely,

es

Stevenson, Todd

From: Hoff, Mary Ann [hoff@ppg.com]
Sent: Wednesday, October 29, 2008 5:19 PM
To: CPSC-OS
Cc: Mullan, John; Stacey-Ann Taylor
Subject: Comments re: CPSIA General Conformity Certificates
Attachments: PPG CPSIA Comments 102908.doc

Please find attached comments from PPG Industries.

Stevenson, Todd 80

From: Michelle Wells [mwells@metrocb.com]
Sent: Wednesday, October 29, 2008 5:22 PM
To: CPSC-OS
Subject: Questions shared by majority of our client base

Importance: High

Good afternoon,

Please consider the following.

1. Section 102 of HR4040 outlines the requirement for certificates of conformity when products may be banned, subject to a rule, regulated by the CPSC, or subject to a guidance document. As section 102 is pertinent only to children's products, does the Conformity Certificate requirement apply to other items that are not purposely made for children?

2. Once merchandise is Customs cleared into the USA, are they subject to further review for the certification? For example, garments enter the USA, are unpacked from their shipping cartons and stored in a GOH (Garment on Hanger) system until later sold and distributed. Part 2 of the question – retail stores subject to scrutiny as well?

3. At what stage of manufacture should the testing for flammability of textiles be conducted? For example, one purchases a roll of fabric which will later be used in the manufacture of some five or more styles of garments. Is it feasible to have the roll of fabric tested to satisfy these requirements, or does the finished product require testing? Information found on page two of http://www.cpsc.gov/businfo/regsumwearapp.pdf is suggestive that testing of the roll would be acceptable.

4. Does recordkeeping truly need to be maintained in the United States? Many Importers of Record are in fact non-resident importers residing abroad.

5. The Conformance Certificate is required to be with the product and disclose the manufacturer of the same. Many importers are in fact buying from a middleman and will not otherwise know the manufacturer of the goods. How can this feasibly be done to protect the identity of the manufacturer within the supply chain, to prevent direct sourcing?

6. Can you please provide a definition of the manufacturer as seen by the CPSC? Are there minimum processing operations that need to be met or will simple assembly of a repair kit qualify for example?

7. Is all jeweler subject to the lead testing and certificate of compliance, or just children's?

8. Is footwear covered by any portion of the act, and also subject to the certification of conformity?

Thank you,

Michelle L. Wells

Regulatory Compliance Manager

T: 518-298-4553 x 109

F: 518-298-3579

www.omnitrans.com

METRO

GOING PLACES. FAST.

The views expressed herein are opinions only based on the information provided, and are not to be considered binding or conclusive. For more certainty an application for a binding ruling from US Customs and Border Protection should be completed.

Stevenson, Todd 81

From: Gemshapes@aol.com
Sent: Wednesday, October 29, 2008 5:22 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act (CPSIA)

October 29, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

GEM SHAPES, INC. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. GEM SHAPES, INC. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Craig Marinovich
President/CEO
GEM SHAPES, INC.
10192 Donner Pass Road
Truckee, CA 96161

Stevenson, Todd

82

From: gary@gwrowe.com
Sent: Wednesday, October 29, 2008 5:23 PM
To: CPSC-OS
Subject: LEAD IN PRECIOUS METAL JEWELRY

Office of the Secretary
Consumer Product Safety Commission

To Whom It May Concern:

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends ection 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administereed by the CPSC.

G W Rowe Corporation respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requriements, and general conformity certificate requirements.

2. G W Rowe Corporation repectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank yu for your kind attention to our comments.

Respectfully submitted,

Gary W. Rowe
G W ROWE CORPORATION
"Serving America from Fort Smith"
(479) 242 2474
(479) 783 6103 [FAX]

RETAIL INDUSTRY LEADERS ASSOCIATION
Retail's Future...Educate, Innovate, Advocate

1700 N. Moore Street, Suite 2250, Arlington, VA 22209
Phone: 703-841-2300 Fax: 703-841-1184
Email: info@retail-leaders.org www.retail-leaders.org

October 29, 2008

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

Re: Section 102 Certificate Requirements

Dear Secretary:

Please accept the following comments from the Retail Industry Leaders Association (RILA) on behalf of our members in response to the Consumer Product Safety Commission's ("Commission") Request for Comments and Information; Section 102 of the Consumer Product Safety Improvement Act ("CPSIA" or "Act"); Requirements for certificates for conformity testing and third party testing.

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.

First, thank you for your important work on behalf of American consumers, many of whom we are proud to say are our members' customers. Our members have followed with great interest the development of the Consumer Product Safety Improvement Act (CPSIA), and they are working hard to ensure full compliance with the myriad provisions in the CPSIA. Many of our members have created their own product safety standards and auditing programs to enforce compliance to those standards. Our members have learned many valuable lessons through this process, which they have freely shared with each other and their suppliers and will take this opportunity to share with the Commission.

Certification

Section 102(a)(1) requires "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other

Act enforced by the Commission and which is imported for consumption or warehousing or distribution in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate" of compliance.

The Consumer Product Safety Act defines manufacturer as "any person who manufactures or imports a consumer product." 15 USC § 2052(a)(4).

RILA appreciates this opportunity to provide comments to the Commission on certificates for conformity testing and third party testing. While several issues the Commission has requested comments on are discussed in detail below, the issue of whether certificates can be generated and transmitted electronically is of the utmost importance to our members, their suppliers, and the vast support network behind today's global supply chain. RILA appreciates the Commission's recognition that in today's marketplace the vast majority of transactions take place electronically, which reduces previously burdensome paperwork requirements and allows for information to be easily called up and analyzed. Besides factoring in the environmental benefits of switching to a paperless system, Congress importantly recognized the benefits of electronic information technology to the Federal Government in 1995 when it enacted the Paperwork Reduction Act (14 U.S.C. 3501), which seeks to "ensure the greatest public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government..." and aides in the "reduction of information collection burdens on the public..."

In the strongest terms possible, RILA urges the Commission to allow issuers of certificates for conformity testing and third party testing the opportunity to transmit certificates to the Commission (and other qualified parties) electronically. We concur with the assessment of CPSC staff's opinion in a recently-released "Frequently Asked Questions" document that "so long as the Commission has reasonable access to the certificate electronically and it contains all the information required by Section 102 of the CPSIA, electronic certificates can be used to satisfy the CPSIA." A return to paper-based transactions would present a logistical nightmare for importers, slow down operations at ports, and do little to help ensure product safety and compliance.

Multiple Certificates and Multi-Party Certificates

RILA urges the Commission to require only one certificate of compliance for each product issued by one firm having a domestic U.S. presence. Hence, if a domestic U.S. firm actually manufactured the product overseas or had it manufactured overseas and issues a certificate of compliance meeting the requirements of the Act, the importer and the private-labeler should not also be required to issue separate certificates of compliance or join in the certification of compliance with the manufacturer.

As an example of how this may occur, retailers often import the first shipment of a product and the manufacturer imports the remaining shipments of the product. The retailer's supplier is the manufacturer, but the retailer also fits the definition of "manufacturer" as the importer of the first shipment. In this scenario, a certification from the manufacturer should be sufficient for all shipments, including those imported by the retailer, since the supplier/manufacturer is a domestic U.S. firm. After all, the manufacturer is in the best position to proactively make certain that the product complies and to certify compliance.

As a practical matter, the product will be subjected to one design review, one manufacturing quality control process and one testing program. Consequently, if the private labeler AND the importer must each issue separate certificates of compliance or join in the manufacturer's certificate of compliance, each would do so based on the same set of supporting documents. This would leave the private labeler and importer in the position of not only relying in good faith on the manufacturer's certification, but essentially guaranteeing the validity of the certification on the basis of design, manufacturing, and testing processes they do not control.

Direct-to-Consumer E-Commerce Sales

As previously discussed, Section 102(a)(1) requires "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or distribution in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate" of compliance. In some instances, retailers engage in direct-to-consumer or direct to business e-commerce sales, where a consumer or business purchases a product on the website of a retailer but the product is shipped directly from the manufacturer to the consumer or business without the retailer taking possession of the merchandise. In such instances, we urge the Commission to clarify that general conformity certificates do not have to accompany the merchandise to the end user; it should be sufficient that the manufacturer "furnish" the conformity certificate to the retailer and make it available to the Commission upon request, but not actually physically travel with the merchandise.

Certificate Presentation

The Commission has undoubtedly received many comments about how the certificate of compliance should be presented so as to meet the Section 102 requirement that the certificate "accompany" each shipment of the certificated product. The Act is silent on the question of exactly what it means for the certificate to "accompany" each shipment of the product. The Commission should allow flexibility on how the certificate is supplied and transmitted. For example, the Commission should consider allowing as an acceptable means that the certificate be transmitted to U.S. Customs and Border Protection ("CBP") and maintained with other records specified in 19 U.S.C. 1509(a)(1)(a) (commonly known as the "(a)(1)(a) list") which are required by law or regulation for the entry of merchandise. These records are required to be maintained and produced upon demand (whether or not CBP requires their presentation at the time of entry). The items on the (a)(1)(a) list include, but are not limited to, statements, declarations, documents, or electronically generated data required by government agencies for the entry of merchandise. By treating the conformity certificate the same as other items in the entry document package, the certificate would "accompany" the shipment, would be produced upon request, and would be maintained in accordance with CBP's recordkeeping requirements.

CBP and the vast majority of importers operate in a paperless environment where entry related documents are transmitted and stored electronically. As CBP is not currently prepared to accept electronic submissions of the certificate, allowing the certificate to be included with other documents in the (a)(1)(a) list and requiring it to be available upon request allows for enforcement without overwhelming CBP and/or the Commission or unreasonably burdening

commerce. Having the entry filer retain the certificate as part of the entry document package satisfies the intent of having the documentation accompany the shipment in the same way that commercial documents accompany the shipment and allows trade to continue functioning in a paperless environment.

Certificate Distribution

Section 102(g)(3) of the Act provides that "[e]very certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each ... retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission."

A major concern of our members is determining how far into the distribution chain the certificate of compliance must accompany shipments of the product. Our members urge the Commission to clarify this point, and only require that the certificate of compliance accompany any shipment of the product presented to CBP at any U.S. port of entry, but no further. We believe this position squares with a careful reading of the requirement set out in Section 102(g)(3) of the Act.

If it was Congress's intent to require every shipment of the product leaving the port on its way to a retailer or distributor to include the certificate, it would not have been necessary to also require the issuer of the certificate to provide a copy to each retailer, since they would get it anyway on receipt of the product. Having specifically stated that the issuer of the certificate should furnish a copy to each retailer, it can be concluded that Congress did not intend to require that the certificate actually accompany every shipment of the product on this side of the U.S. port of entry.

In order for the certificate to accompany shipments of the product on this side of the U.S. port of entry, the certificate would have to be with each individual unit or in each master carton (case pack) of the product. It is literally impossible to include the certificate in each individual unit or master carton, since in most cases the product has already been packaged by the time the production test results come back upon which the certification would be based. Hence, inserting the certificate in each individual unit or master carton would necessitate unpacking the merchandise, inserting the certificate and repackaging the product before it could be shipped. Alternatively, by requiring that the certificate accompany the certificated product through the (a)(1)(A) list, the certificate will be with the product when it is presented at any U.S. port of entry. Meanwhile, retailers, distributors and any others in the U.S. stream of commerce, short of the ultimate consumer, can obtain the certificate directly from the issuer.

Certificate Retention

We expect many suppliers will send our members unsolicited copies of their certificates of compliance. Our members are left to wonder if they receive the certificate from the issuer, whether they have to retain it and if so for how long. We ask the Commission to clarify that the Act does not require retailers to retain certificates of compliance they did not issue, especially since the Commission will likely require the issuer of the certificate to retain it and the

supporting test documents, consistent with the Commission's regulations on certification of bicycle helmets. See 16 CFR §1203.41.

The Act also does not specify how long the issuer has to keep certificates of compliance. We ask that the Commission consider requiring issuers of certificates, whether retailers, importers, manufacturers or private-labelers, to retain the certificates they issue for at least 3 years after issuance. We also recommend that the Commission allow issuers of certificates 48 hours to produce the certificates and supporting test documents upon request from any designated officer or employee of the Commission.

Recertification

The Act does not specify how long a certificate may be used for shipments of the certificated product. We urge the Commission to permit the use of a certificate for any shipment of the product presented to U.S. Customs on or before a date that is 2 years after issuance of the certificate, understanding that the testing supporting the certificate may have to be conducted more frequently. However, as with certification of bicycle helmets under 16 CFR §1203.33(b)(2), if there is a change in the product or its production that could affect the validity of the certificate, a new certificate should be issued.

Contents of the Certificate

Section 102(g)(1) provides that "[e]very certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, 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."

The Act does not specify whether a product manufactured in multiple locations requires separate certificates for each location of production. We urge the Commission to hold that one certificate per product is sufficient, provided the certificate contains the information required by Section 102(g)(1) for all manufacturers, manufacturing dates and places of manufacture of the product.

Likewise, we ask the Commission to clarify whether the certificate must list the locations of production of each component of the product. The Act seems only to require certification of finished goods. However clear the answer may seem, we would prefer not to guess, and therefore we urge the Commission to confirm our understanding of the Act on this point.

Finally, we stress to the Commission that the name and exact location of a manufacturer is highly confidential and considered business proprietary information. Whether intentioned or not, simply listing the manufacturer's name on a conformity certificate could compromise the competitive advantage many firms have with respect to their suppliers. In many cases, imported containers are shipped by suppliers directly to the merchant, in which case the manufacturers' identity may be compromised. Instead, we urge the Commission to only require that the city and country (for example, Shenzhen, China) be listed on the conformity certificate. As an alternative, RILA suggests that the CPSC allow manufacturers to be identified by the

Manufacturer Identification Code (MID) created for U.S. Customs and Border Protection (CBP). In the instance where there is a problem with a product or the Commission would like more information, any designated officer or employee of the Commission may, consistent with Section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b), ascertain the name of the manufacturer while taking all necessary precautions to protect the indentify of the manufacturer.

Certification Labeling

Section 102(b) adds new section 14(d)(2) of the Consumer Product Safety Act which provides that "[n]ot later than 15 months after the date of enactment of the [CPSIA]...the Commission shall by regulation---initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements of..." the Act.

Under the Commission's regulations on certification and testing of bicycle helmets, a similar label was developed. In the case of bicycle helmets manufacturers were directed to "issue certificates of compliance for bicycle helmets...in the form of a durable, legible, and readily visible label..." See 16 CFR 1203.34(a). The Commission's regulations went on to say that the label would be considered sufficient to meet the certification requirements of the law provided it contained specific information, not unlike the information required for certificates under Section 102(b)(g)(1).

RILA urges the Commission to develop this label on an expedited basis. We further urge the Commission to provide, as it did with bicycle helmet certifications, that the label will suffice to meet the certification requirements of the Act, provided it contains the information required by the Act. At the same time, the Commission should allow flexibility and not require a label as the only means to comply with the certification requirement.

Finally, the Commission should provide that the certification requirements of the law can be met by affixing a valid label signifying conformity to an industry conformity assessment regime, such at the Toy Industry Association's Toy Safety Certification Program. These industry conformity assessment regimes contain all the elements of a reasonable testing program that the Commission is likely to require to support a valid certification. Furthermore, these industry conformity assessment regimes contain many other elements critical to safety that goes beyond the requirements of the law, such as design analysis and quality control measures. Wherever possible, the Commission should take the opportunity to steer more manufacturers into these programs.

Enforcement Discretion and Phase-In Periods

RILA members are working hard to ensure full compliance with the myriad requirements in the Act. As the Commission is well aware, some deadlines are extremely tight. The conformity certificate requirement is scheduled to go into effect only 10 business days after the end of the comment period on this issue. This does not provide sufficient time for the Commission to analyze all the comments and issue a rule. Accordingly, RILA respectfully requests that the Commission state in writing that it will use its enforcement discretion for the three-month (90 day) period beginning after the November 12 effective date for requirements related to

conformity certificates. Until the Commission publishes clarifications to Section 102, importers will not be able to provide full guidance to suppliers as to their requirements under the Act.

There are significant systems changes and third party lab capacity changes that the industry is dealing with in order to comply with the Act. An enforcement discretion period would allow importers time to establish processes to comply with the new conformity testing requirements, while not penalizing those that are genuinely striving to comply with the Act.

RILA urges the Commission to consider a phased in approach for the conformity certificate which focuses first on high risk products. A similar approach has recently been taken by other agencies to delay a new declaration requirement related to illegal logging under the amended Lacey Act. See Federal Register: October 8, 2008; Implementation of Revised Lacey Act Provisions (73 FR 58925).

Testing

Section 102(a)(1) provides that "every manufacturer of a product which is subject to a consumer product safety rule under this Act or similar, rule, ban, standard, or regulation under any other Act enforced by the Commission...shall issue a certificate which (A) shall certify, based on a test of each product or upon a reasonable testing program, that such product complies..."

Section 101(a)(2) requires that "every manufacturer of...children's products...shall (A) submit sufficient samples of the children's product, or samples that are identical in all material respects, to a third party conformity assessment body accredited under paragraph (3) to be tested for compliance..."

RILA and our members have concerns with Commission staff statements that component testing will not be accepted, and that only tests on finished goods are sufficient. We urge the Commission to reconsider this position to follow its past practice and allow the testing of the products components to serve as the basis for the certifications. Mandatory testing of finished goods would not allow sufficient flexibility and would result in redundant and costly testing for products for which the same component is used in multiple products. A variety of components of apparel products, e.g. zippers, rivets, snaps, buttons, rhinestones, dyes for screen prints, are used in many styles of apparel carried by different retailers. For example, a specific size of rivet from one of the major hardware manufacturers may be used in six styles of girls' jeans for seven different retailers. Using component testing, the rivet would only be tested once by the rivet manufacturer rather than being tested 42 separate times if testing of the final product is required. Final product testing is extremely costly. In the example used, if the cost of lead testing is $100 - $200 per component, then the cost of final product testing would be $4200 - $8400 for just that component. Under component testing, each apparel supplier would base its certification of compliance for each of the styles it produces on the testing from the rivet manufacturer along with testing of all the other components used in that product. Similarly, a manufacturer of screened t-shirts for boys would be allowed to use testing of the fabric and tests of the inks used in each screen print as the basis for a compliance certification rather than requiring the retesting of the same inks multiple times if the inks are used in ten different screen designs.

A certification process that relies upon component testing, with strong chain of custody documentation requirements that demonstrate that the component was used in the final product, will provide a greater assurance of safe products rather than requiring the testing of a few samples of final products. Manufacturers already have similar documentation and record keeping requirements for any products claiming special customs treatment under a trade preference program. In those instances, upon request from the CBP, manufacturers are required to provide production documentation including the records that support the claim that the required inputs were used in the specific products. RILA respectfully urges the Commission to clarify that component testing is an acceptable basis for certification of compliance.

Meanwhile, phthalate testing is also expensive and time-consuming and should only be required when relevant. If every component of every toy and child care article must be tested for phthalates to support a certificate of compliance, enormous unnecessary costs and delays will be introduced. The universe of materials where phthalates might be found is relatively small. For example, phthalates are used in PVC, but they are not used in polycarbonate plastics. Therefore, it makes no sense to require polycarbonate plastic components to be tested for phthalates. Likewise, wood, metal and rubber components will not contain phthalates. Hence, testing components made of materials that we know will not contain phthalates adds nothing to the safety of the product or assurance of its safety, but could add substantially to the cost of the product and the time needed to bring it to market.

RILA urges the Commission to create a list of materials from which toy and child care articles are made that require phthalate testing. Until such a list can be created, the Commission should only require that certificates of compliance be supported by testing accessible PVC components of toys and child care articles for phthalates.

Conclusion

RILA members place the highest priority on ensuring the safety of their customers and the products they sell, and RILA appreciates this opportunity to comment on the Commission's Request for Comments and Information; Section 102 of the Consumer Product Safety Improvement Act; Requirements for certificates for conformity testing and third party testing. Should you have any questions about the comments as submitted, please don't hesitate to contact me by phone at (703) 600-2046 or by email at stephanie.lester@rila.org.

Sincerely,

Stephanie Lester
Vice President, International Trade

Stevenson, Todd

From: Stephanie Lester [Stephanie.Lester@retail-leaders.org]
Sent: Wednesday, October 29, 2008 5:30 PM
To: CPSC-OS
Subject: RILA comments on testing and certification--PLEASE USE THIS ONE
Attachments: certification testing comments2 10 24 08.pdf

Please use this version. The earlier email did not include RILA letterhead. Thank you.

Please find attached comments from the Retail Industry Leaders Association in response to the CPSC's Request for Comments and Information; Section 102 of the Consumer Product Safety Improvement Act ("CPSIA" or "Act"); Requirements for certificates for conformity testing and third party testing.

Thank you for your consideration of these comments.

Sincerely,

Stephanie Lester
Vice President, International Trade

Retail Industry Leaders Association
1700 N. Moore Street, Suite 2250
Arlington, VA 22209
Direct Dial: 703-600-2046
Fax: 703-841-1184
stephanie.lester@rila.org

To learn more about RILA, go to www.rila.org

Stevenson, Todd 84

From: Lydon Design [lydondesign@peoplepc.com]
Sent: Wednesday, October 29, 2008 5:37 PM
To: CPSC-OS
Subject: Comsumer product safety act

Office of the Secretary
Consumer Product Safety Commission, Rm 502 4330 East West Hwy Bethesda, MD 20814

October 29, 2008

Dear Sir or Madam,

The Commission staff has invited comments on Sec. 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for 3rd party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Lydon Design respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Lydon Design respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for you kind attention to our comments.

Respectfully yours,

Joan Lydon
Lydon Design

PeoplePC Online
A better way to Internet
http://www.peoplepc.com

Stevenson, Todd 85

From: Vicki Newby [vlnewby@eightsusquehanna.com]
Sent: Wednesday, October 29, 2008 5:40 PM
To: CPSC-OS
Subject: CPSIA Section 102

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Vicki Newby of EightSusquehanna.com respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Vicki Newby of EightSusquehanna.com respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Vicki Newby

EightSusquehanna.com
Lovingly handcrafted beaded jewelry
by Vicki Newby

Accept credit card payments online with PayPal!

When you signup for PayPal, you can start accepting credit card payments instantly. As the world's number one online payment service, PayPal is the fastest way to open your doors to over 150 million member accounts worldwide.

Best of all, it's completely free to sign up!
To sign up or learn more, click here: https://www.paypal.com/us/mrb/pal=9EDSTKYDFCDZ4

86

Stevenson, Todd

From: Johnson's - Julie Johnson [info@greatwings.com]
Sent: Wednesday, October 29, 2008 5:41 PM
To: CPSC-OS
Subject: Comments on Section 102

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Johnson's Jewelry, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Johnson's Jewelry, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Julie Stier Johnson
Johnson's Jewelry, Inc.
Dayton, OH

Julie Johnson

Johnson's
1208 Brooklands Road
Dayton, OH 45409
PH: 937-294-5646 or 800-662-4243
FAX: 937-294-6532

www.greatwings.com

87

JYE'S INTERNATIONAL INC.

THE FINE JEWELLERY MANUFACTURER

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

Dear Sir or Madam:

The Commission staff has invited comments on Section 102 of the Consumer Pro Safety improvement Act (CPSIA) regarding requirements for third-party testing an certificates of genera! conformity testing.

Section 102(a)(1) amends section 14(a)(1)ofthe CPSIA to require each manufactu or importer of any consumer product to issue a certificate that the product complie CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Jye's International Inc. respectfully submits the following comments and requests following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amou lead (i.e. natural Pb contaminants found in the earth's crust)], such products shou expressly excluded from the scope of the CPSIA, its testing requirements, and ge conformity certificate requirements.

2. Jye's International Inc. requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subjec testing requirements and general conformity certificate requirements

Thank you for your kind attention to our comments.

Respectfully yours,

CHARLES UENG
JYE'S INTERNATIONAL INC.

Stevenson, Todd

From: Charles Ueng [jyescorp@yahoo.com]
Sent: Wednesday, October 29, 2008 5:49 PM
To: CPSC-OS
Subject: regarding testing for lead
Attachments: CPSCLTR.rtf

National Candle Association
1156 - 15th Street, NW, Suite 900 · Washington, DC 20005 · (202) 393-2210 · Fax: (202) 223-9741
http://www.candles.org

98

October 29, 2008

Comments of the National Candle Association on Section 102 of the Consumer Product Safety Improvement Act of 2008, Relating to General Conformity Testing and Certification.

The National Candle Association ("NCA") is hereby submitting comments, in response to the Commission's request for comments, on Section 102 of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), relating to general conformity testing and certificates. The NCA is a trade association consisting of domestic candle manufacturers, whose members make approximately 90% of all U.S.-made candles.

The NCA advises its members on matters of common legal and regulatory interest and is planning to issue guidance on the CPSIA's General Conformity Certification requirements, set forth in CPSIA §§ 102(a)(1) & (g), which become effective on November 12, 2008. [1] The NCA seeks a smooth transition to this new certification regime. As such, these comments outline NCA's analysis of the relevant CPSIA provisions, set forth NCA's contemplated guidance to its members, and seek CPSC's further guidance. Absent CPSC guidance, given the unique manufacturing realities of the candle industry, NCA members should have the right to comply with the new testing and certification requirements in a flexible manner, to the best of their ability, while keeping in mind the overall objectives of the new legislation.

I. In NCA's Judgment, CPSIA Section 102(a)(1) Requires a General Conformity Certificate Only From Those Candle Manufacturers Who Use Metal-Cored Wicks in their Candles.

As revised by CPSIA § 102(a)(1), Section 14(a)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2063(a)(1), now reads in pertinent part:

> (1) GENERAL CONFORMITY CERTIFICATION.—Except as provided in paragraphs (2) and (3), every manufacturer of a *product* which is *subject to* a consumer product safety rule under this Act or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which is imported for consumption or warehousing or

1 Because NCA members do not make candles "designed or intended primarily for children 12 years of age and younger," CPSIA § 235(a)(16), 15 U.S.C. § 2052(a)(2), NCA members are not subject to the CPSIA's third-party testing and certification requirements, which apply to children's products, nor to the total lead level that will apply to such products as of February 2009.

distributed in commerce (and the private labeler of such product if such product bears a private label) shall issue a certificate which—

(A) shall certify, based on a test of each *product* or upon a reasonable testing program, that such *product* complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission; and

(B) shall specify each such rule, ban, standard, or regulation applicable to the product (emphasis added).

As such, under NCA's analysis, the relevant questions to be answered are:

(1) what "product" is at issue? and

(2) is the product "subject to" a CPSC-enforced rule, standard, or ban, such that the manufacturer of that product would be required to generate a general conformity certification under CPSIA § 102(a)(1)?

In NCA's assessment, the product at issue is metal-cored-candlewicks containing lead, as well as the candles that incorporate such metal-cored wicks. The NCA bases this assessment on the language and regulatory history of the relevant Commission-enforced ban, set forth at 16 C.F.R. § 1500.12(a)(2) and 16 C.F.R. § 1500.17(a)(13), and issued under the Federal Hazardous Substances Act. This regulation set forth at 16 C.F.R. § 1500.12(a)(2) is captioned "[*p*]*roducts* declared to be banned hazards substances[,] and it bans "[m]etal-cored candlewicks *that have a lead content of more than 0.06 percent* of the total weight of the metal core" along with "candles made with such wicks" (emphasis added). See **Tab 1.** Thus, by the plain language of this regulation, as well as its grammatical, dependent-clause construction, the NCA has determined that the only relevant products subject to the CPSIA general conformity certification requirement are *metal-cored candlewicks containing lead*, as well as *candles made with such metal-cored candlewicks.* This conclusion is reinforced by the Commission's regulations on product packaging, enacted as part of the 2003 ban: only the outer containers or wrappers of candles with a lead-content wick must contain a certification the product conforms. 16 C.F.R. § 1500.17(a)(13)(ii), **Tab 1.**

This NCA determination is consistent with the published preamble on the regulation, which defines "[t]he [p]roduct" at issue as "[l]ead-cored . . . candlewicks with a metal wire in the center made of lead or lead alloy." 66 Fed. Reg. 19142 (April 18, 2003), see **Tab 2.** This NCA determination is also consistent with CPSC General Counsel Cheryl Falvey's description of this 2003 Commission action. In her opinion addressing the possible application of new CPSIA lead limits to product inventory, Ms. Falvey described the Commission's 2003 action as "banning metal-cored candlewicks containing lead and candles with such wicks." Office of the General Counsel, Memorandum dated September 12, 2008, p. 3, see **Tab 3.**

Because NCA has determined the relevant product is metal-cored candlewicks containing lead, the NCA has further determined that only those NCA members who make candles incorporating such wicks are "subject to" the general certification requirement under CPSIA § 102(a)(1). On this issue, NCA's analysis was informed by CPSC Compliance Director Gib Mullan's discussion of Section 102(a)(1)'s "subject to" language in conjunction with the lead-in-paint rule, 16 C.F.R. § 1303. At the CPSC's update meeting on the CPSIA's testing and certification requirements, held at CPSC headquarters on October 2, 2008, Mr. Mullan discussed how a painted surface on a product is a necessary prerequisite for the application of – and required certification to -- 16 C.F.R. § 1303. According to Mr. Mullan's remarks, products that do not incorporate a painted surface are not "subject to" 16 C.F.R. § 1303. Consequently, manufacturers of a product without such a painted surface are not required to certify to 16 C.F.R. § 1303. See **Tab 4**, excerpt from Mr. Mullan's remarks.

The NCA believes this type of analysis is also appropriate for the present case. The presence of a lead-content metal wick is a necessary pre-requisite for the application of – and required certification to -- 16 C.F.R. §§ 1500.12 and 1500.17(a)(13). Stated another way, it appears obvious that candles with wicks that contain no metal, e.g. paper or cotton wicks, do not require certification. Consequently, manufacturers of candles *without* such lead-content metal wicks are not "subject to" 16 C.F.R. §§ 1500.12(a)(2) and 1500.17(a)(13). The NCA plans to advise its members that, if they make a candle *without* a lead-content metal wick, they are not required to certify the candle generally to 16 C.F.R. §§ 1500.12(a)(2) and 1500.17(a)(13). The NCA will instruct its members to include an appropriate certification to 16 C.F.R. §§ 1500.12(a)(2) and 1500.17(a)(13) if they are making a candle *with* a lead-content metal wick. Please let us know right away if you disagree with the NCA's analysis on this issue.

II. In NCA's Judgment, Candle Manufacturers Should Be Allowed to Rely on the Testing and Certifications of Metal-Cored Candlewick Makers, Given the Unique Manufacturing Realities of the Candle Industry.

As noted above, CPSIA § 102(a)(1) obligates every manufacturer of a consumer product subject to a CPSC-enforced standard, rule, or ban to certify its compliance with the relevant requirements. As such, NCA's domestic candle manufacturer members will be required to certify their compliance with 16 C.F.R. §§ 1500.12(a)(2) and 1500.17(a)(13) when they make candles with lead-content wicks. However, given the reality of how candles are made, NCA members would like to rely on the testing and certification of the wick manufacturers themselves in making their own certifications. The NCA's proposal follows closely the framework offered by CPSC staff, see **Tab 5**, CPSC Sample General Certification of Conformity, and should constitute sufficient compliance with the CPSIA framework for reasons similar to those offered by CPSC staff at various update meetings on the new law.

As CPSC Compliance Director Mullan explained in detail at the October 2nd meeting, if all parties were to follow the new certification law exactly, multiple parties would test the same products to the same tests. Such expensive duplicative testing is not necessary to achieve the overall objectives of the new certification requirements. As such, the NCA would like to offer a possible refinement to the CPSC model set forth at **Tab 5.**

Without question, under the new CPSIA provision, manufacturers of metal-cored candlewicks themselves will be required to test their candlewicks and certify that their lead content does not exceed the regulatory limit of .06 percent. These wick makers are in the best position to test their wicks for compliance. Affected NCA members will obtain copies of these component-related certifications as part of their materials procurement processes. In the NCA's view, domestic manufacturers of candles that incorporate such metal-cored wicks should be able to rely upon the testing and certification of the candlewick maker in making their own certification. This is because the lead-content of the candle wick is the *only* issue that requires certification in the NCA-member's finished candle, regardless of when any *individual* candle containing the metal-cored wick was made.

Two interrelated manufacturing variables across the domestic candle industry have led the NCA to this conclusion. First, the typical manufacturing operations of an NCA member involve many candles being made at once, with different "lines" in the manufacturing operation producing candles with varying colors, fragrances, and style. Finished candles are then held in the NCA member's warehouse or other storage location until a particular candle is needed to fulfill a particular order. As such, a shipment of finished candles sent by an NCA member, in all likelihood, will contain finished candles that span a very wide range of manufacturing dates. Second, approximately 98% of the candle wicks used by NCA members in their manufacturing operations have *no* lead content and thus will not require any CPSIA certification in NCA's judgment. With respect to the fraction of NCA-made candles with lead-content wicks, NCA members have manufacturing records that allow them to determine which candles contain the wicks subject to the regulatory limit. The lead-content wick will have a specific manufacturing date and place, as well as a specific date and place when testing to the appropriate regulatory lead limit was performed.

As noted above, candles made with lead-content wicks present no other issue requiring CPSIA certification than those set forth in 16 C.F.R. §§ 1500.12(a)(2) and 1500.17(a)(13). In addition, as with any other finished candles, those made with lead-content wicks may incorporate different styles and be made on different manufacturing dates. Consequently, NCA proposes using the testing and certification of the metal-core wick vendor as the basis for its own member's certification. In fact, without radically changing the industry's manufacturing norms, domestic candle manufacturers must realistically rely on the testing and certifications of their metal-cored candlewick vendors.

Working off the CPSC's sample General Certification of Conformity, the NCA proposes advising its members to generate an appropriate certification for each shipment of finished candles made with a metal-core wick that provides the following:

1. A Precise Identification of the Lead-Content Wick and Wick Maker, Along With an Appropriate General Identification of the Finished Candles Made with that Lead-Content Wick by the NCA Member. Because, as noted above, finished candles made with metal-cored wicks can vary in terms of style and manufacturing date, and because the lead content of the wick is the only thing that

requires CPSIA certification for those candles, NCA believes a general description of the finished candles should be sufficient.

2. Identification of 16 C.F.R. § 1500.17(a)(13) as the CPSC-enforced rule to which the lead-content wick and candles are being certified.

3. Identification of the domestic finished candle manufacturer certifying compliance of the product.

4. Identification of the private labeler, if applicable, certifying compliance of the product.

5. The contact name and information for the affiliated party of the US manufacturer that will keep copies, in this country and in English, of the relevant wick-maker's testing that provides the basis for the certification to 16 C.F.R. § 1500.17(a)(13).

6. The precise date and place where the relevant metal-cored wick was manufactured. The NCA member will also provide the place of manufacture for the finished candles, along with the appropriate manufacturing date range, if possible.

7. The precise date and place where the relevant metal-cored wick was tested to the regulatory limit set forth in 16 C.F.R. § 1500.17(a)(13).

The NCA has concluded that such a certification sufficiently complies with the thrust of the new Section 14(g) of the CPSA. Any arrangement other than that set forth above will require the candle industry to dramatically re-tool its manufacturing operations – a result that the NCA does not believe is necessary to achieve the overall objectives of the CPSIA's new testing and certification requirements. After all, the goal of those requirements is products that are compliant with regulatory norms. The NCA believes that its proposed certification procedures will ensure such a result with respect to finished candle shipments.

III. Conclusion

The NCA appreciates the opportunity to comment on these important issues. We would welcome any further insight or comments that CPSC staff may have to offer.

Sincerely,

VB Cooper

Valerie B. Cooper, CAE
Executive Vice President
National Candle Association

Attachments

TAB 1

Sec. 1500.12 Products declared to be hazardous substances under section 3(a) of the act.

(a) The Commission finds that the following articles are hazardous substances within the meaning of the act because they are capable of causing substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use:

(1) Charcoal briquettes and other forms of charcoal in containers for retail sale and intended for cooking or heating.

(2) Metal-cored candlewicks that have a lead content of more than 0.06 percent of the total weight of the metal core, and candles made with such wicks.

(b) [Reserved]

(38 FR 27012, Sept. 27, 1973, as amended at 68 FR 19147, Apr. 18, 2003)

such as, but not limited to, the requirement that any hazardous substance intended or packaged in a form suitable for household use must be labeled in accordance with section 2(p) of the FHSA.

APPENDIX A TO §1500.14(B)(8)—GUIDELINES FOR A CERTIFYING ORGANIZATION (NOT MANDATORY)

(a) The term "certifying organization," as used in this paragraph, refers to an organization or an institute that, after assuring that all provisions are met, certifies that an art material does conform to the labeling requirements of this practice.

(b) The certifying body may be funded by member manufacturers, but should include users or their representatives, as well as manufacturers' chemists, on its technical and certifying committees.

(c) Representative samples of art materials, labeled as conforming to this section and bought at retail, should be analyzed at random and from time to time by an analytical laboratory to ensure they are the same as the formulation used by the toxicologist(s) for determining labeling requirements.

(d) The methods used by the toxicologist(s) in review and determination of the need and content of precautionary labeling for potentially chronic adverse health effects should be periodically reviewed by an advisory board composed of not less than three or more than five toxicologists, at least one of whom is certified in toxicology by a nationally recognized certification board.

(e) In cases where there is disagreement by participating producers or participating users, with the determination of the toxicologist(s), there should be a method whereby the toxicologist's decision can be presented to the advisory board of toxicologists for arbitration.

[38 FR 27012, Sept. 27, 1973, as amended at 41 FR 22934, June 8, 1976; 48 FR 16, Jan. 3, 1983; 53 FR 3018, Feb. 3, 1988; 57 FR 46669, Oct. 9, 1992; 60 FR 8193, Feb. 27, 1995; 61 FR 19629, May 3, 1996; 61 FR 33175, June 26, 1996]

§ 1500.15 Labeling of fire extinguishers.

When a substance or mixture of substances labeled for use in or as a fire extinguisher produces substances that are toxic within the meaning of §1500.3(c) (1) and (2) when used according to label directions to extinguish a fire, the containers for such substances shall bear the following labeling:

(a) When substances are produced that meet the definition of highly toxic in §1500.3(c)(1), the signal word "Danger" and the statement of hazard "Poisonous gases formed when used to extinguish flame or on contact with heat" are required labeling.

(b) When substances are produced that meet the definition of toxic in §1500.3(c)(2), the signal word "Caution" or "Warning" and the statement of hazard "Dangerous gas formed when used to extinguish flame or on contact with heat" are required labeling.

(c) Regardless of whether paragraph (a) or (b) of this section applies, any substance or mixture of substances labeled for use as a fire extinguisher that, if applied to an electrical fire, would subject the user to the likelihood of electrical shock shall be conspicuously labeled "Caution: Do not use on electrical wires."

(d) The statements specified in paragraphs (a), (b), and (c) of this section shall be in addition to any other that may be required under the act. All such substances or mixtures of substances shall also bear the additional statements "Use in an enclosed place may be fatal" and "Do not enter area until well ventilated and all odor of chemical has disappeared."

§ 1500.17 Banned hazardous substances.

(a) Under the authority of section 2(q)(1)(B) of the act, the Commission declares as banned hazardous substances the following articles because they possess such a degree or nature of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of interstate commerce:

(1) Mixtures that are intended primarily for application to interior masonry walls, floors, etc., as a water repellant treatment and that are "extremely flammable" within the meaning of section 2(1) of the act (repeated in §1500.3(b)(10)).

(2) Carbon tetrachloride and mixtures containing it (including carbon tetrachloride and mixtures containing it used in fire extinguishers), excluding unavoidable manufacturing residues of carbon tetrachloride in other chemicals that under reasonably foreseeable

1994, all 24 imported devices the Commission tested, and 1 of 8 domestic devices, tipped over while functioning. In fiscal year 1995, 22 of 27 imported devices and 1 of 5 domestic devices tipped over during Commission testing. The Commission finds that there is unlikely to be substantial compliance with the voluntary standard applicable to multiple-tube devices.

(C) *Relationship of benefits to costs.* The Commission estimates that the 60-degree tip-angle standard will eliminate the unreasonable tip-over risk posed by these devices. This will provide benefits of saving one life about every 3 years, and preventing an unknown number of nonfatal injuries. The annual cost of modifying affected devices is estimated to be between $1.5 million and $2.7 million. The Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: a ban of all multiple-tube devices with inner tube diameters 1.5 inches or greater; a dynamic performance standard; additional labeling requirements; and relying on the voluntary standard. Although a ban of all large multiple-tube devices would address the risk of injury, it would be more burdensome than the tip-angle standard. The Commission was unable to develop a satisfactory dynamic standard that would reduce the risk of injury. Neither additional labeling requirements nor reliance on the voluntary standard would adequately reduce the risk of injury. Thus, the Commission finds that a standard requiring large multiple-tube devices to have a minimum tip angle greater than 60 degrees is the least burdensome requirement that would prevent or adequately reduce the risk of injury.

(13)(i) *Candles made with metal-cored wicks.* Candles manufactured or imported on or after October 15, 2003, made with metal-cored candlewicks, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candles subject to paragraph (a)(13)(i)(A) of this section are shipped, including each outer container or wrapper in which such candles are distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candle(s) is/are intended to be displayed at retail or during use in the home, unless that container or wrapper is also the only container or wrapper in which the candle(s) is/are shipped to a retailer.

(ii) *Metal-cored candlewicks.* Metal-cored candlewicks manufactured or imported on or after October 15, 2003, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candlewicks subject to paragraph (a)(13)(ii)(A) of this section is shipped, including each outer container or wrapper of a shipment distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candlewick(s) is/are intended to be displayed or sold at retail, unless that container or wrapper is also the only container or wrapper in which the candlewick(s) is/are shipped to a retailer.

(iii) *Findings*—(A) *General.* To issue a rule under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include them in the regulation. These findings are discussed in paragraphs (a)(13)(iii)(B) through (D) of this section.

(B) *Voluntary Standard.* One alternative to the ban that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. One organization has a standard for candlewicks intended to address the potential for substantial illness posed by such wicks and candles with such wicks. The Commission has

found that the standard is technically unsound and that substantial compliance with it is unlikely. Furthermore, there is no evidence that the standard has been adopted and implemented by candlewick or candle manufacturers.

(C) *Relationship of Benefits to Costs.* The Commission estimates that the ban will reduce the potential for exposure to lead and resulting lead poisoning because there is no "safe" level of lead in the blood. The annual cost to the candle/wick industry of the ban is estimated by the Commission to be in the range of $100,000 to $300,000. On a percentage basis these costs represent only 0.005 to 0.015 percent of the overall value of candle shipments in 2000, which was approximately $2 billion. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: no action; labeling all metal-cored candles with wicks containing more than 0.06 percent lead by weight of the metal; recordkeeping for shipments of wicks containing 0.06 percent or less lead by weight of the metal and of candles with such wicks; and relying on the voluntary standard. Neither no action, nor labeling, nor reliance on the voluntary standard would adequately reduce the risk of illness. Recordkeeping for shipments of wicks and of candles was not the least burdensome requirement that would prevent or adequately reduce the risk of illness. Therefore the Commission finds that a ban on candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks is the least burdensome requirement that would prevent or adequately reduce the risk of illness.

(b) [Reserved]

(Secs. 2(f)(1), (A), (B), (g), (q)(1)(B), 3(a), 74 Stat. 372, 374, as amended 80 Stat. 1304–05, 83 Stat. 187–189, 90 Stat. 503 (15 U.S.C. 1261, 1262); sec. 701 (e), (f), (g), 52 Stat. 1055–56, as amended 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 371 (e), (f), (g)), sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)))

[38 FR 27012, Sept. 27, 1973, as amended at 38 FR 27514, Oct. 4, 1973; 38 FR 31520, Nov. 15, 1973; 39 FR 30114, Aug. 21, 1974; 39 FR 42903, Dec. 9, 1974; 41 FR 22935, June 8, 1976; 42 FR 44202, Sept. 1, 1977; 43 FR 12310, Mar. 24, 1978; 48 FR 16, Jan. 3, 1983; 56 FR 37837, Aug. 9, 1991; 61 FR 13095, Mar. 26, 1996; 61 FR 15245, Apr. 25, 1996; 68 FR 19147, Apr. 18, 2003]

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other articles presenting mechanical hazards.* Under the authority of sections 2(f)(1)(D) and 24 of the act and pursuant to the provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

(1) Any toy rattle containing, either internally or externally, rigid wires, sharp protrusions, or loose small objects that have the potential for causing lacerations, puncture wound injury, aspiration, ingestion, or other injury. (But see § 1500.86(a)(1)).

(2) Any toy having noisemaking components or attachments capable of being dislodged by the operating features of the toy or capable of being deliberately removed by a child, which toy has the potential for causing laceration, puncture wound injury, aspiration, ingestion, or other injury.

(3) Any doll, stuffed animal, or other similar toy having internal or external components that have the potential for causing laceration, puncture wound injury, or other similar injury. (But see § 1500.86(a)(2)); (See also §§ 1500.48 and 1500.49).

(4) Lawn darts and other similar sharp-pointed toys usually intended for

TAB 2

Final Rule

the interests of producers of winter pears in the production area.

Order Relative to Handling of Winter Pears Grown in Oregon and Washington

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions to change order language relating to alternate Committee members serving for absent members at Committee meetings contained in USDA's Decision issued by the Administrator on June 4, 2002, and published in the **Federal Register** on June 10, 2002, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

* * * * *

Dated: April 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9629 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is today declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and is banning such wicks and candles with such wicks.[1] The Commission is issuing this final rule under authority of the Federal Hazardous Substances Act (FHSA).

DATES: This final rule becomes effective on October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7254.

SUPPLEMENTARY INFORMATION:

A. Background

On February 24, 2000, the U.S. Consumer Product Safety Commission (CPSC or Commission) received a request from Public Citizen that the Commission ban candles with lead-containing wicks and wicks sold for candle-making that contain lead. On February 29, 2000, CPSC received a similar request from the National Apartment Association and the National Multi Housing Council. These requests were docketed collectively under the FHSA (Petition No. HP 00–3) on March 17, 2000.

After analysis of the available data on lead-cored candlewicks and the information provided by the petitioners, the CPSC staff transmitted a briefing package to the Commission recommending that it proceed with a rulemaking that could result in a ban of lead-cored candlewicks and candles with such wicks. The staff recommended that a lead-cored wick be defined as a wick containing a metal core with greater than 0.06 percent lead by weight in the metal, since laboratory test data indicate that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. On February 20, 2001, the Commission voted to grant the petition and commence rulemaking by issuing an advance notice of proposed rulemaking (ANPR) incorporating this criterion. 66 FR 10863. The ANPR was followed in April of 2002 by a notice of proposed rulemaking (NPR) that included requirements for certification, record-keeping, labeling, and tracking of metal-cored candlewicks and candles that comply with the ban. 67 FR 20062.

B. The Product[2]

Lead-cored wicks are candlewicks with a metal wire in the center made of lead or lead alloy. The metal core is used to provide structural rigidity to the wick, *i.e.*, to keep the wick straight during candle production, and to provide an upright wick during burning.

C. The Market

1. Trade Associations

The major trade association that represents candle and wick manufacturers and suppliers is the National Candle Association (NCA). NCA members include about 74 candle manufacturers, 10 of which are foreign. The NCA states that its members produce about 90 percent of the candles made in the U.S. Another U.S. based organization, comprised of craftspersons, is the International Guild of Candle Artisans, with 800 members from around the world.

2. Candle Information

Of 483 firms identified by CPSC staff as U.S. candle manufacturers, all but three firms had fewer than 500 employees and 293 (or 60 percent) had fewer than five employees.

In 2000, the latest year for which factory shipment data are available, U.S. domestic candle shipments totaled approximately $1.5 billion. Imports

[1] The Commissioners voted 3–0 to issue these final rules.

[2] Information presented in this preamble is derived from briefing memoranda to the Commission from Kristina M. Hatlelid, Ph.D., M.P.H., toxicologist, Directorate for Health Sciences, to the Commission, "Petition HP 00–3 to Ban Lead-Cored Candlewicks," December 12, 2000; "Proposal to Ban Lead-Cored Candlewicks," March 18, 2002; and "Briefing Package for Ban on Candles with Lead-containing Wicks for Candle-making that Contain Lead—Final Rule," March 27, 2003. These and other materials for this rulemaking are available on the CPSC world wide Web site at *www.cpsc.gov* and from the CPSC office of the Secretary, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814, (301) 504–7923.

amounted to $504 million in 2000 with candles from the Far East accounting for almost half of the imports. U.S. exports of candles amounted to about $60.5 million in 2001. The apparent U.S. consumption of candles in 2000 (domestic shipments plus imports, minus exports) was about $2.0 billion.

Retail prices of candles range from about 10 cents for a small teelight candle up to $75.00 for large columnar candles.

There are limited data available concerning use of candles in homes. According to the NCA, candles are used in 70 percent of U.S. households. They are burned one to three times a week by the majority of candle consumers. Half of the consumers burn one or two candles at a time.

3. Candlewick Information

There are three general types of candlewicks. Flat braided wicks, used in taper candles, make up about 50 percent of U.S. wick production. Square wicks, representing less than 10 percent of U.S. production, are used in production of beeswax candles and candles that develop small wax pools when burning. Cored wicks, which account for about 40 percent of wicks used in candles, are rigid and have a central core made of cotton, paper, hemp, metal, or polypropylene, surrounded by wicking material made of paper or fiber. The cores provide rigidity to wicks in candles that produce deep pools of molten wax, and are frequently used in votives, pillars, teelights, and other container candles.

CPSC staff identified three domestic producers of candlewicks. The leading producer accounts for the majority of wicks used by the U.S. candle industry. In addition, there may be several small specialty producers of wicks.

Candlewick manufacturers sell their wicks to wholesalers (candle material suppliers) or large candle manufacturers. Some wholesale wick suppliers repackage wicks supplied by large producers. The CPSC staff has identified 55 wholesale suppliers of candle making materials. Small candle producers usually purchase wick material from wholesale firms.

Small quantities of candlewicks may be purchased by consumers at craft stores. They may be purchased in large quantities from wholesale firms or direct from manufacturers. Wicks are available on reels or precut to desired lengths. Prices vary depending upon how the wick is supplied and the quantities ordered. For example, based on one manufacturer's list prices, pre-waxed wicks on reels were 12 cents per yard and pre-waxed, pre-cut, two-inch wicks were 37 cents per yard. For this manufacturer, price did not depend on wick type.

No specific information is available for domestic shipments or sales of candlewicks. However, based on information provided by the leading domestic candlewick manufacturer in its comments on the NPR, the CPSC staff estimates that total domestic sales of candlewicks could be about four to five million dollars annually. Data on international trade in wicks do not distinguish candlewicks from other types of wicks (e.g., wicks for stoves, lighters, and lamps). Still, imports of all types of wicks, including candlewicks, were about $4.1 million in 2001.

Prior to the granting of the petition, candlewicks with some levels of detectable lead were found in the marketplace. In a non-statistical survey of candles for sale in the Washington, DC area in 1999, the petitioners found that about 30 percent of candles for sale had metal-cored wicks, and about 10 percent of these (or three percent of all candles sampled) had detectable levels (*i.e.*, at least trace levels) of lead in the wick.

According to the NCA, use of lead cored wicks among U.S. manufacturers is negligible. Practically all metal-cored wicks currently produced in the U.S. are made of zinc. According to the NCA, zinc-cored wicks account for about 15 to 20 percent of U.S. production. Zinc-cored wicks have trace amounts of lead, about 0.01 percent, substantially less than the lead limit in the standard finalized today.

D. The Risk of Illness

As a lead-cored wick candle burns, some of the lead may vaporize and be released into the air. This airborne lead may be inhaled. Some of this lead may deposit onto floors, furniture, and other surfaces in the room where children may be exposed to it. One cannot tell by looking at the wick core if it is made of lead, and there is no simple way for a consumer to determine its lead content. The presence of lead in a wick can be determined only by laboratory analysis.

Similarly, one cannot tell if lead is being released from a burning candle by observing smoke or soot; nor can one tell that lead is not being released by the lack of visible emissions. Determination of lead in room air or on surfaces must be done by professionals.

The toxic effects of lead and the risk to consumers, especially children, from exposure to lead emitted from lead-cored wick candles, including neurological damage, delayed mental and physical development, attention and learning deficiencies, and hearing problems, were detailed in the CPSC staff briefing packages on Petition No. HP 00–3. CPSC staff concluded that, under reasonable assumptions, exposure of children to indoor air lead levels from candles emitting 430 micrograms of lead per hour or more could result in elevated blood levels (greater than 10 micrograms of lead per deciliter of blood). Laboratory investigations by CPSC staff and others indicate that lead-cored wick candles can emit more than 3,000 µg of lead per hour during candle burning. Thus, the Commission finds that, under certain expected use conditions, the lead emitted from burning candles with lead-cored wicks presents a risk to consumers of substantial illness from exposure through inhalation of airborne lead. Children may also be exposed to lead that deposits onto surfaces in the room.

E. International Activities

Several countries have acted on this issue. Officials in Canada issued an advisory in January 2001, warning consumers that some candles sold in Canada contained lead-cored wicks, and offering advice on making informed purchasing decisions.[3] Officials in Australia and New Zealand instituted provisional bans on candles with wicks containing any amount of lead as early as 1999.[4] Australia recently announced a permanent ban on sales of candles with wicks containing more than 0.06 percent lead.[5]

Denmark issued a comprehensive order in December 2000 banning a number of products containing lead.[6] Chafing dish candles and other candles are specifically included in the ban. The order defines a lead-containing product as one in which lead represents more than 100 mg/kg (0.01 percent) of the homogeneous components.

F. Statutory Requirements

This proceeding is conducted under provisions of the FHSA, 15 U.S.C. 1261–1278. It involves two actions. First, pursuant to section 3(a) of the FHSA, the Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal

[3] Health Canada Advisory 2001–02, January 2001.

[4] Commonwealth of Australia Consumer Protection Notice No. 11 of 1999 under the Trade Practices Act of 1974, September 1999; New Zealand Ministry of Consumer Affairs Unsafe Goods Notice under the Fair Trading Act 1986, June 2000.

[5] Press Release No. 087, Senator Ian Campbell, Parliamentary Secretary to the Treasury, Commonwealth of Australia, November 1, 2002.

[6] Statutory Order No. 1012 of November 13, 2000, on Prohibition of Import and Marketing of Products Containing Lead, Ministry of Environment and Energy, Danish Environmental Protection Agency.

and candles with such wicks are hazardous substances. 16 CFR 1500.12(a)(2). Second, pursuant to section 2(q)(1)(B) of the FHSA, the Commission is banning such wicks and candles with such wicks. 16 CFR 1500.17(a)(13).

A proceeding to declare a substance to be a "hazardous substance" under section 3(a) of the FHSA is governed by, *inter alia*, sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 371(e)–(g). *See* 15 U.S.C. 1262(a)(2).

The Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA because they are toxic, and "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use. * * *" 15 U.S.C. 1261(f)(1)(A). The basis for this declaration is stated in section D. of this preamble, *The Risk of Illness*.

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means to protect the public health and safety. 15 U.S.C. 1261(q)(1)(B). A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1)(B) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and also by sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. 371(e)). *See* 15 U.S.C. 1261(q)(2)and 1262(f).

The CPSC Human Factors staff analysis on the issue of precautionary labeling of individual candles concludes that labeling is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.[7]

That analysis shows that since lead is emitted in unpredictable amounts from a candle with a metal-cored wick containing more than 0.06 percent lead in the metal when the candle is used as intended, the only preventative measures consumers could take to protect themselves against the hazard would be to not burn candles with such wicks. No label or subsequent action by the consumer would prevent the release of lead into the air if the candle were used as intended. The Commission therefore finds that, notwithstanding the precautionary labeling required by the FHSA, metal-cored candlewicks containing more than 0.06 percent lead in the metal and candles with such wicks present a hazard such that keeping them out of interstate commerce is the only adequate means to protect the public health and safety.

In addition to today's final rule banning these wicks and candles, the FHSA requires that the Commission publish a final regulatory analysis that includes: (1) A description of the potential costs and benefits of the rule; (2) a description of alternatives considered by the Commission (including a description of their potential costs and benefits and an explanation of why they were not chosen); and (3) a summary of significant issues raised by comments on the preliminary regulatory analysis published with these proposed rules. 15 U.S.C. 1262(i)(1). The Commission must also find that: (1) Any relevant voluntary standard is unlikely to adequately reduce the risk of injury or substantial compliance with the voluntary standard is unlikely; (2) the expected benefits of the regulation bear a reasonable relationship to expected costs; and (3) the regulation imposes the least burdensome requirement that would adequately reduce the risk of injury. 15 U.S.C. 1262(i)(2).

Procedures established by section 701(e) of the FDCA govern this Commission action to finalize the hazardous substance declaration and the banning rule. 15 U.S.C. 1262(a)(2) and 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have a period of 30 days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). Should valid objections be filed, a hearing to receive evidence concerning the objections would be held and the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e); 16 CFR part 1502.

G. Response to Comments on the NPR

Six comments were received in response to the NPR. All six comments were in favor of a ban on lead-cored wicks. One commenter expressed interest in allowing the use of lead-cored candlewicks in certain circumstances.

One wick manufacturer (Atkins and Pearce) and two industry groups (Consumer Specialty Products Association, National Candle Association) provided comments. One commenter represented a non-profit information and advocacy group in Australia (Global Lead Advice and Support Service). Two commenters were individual consumers or interested parties.

1. Federal Regulation

Comments: All six commenters support the concept of regulating the use of lead in metal-cored candlewicks, although there was disagreement about the scope of the proposed regulation, and the proposed requirements for testing, certifying, and tracking metal-cored wicks.

Response: The Commission acknowledges the interest among consumers, industry, and advocacy groups in the elimination of candlewicks as a source of lead exposure. Responses to specific questions and comments about the proposed rule are set forth below.

2. Proposed Record-Keeping Requirements

Comments: The rule as proposed included requirements that shipping cartons of metal-cored candlewicks and shipping cartons of candles with such wicks be labeled as complying with the ban and with a lot number or other designation, and that wick and candle manufacturers, importers, and distributors maintain records documenting compliance with the ban for each lot. Representatives from industry expressed concern about the costs and labor that would be involved in the tracking of metal-cored wicks used in specific candles, and the maintenance of records.

These commenters provided some information about the candle-making process to illustrate potential difficulties with the proposed requirements. For example, the commenters described machines that rapidly produce many candles at once, simultaneously drawing candlewick from several different spools. Consequently, a batch of finished candles could contain wicks from different lots or sources. Further, these candles with different wicks would be indistinguishable and would be packaged together at the end of production. Thus, a single shipping carton could contain identical candles with different lots of metal-cored candlewicks. The commenters believe it would be labor intensive and costly to change the current method of production so that individual lots of

[7] *See* footnote 2 for sources for the CPSC staff analyses related to this rulemaking.

wicks could be separated and tracked. While not providing alternative estimates of costs, the commenters indicated that the staff may have underestimated the costs of the labeling and record-keeping requirements.

Response: On the basis of comments received and the CPSC staff's further analysis of the complex manufacturing processes described by the commenters and the limited benefits expected, the final rule issued today does not require record-keeping and tracking.

Comment: One commenter, a U.S. wick manufacturer, suggested that tracking could be done in ways other than labeling shipping cartons with a lot number or other identifier. For example, if the wicks in specific lots, made with specific lots of metal-core material (*e.g.*, zinc wire), could be visually distinguished from each other, manufacturers could track candlewick lots without changing current manufacturing processes. One way to distinguish wick lots would be to incorporate unique colors and patterns into the wick braid. Thus, inspecting the wicks in candles from a specified manufacturer would provide visual information about the wick lot. Multiple wick lots could be used at the same time in candle production, and multiple wick lots could end up in the same shipping carton, without losing the ability to obtain records for specific candles or track specific lots of metal-cored wicks. However, additional information provided by this commenter indicated that the use of color-coded tracer threads in the candlewick could result in increased costs associated with testing the performance of the new candlewicks before they could be used in candle production.

Response: The final rule issued today does not require the record-keeping and tracking proposed in the NPR.

3. Effective Date

Comment: One commenter stated that non-complying products should not benefit from an extended sell-through period.

Response: The Commission has no reason to believe that manufacturers, importers, or retailers have, or will, warehouse or stockpile candles made prior to the effective date that would not conform to the rule. Similarly, the Commission has no information that suggests that manufacturers, importers, or retailers will stockpile non-complying candlewicks for the purposes of producing candles between issuance of the final rule and the effective date. Moreover, non-complying candlewick inventory would not be usable after the effective date. The 180-day effective date provides time for manufacturers, distributors, and importers to make any necessary changes to bring their products and shipping containers into compliance with the regulation.

4. Lead-Cored Candlewicks Are Superior for Some Uses

Comment: A commenter stated that candles with lead-cored wicks performed better than candles with other kinds of wicks in a specific application (camping lanterns), and suggested that an exemption be made to allow specific uses of lead-cored candlewicks in candles.

Response: Additional information provided by this commenter indicates that the candles in question do not actually contain lead-cored wicks.

5. All Metals Should Be Banned for Use in Candlewicks

Comment: One commenter, representing an information and advocacy group in Australia, suggested that all metal-cored wicks should be banned for use in candles to avoid any confusion about whether the metal contains unacceptable levels of lead.

Response: As discussed in the CPSC staff briefing memoranda, laboratory test data show that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. Therefore, there is no basis for declaring all metal-cored candlewicks and candles with such wicks to be hazardous substances.

H. Alternatives to the Ban

1. No Action

If the Commission took no action, lead-cored candlewicks could continue to be sold in the U.S. In the mid-1970's the domestic candle industry stopped using lead in wicks, but lead-cored wicks reappeared on the domestic market some time thereafter. While the domestic industry states that it has now voluntarily eliminated lead in wicks, imports may continue to be a source of lead in the absence of a mandatory standard. Under a no action scenario, CPSC enforcement staff would be limited to taking action against lead-containing wicks under the FHSA on a case-by-case basis.

2. Voluntary Standards

In 1974, the Candle Manufacturers Association industry group submitted a statement informing the Commission of an agreement among candle manufacturers to convert to substitutes for lead-cored wicks in candles by the end of the third quarter 1974. They also agreed not to import candles with lead-cored wicks. Further, the major domestic wick manufacturer at that time agreed to discontinue the production of lead-cored wicks.

Despite this agreement, some wick manufacturers resumed producing lead-cored wicks and some candle manufacturers resumed producing and importing candles with lead-cored wicks after 1974.

In May 2000, a task group for candlewicks was formed under the ASTM F15.45 Candle Products Subcommittee to develop a consensus standard to address the lead content of candlewicks. The task group stopped their standards development process in February 2001 in favor of supporting the CPSC mandatory rulemaking process.

During the public comment period on the ANPR, Voices of Safety International (VOSI) proffered a voluntary standard for lead in candlewicks. CPSC technical staff reviewed the standard and noted a number of difficulties. Although the standard stated that a maximum of 0.01 percent lead is required to protect consumer health, no technical or health basis for this level was provided. The CPSC staff maintains that the limit of 0.06 percent lead by weight in the metal is appropriate and supported by the laboratory analyses performed by CPSC staff and others.

The CPSC staff further states that the analytical methodology in the submitted standard is not capable of reliably determining either the presence or concentration of lead in metal-cored candlewicks. The CPSC staff concludes that the tensile strength of a metal alloy would not definitively identify zinc cored wicks with less than the maximum allowable lead content in the metal, but could falsely detect alloys not containing lead, causing them to fail the test and be needlessly prohibited from wick use. The staff states that the metal's lead content, not its physical attributes, is the important characteristic in protecting consumers' health.

The VOSI standard specifies different standards for domestic and imported products. A discriminatory approach to imports with no basis in fact would in all likelihood be a violation of the North American Free Trade Agreement (NAFTA), if not other U.S. treaty obligations.

The Commission believes that membership in standards organizations, such as ASTM, serves, in part, to transmit applicable standards to member firms. VOSI offered no information that its members include candle or wick manufacturers. Nor has it provided any evidence that there would be substantial compliance with the voluntary standard.

Based on the foregoing analysis, the Commission finds that the VOSI standard is technically unsound, and thus would not result in the elimination or adequate reduction of the risk, and that substantial compliance with it is unlikely.

3. Precautionary Labeling

As discussed above in Section F. of this preamble, *Statutory Requirements*, the CPSC Human Factors staff analysis on this issue demonstrates that precautionary labeling of individual candles is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.

I. Regulatory Analysis

1. FHSA Requirement

The Commission is issuing a rule declaring a ban on metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks. Section 3(i) of the FHSA requires that the Commission prepare a final regulatory analysis for this action. 15 U.S.C. 1262(i). The following discussion addresses this requirement.

2. Introduction

The Commission is amending the FHSA regulations to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. In February 2001, the Commission voted to issue an ANPR that could lead to such a declaration and ban. 66 FR 10863. In April 2003, the Commission issued proposed rules that would declare such wicks and candles with such wicks to be hazardous substances and would ban them. 67 FR 20062.

3. Required Content of the Regulatory Analysis

To issue the ban rule under the FHSA, the Commission must also publish a final regulatory analysis containing a discussion of various factors. These factors include a description of the potential benefits and potential costs of the rule, including any benefits and costs that cannot be quantified in monetary terms, and an identification of those most likely to receive the benefits and bear the costs. The FHSA also requires a description of any reasonable alternatives to the rule, together with a summary description of their costs and benefits, and a brief explanation of why such alternatives were not chosen. 15 U.S.C. 1262(i). In addition, the Commission must address the requirements of the Regulatory Flexibility Act, which considers effects on small firms, and the requirement for review pursuant to the National Environmental Policy Act.

4. Analysis of Hazardous Substance Ban [a]

(a) Benefits

While the benefits to consumers of eliminating lead-cored candlewicks as a source of lead exposure are not quantifiable, they are likely to be small since few lead-cored candlewicks are now produced and/or sold in the U.S. The likely benefits are dependent on individual circumstances of candle use. Laboratory studies indicate that under certain conditions of use exposure to airborne lead from burning candles with lead-cored wicks presents a risk of lead poisoning. Therefore, a ban may result in positive health benefits in individual cases.

In the mid-1970s, the Commission chose to defer to the industry's voluntary agreement to eliminate lead from candlewicks. Since this agreement did not prevent companies from returning to the use of lead-cored wicks in the 1980s and 1990s, a ban on the use of lead in candlewicks will help ensure that lead will not be used in candlewicks in the future.

(b) Costs

The costs of replacing lead-cored candlewicks with non-leaded wicks are expected to be small. The current use of lead in wicks is already small, since none of the NCA members use lead in their wicks beyond the acceptable trace levels found in zinc cores, and information obtained from an industry source indicates that the costs of substitutes for lead-cored wicks are not higher than costs of wicks made with lead.

There may be costs associated with labeling and ensuring conformance. Shipping carton labeling may be done by direct printing onto the carton or by affixing a pre-printed label, such as a sticker. On a per carton basis, direct printing is expected to be less costly than the use of a sticker. Labeling machines may cost as much as $15,000 and individual labels may cost five to 10 cents each. Assuming that 15–20 percent of all candles produced would be affected, and that each shipping carton holds 144 candles, valued at one dollar each, perhaps two to three million shipping cartons would require labeling annually. If labels cost five to 10 cents each, then annual costs would be about $100,000 to $300,000. The costs to candlewick manufacturers to label shipments of metal-cored candlewicks, expected to be substantially less than that of candles, are estimated to be about $80 to $320 per year.

Consistent with the Commission's lead in consumer products guidance policy at 16 CFR 1500.230, domestic producers, distributors, private labelers, importers, and retailers of metal-cored candlewicks and candles with such wicks may wish to test products to ensure compliance with the regulation. Alternatively, firms may wish to obtain assurances from suppliers that the lead content of the metal does not exceed 0.06 percent by weight. This should be relatively straightforward because candlewick manufacturers generally receive chemical analyses from the suppliers of the metal used in their candlewick production.

Finally, there may be costs associated with inventories of non-complying candlewicks held by manufacturers. The rule would apply to candlewicks or candles manufactured on and after the rule's effective date. Therefore, non-complying candlewicks would have to be scrapped under the regulation since they would no longer be usable in candle manufacturing on and after the effective date. It is not anticipated, however, that a large amount of candlewick inventory would be affected.

In summary, while the benefits of a ban of lead in candlewicks are likely to be small, the costs of the ban to the industry are small, and thus bear a reasonable relationship to the benefits. The action will contribute to the gradual reduction in lead exposure in the U.S. population.

5. Alternatives to the Rule

The Commission has considered several other alternatives, including: no action, product labeling, recordkeeping for wick/candle shipments and deferral to a voluntary standard. See discussions above at section G., Response to Comments on the NPR, and section H., Alternatives to Proposed Ban.

J. Paperwork Reduction Act

The ban regulation as proposed would have required manufacturers and importers of metal-cored candlewicks and candles with such wicks to perform testing or obtain records of testing, maintain records, and label shipping

[a] The following discussion of costs and benefits is extracted from Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatfield, CPSC Directorate for Health Sciences, "Final Regulatory Analysis of a Proposed Ban of Lead in Candlewicks," March 10, 2003. See footnote 2 for information on the availability of this and other related documents for this rulemaking.

containers for metal-cored candlewicks and candles with such wicks that they produce or import. For this reason, the proposed rule contained "collection of information requirements," and would have been subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.

As noted above in section G., Response to Comments, the Commission has elected to delete these recordkeeping requirements from the final rule issued today. Accordingly, the rule as finalized is not subject to the PRA.

K. Regulatory Flexibility Act Certification

When an agency issues a final rule such as the ban on lead-cored candlewicks and candles with such wicks, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare a final regulatory flexibility analysis describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. A copy of the preliminary analysis is available for inspection in the docket for this rulemaking. That assessment reported that the costs to consumers and candlewick and candle manufacturers were likely to be small.

After analyzing the comments received in response to the NPR, the CPSC staff has concluded that the incremental cost of the rules issued today is likely to be small. Accordingly, it is unlikely that the rules will have a substantial effect on a significant number of small businesses.

Based on the foregoing assessment, the Commission certifies that the rules issued today to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles will not have a significant adverse impact on a substantial number of small businesses or other small entities.

L. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the hazardous substance declaration and ban for metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks.

The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules or safety standards to provide design or performance requirements for products normally have little or no potential for affecting the human environment. Assessment of the impact of the rules issued today indicates that they will have no significant effects on the environment. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

M. Effective Date

The rule issued today provides an effective date 180 days after publication in the **Federal Register**. The time before that date may be used for depletion of any existing stocks of candlewick material and candles subject to the ban. The ban then applies to any metal-cored candlewick containing more than 0.06 percent lead by weight in the metal, and any candle with such a wick, that is manufactured or imported on or after that date.

N. Executive Order 12988

As provided for in Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of these regulations as follows.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the rule banning metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks preempts non-identical state or local requirements applicable to such wicks and candles designed to protect against the same risk of injury.

O. Conclusion

For the reasons stated in this preamble, the Commission finds that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances, that cautionary labeling required by the FHSA is not adequate for such wicks and candles, and that, due to the degree and nature of the hazard presented by these items, in order to protect the public health and safety it is necessary to keep them out of commerce.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping.

■ For the reasons stated in the preamble, the Commission amends title 16 of the Code of Federal Regulation to read as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

■ 2. In § 1500.12, add a new paragraph (a)(2) to read as follows:

§ 1500.12 Products declared to be hazardous substances under section 2(a) of the act.

(a) * * *

(2) Metal-cored candlewicks that have a lead content of more than 0.06 percent of the total weight of the metal core, and candles made with such wicks.

* * * * *

■ 3. In § 1500.17, add new paragraphs (a)(13) and (b) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

(13)(i) *Candles made with metal-cored wicks.* Candles manufactured or imported on or after October 15, 2003, made with metal-cored candlewicks, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candles subject to paragraph (a)(13)(i)(A) of this section are shipped, including each outer container or wrapper in which such candles are distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candle(s) is/are intended to be displayed at retail or during use in the home, unless that container or wrapper is also the only container or wrapper in which the candle(s) is/are shipped to a retailer.

(ii) *Metal-cored candlewicks.* Metal-cored candlewicks manufactured or imported on or after October 15, 2003, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candlewicks subject to paragraph (a)(13)(ii)(A) of this section is shipped, including each outer container or wrapper of a shipment distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candlewick(s) is/are intended to be displayed or sold at retail, unless that container or wrapper is also the only container or wrapper in which the candlewick(s) is/are shipped to a retailer.

(iii) *Findings*—(A) *General.* To issue a rule under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include them in the regulation. These findings are discussed in paragraphs (a)(13)(iii)(B) through (D) of this section.

(B) *Voluntary Standard.* One alternative to the ban that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. One organization has a standard for candlewicks intended to address the potential for substantial illness posed by such wicks and candles with such wicks. The Commission has found that the standard is technically unsound and that substantial compliance with it is unlikely. Furthermore, there is no evidence that the standard has been adopted and implemented by candlewick or candle manufacturers.

(C) *Relationship of Benefits to Costs.* The Commission estimates that the ban will reduce the potential for exposure to lead and resulting lead poisoning because there is no "safe" level of lead in the blood. The annual cost to the candle/wick industry of the ban is estimated by the Commission to be in the range of $100,000 to $300,000. On a percentage basis these costs represent only 0.005 to 0.015 percent of the overall value of candle shipments in 2000, which was approximately $2 billion. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: no action; labeling all metal-cored candles with wicks containing more than 0.06 percent lead by weight of the metal; recordkeeping for shipments of wicks containing 0.06 percent or less lead by weight of the metal and of candles with such wicks; and relying on the voluntary standard. Neither no action, nor labeling, nor reliance on the voluntary standard would adequately reduce the risk of illness. Recordkeeping for shipments of wicks and of candles was not the least burdensome requirement that would prevent or adequately reduce the risk of illness. Therefore the Commission finds that a ban on candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks is the least burdensome requirement that would prevent or adequately reduce the risk of illness.

(b) [Reserved].

Dated: April 9, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Appendix—

List of Relevant Documents

(This Appendix Will Not Appear in the Code of Federal Regulations)

The following documents contain information relevant to this rulemaking, can be accessed on the world-wide web at *www.cpsc.gov*, and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, "Petition HP 00-3 to Ban Lead-cored Candlewicks," December 12, 2000.
2. Memorandum from K.M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to Mary Ann Danello, Ph.D., Associate Executive Director, Directorate for Health Sciences, "Review of Lead Emissions from Candles," November 15, 2000.
3. Memorandum from Carolyn Meiers, Engineering Psychologist, Human Factors, to Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, "Labeling of Candles with Lead-cored Wicks (Petition HP 00-3)," October 18, 2000.
4. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, "Proposal to Ban Lead-Cored Candlewicks," March 18, 2002.
5. Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatlelid, CPSC Directorate for Health Sciences, "Preliminary Regulatory Analysis of a Proposed Ban of Lead in Candlewicks," March 5, 2002.
6. "Briefing Package for Ban of Candles with Lead-containing Wicks and Wicks for Candle-making that Contain Lead—Final Rule," Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, March 27, 2003.

[FR Doc. 03-9255 Filed 4-17-03; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 012-2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), is exempting five Privacy Act systems of records from the subsections of the Privacy Act listed below. The five systems of records were published in the Federal Register on January 24, 2003 (68 FR 3551). As described in this rule, the exemptions are necessary to protect law enforcement and investigatory information and functions of ATF.

EFFECTIVE DATE: This final rule is effective April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307-1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

On November 25, 2002, the President signed into law the Homeland Security

TAB 3

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

Office of the General Counsel
Memorandum

Date: September 12, 2008

TO : Acting Chairman Nancy A. Nord

FROM : Cheryl A. Falvey, General Counsel CAF

SUBJECT : Retroactive Application of the CPSIA to Inventory

In light of requests for guidance at our public meeting on September 4, 2008, you have asked the Office of the General Counsel to provide you with this advisory opinion to provide to the public on whether section 101 regarding lead in the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, 122 Stat. 3016 (August 14, 2008) ("CPSIA") applies to product in inventory or on stores shelves prior to the effective date of those provisions, February 10, 2009, or only to product manufactured after that date. This memorandum sets forth the legal analysis supporting our conclusions that products that contain lead above the limit set in the CPSIA cannot be sold from inventory or on store shelves after February 10, 2009.[1]

The canons of statutory construction dictate that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. *Consumer Product Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108 (1980). Section 101 of the CPSIA limits the amount of lead that can be in products designed or intended primarily for children twelve or younger. Effective 180 days after enactment or February 10, 2009, any children's product[2] that contains more than 600 ppm of lead "shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act ('FHSA')." CPSIA § 101(a). CPSIA makes explicit that any ban imposed or rule promulgated under the lead section will be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the FHSA. CPSIA § 101(g). Under section 2(q)(1) of the FHSA, a banned hazardous substance means any toy or article intended for children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted. 15 U.S.C. § 1261(q)(1).

In addition, section 216 of the CPSIA, entitled "Prohibited Acts," makes it unlawful for any person to "sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product...that is a banned hazardous substance within the meaning of section 2(q)(1) of the [FHSA]." CPSIA § 216(a)(2)(D). Thus, with respect to lead,

[1] This advisory opinion, which was prepared by CPSC staff, has not been approved by and may be changed or superseded by the Commission.
[2] The term "children's product" is defined in the CPSIA at section 235(a) (amending section 3(a)(16) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2052(a)(16)).

the question presented is whether the plain language of the statute sufficiently conveys congressional intent to apply this new ban under the FHSA (or 600 ppm lead limit) retroactively to children's products in inventory prior to the effective date of this new lead limit.

In deciding whether the new lead limit applies retroactively to inventory and product on store shelves, this office has fully considered the precedent that there must be an unmistakable congressional intention that the law apply retroactively. The Supreme Court held in *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988), that "[r]etroactivity is not favored in the law. . . . [C]ongressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." *See also Jahn v. 1-800 Flowers.com, Inc.*, 284 F.3d 807, 810 (7th Cir. 2002), *cert. denied*, 537 U.S. 882 (2002) ("Federal regulations do not, indeed cannot, apply retroactively unless Congress has authorized that step explicitly.") The Supreme Court in *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994), articulated a two-step test for determining whether a federal statute applies retroactively. First, if Congress has clearly provided that a statute will apply retroactively, the analysis goes no further. *Id.* at 264. However, absent clear congressional intent favoring retroactive application, the second step of the *Landgraf* test requires a determination of whether the new provision attaches new legal consequences to events completed before its enactment such that it interferes with familiar considerations of fair notice, reasonable reliance, and settled expectations. *Id.* at 269-70.

It can be argued that Congress has provided that the lead limits in the CPSIA will apply retroactively by its having amended the statute to treat products over the lead limit as banned hazardous substances and by having included the sale of products to which FHSA bans apply as one of the acts prohibited under the statute. If children's products with more than 600 ppm of lead are to be treated as banned hazardous substances, then the ban is applicable to them at the effective date of that treatment regardless of the date of manufacture of the product. In other sections of the CPSIA, Congress specifically states that certain rules apply to product manufactured after the effective date of the provision. With regard to the new third-party testing requirements for children's products, for example, Congress stated that testing requirement "shall apply to any children's product ***manufactured*** more than 90 days after the Commission has established and published notice of the requirements for accreditation of third-party conformity assessment bodies."[3] CPSIA § 102(a)(3)(A). While Congress may never explicitly state that the lead ban applies retroactively to inventory, it did not condition the applicability of the lead ban to product manufactured after a certain date as it did in other sections of the statute. "It is generally assumed that Congress acts purposely when it includes particular language in one section of a statute but omits it in another." *City of Chicago v. Environmental Defense Fund*, 511 U.S. 328, 338 (1994) (citing *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993)). Since Congress has provided that the third-party testing requirement applies only to children's product manufactured 90 days after the establishment and publication of accreditation procedures, its failure to use the same language with regard to the lead limit appears to be intentional. The prohibited acts section of the CPSIA is effective in September 2008, well before the new lead

[3] Congress also recognized that its requirement that catalogues and other printed material contain choking hazard warnings might impact catalogues that had been printed before the effective date in the statute and provided that the Commission could allow a 180 day grace period for previously printed materials. CPSIA § 105. Congress chose to include the option of a grace period for inventory, albeit previously printed catalogues, and did not do so for children's products in inventory that may contain lead above the 600 ppm limit.

limits take effect, so it can be argued that Congress sequentially timed the effective dates to make the lead provisions retroactive.

Similarly, Congress did not extend the existing exception in section 9(g)(1) of the CPSA for inventory manufactured prior to the effective date of a consumer product safety standard to the similar rules, regulations, standards and bans now covered under the expanded prohibited acts section of the CPSIA. Section 9(g)(1) provides that, "[a] consumer product safety standard shall be applicable only to consumer products manufactured after the effective date." 15 U.S.C. § 2058(g)(1). The FHSA does not have a provision comparable to section 9(g) of the CPSA that spells out whether a ban is applicable only to product manufactured after the effective date. In the past, when the agency has determined that a product shall be treated as a banned hazardous substance, it has sometimes applied the ban retroactively to inventory and sometimes it has not. The following examples, each of which is distinguishable and not dispositive here, provide some context on how the FHSA has been used both prospectively and retroactively. In 1988, legislation went into effect that required the Commission to amend its regulations within 60 days of enactment and revoke an exemption for lawn darts not marketed for children's play. In that instance, the Commission revoked the exemption and applied the ban "as to all products in the chain of distribution" on or after the effective date. *See, e.g.*, 53 FR 46828 (Nov. 18, 1988). Likewise, in 2003 when banning metal-cored candlewicks containing lead and candles with such wicks, the Commission adopted a 180 day effective date and decided that inventory would not be usable after that date. 68 FR 19142 (April 18, 2003). The Commission stated that "the 180-day effective date provides time for manufacturers, distributors, and importers to make any necessary changes to bring their products into compliance with the regulations." *Id.* at 19145. However, when banning dive sticks in 2001, the Commission adopted a 30 day effective date and that applied to "dive sticks entering the chain of distribution after that date." 66 FR 13650 (March 7, 2001). The Commission supported its decision on the effective date with the fact that few if any dive sticks were on the market given significant recall activity due the hazard, it would be relatively simple to redesign the product to comply with the rule and alternative products such as dive rings were readily available. While this precedent may not be relevant for reaching a conclusion based on the plain meaning of the statute, it does suggest that FHSA bans can apply retroactively.

On the other hand, it can be argued that Congress recognized the need for an orderly marketplace transition when it phased in the lead limit on a rolling basis. It restricted stockpiling of non-complying goods by expanding the Section 9 prohibition on stockpiling to cover products banned under the FHSA. CPSIA § 213. The February 2009 lead limit of 600 ppm in children's products is lowered to 300 ppm in August of 2009. This suggests some intent to permit sale of product entered into the ordinary stream of interstate commerce at the then applicable 600 ppm limit prior to the effective date for the lower 300 ppm limit. It would certainly seem that given this graduated decrease in the limit over time, a manufacturer could rely on the 6 month limit of 600 ppm lead for purposes of manufacturer during the period February 2009 to August 2009 and, so long as the manufacturer is not stockpiling product, work during that 6 month period to determine how to begin manufacture in August 2009 at the 300 ppm limit.[4] This too would be

[4] Congress also chose to provide that a new rule to be issued by the Commission on cribs was to be applied retroactively. In section 104 of the CPSIA on durable infant and toddler standards, Congress states that the crib standard issued by the Commission must apply to cribs already in use, including in such places as hotels and day

consistent with due process concerns that parties cannot be made to meet prospective new regulatory requirements absent express congressional language to the contrary. This view is reinforced in the Senate conference report on H.R. 4040 where it was noted that the legislation established "the most comprehensive lead safety standards that we have seen to date for toys and the paint manufacturers use on toys. These standards are implemented responsibly to give manufacturers time to adapt, without compromising safety." 154 Cong. Rec. S7877 (daily ed. July 31, 2008) (statement of Sen. Hutchison). Here, the government is imposing a new requirement limiting total lead content across a broad array of children's products in a variety of industries, each with their own inventory issues and testing questions regarding the application of the law to the component parts of their products and with varying financial impacts. The Commission would ordinarily look at these issues in setting an effective date and balance them against the hazards and risks in determining the applicability to inventory to be clear both as to prospective effective dates and the testing schemes that will be acceptable to denote compliance after the effective date.

On balance, it appears that the 600 ppm lead limit applies to product in inventory or on store shelves as of the effective date of February 10, 2009. While the case law suggests that in determining this issue the courts will take a demanding approach to finding unambiguous direction from Congress to apply laws retroactively, given the strength of the congressional language that these products shall be treated as banned hazardous substances and the strong prohibition against their sale, the CPSIA read as a whole suggests that the statutory provisions on lead limits apply to inventory. Products with more than 600 ppm of lead must come off the shelves no later than February 10, 2009, 180 days after enactment.[5]

Congress also required a more stringent lead paint ban to reduce the lead limit in paint from 600 ppm to 90 ppm under the Commission's regulations at 16 C.F.R. § 1303.1, effective one year of the enactment of that act, or August 14, 2009. CPSIA § 101(f). Congress further mandated that any ban imposed or rule promulgated under section 1303.1 would also be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the FHSA. CPSIA § 101(g). For the same reasons proffered above, we believe that the new provisions on the lead paint limit would similarly apply retroactively to ban the sale of any product containing amounts over the new lead paint limit of 90 ppm in inventory or on store shelves on the effective date of those provisions, August 14, 2009.

---

care centers. CPSIA § 104(c). So Congress clearly expressed retroactive intent with regard to cribs in section 104 of the CPSIA. However, since existing CPSA section 9(g) expressly states that new consumer product safety standards apply only to product manufactured after the effective date, it could be argued that such an express statement was not needed with regard to the FHSA lead ban since no provision like section 9(g) exists to limit the ban to product manufactured after the effective date.

[5] This analysis would also apply to children's products that contain lead levels above the 300 ppm lead limit which cannot be sold from inventory or on store shelves after August 14, 2009, as well as to children's products that contain lead above 100 ppm, if it is deemed technologically feasible, after August 14, 2011.

TAB 4

CONSULTER TOUJOURS

"Subject to"

1. Which products are ***subject to*** a standard or ban is generally spelled out in the regulation
   - Example: Part 1303/Lead Paint Ban
2. A product that is ***exempt*** under a standard is not subject to it, and would not require certification to it
   - Example: crayons not subject to the small parts ban
3. A product may be subject to a standard but exempt only from testing: still must be certified

Content of Certificates

Certificates must specify, in English:

- the manufacturer or private labeler issuing the certificate and any third party on whose testing the certificate depends, by name, address and phone number
- the date and place where the product was manufactured and date and place of testing
- contact information for person maintaining test records
- each applicable standard, ban, etc.
- May include other info or same info in other languages

Thank You

Gib Mullan, Director, Office of Compliance & Field Operations

TAB 5

SAMPLE GENERAL CERTIFICATION OF CONFORMITY

CERTIFICATION OF COMPLIANCE

1. Identification of the product covered by this certificate:

2. Citation to each CPSC product safety regulation to which this product is being certified:

3. Identification of the foreign or domestic manufacturer certifying compliance of the product:

4. Identification of the U.S. importer, if applicable, certifying compliance of the product:

5. Identification of the private labeler, if applicable, certifying compliance of the product (if any):

6. Contact information for the individual maintaining records of test results:

7. Date and place where this product was manufactured:

8. Date and place where this product was tested for compliance with the regulation(s) cited above:

9. Identification of any third-party laboratory on whose testing the certificate depends:

This form of certificate and instructions are staff interpretations and do not replace or supersede the statutory requirements of the new legislation. They were prepared by CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the Commission. They may be subject to change based on Commission action.

Instructions for completing the General Certification of Conformity

General Instructions. This sample shows the information that is required for an acceptable certification required by section 14(g) of the Consumer Product Safety Act, 15 U.S.C. § 2063(g).

The required information must be provided in English.

Item 1: Describe the product covered by this certification in enough detail to match the certificate to each product it covers and no others.

Item 2: The certificate must identify separately each applicable rule, ban, standard or regulation under the Acts administered by the Commission that is applicable to the product.

Item 3: Provide the name, full mailing address, and telephone number of the foreign or domestic manufacturer of the product.

Item 4: Provide the name, full mailing address, and telephone number of the U.S. importer, if applicable, of the product. This information may be omitted if the importer chooses to certify separately.

Item 5: Provide the name, full mailing address, and telephone number of any private labeler certifying the product. This information may be omitted if the private labeler chooses to certify separately.

Item 6: Provide the name, full mailing address, e-mail address and telephone number of the person maintaining test records in support of the certification.

Item 7: Provide the date(s) when the product was manufactured by at least month and year. For the place of manufacture, if different from the manufacturer's address in item 3, provide at least the city and country or administrative region, of the place where the product was finally manufactured or assembled. If the same manufacturer operates more than one location in the same city, provide the street address of the factory.

Item 8: Give the date of the tests or test report(s) on which certification is being based and the location(s) of the testing.

Item 9: If a third-party laboratory tested the product or conducted a testing program on which the certification is based,

give the name, full mailing address and telephone number of the laboratory.

This form of certificate and instructions are staff interpretations and do not replace or supersede the statutory requirements of the new legislation. They were prepared by CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the Commission. They may be subject to change based on Commission action.

Q. Can electronic certificates be used to meet the requirements of Section 102 rather than paper?

A. The CPSC staff's opinion is that so long as the Commission has reasonable access to the certificate electronically and it contains all of the information required by section 102 of the CPSIA, electronic certificates can be used to satisfy the CPSIA.

Q. Must each shipment be "accompanied" by a certificate?

A. Yes, the law requires that each import (and domestic manufacturer) shipment be "accompanied" by the required certificate. The requirement applies to imports and products manufactured domestically. CPSC staff believes that an electronic certificate is "accompanying" a shipment if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and available with the shipment.

Q. Must I supply the certificate to my distributors and retailers?

A. You are required to "furnish" the certificate to your distributors and retailers. CPSC staff believes that this requirement is satisfied if you provide your distributors and retailers a reasonable means to access the certificate.

Q. Must the certifier(s) sign the certificate?

A. No. Issuing the certificate satisfies the new law. It does not have to be signed by the issuer(s).

Q. On what does my certification have to be based?

A. The general conformity certification must be based on a test of each product or a reasonable testing program.

Q. Where must these certificates be filed?

A. A certificate does not have to be filed with the government. As noted above, the certificate must "accompany" the product shipment, and be "furnished" to distributors and retailers, and be furnished to CPSC upon request.

These FAQs are unofficial descriptions and interpretations of various features of CPSIA and do not replace or supersede the statutory requirements of the new legislation. These FAQs were prepared by CPSC staff, have not been reviewed or approved by, and may not necessarily reflect the views of, the Commission. Some FAQs may be subject to change based on Commission action.

Stevenson, Todd

From: Becky Butler [RMB@brown-gidding.com]
Sent: Wednesday, October 29, 2008 5:50 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: NCA Comments on CPSIA Testing and Certification Part 1 10.29.08.pdf; NCA Comments on CPSIA Testing and Certification Part 2 10.29.08.pdf

Becky Butler
Brown & Gidding, P.C.
3201 New Mexico Avenue, N.W.
St. 242
Washington, DC 20016

This electronic message is intended for the use of the individual or entity to which it is addressed, and may contain information that is privileged and confidential. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify us immediately by reply e-mail or by telephone at 202-237-6008, and destroy the original transmission and its attachments without reading or saving them to disk. Thank you.

Stevenson, Todd 89

From: minasyani@minasyani.com
Sent: Wednesday, October 29, 2008 5:59 PM
To: CPSC-OS
Subject: CPSIA

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Golden Link of NJ Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Golden Link of NJ Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Vache Minassian

Golden Link of NJ Inc.
104 Hardenburgh Ave.
Demarest, NJ 07627
201-322-2165

Kimberly-Clark Corporation

October 29, 2008 - via email

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

Re: Section 102 Certificate Requirements

Please allow this to serve as our response to Consumer Product Safety Commission's ("CPSC") request for comments and information regarding Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"): Requirements for certificates for conformity testing and third party testing. We are grateful for the opportunity to comment on these provisions of CPSIA.

With regard to specific comments or concerns on provisions for either a paper or electronic certificate accompanying products, we offer the following comments:

We believe that paper-based certificates pose risks and potential for errors in handling. These risks include:

- Paper certificates may not be properly attached to shipment documentation.
- Carriers or drivers could inadvertently remove certificate documents, particularly as third party carriers haul shipments when they are not familiar with documentation requirements.
- Receiving personnel may not forward certification to target audience.
- The certification process becomes routine and documents are inadvertently discarded.

We support an approach to electronic certificates which is more consistent with current document handling practices. Underlying support for an electronic approach to certification includes the following observations about current practices:

- Electronic communications are in common use
- A significant majority of orders and invoices are handled electronically.
- Many customers receive advance shipment notifications electronically.

Transmitting certification electronically is a significantly more efficient, environmentally friendly and cost effective method for providing certification for thousands of annual shipments.

With regard to the availability of certificates, we call CPSC's attention to declarations of conformity required under a number of directives in the European Union ("EU"). Guidance is provided by the Notified Bodies in the EU that key technical documentation (including declarations of conformity and testing statements) *"should be able to be submitted immediately, allowing a reasonable time for transmission"*. Please note that the national competent authorities in the EU accept all technical documentation and declarations of conformity in an electronic form.

The declarations of conformity which are backed by the CE mark are only supplied on demand. They do not routinely accompany goods across borders in the EU. It is up to the discretion of customs in each

country to request a declaration of conformity if they want it which is then supplied in an electronic form. This system works well which is both less burdensome and a lower added cost alternative approach.

Building on the handling of declarations of conformity, we encourage CPSC to consider the merits of marking systems. We have observed that CPSC has made reference to these types of systems in their October 2, 2008 presentation on the Certificate of Conformance issue. They can have an important role in achieving compliance with CPSIA. From our experience in Europe, we comment:

- Products subject to conformance certification could be indicated by a mark on the product and/or package. Marking schemes have potential benefits including:
    - A mark is visible to many stakeholders - consumers, retailers, regulators, competitors. The current CPSIA scheme requiring certificates to accompany goods is only visible to those who have access to a certificate and therefore excludes consumers and competitors. The United Kingdom competent authority (MHRA) has indicated that monitoring of the marketplace occurs and can be a prime source for identifying non-compliant goods on the market.
    - The mark limits additional costs for manufacturers, retailers or regulators as it is printed on the product or package. A certificate to accompany products alternatively requires a complex electronic system or significant amount of paperwork.
    - The EU and Russia use an approach with the CE mark and GOST R certification symbol respectively. In both cases, they have differentiated levels of certification. In the EU, the CE mark differentiates the higher risk products which are certified by a third party accredited body from those which are self-certified. In Russia the marks differentiate between products which require mandatory certification and those which are certified voluntarily.
- We believe marking systems such as those used in the EU have served the same regulatory purpose as conformance certificates and can adequately serve the intent and purpose of CPSIA.

Other Federal agencies, most notably the Food and Drug Administration (FDA), have used the approach of publishing guidance documents as a useful facet of an overall program to achieve compliance. We encourage CPSC to consider this approach to help industry reach compliance with CPSIA.

Finally, we encourage CPSC to allow adequate and sufficient time for compliance while exercising its regulatory discretion with regard to implementation and enforcement of CPSIA. We continue to be engaged in orientation activities CPSC is sponsoring regarding the Act.

Sincerely,

Charles C. Keely
Regulatory Technical Leader
Global Regulatory Affairs

Stevenson, Todd

From: Keely, Chuck [cckeely@kcc.com]
Sent: Wednesday, October 29, 2008 6:01 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: CPSIA_CoC_Sec102_Comments_29Oct08.pdf

Please allow the attached file to serve as our response to CPSC's request for comments regarding Section 102 of the Consumer Product Safety Improvement Act. We appreciate the opportunity to offer comments.

Regards,

Chuck Keely | Kimberly-Clark Corp.| Global Regulatory Affairs | cckeely@kcc.com | P:+920-721-5551 | F:+920-721-7878 |

This e-mail is intended for the use of the addressee(s) only and may contain privileged, confidential, or proprietary information that is exempt from disclosure under law. If you have received this message in error, please inform us pı by reply e-mail, then delete the e-mail and destroy any printed copy. Thank you.

Newell Rubbermaid
Brands That Matter

October 29, 2008

U.S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Section 102 Certificate Requirements

In response to your request for comments to Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"), Newell Rubbermaid offers the following concerning the Certificate of Conformity requirement. As background, Newell Rubbermaid is a global consumer products company of power brands including Sharpie®, Graco®, Goody®, Rubbermaid Home Products®, Rubbermaid Commercial Products, Irwin Tools®, Calphalon® & Levolor®.

While we understand the need for the certificates, and the requirement that the Consumer Product Safety Commission ("CPSC") be able to verify that the certificate has been supplied, we do not believe that having a hard copy of the certificate physically accompanying shipments is the proper way to fulfill this requirement for the following reasons:

- Potential loss or damage to the certificate/certificates – This would be especially true when shipments are moving with a consolidator, as the shipments will be handled many times before they reach the U.S.
- Identification of products covered in shipments that have multiple items, not all of which require a certification.
- Knowledge of when a shipment might require a certification if moving by consolidator.
- Knowledge at destination when a shipment might have product that requires a certificate/certificates.

We strongly support the idea of an electronic certificate that would satisfy the requirement that the certificate accompanies the shipment, as outlined in the *"General Certification of Conformity: Sample, Instructions for Completion, and Frequently Asked Questions"* recently posted on the CPSC website. While we understand that the FAQ were prepared by CPSC staff and do not necessarily reflect the views of the Commission, we feel that this is a very reasonable and secure way to handle the Certificates required under the CPSIA. We urge the Commission to adopt an electronic protocol for General Certificates of Conformity.

In lieu of the above, we believe the next most secure and efficient way to handle these certificates is to make them part of the Customs entry package. By handling in this manner the certificates will be matched to the specific import shipment and can be easily made available to either CPSC or CBP for inspection and review.

3 Glenlake Parkway | Atlanta, GA 30328 | Phone +1 (770) 418-7000 | www.newellrubbermaid.com

If the concern is the large number of shipments that are released without CBP review of the documentation that issue could be resolved by adding a flag on the ABI transmission allowing the customs broker to indicate that the certificate is present. This would be similar to how CBP works with EPA for TSCA, FCC for product affirmation and TTB for label approvals for alcoholic beverages.

Additionally, by having the certificate/certificates as part of the entry package it would give CPSC this information prior to the shipments arrival in the U.S. Under the current plan you would have to wait for the container to arrive and than do a physical exam of the shipment to ensure compliance with the certificate requirement.

This would also assist CPSC/CBP in identifying the products if a shipment is designated for examination, as the entry package would be submitted to CBP and forwarded to the examination station. This would give the examining party all the information needed to easily identify the cartons in question, as the entry package would include the invoice and packing list showing marks and numbers.

By utilizing the entry process it would assist importers in identifying shipments that require the document prior to the shipment arriving in the U.S. If the broker has the documents prior to arrival and pre files the entry they will know if any documentation is missing and can alert the importer.

This brings up another concern we have, the scope of the act. At this time there is not any tariff specific guidance concerning what Harmonized Tariff numbers are covered by the Act. While we understand that this is a difficult task we feel this guidance is an integral back to compliance and allowing the Act to accomplish its intent.

If you would like to discuss any of the above please feel free to contact either of us.

Respectfully,

John Higinbothom
Manager, Corporate Compliance
Newell Rubbermaid Inc.
john.higinbothom@newellco.com

Lori A. Prokes
Vice-President, Asst. General Counsel
Newell Rubbermaid Inc.
lori.prokes@newellco.com

Stevenson, Todd

From: Kress, Debbie [Debbie.Kress@newellco.com]
Sent: Wednesday, October 29, 2008 6:36 PM
To: CPSC-OS
Cc: Prokes, Lori; Higinbothom, John
Subject: Section 102 Certificate Requirements
Attachments: Newell Rubbermaid Section 102 Certificate Req.pdf

See the attached letter regarding Section 102 certificate requirements.

Best Regards,

Lori Prokes
Vice President, Assistant General Counsel
Legal Department
Newell Rubbermaid Inc.
2707 Butterfield Road, Suite 100
Oak Brook, IL 60523
(630) 481-1664
lori.prokes@newellco.com

Both Debbie Kress and Newell Rubbermaid Inc. (including all subsidiaries and affiliates) intend that this electronic message (and any attachments) be used exclusively by the intended recipient. This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, be aware that any disclosure, dissemination, distribution or copying of this communication, of the use of its contents, is strictly prohibited. If you received this communication in error, please notify Debbie Kress at (630) 481-1651 and delete the original message from your e-mail system. Thank you.

This message may contain information that is confidential and/or protected by law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying or communication of this message is strictly prohibited. If you have received this communication in error, please contact the sender immediately and delete the message. Please note that although we will take all commercially reasonable efforts to prevent viruses from being transmitted from our systems, it is the responsibility of the recipient to check for and prevent adverse action by viruses on its own systems.

This email has been scanned by the MessageLabs Email Security System.
For more information please visit http://www.messagelabs.com/email

Stevenson, Todd 92

From: katepearce03@aol.com
Sent: Wednesday, October 29, 2008 6:36 PM
To: CPSC-OS
Subject: Section 102 CPSIA

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Pearce Design respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Pearce Design respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Fred & Kate Pearce
Pearce Design

Stevenson, Todd 93

From: Torgny & Co. Jewelers [torgnyandco@usa.net]
Sent: Wednesday, October 29, 2008 6:48 PM
To: CPSC-OS
Subject: Comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Torgny & Co. Jewelers respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Torgny & Co. Jewelers respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Joselyn Beth Belkin, G.G., A.J.P. (GIA)
Torgny & Co. Jewelers
2342 Thousand Oaks Blvd
Thousand Oaks, CA 91362
805-494-3500 Phone
805-496-6004 Fax

Stevenson, Todd 94

From: stevendavis54@gmail.com on behalf of Steven Davis [steven@tobypomeroy.com]
Sent: Wednesday, October 29, 2008 6:55 PM
To: CPSC-OS
Subject: section 102 comments

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Toby Pomeroy respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Toby Pomeroy respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Steven Davis
Toby Pomeroy

Stevenson, Todd 92

From: katepearce03@aol.com
Sent: Wednesday, October 29, 2008 6:36 PM
To: CPSC-OS
Subject: Section 102 CPSIA

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Pearce Design respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Pearce Design respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Fred & Kate Pearce
Pearce Design

Stevenson, Todd 93

From: Torgny & Co. Jewelers [torgnyandco@usa.net]
Sent: Wednesday, October 29, 2008 6:48 PM
To: CPSC-OS
Subject: Comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Torgny & Co. Jewelers respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Torgny & Co. Jewelers respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Joselyn Beth Belkin, G.G., A.J.P. (GIA)
Torgny & Co. Jewelers
2342 Thousand Oaks Blvd
Thousand Oaks, CA 91362
805-494-3500 Phone
805-496-6004 Fax

Stevenson, Todd 94

From: stevendavis54@gmail.com on behalf of Steven Davis [steven@tobypomeroy.com]
Sent: Wednesday, October 29, 2008 6:55 PM
To: CPSC-OS
Subject: section 102 comments

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Toby Pomeroy respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Toby Pomeroy respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Steven Davis
Toby Pomeroy

WIDEBAND

The Fusion of Art and Treasure Since 1951
39 West 29 St. 8 Fl. New York, NY 10001 212-691-9000 fax 212-691-9835

October 29, 2008

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

Dear Sir or Madam, The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

I respectfully submit the following comments and request the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. I respectfully request the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your attention to our concerns.

Sincerely,

Richard Korwin

Richard Korwin
President

Stevenson, Todd

From: RK Wideband [richard@WidebandJewelry.com]
Sent: Wednesday, October 29, 2008 7:46 PM
To: CPSC-OS
Subject: lead testing in precious jewelry
Attachments: Consumer product safety comm re lead testing in precious jlry.doc

Please see attached letter about testing of lead in precious jewelry.

Regards,

Richard Korwin
President

WIDEBAND & Richard Korwin Designs
39 West 29 St 8 FL
New York, NY 10001
212-691-9000
F 212-683-9813
Since 1951
The Fusion of Art and Treasure

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, send an email to info@widebandjewelry.com

Stevenson, Todd 96

From: GHillOrng@aol.com
Sent: Wednesday, October 29, 2008 7:49 PM
To: CPSC-OS
Cc: GHillOrng@aol.com
Subject: Lead in precious metal jewelry

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Gary Hill Jewelers respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Gary Hill Jewelers respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Gary R. Hill

Gary R Hill, owner

Gary Hill Jewelers

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

Stevenson, Todd 97

From: Yossi Segal [dvossi@hotmail.com]
Sent: Wednesday, October 29, 2008 7:54 PM
To: CPSC-OS
Subject: consumer product safety improvement act

Office of the Secretary
Consumer Product Safety Commission, room 502
433 East West Highway
Bethesda, Maryland 20814

Dear Sir or Madam,

The commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA)
regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Tambetti Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its requirements, and general conformity certificate requirements.

2. Tambetti Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your attention to our comments.

Respectfully yours,

Joseph Segal

Tambetti Inc.
509 Madison Avenue
New York, NY 10022

See how Windows Mobile brings your life together—at home, work, or on the go. See Now

98

Stevenson, Todd

From: akgold1@gmail.com on behalf of Adamas Jewelry Co. [akgold@alaska.net]
Sent: Wednesday, October 29, 2008 7:54 PM
To: CPSC-OS
Subject: Comment on CPSIA, Section 102

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Adamas Jewelry Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry made exclusively of precious metals and gemstones is by nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Adamas Jewelry Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Stephanie Jordan, Owner
Adamas Jewelry Co.

Adamas Jewelry Co.
3677 College Rd. Ste. #7
Fairbanks, AK 99709
Ph. (907) 455-6055
Fax (907) 455-6091
http://www.alaskasgold.com
akgold@alaska.net

Stevenson, Todd 99

From: Kevin Doane [kwdoane@sbcglobal.net]
Sent: Wednesday, October 29, 2008 8:02 PM
To: CPSC-OS
Subject: Comments on Section 102...

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Greystone and Company respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth□s crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Greystone and Company respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Kevin Doane, GenMngr

Greystone and Company
Newport Beach, CA 92660

VIA ELECTRONIC MAIL
cpsc-os@cpsc.gov

October 29, 2008

The Honorable Nancy Nord
Acting Chair & Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Section 102 Certificate Requirements - *Consumer Product Safety Improvement Act (CPSIA)*

Dear Commissioner Nord:

The following letter is intended as a response to the CPSC staff request for comments regarding Section 102 – Certificate Requirements.

Access Business Group with Amway, the nearly 50 year old multilevel marketing company, are members of the Alticor Corporation family of companies. Access Business Group manufactures products for Amway distribution as well as offering contract manufacturing services for household, personal care and cosmetic products.

As set forth in the posted CPSC comment request, Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC. The certificate must be based on a test of each product or on a reasonable testing program. This requirement is effective November 12, 2008. In addition, Section 102(b) adds section 14(g)(3) that requires that every certificate "shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product."

FHSA General Compliance Products

As legislatively titled, this section addresses mandatory third party testing for certain children's products. We believe that this is the principle charge for the Commission. As CPSC develops testing procedures and implementing regulations, it is important that existing statutory language and requirements be taken into consideration. In some cases, existing product safety requirements already mandate the information required to be available under longstanding provisions. Methods of identifying this information already appears on product labels, sometimes as a certification mark but often by stipulated label warning language.

Many of our products such as cleaning products or those in pressurized packaging are subject to various federal requirements s under the Federal Hazardous Substances Act (FHSA). FHSA clearly defines those requirements as an adequate notification for consumers and as an assurance of compliance with the Act. Thus, the label in itself is a statement of product certification.

This suggests that any further certification requirement would be duplicitive and redundant without achieving additional consumer safety or information for the CPSC. As such it contravenes the principle of sound regulation – any regulation should accomplish its intended goal with a minimum interference in the marketplace.

PPPA General Compliance Products

Sirnilarly, the Poison Prevention Packaging Act requires use of qualified closures that meet carefully described criteria. The very presence of these closures is an implied certification of that compliance and a sufficient announcement to the CPSC of the manufacturer/packager's certification._ We believe that the separate requirement for certification is burdensome and unnecessary.

General Compliance Certification Requirement

Access Business Group has noted the CPSC staff has supported electronically accessible certificates as acceptable to meet the intent of the CPSIA. .We further suggest that CPSC be flexible in accepting schemes for presenting certification that that meet the intent of the legislation while acknowledging the complexity of logistics among varying product categories and businesses. As identified above, existing marking, labeling or packaging requirements which indicate certification should also be deemed acceptable to meet requirements.

The amount of information provided by coded manufacturing data (date code or lot code) already used to identify individual lots of production for a variety of business purposes should be considered adequate to meet the intent of the certification requirement of correlating product and manufacturer and the substantiation of product compliance. CPSC should require additional certification information only when a reasonable individual might fail to understand the certification or identify the manufacturer/ marketer.

Marketing Alternatives not Clearly Covered

Amway is a leader in responsibly marketing products through multilevel marketing channels of distribution. This is but one mechanism of an ever changing marketplace in the United States. The rules that CPSC is expecting to implement that requirements of CPSIA will require careful consideration and adaptation to be implemented in that flexible marketplace. Some consideration should also be given to direct to consumer marketing via the internet and resale

of goods via "flea markets" and other entrepreneurial outlets. Again, we plead for flexibility in enforcement when the parties involved are making a best effort to comply.

Implementation Deadlines

In view of the arguments presented above and the sweeping nature of CPSC regulations both in type and number of products, we believe that the implementation date is unrealistic. Both the November 12 implementation of the General Compliance requirements and the specified dates for the 3rd party certification of children's products are aggressive and may not be possible for some manufacturers, especially those with limited resources. In this time of economic upheaval, it is reasonable for CPSC to exercise discretion in implementing CSPIA.

Access Business Group strongly urges the consideration of these comments and requests the Commission exercise its full and complete authority to delay implementation of Section 102 until further and more considered guidance can be developed.

Thank you for the opportunity to comment on implementation of this extremely important legislation. Should you or your staff require further assistance please contact me at eMail **bob.hamilton@accessbusinessgroup.com** or phone number (616) 787-7697.

Sincerely,

Robert W. Hamilton
Regulatory Policy Director
Access Business Group
Mail Code 50-3P
7575 Fulton Road, East,
Ada, MI 49355

Stevenson, Todd

From: Bob_Hamilton@accessbusinessgroup.com
Sent: Wednesday, October 29, 2008 8:07 PM
To: CPSC-OS
Subject: Fw: Section 102 Certificate Requirements."
Attachments: Comments on Certification to CPSCL.doc

re-sending previous delivery failure for incomplete address

Bob Hamilton
Regulatory Policy
Access Business Group/ Amway Global
Ph: (616) 787-7697
FAX: (616) 787-5625
Mobile: (616) 485-1047

----- Forwarded by Bob Hamilton/Develop/Access on 10/29/2008 08:05 PM -----

Bob Hamilton/Develop/Access

10/29/2008 04:52 PM

To os@cpsc.gov
cc
Subject Section 102 Certificate Requirements."

CPSC Staff,

Please find in attachment our comments to the captioned issue.

Bob Hamilton
Regulatory Policy
Access Business Group/ Amway Global
Ph: (616) 787-7697
FAX: (616) 787-5625
Mobile: (616) 485-1047

Stevenson, Todd

101

From: RAPHAEL & LEON SARDAR [RALPH@QUALITYCOLOR.COM]
Sent: Wednesday, October 29, 2008 8:15 PM
To: CPSC-OS
Subject: mjsa petition

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Quality Color respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Quality Color respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Ralph sardar
Quality color

102

October 29, 2008

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

Via Email: cpsc-os@cpsc.gov

To Whom It May Concern:

I am writing on behalf of the American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industries and their suppliers – with regard to the general conformity certificate as mandated by Section 102 of the Consumer Product Safety Improvement Act (CPSIA).

At the outset, let me stress that our members have been working hard to ensure full compliance with this new requirement – as well as with other provisions in the CPSIA. Moreover, we at the AAFA communicate with our members daily to make certain our members understand the full ramifications of the new law. They, in turn, are meeting with their customers and suppliers to ensure a fully compliant supply chain.

Notwithstanding that point, there are a number of concerns we still have with the expected implementation of the conformity assessment certificate. There are several issues we believe to be extremely important to ensure the smooth implementation of this new requirement.

In general, we encourage the CPSC to be extremely flexible in its guidance as to what will be acceptable for the certificate. Given these very challenging economic times, we feel an overly burdensome certificate requirement will make U.S. companies less competitive in the global economy without providing an additional improvement in products safety. Moreover, if the certificate system is not executed properly or is executed too hastily, accuracy will deteriorate, which will reduce the confidence level among importers and retailers and tax the CPSC staff beyond its physical limits. Ultimately consumers will suffer.

ELECTRONIC BASED CERTIFICATE

The recent Frequently Asked Questions (FAQ) published on October 24 indicated an electronic certificate would satisfy the requirements of the CPSIA. However, in order for the electronic

1601 North Kent Street, Suite 1200, Arlington, VA 22209 www.apparelandfootwear.org p (703) 524-1864 (800) 520-2262 f (703) 522-6741

certificate to "accompany" a shipment, either the URL or another unique identifier that provides internet-based access to the general conformity certificate must be "available" with the shipment.

We would like to thank the CPSC for working to understand the business community's needs and being more flexible (than simply requiring a paper based certification for all shipments) in considering the certificate format requirements. As we (and others) have noted previously, a paper certificate system would be extremely expensive and virtually impossible to produce by November 12.

While we believe this concept is a step in the right direction, we still have questions and concerns. Without clarification on what it means for the URL or unique identifier to be "available" with the shipment, the CPSC will be spending a lot of time searching shipping containers for this information. Moreover, a system that may work for one industry may not be ideal for another industry. Creating and executing any new system that requires either a paper-based certificate or a physical mark accompanying shipments by November 12 is nearly impossible. Therefore, in order to accommodate companies (especially small and medium businesses) who do not have the ability or the resources to implement complicated new systems, it is important for the CPSC to consider and permit other non-paper-based formats to satisfy the "accompany" requirement for the general conformity certificate.

One of our members (a small to medium sized business) wrote to us recently illustrating this point:

> "Each style of garment requires several certifications because several suppliers are involved. If we have 20 styles in the shipment, and we have 2 to 3 suppliers, we have to have at least 40 to 60 certifications. This is very difficult to produce. Attaching the certificate (or a sticker) to each box is very difficult as we might have 400 cartons in the container."

In addition, members have identified numerous logistics and transportation scenarios they encounter on a daily basis, all of which would face gridlock were there to remain a physical requirement for the certification. This is particularly the case as products transit through distribution centers (DC) and onto individual retail customers. Products arrive to the DC as a shipment from a particular factory. Then, in the DC, individual products are reorganized and repacked as orders for individual retail customers. This necessarily requires generation of new certifications for shipments leaving the DC that are different than the certifications entering the DC. While any certification record keeping requirement connected with this logistical scenario is extremely complex, a paper based record keeping requirement, particularly with DCs that are dealing with 1000s of orders and shipments per day, is impossible.

One possible solution for the inbound certification requirements is to allow companies to include the general conformity certificate within the import recordkeeping system they are already required to maintain as specified in 19 U.S.C. 1509 (a)(1)(A). The "(a)(1)(A) list" includes records and information required to be produced to Customs and Border Protection (CBP) upon request. The "(a)(1)(A) list" already includes records required by other government agencies including the Animal Plant Health Inspection Services, U.S. Coast Guard,

Food and Drug Administration and Federal Wildlife Services. By allowing the certificate to be a part of the "(a)(1)(A) list," the certificate would be deemed to be legally accompanying the shipment, would be easily accessible and available on demand, and would be implemented in a manner that compliments current operating procedures. Furthermore, CPSC would not have to create any new database as one already exists with CBP. By being flexible in considering a fully electronic based certificate, the CPSC will allow companies to comply with the legislation at the lowest possible cost with the greatest efficiency resulting in the highest compliance rate. We believe such an approach would be in the interests of both the importer and enforcement communities.

For the outbound certifications – that is the certifications from the importer to the retailer – we believe the certification requirement should focus only on ensuring that the retailers have access to a certificate for the products covered by a particular order, should they want to review it. In other words, rather than require companies to send the certificate along with each shipment, the CPSC should permit companies to notify their customers how they can access the certificate through an intranet or other electronic means. This is best accomplished by permitting companies to rely upon, and supplement as necessary, the normal business-to-business documentation and procedures they use in the course of their normal transactions. This concept, we presume through electronic means, appears to be covered in the CPSC FAQs published on October 24.

We also encourage the CPSC to ensure that existing practices like continuing guarantees (CG) under the Flammable Fabrics Act (FFA) can form the basis of a reasonable testing program. As you know, a CG under the FFA is a good faith declaration that a product, fabric, or related material conforms with applicable flammability standards. The issuance of a guarantee must be based on reasonable and representative tests conducted in accordance with applicable flammability standards issued under the Flammable Fabrics Act (FFA) or based upon a guarantee received and relied upon in good faith by the guarantor. (See Section 8 of the Flammable Fabrics Act (15 U.S.C.1191) and 16 CFR 1608 General Rules and Regulations under the Flammable Fabrics Act.). A person receiving a proper guarantee in good faith is not subject to criminal prosecution. This same model could be used as a basis for conformance verification for other standards where third party testing is not required under the CPSIA.

EDUCATION PERIOD

Regardless of the format of the certificate, the first few months after the regulation is in place will be chaotic for the entire business community as well as the CPSC. Larger companies are grappling with the best way to inject these new requirements into already complex recordkeeping and data transmission systems dealing with millions of different stock-keeping units (SKU) per year. Smaller companies, where one individual may juggle several different jobs, are trying to figure out how they can accommodate the new requirement in a way that doesn't overtax their very limited resources. In both cases, the added costs of this requirement create real problems for companies facing a much more severe economic environment.

At the same time, we are continuing to hear stories of companies, mostly smaller, family owned companies, who are not even aware of the requirement or have not yet realized the requirement applies to them. We note that the heading for this requirement (in Section 102) in

the bill reads "Mandatory Third Party Testing For Certain Children's Products." While there have been countless advisories and briefings on this issue, including several very informative ones offered by the CPSC itself, it is easily understandable how the owner of a small business that produces adult garments, trying to figure out how best to survive in the current economic climate and dealing with very adverse and very competitive circumstances, may have missed the fact that section 102 (which creates the general conformity assessment certificate) of the CPSIA applies to them as well.

Because of these concerns, we believe it is critical for CPSC to exercise its enforcement discretion to delay enforcement past November 12, and implement an "education period" instead. Again, our members are working hard to comply with the new requirement. However, there are numerous outstanding questions that make the November 12 deadline virtually impossible.

For example, it is extremely difficult to get a definitive list of exactly which standards need to be reported for the various products our members make. In our research on this issue for a basket of products, we have found sharply conflicting opinions about which standards apply in various circumstances. There continues to be confusion of whether mandatory standards that do not apply to apparel and footwear, but which many companies voluntarily follow because of safety concerns, should be disclosed on the certificate. We even note that the guidance offered by the CPSC on this with respect to several product examples from earlier this month indicates some uncertainty. Given the complexity of this seemingly straightforward exercise, we are concerned other more complex issues associated with the certificate will make it exceedingly difficult for companies to know if they are even in full compliance even though they are offering a safe consumer product.

Additionally, a number of other transitional issues – problems that we will not be experiencing once the program has been in place and in operation, but which are causing enormous concerns now – have arisen. For example, one company offered a scenario where they silk screen and embellish imported t-shirts in the United States. They have t-shirts in stock now that they will not embellish until next year. Aside from trying to understand which standards apply to which embellishments (i.e., does silk screening trigger the lead paint or lead substrate requirements), they want to know if they have to get a certificate for the underlying t-shirt (which was clearly produced before November 12) if the embellishment activity is performed after November 12. In another case, a member are asking how he can acquire certificates for stock components, like buttons and zippers, that were produced and purchased from companies who are no longer in business, but which met the applicable safety standards when they were made. We are concerned that full enforcement of the certificate by November 12 may lead companies to make hasty, and incorrect, decisions regarding these and other complicated issues.

Furthermore, comments on the general conformity certificate are due just two weeks before the certificate is to be implemented. This does not give enough time to process, respond to and digest the comments for the CPSC or interested stakeholders. By moving to an "education period," companies (as well as the CPSC) would be allowed a grace period to figure out how to incorporate this new requirement into their business process so we can all move ahead jointly in full partnership. During this period, companies will be expected to begin complying with the

CPSIA (including all safety regulations) and issue general conformity certificates as required. However, the format, content and enforcement will be given a "trial run" to ensure an efficient, working system. Delaying enforcement of the general conformity assessment certificate would leave the safety standards intact so there would be no diminution of consumer safety. Rather, safety will be enhanced as companies are able to focus on ensuring they are producing safe products while eventually phasing in the additional record keeping requirements to provide CPSC the visibility to those standards.

There is recent precedent of a government agency implementing an "education period." On October 8, the Department of Agriculture issued a Federal Register notice allowing for a phase-in schedule of enforcement for recent Lacey Act amendments (regarding illegal timber) to allow completion of an electronic data system to capture additional reporting requirements. The underlying requirements, relating to not trading in products that are made from illegally harvested timber, remain intact and fully in force. That notice further states "CBP already collects some of the information that the Lacey Act amendments require importers to include in their declaration." In a similar manner, CPSC already requires manufacturers to produce, test, and/or label products according to pre-existing product safety standards. The CPSIA augments some of these standards and creates new ones. We believe the CPSC should closely examine the above cited example, as well as numerous other cases with other agencies where a delay in a record keeping burden was permitted, to structure a similar delay/education period with respect to the certificate.

MAINTAIN BUSINESS CONFIDENTIALITY

The CPSIA mandates a copy of the general conformity certificate be furnished to distributors and retailers. This presents a problem when required information on the certificate includes confidential business information (such as the name, full mailing address, and telephone number of the foreign manufacturer of the product).

We encourage the CPSC to publish guidance that makes clear that confidential business information is permitted to be excluded from the version of the certificate supplied to the retailer, provided this information is made available to the CPSC. Upon furnishing the certificate to the retailer or distributor, it is extremely important the CPSC allow companies to omit proprietary or business sensitive information.

We note further that the concept of maintaining business confidentiality underscores our comments relating to physical transmittal of the certificate itself. If a certificate is required to be included in a physical manner in a shipment that is then forwarded (or directly shipped through a "drop-shipment") to the retailer, that retail customer will have access to confidential business information. If a certificate can be maintained electronically, it can be furnished in such a way that retailers are provided with full information regarding product safety conformity without the need to disclose proprietary matters. At the same time, because CPSC will have access to certificates generated by all parties in the supply chain, it will have full visibility to that supply chain for the purposes of ensuring regulatory compliance.

CONCLUSION

In conclusion, let me stress that our industry supports legislation and efforts to ensure that only safe products reach the consumer. But we have real concerns on timing, methodology, reporting and their effect on our industry. We believe that the CPSC must maintain a flexible approach that allows companies to use electronic transmittal and storage of certificates, that permits confidential business information to be shielded from retail customers, and that allows companies to rely upon the systems they already use when they communicate with their business partners. Above all, we cannot stress enough the importance of using the coming months as a period of extensive education, rather than enforcement, of this certification requirement.

Thank you for your consideration of these comments. We look forward to continuing to work closely with the CPSC to ensure a smooth and effective implementation of the new requirements established by the CPSIA.

Sincerely,

Kevin M. Burke
President and CEO

Stevenson, Todd

From:	Steve Lamar [slamar@apparelandfootwear.org]
Sent:	Wednesday, October 29, 2008 8:41 PM
To:	CPSC-OS
Cc:	Rebecca Mond
Subject:	Section 102 Comments
Attachments:	October 29.doc

Please find attached comments from AAFA in connection with Section 102. Thanks. Steve Lamar, Exec VP, AAFA. Phone: 703-797-9041

October 29, 2008

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

Via Email: cpsc-os@cpsc.gov

To Whom It May Concern:

I am writing on behalf of the American Apparel & Footwear Association (AAFA) – the national trade association of the apparel and footwear industries and their suppliers – with regard to the general conformity certificate as mandated by Section 102 of the Consumer Product Safety Improvement Act (CPSIA).

At the outset, let me stress that our members have been working hard to ensure full compliance with this new requirement – as well as with other provisions in the CPSIA. Moreover, we at the AAFA communicate with our members daily to make certain our members understand the full ramifications of the new law. They, in turn, are meeting with their customers and suppliers to ensure a fully compliant supply chain.

Notwithstanding that point, there are a number of concerns we still have with the expected implementation of the conformity assessment certificate. There are several issues we believe to be extremely important to ensure the smooth implementation of this new requirement.

In general, we encourage the CPSC to be extremely flexible in its guidance as to what will be acceptable for the certificate. Given these very challenging economic times, we feel an overly burdensome certificate requirement will make U.S. companies less competitive in the global economy without providing an additional improvement in products safety. Moreover, if the certificate system is not executed properly or is executed too hastily, accuracy will deteriorate, which will reduce the confidence level among importers and retailers and tax the CPSC staff beyond its physical limits. Ultimately consumers will suffer.

ELECTRONIC BASED CERTIFICATE

The recent Frequently Asked Questions (FAQ) published on October 24 indicated an electronic certificate would satisfy the requirements of the CPSIA. However, in order for the electronic certificate to "accompany" a shipment, either the URL or another unique identifier that provides internet-based access to the general conformity certificate must be "available" with the shipment.

We would like to thank the CPSC for working to understand the business community's needs and being more flexible (than simply requiring a paper based certification for all shipments) in considering the certificate format requirements. As we (and others) have noted previously, a paper certificate system would be extremely expensive and virtually impossible to produce by November 12.

While we believe this concept is a step in the right direction, we still have questions and concerns. Without clarification on what it means for the URL or unique identifier to be "available" with the shipment, the CPSC will be spending a lot of time searching shipping containers for this information. Moreover, a system that may work for one industry may not be ideal for another industry. Creating and executing any new system that requires either a paper-based certificate or a physical mark accompanying shipments by November 12 is nearly impossible. Therefore, in order to accommodate companies (especially small and medium businesses) who do not have the ability or the resources to implement complicated new systems, it is important for the CPSC to consider and permit other non-paper-based formats to satisfy the "accompany" requirement for the general conformity certificate.

One of our members (a small to medium sized business) wrote to us recently illustrating this point:

> "Each style of garment requires several certifications because several suppliers are involved. If we have 20 styles in the shipment, and we have 2 to 3 suppliers, we have to have at least 40 to 60 certifications. This is very difficult to produce. Attaching the certificate (or a sticker) to each box is very difficult as we might have 400 cartons in the container."

In addition, members have identified numerous logistics and transportation scenarios they encounter on a daily basis, all of which would face gridlock were there to remain a physical requirement for the certification. This is particularly the case as products transit through distribution centers (DC) and onto individual retail customers. Products arrive to the DC as a shipment from a particular factory. Then, in the DC, individual products are reorganized and repacked as orders for individual retail customers. This necessarily requires generation of new certifications for shipments leaving the DC that are different than the certifications entering the DC. While any certification record keeping requirement connected with this logistical scenario is extremely complex, a paper based record keeping requirement, particularly with DCs that are dealing with 1000s of orders and shipments per day, is impossible.

One possible solution for the inbound certification requirements is to allow companies to include the general conformity certificate within the import recordkeeping system they are already required to maintain as specified in 19 U.S.C. 1509 (a)(1)(A). The "(a)(1)(A) list" includes records and information required to be produced to Customs and Border Protection (CBP) upon request. The "(a)(1)(A) list" already includes records required by other government agencies including the Animal Plant Health Inspection Services, U.S. Coast Guard, Food and Drug Administration and Federal Wildlife Services. By allowing the certificate to be a part of the "(a)(1)(A) list," the certificate would be deemed to be legally accompanying the shipment, would be easily accessible and available on demand, and would be implemented in a manner that compliments current operating procedures. Furthermore, CPSC would not have to create any new database as one already exists with CBP. By being flexible in considering a fully electronic based certificate, the CPSC will allow companies to comply with the legislation at the lowest possible cost with the greatest efficiency resulting in the

highest compliance rate. We believe such an approach would be in the interests of both the importer and enforcement communities.

For the outbound certifications – that is the certifications from the importer to the retailer – we believe the certification requirement should focus only on ensuring that the retailers have access to a certificate for the products covered by a particular order, should they want to review it. In other words, rather than require companies to send the certificate along with each shipment, the CPSC should permit companies to notify their customers how they can access the certificate through an intranet or other electronic means. This is best accomplished by permitting companies to rely upon, and supplement as necessary, the normal business-to-business documentation and procedures they use in the course of their normal transactions. This concept, we presume through electronic means, appears to be covered in the CPSC FAQs published on October 24.

We also encourage the CPSC to ensure that existing practices like continuing guarantees (CG) under the Flammable Fabrics Act (FFA) can form the basis of a reasonable testing program. As you know, a CG under the FFA is a good faith declaration that a product, fabric, or related material conforms with applicable flammability standards. The issuance of a guarantee must be based on reasonable and representative tests conducted in accordance with applicable flammability standards issued under the Flammable Fabrics Act (FFA) or based upon a guarantee received and relied upon in good faith by the guarantor. (See Section 8 of the Flammable Fabrics Act (15 U.S.C.1191) and 16 CFR 1608 General Rules and Regulations under the Flammable Fabrics Act.). A person receiving a proper guarantee in good faith is not subject to criminal prosecution. This same model could be used as a basis for conformance verification for other standards where third party testing is not required under the CPSIA.

EDUCATION PERIOD

Regardless of the format of the certificate, the first few months after the regulation is in place will be chaotic for the entire business community as well as the CPSC. Larger companies are grappling with the best way to inject these new requirements into already complex recordkeeping and data transmission systems dealing with millions of different stock-keeping units (SKU) per year. Smaller companies, where one individual may juggle several different jobs, are trying to figure out how they can accommodate the new requirement in a way that doesn't overtax their very limited resources. In both cases, the added costs of this requirement create real problems for companies facing a much more severe economic environment.

At the same time, we are continuing to hear stories of companies, mostly smaller, family owned companies, who are not even aware of the requirement or have not yet realized the requirement applies to them. We note that the heading for this requirement (in Section 102) in the bill reads "Mandatory Third Party Testing For Certain Children's Products." While there have been countless advisories and briefings on this issue, including several very informative ones offered by the CPSC itself, it is easily understandable how the owner of a small business that produces adult garments, trying to figure out how best to survive in the current economic climate and dealing with very adverse and very competitive circumstances, may have missed the fact that section 102 (which creates the general conformity assessment certificate) of the CPSIA applies to them as well.

Because of these concerns, we believe it is critical for CPSC to exercise its enforcement discretion to delay enforcement past November 12, and implement an "education period" instead. Again, our members are working hard to comply with the new requirement. However, there are numerous outstanding questions that make the November 12 deadline virtually impossible.

For example, it is extremely difficult to get a definitive list of exactly which standards need to be reported for the various products our members make. In our research on this issue for a basket of products, we have found sharply conflicting opinions about which standards apply in various circumstances. There continues to be confusion of whether mandatory standards that do not apply to apparel and footwear, but which many companies voluntarily follow because of safety concerns, should be disclosed on the certificate. We even note that the guidance offered by the CPSC on this with respect to several product examples from earlier this month indicates some uncertainty. Given the complexity of this seemingly straightforward exercise, we are concerned other more complex issues associated with the certificate will make it exceedingly difficult for companies to know if they are even in full compliance even though they are offering a safe consumer product.

Additionally, a number of other transitional issues – problems that we will not be experiencing once the program has been in place and in operation, but which are causing enormous concerns now – have arisen. For example, one company offered a scenario where they silk screen and embellish imported t-shirts in the United States. They have t-shirts in stock now that they will not embellish until next year. Aside from trying to understand which standards apply to which embellishments (i.e., does silk screening trigger the lead paint or lead substrate requirements), they want to know if they have to get a certificate for the underlying t-shirt (which was clearly produced before November 12) if the embellishment activity is performed after November 12. In another case, a member are asking how he can acquire certificates for stock components, like buttons and zippers, that were produced and purchased from companies who are no longer in business, but which met the applicable safety standards when they were made. We are concerned that full enforcement of the certificate by November 12 may lead companies to make hasty, and incorrect, decisions regarding these and other complicated issues.

Furthermore, comments on the general conformity certificate are due just two weeks before the certificate is to be implemented. This does not give enough time to process, respond to and digest the comments for the CPSC or interested stakeholders. By moving to an "education period," companies (as well as the CPSC) would be allowed a grace period to figure out how to incorporate this new requirement into their business process so we can all move ahead jointly in full partnership. During this period, companies will be expected to begin complying with the CPSIA (including all safety regulations) and issue general conformity certificates as required. However, the format, content and enforcement will be given a "trial run" to ensure an efficient, working system. Delaying enforcement of the general conformity assessment certificate would leave the safety standards intact so there would be no diminution of consumer safety. Rather, safety will be enhanced as companies are able to focus on ensuring they are producing safe products while eventually phasing in the additional record keeping requirements to provide CPSC the visibility to those standards.

There is recent precedent of a government agency implementing an "education period." On October 8, the Department of Agriculture issued a Federal Register notice allowing for a phase-in schedule of enforcement for recent Lacey Act amendments (regarding illegal timber) to allow completion of an electronic data system to capture additional reporting requirements. The underlying requirements, relating to not trading in products that are made from illegally harvested timber, remain intact and fully in force. That notice further states "CBP already collects some of the information that the Lacey Act amendments require importers to include in their declaration." In a similar manner, CPSC already requires manufacturers to produce, test, and/or label products according to pre-existing product safety standards. The CPSIA augments some of these standards and creates new ones. We believe the CPSC should closely examine the above cited example, as well as numerous other cases with other agencies where a delay in a record keeping burden was permitted, to structure a similar delay/education period with respect to the certificate.

MAINTAIN BUSINESS CONFIDENTIALITY

The CPSIA mandates a copy of the general conformity certificate be furnished to distributors and retailers. This presents a problem when required information on the certificate includes confidential business information (such as the name, full mailing address, and telephone number of the foreign manufacturer of the product).

We encourage the CPSC to publish guidance that makes clear that confidential business information is permitted to be excluded from the version of the certificate supplied to the retailer, provided this information is made available to the CPSC. Upon furnishing the certificate to the retailer or distributor, it is extremely important the CPSC allow companies to omit proprietary or business sensitive information.

We note further that the concept of maintaining business confidentiality underscores our comments relating to physical transmittal of the certificate itself. If a certificate is required to be included in a physical manner in a shipment that is then forwarded (or directly shipped through a "drop-shipment") to the retailer, that retail customer will have access to confidential business information. If a certificate can be maintained electronically, it can be furnished in such a way that retailers are provided with full information regarding product safety conformity without the need to disclose proprietary matters. At the same time, because CPSC will have access to certificates generated by all parties in the supply chain, it will have full visibility to that supply chain for the purposes of ensuring regulatory compliance.

CONCLUSION

In conclusion, let me stress that our industry supports legislation and efforts to ensure that only safe products reach the consumer. But we have real concerns on timing, methodology, reporting and their effect on our industry. We believe that the CPSC must maintain a flexible approach that allows companies to use electronic transmittal and storage of certificates, that permits confidential business information to be shielded from retail customers, and that allows companies to rely upon the systems they already use when they communicate with their business partners. Above all, we cannot stress enough the importance of using the coming months as a period of extensive education, rather than enforcement, of this certification requirement.

Thank you for your consideration of these comments. We look forward to continuing to work closely with the CPSC to ensure a smooth and effective implementation of the new requirements established by the CPSIA.

Sincerely,

Kevin M. Burke
President and CEO

103

ADNY™

AAROHI DIAMONDS *New York*

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Aarohi Diamonds, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Aarohi Diamonds, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Parag Ashar
Aarohi Diamonds, Inc.

ADNY Aarohi Diamonds New York 145 West 45th Street New York NY 10036 Phone 212 869 5494
Fax 212 869 7861 www.myadny.com

Stevenson, Todd

From: Parag Ashar [Parag@DiamondDirectNY.com]
Sent: Wednesday, October 29, 2008 10:08 PM
To: CPSC-OS
Subject: FW: URGENT: CPSC Comments Needed Today!
Attachments: Aarohi Comments Letter.doc

ADNY
AARONI DIAMONDS

Parag Ashar
Vice President
212-869-5494 Ext-119

Government Affairs
October 29, 2008

Urgent Action Required Today!

Dear MJSA Member:

Comments about the Consumer Product Safety Improvement Act (CPSIA) regarding testing for lead in all children's products are **due today**. THE ACT CURRENTLY APPLIES TO BOTH PRECIOUS AND NON-PRECIOUS JEWELRY.

These mandates are a potentially costly and entirely unnecessary burden for makers of precious metal jewelry with or without gemstones. Such jewelry is lead-free almost by definition, and therefore should receive an exemption from the CPSIA's requirements. The CPSIA gives the commission the power to grant such an exemption.

MJSA needs your participation if we are to persuade the Consumer Product Safety Commission to act. **Please e-mail the commission TODAY** at cpsc-os@cpsc.gov with comments on this vital issue. You may prefer to cut and paste the sample e-mail below and modify it with your name and your company's name.

For convenience, the sample e-mail has also been made an attachment. Another attachment, included for your information, contains MJSA's position paper on the issue.

Sincerely,

James McCarty
MJSA Chief Operating Officer

Sample e-mail to cut and paste:

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

[COMPANY NAME] respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. [COMPANY NAME] respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

[SIGNATURE]

[TYPED NAME]
[COMPANY NAME]

E-mail: info@mjsa.org | Web site: www.mjsa.org

© 2008 Manufacturing Jewelers & Suppliers of America

MJSA

Stevenson, Todd

104

From: Russ Nobbs [russnobbs@rings-things.com]
Sent: Wednesday, October 29, 2008 11:46 PM
To: CPSC-OS
Cc: joeh@rings-things.com
Subject: Section 102 of CPSIA

Gentlepersons,

The Commission staff has invited comments on Section 102 of the CPSIA relating to requirements for third-party testing and certificates of general conformity testing.

The proposed amendment would require each manufacture and importer of any consumer product issue a certificate that the product complies with CPSC rules.

My business, Rings & Things, is a wholesale distributor and importer of goods used in the manufacturer of jewelry and crafts. We respectfully submit the following comments and direction and clarification from the Commission.

We have worked hard to make sure our product meet CA class requirements. Our website specified the CA class for nearly every item. We submit that jewelry components made exclusively of precious metals and gemstones are by their nature lead-free (within the limits of the miniscule trace amounts found in the earth's crust) such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

The CA consent agreement created a list of materials that were proven safe and mad it much easier and less expensive for companies to comply with regulations aimed at reducing lead exposure. Currently we pay about $27 per item we test. Eliminating from testing the precious metal and gems stones known to be safe makes it possible for us to remain in business and actually test potentially harmful products. We request the CPSC adopt the same sort of class structure making the CA classes a nationwide standard.

I respectfully request the Commission's guidance and clarification on the scope of products required for testing and certification under the CPSIA.

Thank you for your consideration of our comments.

Russ Nobbs, owner
Rings & Things Wholesale
304 E 2nd Ave, Spokane, WA, 99201 USA
(http://www.rings-things.com)
Office e-mail: russnobbs@rings-things.com Traveling e-mail: russnobbs@hotmail.com Office 509-252-2900 x 101 Fax 509 838-2602 Cell 509 370-0176

105

Stevenson, Todd

From: Olemace@aol.com
Sent: Wednesday, October 29, 2008 10:51 PM
To: CPSC-OS
Subject: Section 102(a)(1) amendment to Section 14(a)(1) of CPSIA Act

Sir/Madam,

We respectfully request that Jewelry and Jewelry with stones made from precious metals be excluded from the scope of the CPSIA. All Jewelry made of precious metals are carefully alloyed and handled to not contain lead, Precious metal Jewelry is quality marked and the Hallmark (Trade Mark) of the person or company that stands behind the quality is clearly stamp into the surface of the metal.

Thank You for your consideration.

Mayson A. Callaway

Mayson A. Callaway, CEO
Callaway Consolidated, Inc.
1733 Montreal Circle
Tucker, GA 30084

****

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!
(http://travel.aol.com/discount-travel?ncid=emlcntustrav00000001)

140

THE ART & CREATIVE
MATERIALS INSTITUTE, INC.
1280 Main St., 2nd Fl., P.O. Box 479
Hanson, MA 02341 USA
Tel. (781) 293-4100 Fax (781) 294-0808
Web Address: www.acminet.org

Deborah M. Fanning, CAE, Executive Vice President
Deborah S. Gustafson, Associate Director

October 29, 2008

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

Re: Section 102 Certificate Requirements

Dear Sir:

These comments are being submitted by The Art and Creative Materials Institute, Inc. (ACMI). We have reviewed the Consumer Product Safety Commission (CPSC) Request for Comments and Information on Section 102 of the Consumer Product Safety Information Act (CPSIA) as well as the entire CPSIA. The members of ACMI feel that their participation in ACMI's certification program already indicates that they are in compliance to the Labeling of Hazardous Art Materials Act (LHAMA) and other portions of the Federal Hazardous Substances Act for both acute and chronic hazards and FHSA's labeling requirements. The ACMI's Board of Directors therefore has asked that representatives of ACMI meet with CPSC to determine whether participation in ACMI's certification program can be extended to mean compliance to CPSIA, given the outstanding record of LHAMA and ACMI's programs achieving the goals of CPSIA and the inclusion by Congress in CPSIA of certifying organizations such as ACMI for art materials.

Consumers, retailers and distributors of art materials already rely on the presence of the conformance statement to ASTM D 4236 and the ACMI Seals to mean that the art material complies to FHSA/LHAMA. They know that the ACMI Seals also mean that these products comply to acute hazards and labeling requirements in FHSA, in addition to chronic hazards and labeling requirements of LHAMA. ACMI would be willing to work with CPSC to assure them that ACMI's certification program could also signify compliance to CPSIA. Therefore, we urge CPSC to consider the acceptance of current certification programs such as ACMI's to be compliance to CPSIA, rather than burden manufacturers with provision of certificates to retailers and distributors who already understand by virtue of certification programs and/or seals that products comply to CPSC regulations.

LOOK FOR THESE SEALS.....

Office of the Secretary
Consumer Product Safety Commission

October 29, 2008

ACMI and its members are also very concerned that there will not be enough accredited laboratories to perform third party testing of children's products if accreditation is limited to that provided by ILAC. We urge CPSC to consider accreditation by other accreditation bodies such as NELAC, provided they accredit to the same standards as ILAC, as outlined in the attached proposal of ACMI's consulting toxicologist, Woodhall Stopford, MD, MSPH.

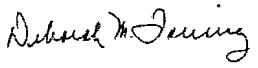
ACMI is also concerned that proprietary information, such as identification of manufacturers of private label brand products, is being required for conformity certificates. We do not understand why this information should be revealed and why there cannot be a system that one company takes responsibility for the conformity certificates. For this reason, we do not believe that multiple certificates would be contemplated in the art material industry as they would draw attention to the identification of this proprietary information.

Art material manufacturers can produce components of products that are manufactured and tested on different dates and even in different locations, so listing date and location of manufacture and testing of each item in a product could be especially onerous. Manufacturers should be allowed to issue a conformity certificates for the entire product with lesser detail of date and place of manufacture and testing. Delivery methods of such certificates should also be allowed by electronic means, rather than by paper, in these days of trying to conserve our natural resources. Electronic submission would also make it easier to get the certificates to the right recipient at a retailer or distributor location, rather than the person in the warehouse accepting the delivery, as well as to CPSC and Customs.

Finally, we urge CPSC to recognize that the task of compliance to the vast requirements of CPSIA is a daunting one, as they have in realizing their own responsibilities and timeline under this act. Therefore, we urge that CPSC either extend the deadlines for compliance or at least use discretion in immediate enforcement for manufacturers displaying good faith efforts to comply.

We appreciate the opportunity to submit these comments on this very important new law.

Respectfully yours,



Deborah M. Fanning, CAE
Executive Vice President
The Art and Creative Materials Institute, Inc.

Of Counsel
Martin J. Neville, Esq.
Mary Martha McNamara, Esq.

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

In your "Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with part 1303 of Title 16, Code of Federal Regulations" (Federal Register: September 22, 2008 (Volume 73, Number 184)Page 54564-54566) you state that 3rd party testing laboratories must have baseline accreditation against ISO/IEC 17025:2005, the accrediation body must be a signatory to ILAC-MRA and that the scope of the accreditation must include compliance to the lead paint ban. Since initial accreditation through an ILAC-MRA accredited laboratory may take 8-10 months and since you are required to fast track accreditations, requiring this type of accreditation will initially limit laboratories that can do testing against regulations administered by CPSC to those laboratories that already have ILAC-MRA accreditation and, further, would require testing done by laboratories accredited through other agencies to be repeated.

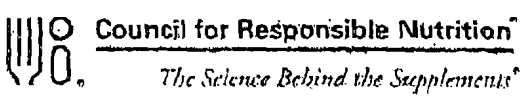
There is, however, an equivalent route for accreditation of analytical laboratories that meets both ISO/IEC 17025 and ISO/IEC 17011 standards. The National Environmental Laboratory Accreditation Conference (NELAC) Standard 2003 http://www.nelac-institute.org/docs/2003nelacstandard.pdf, (EPA/600/R-04/003), administered by the NELAC Institute (TNI), is intended as an application of ISO/IEC 17011 (general requirements of accreditation bodies accrediting conformance assessment bodies). Analytical laboratories are accredited under the Institute's National Environmental Laboratory Accreditation Program (NELAP) . This accreditation program is administered by EPA: they are responsible for implementation of TNI standards. This program requires that an accrediting authority use assessors trained according to the requirements of TNI be used for test laboratory evaluations, that the authority adopts NELAC Institute standards and that authority be evaluated by EPA's accreditation assessment program of their oversight office. TNI adopts standards developed by Acceptable Standards Development Organizations (such as ANSI and ASTM) and incorporates, to the extent applicable, ISO/IEC 17025, ISO Guide 34 (quality system guidelines for production of reference materials) and ISO/IEC Guide 43 (proficiency testing by interlaboratory comparisons). All of the requirements of ISO/IEC Guide 58 (calibration and testing laboratory accreditation systems-general requirements for operation and recognition) are met by a NELAP-recognized accrediting authority. This program includes the accreditation for analysis of analytes not required under any EPA program. All such supplemental accreditations are accredited by NELAP. Proficiency testing of laboratories against methods to which test laboratories are accredited is required. The National Institute of Standards Technology (NIST) prepares standards for this testing. A2LA acts as the proficiency test authority accreditor for this program. Test Laboratories accredited in this program are required to have quality assurance procedures conforming with ISO 9000, ISO 9001 and ISO 9002. Laboratories that complete proficiency testing receive a Demonstration of Capability Certificate Statement for specific test methods covering designated analytes or classes of analytes and the Certificates have to be renewed every 2 years. There are 13 state agencies that

are recognized NELAP accreditation bodies including the New York Department of Health and the Pennsylvania Department of Environmental Protection. The NELAC Institute proficiency test program has been accepted by the US Geological Survey as a requirement for non-governmental test laboratories to provide analytical services to the agency. Initial NELAP accreditation of a test lab takes 12-18 months. Laboratories with NELAP accreditation test samples manufactured both in the US and abroad. Accredited test methodologies include those suitable for testing surface coatings for lead in conformance with 16CFR1303.

Acceptance by CPSC of this alternate accreditation pathway will increase the number of accredited analytical laboratories available that offer testing required under CPSIA. Since these laboratories are already used to test products in conformance with 16CFR1303 and F963, if CPSC accepts this accreditation pathway as an alternate to ILAC signatory accreditation, the required retesting (at least in the short term) will be limited.

Respectfully submitted,

Woodhall Stopford, MD, MSPH
Duke University Medical Center
Department of Community & Family Medicine Division of Occupational and Environmental Medicine Suite 400 2200 W. Main St.
Durham, NC 27705
FAX: 919-286-5647
Email Woodhall.Stopford@duke.edu
Web Site: http://duketox.mc.duke.edu



October 29, 2008

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

Via E-Mail and Facsimile

Re: Section 102 Certificate Requirements

To the Commission:

The undersigned trade associations, representing the manufacturers, distributors, and retailers of a broad array of products, are writing to request that the Commission exercise enforcement discretion with respect to the new general conformity certification requirement imposed by the Consumer Product Safety Improvement Act of 2008 (CSPIA). A formal stay of enforcement, as well as clear implementation guidance from the Commission, is necessary to prevent the severe business disruptions that could otherwise result from manufacturers' practical inability to fully comply with the certification requirement by the effective date of November 12, 2008.

Individual associations will be providing additional comments regarding the applicability of the general conformity certification requirement to the products manufactured or distributed by their member companies and other issues relating to implementation and compliance as they affect manufacturers, distributors and retailers. Although the Commission has asked for comments by Wednesday, October 29, 2008, we ask that the Commission remain open to hearing additional concerns and questions that undoubtedly will arise as our member companies continue to grapple with the logistics challenges of complying with the certification requirement.

The CSPIA (P.L. 110-314) was signed into law on August 14, 2008. Section 102(a)(1) of the Act imposes a general conformity certification requirement that takes effect ninety days following enactment (November 12th).

Compliance with this requirement entails preparing a certificate to "accompany the applicable product or shipment of products," attesting to the product's conformity with all Commission "rules, bans, standards, or regulations applicable to the product."

The general conformity certification provision is contained within the "Children's Product Safety" title of the act and, specifically, within a section titled "Mandatory Third Party Testing for Certain Children's Products." Many companies and their trade associations learned only recently that the Commission interprets this provision as applicable to any product subject to the Commission's authority, not only children's consumer products. Some of the undersigned associations believe that this interpretation is not correct and that the CSPIA specifically does not apply to their industry. These individual positions are expressed in separate letters to the Commission. Nevertheless, without adequate time to both research and discuss these positions with the Commission, we are unified in asking the Commission to exercise enforcement discretion.

Our immediate concern is that the short 90-day timeframe from enactment to effective date for the certification requirement makes it impossible for manufacturers and distributors to be fully in compliance by November 12th, and raises significant compliance concerns and potential supply chain disruptions for pharmacy and other retailers.

Enforcing the new certification requirement beginning November 12th, rather than providing clear guidance allowing for a more reasonable implementation period, could result in a massive supply disruption affecting many thousands of products and a broad cross-section of the economy.

Especially in today's economic environment, the prospect of this supply disruption is a serious threat to manufacturers, distributors, and retailers. We urge the Commission to issue at the earliest possible opportunity a clear statement providing a time period of at least six months for affected companies to fully assess their manufacturing, distribution, and supply processes, help ensure that all questions regarding compliance are answered fully, and implement the new certification requirement in a way that is both transparent and effective.

All manufacturers of products potentially subject to the general conformity certification requirement already are subject to the underlying substantive requirements of the statutes and regulations enforced by the Commission. Our request for the Commission to exercise enforcement discretion regarding certifications does not alter the ongoing obligations of our member companies to fully comply with those substantive requirements. There should be no concern, therefore, that allowing for a longer compliance period would have any consumer safety implications.

Thank you very much for considering our views and concerns, and we look forward to working closely and constructively with the Commission on this critical issue.

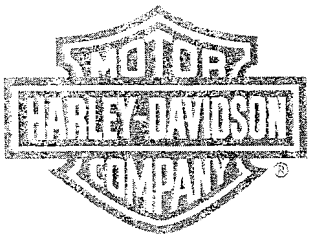
Sincerely,

Council for Responsible Nutrition
Consumer Healthcare Products Association
Consumer Specialty Products Association
Healthcare Distribution Management Association
National Association of Chain Drug Stores
Natural Products Association
Personal Care Products Council

cc: Ms. Patsy Semple, Executive Director

OCT-31-2008 14:13 99% P.09

107



Harley-Davidson Motor Company, 11800 W. Capitol Drive, Wauwatosa, WI 53222 414/465-6000

2008 OCT 30 A 9:31
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

October 28, 2008

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

Re: Section 102 Certificate Requirements: Request for Clarification and Delayed Implementation

To Whom It May Concern:

Harley-Davidson, Inc. is responding to the Consumer Product Safety Commission's (CPSC) request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our comments and concerns in connection with the Section 102 General Conformity Certification (GCC) requirements that are scheduled to go into effect on November 12, 2008. In addition to our comments, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

We have serious concerns in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children's products, we would like to highlight just a few of the many significant concerns that we have about the GCC requirements:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products***. Our company, along with countless others, initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that additional regulated consumer products may be affected. If it is determined that the GCC requirement applies to all regulated consumer products, it would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products…"; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Essential guidance to industry with respect to the interpretation of, and compliance with, many key provisions, including the GCC requirements of the CPSIA, has not yet been provided as noted below.

    - ***CPSC Guidance and Advice Has Not Been Timely.*** CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool.

    - ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance.*** Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

    - ***Insufficient Regulatory Guidance on Specific Testing Standards.*** There has been insufficient guidance on specific regulations, bans and standards for certain products, and compliance by November 12th in the absence of such guidance is essentially impossible.

    - ***Uncertainties About Voluntary Standards That May Require GCC.*** While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not clear whether products covered by certain voluntary standards that may be used by CPSC as policy guidance might, in fact, require a GCC.

- ***Private Labelers Have No Guidance.*** Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can) or whether they must conduct their own testing, and whether or how their GCC must somehow be included in documents sent by licensees to retailers.

    - Private Labelers who operate solely as trademark owners/licensors and are not involved in any aspect of manufacturing, importing, distributing, or retailing, should not be required to issue a GCC.

    - If Private Labelers who are trademark owners/licensors are required to issue GCC's, but they are not in the chain of distribution, they should be permitted to rely on other GCC's from other parties in the actual chain of distribution. Otherwise, to require such Private Labelers to somehow insert themselves into the distribution chain in order to physically remove samples of product for testing, and to conduct independent testing, would constitute an unconscionable burden on such licensors and is certainly not what Congress intended. This would irreversibly alter the manner in which licensors may have to conduct business (e.g., would licensors be required to take possession of shipments under this scenario?).

- If Private Labelers are required to issue GCC's, and they are not in the distribution chain, how and when would they be required to furnish the GCC's to retailers? How would they correlate and time the furnishing of the GCC's to specific shipments sent by distributors to retailers?

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

While we fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task, we require guidance on the implementation of Section 102 before the changes can be implemented. Moreover, in view of the significant penalties under the CPSIA for non-compliance, and in view of the lack of clarity concerning the GCC requirements, we respectfully request that CPSC delay its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge the Commission to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If you believe that you do not have the existing authority to take such action, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Daniel Hanrahan
Senior Products Counsel
Harley-Davidson Motor Company
11800 W. Capitol Drive
Wauwatosa, WI 53222
(414) 465-6637

ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309
Telephone [202] 298-8660 Fax [202] 342-0683
www.zsrlaw.com

JAMES A. CALDERWOOD jacalderwood@zsrlaw.com

October 29, 2008

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

Re: Consumer Product Safety Improvement Act;
Section 102 Certificate Requirements

I am submitting comments on behalf of various manufacturers, importers and distributors of glass and ceramic consumer products regarding Section 102 of the Consumer Product Safety Improvement Act and its requirements for certificates for general conformity testing and third party testing.

Section 14(g) of the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), sets new certification requirements for products subject to CPSC-administered regulations or standards. Methods of identifying this information can appear on a product via a label, certification mark or other marking or certification requirements.

We do not believe that this rule as it will be applied on November 12, 2008 will have an immediate impact on most glass and ceramic decorators, as glass and ceramic items are not generally subject to specific CPSC testing requirements. For example, the CPSC Paint Rule excludes "those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing." (CFR16, Part 1303.2)

Glass and ceramic tableware items such as mugs and plates must meet U.S. Food and Drug Administration (FDA) standards for release of lead into food or beverages; however, the new CPSC certificate requirements would not apply for those standards. In addition, a certification program is already in place for ware imported from China, and a 1999 Memorandum of Understanding between FDA and the Chinese State Administration of Entry-Exit Inspection and Quarantine (SAIQ) has established a system where the China Import and Export Commodity Inspection Bureau (CCIB) inspects and certifies factories for eligibility to export ware to the U.S.

We are concerned, however, that should future CPSC standards be applied to glass and ceramic products, the scope and complexity of the CPSC certification requirements would create extremely confusing paperwork and reporting burdens. Therefore, we urge the CPSC to accept a flexible scheme of regulation that fully recognizes the complexity of logistics related to providing required certification documentation.

Acceptance of Electronic or Web Based Data is Essential

The CPSC should issue clear guidance on what information must be provided and to whom and in what form. The CPSC should allow for such information to be provided through alternative and electronic formats. The reality of today's market is that it largely already involves electronic filings. Integration with CBP's existing systems and time needed to implement properly is essential. There are no viable alternatives to such flexibility in today's global marketplace. A one size fits all approach should be avoided given the broad scope of defined products to be subject to such certification. We urge the Commission to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

Proprietary Manufacturer or Importer Information must be Protected

In the promotional product and other segments of the glass and ceramic industry as well as other manufacturing sectors, direct access to manufacturers in the U.S. or overseas is often limited to the distributor or importer of the product for proprietary reasons. We strongly recommend that in such situations, a coded identification number that was identifiable only to CPSC be provided to enable the agency to quickly identify and contact the manufacturer with any questions.

Flexibility is Essential

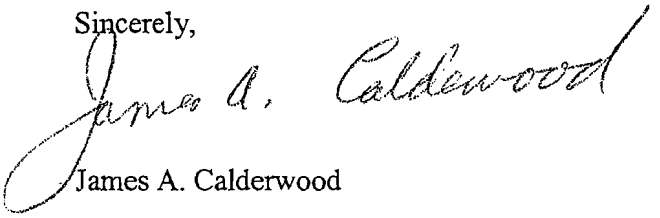
As CPSC considers implementing regulations for the CPSIA, it is essential that an integrated systematic approach to regulation be undertaken, with due recognition of existing Section 14 statutory language and requirements. Substance needs to take precedence over form. The imperatives of the marketplace economy require a flexible approach that includes alternate means of denoting certification to whatever requirements are mandated for each product segment. We believe that Congress recognized the need for systemic integration and flexibility. Failure to adequately recognize the realities of the marketplace could result in severe systemic bottlenecks. The real economy necessitates that a variety of means to denote certification need to be recognized by the CPSC.

Companies that must comply with these requirements on November 12 are trying to consider the various nuances as they work to comply with the new law, but it is

inevitable that not all firms will have the means, technology or wherewithal to comply at the outset with the new certification requirements. We respect that the Commission must uphold the law, but where there is discretion in interpretation and application, it should apply to reasonable proposals that attempt to lessen costs and burdens. Therefore, we feel it is important that the commission be explicit and that it exercise its inherent discretion and not enforce the law immediately upon its effective date, particularly for firms that are making good faith efforts to comply and that are well on the road to full compliance.

Thank you for your consideration of our comments, and I welcome the chance to answer any questions on the subject.

Sincerely,



James A. Calderwood

Stevenson, Todd

From: Andy Bopp [abopp@bostrom.com]
Sent: Wednesday, October 29, 2008 2:30 PM
To: CPSC-OS
Cc: James A. Calderwood
Subject: COMMENTS Section 102 Certificate Requirements
Attachments: Section 102 Certificate Requirements - Glass Ceramic Products.pdf

To Whom It May Concern:

Comments are attached. Please contact me if you have any questions.

Andy

Andrew Bopp
Bostrom Corp.
1444 I St. NW, Suite 700
Washington, DC 20005
202-712-9041

October 29, 2008

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

RE: JPMA Comments on Section 102 Certificate Requirements

The Juvenile Products Manufacturers Association is a national trade organization of more than 300 companies in the United States, Canada, and Mexico. JPMA exists to advance the interests, growth and well-being of North American prenatal to preschool product manufacturers, importers, and distributors marketing under their own brands to consumers. It does so through advocacy, public relations, information sharing, product performance certification, and business development assistance conducted with appreciation for the needs of parents, children, and retailers.

Section 14(g) of the Consumer Product Safety Act ("CPSA"), as amended by the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), sets new certification requirements for products subject to CPSC-administered regulatory regulations or standards. In some cases, existing product safety requirements already mandate the information required to be available under longstanding provisions under 14(a) applicable to CPSA Standards. Methods of identifying this information can appear on a product via a label, certification mark, or other marking or certification requirements. Other verification schemes are also recognized by CPSC. For example under FFA certification requirements a continuing "Guaranty" may be relied upon. In our complex economy manufacturers, importers, distributors, retailers and U.S. Customs and Border Protection (CBP) need to have input both as to the form of certification and the method of transmittal, regardless of the time required to properly implement.

A fair reading of the Section does not indicate that Congress intended to create a procedurally burdensome certification process, or that such certification is required to be paper based, monolithic or inflexible. Section 14(g) language should not be considered in a vacuum and should be interpreted consistently with the language used for certification formats in Section 14(a) as well.[1] In this regard the requirement for certifications to "accompany" product cannot be

[1] Section 14(a)(1) [15 USC 2063] provides that manufacturers and private labelers of a product which is subject to standards under the CPSA which is distributed in commerce "shall issue a certificate that the product conforms to all applicable consumer product safety standards and shall specify any standard which is applicable. Such certificate shall accompany the product *or* shall otherwise be furnished to any distributor or retailer to whom the product is delivered." (emphasis supplied)

Section 14(g)(3), under the heading "AVAILABILITY OF CERTIFICATES" provides that a "certificate required under this section [g] shall accompany the applicable product *or* shipment of products covered by the same certificate." It is a separate requirement that "a copy of the certificate to be furnished to each distributor or retailer of the product." The statutory language does not specify the means by which such information may be provided to the retailer or distributor. Under such circumstances, it is reasonable to assume that Congress intended a variety of flexible methods reasonably related to customary business practices between suppliers and retailers to be capable of use to provide such information. We are urging the CPSC to recognize this and maintain such flexibility.

Juvenile Products Manufacturers Association, Inc.
15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525
Email: jpma@ahint.com • Web site: www.jpma.org

read literally and should be construed as consistent with virtual electronic and "on demand" procedures for tracking and supportive documents available with today's electronic based import logistics. The Procedures adopted also need to be consistent with the Paperwork Reduction Act[2] and CBP's ACE system. This is clearly recognized in the congressional directive in Section 14(g)(4) providing for electronic filing of information related to imported product. Therefore, we urge the CPSC to accept a flexible scheme of regulation that fully recognizes the complexity of logistics, which vary among product categories and businesses. In this context existing marking or labeling requirements, which indicate certification, be deemed acceptable to meet section 14(g) requirements to the extent applicable. The CPSC needs to allow for methods that permit efficient effective flexible ways to identify required information by easy reference (including seamless electronic data formats). Otherwise, such obligations could result in burdensome, environmentally unsound policies that confuse businesses and unduly impede commerce.

Acceptance of Electronic or Web Based Data is Essential in the U.S. Marketplace

The CPSC should issue clear guidance on what information must be provided and to whom. The CPSC should allow for such information to be provided through alternative and electronic formats in all cases. The reality of today's marketplace is that it largely already involves electronic (not paper-based) filings. Integration with CBP's existing systems and time needed to implement proper protocols is essential. Certification templates can be added to existing CBP electronic templates. In the existing automated customs environment, importers and customer brokers increasingly depend on electronic systems to transmit import entry data to U.S. Customs and Border Protection (CBP).

Tracking CBP Protocols or Web-based Systems Should Be Permitted

Many large importers, who are self-filers, use the Automated Broker Interface (ABI) system to transmit import entries electronically to CBP. ABI defines the data standards for electronic communications with CBP for cargo clearance. It would be desirable for importers and customs brokers to use the existing framework of the ABI system to electronically transmit the required certificate of compliance.

Under ABI, importers transmit the Entry Summary information electronically to CBP, prior to the arrival of merchandise. The EDI transmission includes all import shipment data necessary to satisfy CBP's requirements for entering goods into U.S commerce. The Entry Summary contains various data elements such as product name and description, corresponding HTS tariff numbers, country of origin, tariff rates, port of export, port of import, vessel, bill of lading, and other government information (FDA, FCC, USDA, TSCA, etc). Once CBP receives this data in electronic format, the shipment is either released, or flagged for further review. The commercial invoice is not required to be transmitted to CBP by importers who opt to use the "Invoice by

---

2 The Paperwork Reduction Act requires agencies to: Section 3506 (b)(1)(A): reduce information collection burdens on the public; Section 3506 (c)(1)(C): assess the information collection burden of proposed legislation affecting the agency • Section 3506)(c)(2)(A)(iv): minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Request" program. Under this program, importers must maintain the commercial invoice on file and transmit it electronically to CBP if so requested.

Importers and customs brokers could use the ABI framework to electronically transmit certificate of compliance data via the Entry Summary transmission. This could be expanded to include additional data elements such as month/date of manufacture, testing location and other data required to be declared, as part of the CPSC required certification. The certification could be submitted electronically by the importer with the Entry Summary. As is the case with entry data transmitted to CBP, it would be necessary for importers to create the required records for the certificate of compliance in the format dictated by the Customs and Trade Automated Interface Requirements (CATAIR) manual published by CBP.

In the alternative, Company- or industry-based "on demand" electronic databases could be used to keep track of shipment subject to certification requirements. An Internet-based electronic certification system keyed to production dates by coding (i.e. UPC codes) which could be entered into a template whereby the Company could obtain and provide the required information, thereby rendering the need for any printed documentation to distributors and retailers obsolete and unnecessary. These could be industry or Company maintained. Many companies already are EDI linked with their retail customers and certification information or references can be an added template to these formats. Similarly, some industries that already use RFID technology in their products for inventory, distribution, and sales management could encode information as part of existing protocols. Both could be used in conjunction with a continuing certification approach or separately.

There are no viable alternatives to such flexibility in today's global marketplace. One-size fits all approach should be avoided given the broad scope of defined products to be subject to such certification.

Certification Language in Existing Purchase Orders, Bills of Lading, Transport Containers and Other Formats Accepted by CBP is Essential

For product manufactured on or after the effective date (November 12, 2008) we believe that the following paragraph can be added to customary import (if applicable) and shipping documentation maintained in the ordinary course of business (i.e. POs, Bills of Lading, Custom Entry Documents, Shipping or Packing Documents; including electronic entries):

"These products [reference a product description, SKU numbers, etc.] or applicable component parts thereof are hereby certified by the undersigned [manufacturer, private labeler or importer of record designated on form] to meet all applicable U.S. Consumer Product Safety Commission standards, including: [list the applicable CPSC standards, rules, bans or requirements broadly here.] These products were manufactured in [insert month and year] in [insert city/state/country of manufacture]. Representative testing of samples was conducted by [insert name, address of laboratory] and is maintained by the Product Safety Director who can be contacted at the address above."

In considering this format flexibility is essential. Some companies may consider the "Name of the Company" of manufacture to be a piece of proprietary information. This may be especially true of private label products. In such situations we recommend that a "coded" identifier available only to the CPSC should be permitted in identifying such proprietary information.

Alternatively, it has been suggested that such information could be stamped on shipping cartons, also avoiding the need for burdensome paper trails.

The certifying "party" for which full contact information must be provided should be deemed to be the U.S. manufacturer, private labeler, importer, or distributor. The location of manufacture should be permitted to be designated by country of origin rather than by a specific facility, since such information is confidential and is available on such basis from the responsible certifying party.

When identification of a "responsible individual" is required, reference to a title rather than an individual should suffice. CPSC needs to realize that component parts may be tested for compliance with lead limits on different dates. Each of these components, once verified to meet the lead limits, should be able to be incorporated in a variety of finished products and a single shipment might include product made from such components. The CPSC should clarify a certificate for a shipment product may cover such circumstances. In addition, consideration should be given to the fact that a reference to the specific standards or regulations met may not be necessary if test reports or conformity assessments in turn identify the specific standards or requirements involved.

A "Continuing" Certification Format Alternative Should Be Accepted

The CPSC could also adopt existing practices as related to continuing guarantees under the FFA as a basis for conformance verification in other industries as well. A "Guaranty" under the FFA is a good faith declaration that a product, fabric, or related material conforms with applicable flammability standards. The issuance of a guaranty must be based on reasonable and representative tests conducted in accordance with applicable flammability standards issued under the Flammable Fabrics Act (FFA) or based upon a guaranty received and relied upon in good faith by the guarantor. (See Section 8 of the Flammable Fabrics Act (15 U.S.C.1191) and 16 CFR 1608 General Rules and Regulations under the Flammable Fabrics Act). A person receiving a proper guaranty in good faith is not subject to criminal prosecution. This same model could be adopted and applied to testing certification requirements under the CPSIA.

Certification "Seals" or "Markings" To Denote Compliance Should Be Accepted

For industry segments where there are existing conformity assessment marks that are attached to products as part of a voluntary certification program (which incorporate ASTM, ANSI, or internationally recognized standards that necessarily incorporate applicable mandatory U.S. regulatory requirements, standards, or regulations) involving accredited entities the CPSC should recognize the accreditation mark as denoting "Certification." Many of these regimes incorporate conformity assessment production sampling of either input components and/or finished production samples and recognize that any substantive change to the design of the product results

in re-certification by the accrediting body. In such cases, no further issuance of a "certificate" would be necessary and CPSC and CBP officials should be permitted to rely upon the presence of the certification mark as evidence of compliance with Section 14(g). The JPMA Certification Program is such a program. The Certification Program currently includes bassinets/cradles, bath seats, booster seats, carriages and strollers, changing tables, children's folding chairs, frame infant carriers, full-size cribs, gates and enclosures, hand-held infant carriers, high chairs, infant bouncers, infant swings, play yards/non-full size cribs, portable bed rails, portable hook-on chairs, soft infant carriers, stationary activity centers, toddler beds, and walkers. The program will incorporate all mandatory regulations for children's products and childcare articles.

ASTM International developed and published the standards. JPMA and industry members, consumer groups, and staff from the U.S. Consumer Product Safety Commission are involved in the development of the standards.

To become JPMA Certified, a product must be verified as properly tested by an independent accredited testing facility for compliance with the specific ASTM standards. Random retail testing is included in the program. If a product passes the tests, JPMA allows the manufacturer to label it with the JPMA Certified Seal.

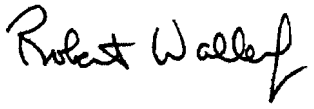
The programs are open to all manufacturers, both members and non-members of JPMA, and to firms that market private brand models. Participation in the programs is on a voluntary basis.

The "Directory of Certified Products" contains the names of manufacturers with products currently in the Certification Program. Twice a year, retailers receive the directory.

As CPSC considers implementing regulations for the CPSIA, it is essential that an integrated systematic approach to regulation be undertaken, with due recognition of existing Section 14 statutory language and requirements. Substance needs to take precedence over form. Clearly the imperatives of the marketplace economy require a flexible approach that permits a varied approach accepting of alternate means of denoting certification to whatever requirements are mandated for each product segment or category. We believe that Congress recognized the need for systemic integration and flexibility. Failure to adequately recognize the realities of the marketplace could result in severe systemic bottlenecks. The real economy necessitates that a variety of means to denote certification need to be recognized by the CPSC.

Thank you for providing us with the opportunity to comment on these important issues.

Respectfully submitted,



Robert Waller, Jr., CAE
President
(856) 642-4402

Stevenson, Todd

From: Yarissa Reyes [yreyes@ahint.com]
Sent: Wednesday, October 29, 2008 10:54 AM
To: CPSC-OS
Cc: fblocker@ahint.com; Mike Dwyer; Bob Waller
Subject: Section 102 Certificate Requirements
Attachments: CPSIA Section 102 Comments-Certification Requirements.pdf

Importance: High

** High Priority **

To Whom It May Concern:

On behalf of the Juvenile Products Manufacturers Association, attached please find comments on Section 102 of the Consumer Product Safety Improvement Act - Requirements for certificates for conformity testing and third party testing.

Sincerely,

Robert Waller, Jr., CAE
President
Juvenile Products Manufacturers Association
(856) 642-4402
www.jpma.org

USA ITA

UNITED STATES ASSOCIATION OF IMPORTERS OF TEXTILES AND APPAREL

HEADQUARTERS:
13 EAST 16TH STREET
NEW YORK, NY 100
212-463-0089
FAX: 212-463-0583

2100 L STREET, NW
SUITE 210
WASHINGTON, D.C.
202-638-7640
FAX: 202-419-0487

October 29, 2008

Via Courier

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

Section 102 Certification Requirements

These comments are submitted on behalf of the United States Association of Importers of Textiles and Apparel ("USA-ITA") in response to the request for comments on Section 102 Certification Requirements.

USA-ITA is a voluntary association of some 200 importers and retailers of textile products and wearing apparel as well as related service industries such as international transportation concerns. The importer and retailer members of USA-ITA import textile and apparel products with a first cost in excess of $60 billion.

Introduction. Section 102(a)(i) of the Consumer Product Safety Improvement Act ("CPSIA") requires that each manufacturer and importer of a consumer product issue a certificate that the product complies with all applicable CPSC bans, standards, rules and regulations. CPSIA Section 102(b) requires that the certificate "accompany the applicable product or shipment of products covered by the certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product".

The CPSC staff seeks comments on five issues raised by the certificate requirement.

Certificate Availability. The first two issues relate to how the certificates can be made available to the CPSC for inspection, how the certificate can "accompany" the shipment such that it can be available for "immediate inspection" and how it can be tied to a "specific shipment of products".

USA-ITA suggests that in the case of imports the obligation to make the certificate available to the CPSC for immediate inspection can be satisfied by employing existing United States Customs and Border Protection ("CBP") procedures. The reality is that this is the only practical avenue available.

Importers of textiles and apparel routinely provide certificates of compliance through the entry process. For example, importers who claim the benefit of certain tariff preference programs must obtain a certificate of origin from the producer or manufacturer. The certificate must be available at the time the preference claim is made, which is at entry. The certificate need not be physically presented to CBP at entry but it must be supplied at CBP's request. This is a routine exercise. Presentation of the certificate required by Section 102 of the CPSIA should not create a particular problem for traders or the CPSC if the requirement is implemented in a reasonable manner.

Under this approach, the certificate would be part of an entry package, which typically includes a commercial invoice, packing list, bill of lading, and CBP forms. The entry package is transmitted to the importer and the importer's customs broker. The CBP forms are filed electronically in the great majority of cases and the balance of the entry package (invoices, etc.) is not presented unless requested. The CBP forms include information about the merchandise, importer, county of origin, etc. Normally it is the broker who receives and responds to a request for these documents.

As noted above, certificates of various sorts are required at entry. In many cases the certificates are not necessary for customs clearance and we

understand that the same will be true of the Section 102 certificate. The certificate is retained in an entry file maintained by the importer and/or its customs broker and presented to CBP or other agency on request. There is no reason that this general approach will not prove effective here.

USA-ITA assumes that CPSC inspectors will select shipments for inspection by reviewing CBP entry data filed prior to arrival of the cargo. It is important to keep in mind that the general rule is the cargo is released almost automatically unless CBP requires an exam. When this occurs, the importer is required to submit a full set of documents. If a hold is placed on a shipment at the request of a CPSC inspector, the conformity certificate would be included with the documents presented as part of entry package. If there is no hold, the shipment likely will not be available for inspection by the CPSC prior to release.

This approach offers the significant benefit of being well understood by traders. It takes advantage of existing procedures and will be an administrative convenience to CSPC inspectors. Once an inspector identifies a shipment for which a certificate is required for inspection the importer or its customs broker could be contacted with a request to provide a certificate. The certificate would be transmitted electronically.

Tying the certificate to a specific shipment will not be much of a problem. USA-ITA assumes that the certificate will reference some sort of product identifier, such as a style number, and/or a purchase order. The invoice and packing list will reference the same product identifier and purchase order. Since it can be tied to an invoice it will be readily apparent that the certificate applies to a specific shipment.

Furnishing the Certificate to Distributors and Retailers. The staff has also expressed interest in how the certificate should be furnished to distributors or retailers.

This requirement does not present much of a problem when the importer moves the shipment directly to the distributor or retailer without having to break it up. In these cases, the importer simply will provide a copy of the certificate along with the normal commercial documentation, invoice, packing list, etc. (But see the discussion below, regarding any requirement to physically place a paper document inside a container or carton.)

A significant difficulty arises, however, when the importer breaks up the shipment and places the product into inventory. At this point it will become difficult to marry a particular carton or a particular garment to a specific certificate without a great deal of effort. Theoretically, it could be done but it would be time consuming and expensive, and of little value in meeting the goals of the statute.

USA-ITA suggests that in these cases, the obligation would be satisfied by a general statement of compliance accompanied by an undertaking to provide a complete certificate on request. Alternatively, the importer would advise that the certificate is available on a website maintained by the importer for communications with distributors and retailers. It is now common for businesses to communicate in this fashion and there is not reason to prohibit its use here.

Confidentiality. One of the certificate requirements is the name and address of the manufacturer of the product. Importers generally do not disclose the name of the manufacturer to their customers. The identity of the source of merchandise is considered sensitive commercial information. Release of this information to customers and potential competitors would have an adverse effect on an importer's business. USA-ITA recommends that importers be allowed to delete the name and address of the manufacturers in certificates furnished to distributors and retailers.

Alternatively, importers should be permitted to provide a "code" for each manufacturer and address, with the translation of that code placed on file

with the CPSC. The CPSC would be responsible for maintaining that information as business proprietary and confidential, not subject to disclosure under the Freedom of Information Act.

Form of Certificate. The CPSIA does not mandate a particular form or medium for the certificate. USA-ITA suggests that importers be allowed wide flexibility in terms of the certificate form and the means of transmission. The majority of documentation used in international trade is transmitted electronically. This is the most efficient method and certainly should be allowed. There is no advantage to requiring a paper certificate. A physical document placed inside a carton provides no assurance that it will be received or ever seen by – much less retained – by appropriate distributor or retailer personnel.

USA-ITA does not suggest that paper certificates be prohibited. While USA-ITA believes that the great majority of manufacturers, importers and private labelers will elect an electronic format, there may be a few smaller firms that would rather use a paper format; both mediums should be permitted.

Multiple Certificates. USA-ITA supports the ability to use multiple certificates in appropriate circumstances. This would somewhat reduce the administrative and logistical challenges implicit in the certification requirement. The use of a certificate executed by multiple parties should be at the option of the importer. Again, flexibility is a key element in ensuring that importers can satisfy the certificate requirement without unnecessary expense and effort.

Other Issues:

Date of Manufacture: USA-ITA urges that the CPSC provide clarity on the meaning of date of manufacture. USA-ITA member companies are unsure of when their responsibility to provide certificates begins, and if the member companies are unsure, so too may the CPSC be unsure, creating the possibility of inconsistent implementation. USA-ITA recommends that the date the

garment finished (including washing, pressing and packing) be deemed the date of manufacture. Also, the date should not be a day but a range of days – a week or a month. The garments in a shipment covered by a single certificate will have been finished over a period of time, not on a single date.

Phase-In Period. USA-ITA strongly recommends that the CPSC phase-in enforcement of the certification requirement. The requirements are not as clear to industry or the CPSC as they should be even now, barely two weeks before they become effective. A phase-in period of six months will allow all concerned to understand better how the requirements affect the flow of trade and what adjustment are necessary.

* * *

USA-ITA appreciates the opportunity to comment on this important matter and urges that its views be adopted.

Sincerely,

Laura E. Jones
Executive Director

Of counsel:

John Pellegrini
McGuireWoods LLP
1345 Avenue of the Americas
New York, NY 10105
212-548-7020
jpellegrini@mcguirewoods.com
USA-ITA Customs Counsel

Brenda A. Jacobs
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
202-736-8149
bjacobs@sidley.com
USA-ITA Washington Trade Counsel

Stevenson, Todd

From: Pellegrini, John B. [jpellegrini@mcguirewoods.com]
Sent: Wednesday, October 29, 2008 2:27 PM
To: CPSC-OS
Cc: bjacobs@sidley.com
Subject: Section 102
Attachments: Section 102.PDF

Dear Sir or Madam:

The comments of the United States Association of Importer of Textiles and Apparel on Section 102 are attached.

Regards,

John B. Pellegrini

McGUIREWOODS
McGuireWoods LLP
1345 Avenue of the Americas
New York, NY 10105-0106
212.548.7020 212.715.2301 (fax)
jpellegrini@mcguirewoods.com

This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

National Retail Federation®
The Voice of Retail Worldwide

October 29, 2008

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

RE: Comments on CPSIA Section 102 - Requirements for certificates for conformity testing and third party testing

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 Request for Comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA). NRF strongly encourages the CPSC to allow flexibility in the implementation of the conformity assessment certificate requirements.

Specifically, we urge the CPSC to allow for the electronic transmission of the certificates to satisfy the "accompany" and "furnish" requirements as opposed to requiring a paper certificate. We fully believe the electronic transmission of this information will satisfy the requirements of the CPSIA while not significantly disrupting current business processes, which are for a majority electronic, and make it easier for the CPSC to obtain the required information. We appreciate and support the CPSC staff recommendations that were posted on the CPSIA website that will allow for the electronic transmission of the certificates. However, there are still a number of significant issues that require clarification.

By way of background, the NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail companies, more than 25 million employees - about one in five American workers - and 2007 sales of $4.5 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations.

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Overview

It is important to stress that NRF's members are doing everything they can at this point to ensure compliance with all the provisions of the CPSIA. As the CPSC is well aware, the CPSIA includes a number of very quick deadlines for industry, including the November 12, 2008 conformity assessment certificate requirement. In order to meet these deadlines, industry needs additional guidance from the CPSC in order to comply. The CPSC must understand that company's supply chains are very complex. The certification requirement will require significant changes within a company's supply chain that cannot be accomplished overnight. The more guidance that companies are given the easier it will be for them to implement these requirements.

We would encourage the CPSC to use its enforcement discretion beginning on November 12 and start with an "education period" to work with companies to ensure they are complying with the requirements. We have seen this in other areas where agencies will work with the affected industries at the beginning of an enforcement period to ensure they are properly complying with the requirements. The CPSC should focus initially on those products that are considered "high risk" while continuing to work with all of the affected industries on ensuring compliance. NRF's members are trying their best to ensure they will comply on the November 12 effective date. This educational period would help ensure that there is full compliance with the new requirements.

With regards to guidance, there are several areas which we believe the CPSC needs to provide further clarification or advice on. These include:

- What are the rules, regulations or requirements that are covered by this provision? We would request that the CPSC, as quickly as possible, identify what all of the rules, regulations and requirements are that are covered and post them on the CPSIA website in a clear and concise manner. Industry is struggling with identifying all of the areas that are covered by this requirement. Is a CPSC regulation that requires a label covered by this requirement? We do not see the point in requiring a conformity certificate that states a company meets a labeling requirement.

- We also request that the CPSC continue to follow its past practice and allow the testing of the products components to serve as the basis for the certifications. A certification process that relies upon component testing with strong chain of custody documentation requirements that demonstrate that the component was used in the final product will provide greater assurance of safe products rather than requiring the testing of a few samples of final products. Many apparel components, e.g. zippers, rivets, snaps, buttons, rhinestones, dyes for screen prints, are common to many styles of apparel carried by numerous retailers. For example, a specific size of zipper from one of the major zipper manufacturers may be used in 5 styles of girls' jeans for six different retailers. Under component testing, the zipper manufacturer would have its product tested once and would supply that testing result to the various manufacturers of the final products. Each manufacturer would then base its certification of compliance for each of the styles it produces using the testing from the zipper manufacturer along with testing of all the other components used in that product. Final product

testing would require that the zipper be tested at least 30 times (5 different styles each for 6 different retailers) without any demonstration of increased safety compliance. In a time when retailers and their suppliers are trying to comply with the new requirements, redundant testing of components without any increased safety benefits should be avoided.

- We believe the CPSC should provide a recommended template for the general conformity assessment. Otherwise you will have multiple formats that will prove to be very confusing for industry as well as the CPSC itself.

- The information requirements under Sec. 102 include potentially business confidential information. The CPSC must provide guidance as to how the business confidential information will be protected among business partners.

- While the general conformity assessments are required for products manufactured on or after November 12, 2008, we would request the CPSC to define the term "manufacture." Does this mean the point in time when the product goes through its final assembly process or Ex Works (when the manufacturer makes the goods available at its premises for delivery)? This is critical for the CPSC to define.

- The statute requires "manufacturers" to certify compliance. We would urge the CPSC to clarify whether or not the definition of manufacturer includes the importer or if they are seen as separate entities that both require certificates. As addressed below, we would urge the CPSC to not require duplicate or multiple certifications on the same product.

- What about a product that is licensed? If the product carries a brand name, but that brand name has nothing to do with the product, other than a company selling their name to be placed on the product that is being sold, is the licensee considered a "private labeler"? Would they have to provide the general conformity assessment certificate?

- We urge the CPSC to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal.

As stated above, we recommend that the CPSC allow for the electronic transmission of the general conformity assessment certificates to satisfy the Section 102 requirement that the certificates be made available to the CPSC for inspection. The CPSC should allow for electronic transmission of these certificates as part of the normal customs entry process. Many other agencies, such as the Food and Drug Administration, who have different certificate requirements allow for this electronic transmission. When the situation arises where an FDA inspector must inspect the

container, they can then contact Customs and Border Protection (CBP) or the importer/broker to obtain the required certificate. This usually takes a matter of minutes for the certificate to be transmitted electronically to the inspector.

As specified in 19 U.S.C 1509 (a)(1)(A), importers must maintain an extensive import recordkeeping system, this includes all of the different certificates that are required for importation. This would include the general conformity assessment certificate. In this case, the certificate would legally "accompany" shipments of consumer goods where the certificate is required and would be easily accessible and available on demand for CPSC inspectors. Using this process would take advantage of the current importing process and supply chain operations that companies are currently using.

We strongly recommend that the CPSC avoid requiring the general conformity assessment certificates be based on a paper process in order to satisfy the "accompany" requirement of the CPSIA. As pointed out, when dealing with the current import process it is a truly electronic system. The cost to go back to a paper based system, not only for the certificates themselves but for the logistics of issuing and placing certificates in every covered shipment, would be enormous. One NRF member stated that if paper certificates were required, they would receive over 7 million paper certificates from their suppliers to cover all of their SKUs in inventory. This number grows exponentially when you include other retailers and manufacturers. In addition, neither the business community nor the CPSC have the appropriate resources to be able to store such paper certificates.

In addition, as the CPSIA allows for the CPSC and CBP to eventually allow for the electronic transmission of such certificates, we believe the agencies should start now to meet this requirement. This will also help both agencies as they develop their risk based screening system for import safety. Paper certificates in the cartons or containers are useless to CBP for screening and monitoring purposes. Paper certificates filed upon entry defeat the movement toward paperless entries.

Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA

As identified in the previous section, we fully believe that allowing for the electronic transmission of the general conformity assessment certificate as part of the current import documentation will satisfy the "accompany" requirement of Section 102 of the CPSIA. If an issue arises where a CPSC inspector needs to inspect the shipment, they can easily contact CBP or the importer/broker to get the appropriate certificate. Since the certificates would accompany the commercial documentation they would already be tied to the individual shipments. In addition, it usually takes some time when a container is identified for inspection to be moved to the inspection facility. This time would allow the CPSC inspector to contact the appropriate party to retrieve the general conformity assessment. This process would not disrupt the current business practices of companies while potentially improving the communication and cooperation between the CPSC and CBP, something we strongly support.

Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise.

As with the requirement that the conformity assessment certificates "accompany" the shipment, we strongly believe that the requirement that the certificate be "furnished" to the retailer of the product should be an electronic process as well. Requiring paper certificate would be a logistical nightmare to obtain and exercise monitoring and oversight. The job of searching for the correct certification for a product would be incredibly difficult if paper certifications are required. Electronic certifications would allow retailers to more easily search for and respond to a request from the CPSC or CBP. The importer/manufacturer could easily provide information on the commercial invoice that would allow for the retailer/distributor to obtain the required certificate.

Allowing for such an electronic process would eliminate the need for multiple certificates, which we strongly oppose. Distributors will often make multiple shipments of the same product, i.e. a replenishment program where shipments are made weekly to the retail store. Requiring a paper certificate with each of these shipments would be unnecessary and unwieldy. Distributors should be allowed to provide one certification that covers all of the shipments of that product. In addition, the distributors may ship the same product to multiple customers. The testing and record information for that product will be the same. Distributors should be able to establish a website that retailers can access. Listed on the website would be the model numbers and the testing information and conformity assessment certificates for that product.

Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products.

As we have indicated, NRF and its members strongly support the use of an electronic system to meet the requirements of Section 102 of the CPSIA. We fully believe that allowing the use of current business processes, which are electronic, would satisfy the requirements that the certificate "accompany" the shipment and be "furnished" to the distributor/retailer. An electronic system will make it easier for companies to comply with the requirements as well as better enable the CPSC to enforce the requirements. We do not believe a paper based system is an option due to the cost of implementing such a system or the ability to monitor and enforce such a system.

In addition, we also urge the CPSC to consider whether or not the requirement for a paper certificate meets the requirements of the Paperwork Reduction Act. We do not believe requiring millions of new paper certificates will meet these requirements.

Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

This is a significant area that the CPSC needs to provide clarification on. We do not believe there is a reason to require multiple certificates that state the same information for the same product. In most instances, importers will rely upon the testing

provided by manufacturer to issue the general conformity assessment certificate. Rather than having several forms that must be filled out, there should one format or template that all entities – manufacturers, importers and private labelers can include information into one certificate.

Again, we believe requiring multiple certificates is a complete redundancy of the same information that in the end all ties back to the initial testing by the manufacturer. Testing reports / certification should be provided by the manufacturer to the importer who would keep it on file until it is requested by the CPSC for review. By requiring the importer to provide a certification and the distributor or private labeler, its additional work that is meaningless, as the final distributor or private labeler, if not the importer are so far removed for the manufacturing process.

Conclusion

NRF welcomes the opportunity to share our thoughts on the requirements for the general conformity assessment certificates. As stated above, we believe the CPSC should allow for the certificates to be provided in an electronic format with the commercial documentation that would satisfy the requirements that a certificate "accompany" the shipment and be "furnished" to the retailer/distributor. It is important that the CPSC recognize the complexities in the supply chain and understand that companies are currently doing business in an electronic environment and cannot go back to a paper based system.

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.

Sincerely,

Steve Pfister
Senior Vice President
Government Relations

Stevenson, Todd

From: Epstein, Michael [EpsteinM@NRF.com] on behalf of Gold, Jon [GoldJ@NRF.com]
Sent: Wednesday, October 29, 2008 2:13 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: NRF Comments on Section 102 Conformity Assessment Certificates 102408.pdf

Attached please find the comments of the National Retail Federation regarding Section 102 Certificate Requirements. Please contact us with any questions.

<<NRF Comments on Section 102 Conformity Assessment Certificates 102408.pdf>>

Jonathan E. Gold
Vice President, Supply Chain and Customs Policy
National Retail Federation
325 7th Street, NW Suite 1100
Washington, DC 20004
Direct: (202) 626-8193 Fax: (866) 235-1938
www.nrf.com

Stevenson, Todd

From: John S. Satagaj [email@jsatlaw.com]
Sent: Wednesday, October 29, 2008 1:21 PM
To: CPSC-OS
Cc: 'Steve Slagle'
Subject: Section 102 Certificate Requirements

In response to the CPSC's request for comments to the requirements for certificates for conformity testing and third party testing the Promotional Products Association International (PPAI) offers the following observations about the impact on our industry.

PPAI—the promotional products industry's only international not-for-profit trade association—offers education, tradeshows, business products and services, mentoring, technology and legislative support to its more than 7,500 global members. Promotional products are more than a $19.4 billion industry and include wearables, writing instruments, calendars, drinkware and many other items, usually imprinted with a company's name, logo or message. PPAI created and maintains the UPIC (Universal Promotional Identification Code), the industry's only free identification system and universal company database.

The industry consists of approximately 21,000 distributors and 3,500 suppliers. The distributor develops solutions to marketing challenges through the innovative use of promotional products and is a resource to corporate buyers, marketing professionals and others. A supplier manufactures, imports, converts, imprints or otherwise produces or processes promotional products offered for sale through distributors and the distributors' sales force known as promotional consultants.

The difficulty in complying with the requirement for certificates for literally hundreds of thousands of products within a few weeks notice after adoption of the law cannot be overestimated. Communicating the requirements to an industry that comprises thousands of companies, and tens of thousands more manufacturers in other parts of the world make implementation a daunting task, despite our industry's willingness and interest in adopting compliance requirements.

The promotional products industry differs in several ways from a traditional manufacturer to retail supply chain, but the most important distinction lies in the process of customizing the products through various forms of decoration (imprinting, embroidery, etching, engraving, or embossing). Products in the promotional products industry are either manufactured in the U.S. or imported, decorated, and sold by suppliers to or through distributors that have obtained an order for the decorated products from businesses (end buyers) that have their company logos and messages decorated on the products.

The decoration applies a company logo, advertising message or other information to assist the end buyer purchaser in creating brand awareness. Products may be provided to fill a specific order or inventoried by one or more parties until an order is entered into the supply chain from an end buyer to a distributor to a supplier, which may require several months from the time a product is originally manufactured.

Process Flow Scenarios in the Promotional Products Industry

To assist in the evaluation of the certificates'management application to our industry, we have provided some scenarios that describe the various ways by which products enter the supply chain and are subsequently distributed for use in our business to business model.

Scenario 1

Purchased materials and components are received at PPAI member U.S. facilities from U.S. and international suppliers. The materials and components will be used to make products in an Assemble-to-Order (ATO) discipline, meaning that sub-assemblies and final products are made to known orders and not to stock. These are typically small quantity orders (100 – 1,000). Once the sub-assemblies and assembled products are complete, they may either be decorated for customization at the location that made them or be transported to one or more of the other U.S. locations for decorating, packing and shipping. Once decorated, some may be "combo-packed" with other finished/decorated items (either ATO or "decorate and ship") before shipping. Shipping may be directly to our customer (distributor), the distributor's customer (end buyer client), to an affiliate (sister company), or to another affiliated operation to be "combo-packed" with their "decorate and ship" products.

Scenario 2

"Decorate and ship" items may be received at the PPAI member's U.S. facilities or produced at the PPAI member's U.S. facilities and then inventoried until there is an order for these items, either decorated or undecorated (these are purchase to stock rather than to order as in scenario 1). The quantities can vary from a small sample (6 -12) to hundreds of thousands and may involve opening the inventoried boxes and re-boxing a mix of products into another shipping box. This complicates inventory management and makes lot traceability very difficult. An order for decorating any of these products gets shipped in the same ways as discussed in Scenario 1 once imprinting is completed.

Scenario 3

The PPAI member and product manufacturer of "decorate and ship" products where the manufacturer decorates at the place of manufacture. In this case, the decorated product will then be shipped to the PPAI member's U.S. locations where the product will be inventoried until there is an order for that product either individually or "combo-packed" with another product (s) and shipped to any of the same ways as scenario 1.

Scenario 4

The PPAI member and the product manufacturer of "decorate and ship" products where the manufacturer decorates at the place of manufacture and ships directly to PPAI member's customer (distributor) or the "end buyer client. This by-passes any handling of the product by the PPAI member except for arranging shipping method, carrier, or forwarder.

We urge the Commission to adapt the most flexible process for conveying certificate information between our suppliers and distributors. The size of distributors and suppliers vary dramatically, and we believe both paper and electronic options need to be made available. Ultimately, we believe the best way to achieve the objectives of this requirement is through an electronic database or web-based system. Certainly, for imported products, integration with Custom and Border Protection's electronic filing system is essential. Moving from a paper system is both a cost-efficient and environmentally sensible action.

As noted, PPAI has such a coding system for the industry, referred to as the Universal Promotional Identification Code (UPIC). Established in 1999, the UPIC is available to all companies in the industry, not just PPAI member firms. Currently PPAI maintains a database and online directory of nearly 30,000 industry firms, with each firm assigned an alpha/numeric symbol distinctive to each company. The directory is available to all industry companies for identifying the contact information about other companies and could be adapted to also include the product databases and accompanying certificate information in the future. An electronic certification methodology would be essential for such an efficient means of transmitting certification information.

Second, it will be extremely difficult, given the scenarios described above, for suppliers to be able to match specific certificates for products they have manufactured or imported to specific, typically smaller, shipments of

decorated items. There is a great of blending of products from different production cycles during the decoration process. If some broad parameters could be established so that more products could be included within a certificate's scope that would be helpful. . Another approach could be to eliminate the requirement for the date of manufacture on the certificates or allow for the certificate to cover a blanket period such as a calendar year.

While we do not currently maintain a certification mark system for our industry's products, we believe that such a system has potential for our industry, particularly given the average size of a promotional product and we would support an initiative to establish one. If it is built upon a certification that carries with it all of the characteristics of a conformity assessment certification program (e.g. incorporation of applicable mandatory U.S. regulatory requirements, standards or regulations, testing records maintained by the manufacturer, safety laboratory and/or accrediting body, conformity assessment production sampling of components and /or finished production samples, and recertification upon any substantive change to the design of the product.) we believe it meets the requirements of the CPSIA. In such cases, no further issuance of a "certificate" would be necessary and the CPSC would rely upon the presence of the certification mark as evidence of compliance. PPAI is prepared to initiate an industry certification program similar to other industries that could result in a certification mark or seal to signify compliance with CPSIA requirements.

If our unique decoration and distribution process is the biggest challenge to complying with the certificate distribution requirement, the second most significant concern is based on the industry's long history of maintaining production sources as proprietary information, specifically, "Name of the Company" of manufacture. We would recommend that a "coded" identifier available only to the CPSC should be permitted in identifying such proprietary information, since such information is confidential and is available on such basis from the responsible certifying party. We would recommend the location of manufacture be designated by country of origin rather than by a specific facility.

We suggest the certifying "party" for which full contact information must be provided should be the U.S. manufacturer or importer. We would suggest that if a responsible individual must be identified that the identification should be by title of the individual rather than by a specific name.

We urge the Commission to consider the establishment of a "guaranty" option as is provided under the Flammability Fabrics Act (FFA). As you know, a "guaranty" under the FFA is a good faith declaration that a product, fabric, or related material conforms with applicable flammability standards. The issuance of a guaranty must be based on reasonable and representative tests conducted in accordance with applicable flammability standards issued under the FFA or based upon a guaranty received and relied upon in good faith by the guarantor.

We cannot pass up this opportunity to express our concern about existing inventories. We believe it will be difficult, if not impossible, for promotion product companies to exhaust existing inventories by February 10, 2009. We would hope the Commission would adopt a rule that would allow companies to exhaust those inventories.

Finally, we hope that the CPSC would adopt an enforcement policy that acknowledges the good faith efforts to comply with these new laws. We believe, as is becoming readily apparent, the undertaking is extremely complex and translating statutory or regulatory requirements into operational guidance within companies takes time. Due to the nature of many companies' business cycles, orders are often placed for products well in advance of the expected date of sale to a customer. With the prohibition against stockpiling, we believe there is adequate protection against abuse.

Thank you.

Sincerely,

Steve Slagle, President and CEO

PROMOTIONAL PRODUCTS ASSOCIATION INTERNATIONAL

Steve Slagle, CAE | President and CEO
3125 Skyway Circle North
Irving, Texas 75038
p 972.258.3090 | f 972.258.3016
www.ppai.org

PPAI The Expo Las Vegas PPAI MARKETSHOWS

*This is PPAI

AMERICAN FREE TRADE ASSOCIATION

5200 Blue Lagoon Drive, Suite 600
Miami, Florida 33126
Telephone: (305) 267-9200
Fax: (305) 267-5155
www.aftaus.com
www.americanfreetradeassociation.com

October 29, 2008

2008 OCT 30 P 3:33
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

Via E-Mail
Cpsc-os@cpsc.gov

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

Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

The American Free Trade (AFTA) is a trade association of wholesalers, distributors and importers of brand name consumer products, distributed widely through the domestic wholesale, retail and discount marketplaces. AFTA was formed over 25 years ago to ensure a continued, competitive marketplace in brand name products for the benefit of American consumers and small businesses through the country. The Association is pleased to offer these comments in response to the above-captioned Request for Comments and Information.

General Comments

American consumers enjoy a competitive, commercial marketplace with a great variety of consumer goods, sourced from a myriad of global suppliers. It is important that well-intentioned product safety regulations do not unnecessarily impede critical international trade.

An imported product's global distribution and supply chain may include many, unrelated parties, having no relationship to one another. A domestically manufactured article may be exported from the United States and subsequently, lawfully reimported by

a third party importer. **A non-U.S. manufacturer may make an item and sell it to an authorized distributor, wholesaler or reseller outside of the United States.** That distributor, wholesaler or reseller may sell the same product to another reseller, distributor or importer, located within or outside of the United States. The global distribution chain of an imported consumer good may, in fact, include a variety of legitimate product wholesalers, distributors and resellers, without in any manner compromising the product's integrity or safety.

American consumers must be confident that the consumer products being sold within the commercial marketplace meet all applicable U.S. requirements and standards. For this reason, consumer goods should be permitted entry into the U.S. if the importer certifies, pursuant to a verifiable, compliant testing program, that the product conforms with all applicable CPSC standards, rules and regulations. It is an unreasonable duplicitous effort, however, to require both the importer *and* the foreign product manufacturer to issue conformity certifications for the identical product arriving in the same shipment. Requiring duplicitous certifications of both the manufacturer and the importer based upon replicated testing efforts will increase the costs of supplying genuine and safe consumer goods to the American marketplace, escalate retail prices and will clearly obstruct international trade, without any resulting benefit in terms of enhanced product safety.

The following comments are summarized as follows:

1. While any manufacturer or importer can certify conformance, it is unnecessary to require both.
2. It is critical that manufacturers, importers and private labelers be able to rely upon a single reasonable or otherwise permissible testing protocol to support required certifications.
3. Because shipments or truckloads can contain hundreds or thousands of different product types, it is unreasonable to have every required conformity certificate "accompany" the product
4. More clarity as to reasonable testing is necessary before any certification can be declared false or otherwise unacceptable.

These comments, while not specifically numbered as set forth in the Request for Comments and Information, collectively provide the information and comments requested by the CPSC in connection with Section 102 of the CPSIA.

A. <u>Congress stated that its intent was not to require duplicative testing of consumer products.</u>

On December 19, 2007, regarding Section 102 of the CPSIA, Congressman John Dingell (D-MI) stated on the floor of the House of Representatives that: "the Committee intends for these requirements to be vigorously enforced, but it does not intend the provision to be interpreted to require unnecessary duplicative testing."

It is unnecessary for both the importer and the foreign manufacturer of the identical product to perform and pay for separate conformity testing. Although the CPSC has assured the trade that U.S. importers can rely upon a foreign manufacturer's product testing or reasonable testing program to support the importer's conformity certification, no such reciprocal provisions are specifically provided to foreign manufacturers, necessarily increasing the costs of U.S. market access.

There is no basis or reason to require duplicative product testing by different parties for the identical product. Such a requirement clearly contradicts the stated legislative history of the Act and unnecessarily increases the costs of foreign manufactured consumer goods. If the importer conducts and performs the required testing, reviews those test results and identifies itself as the issuer of the applicable product conformity certification, no further assurances or guarantees should be required.

B. To condition entry of foreign-manufactured goods upon issuance of a conformity certification from both the importer and the manufacturer violates WTO's national treatment guarantees

Paragraph 4 of Article III of GATT 1994 states the following: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* Article III was designed to eliminate discrimination between imported goods and domestically produced goods. Technical standards, such as the certification requirements set forth in Section 201, even if only inadvertently, necessarily act as discriminatory trade barriers, in favor of domestic producers.

Although Section 102 of the CPSIA applies equally to domestically manufactured and foreign produced consumer goods, domestically produced goods only require certification by the manufacturer and the private labeler while the CPSC is requiring that foreign manufactured goods be accompanied with certification by the manufacturer, the private labeler AND the importer. The additional certification requirement imposed only upon foreign manufactured consumer goods, together with the duplicative product testing programs described above, increases the cost of market access for imported goods and unnecessarily obstructs international trade in lawful and safe consumer products, for the

benefit of only domestic producers. This violates of the National Treatment guarantees provided under GATT 1994 and creates a very real risk of challenge from U.S. trading partners.

C. HR 4040 does not require certification by both the manufacturer and the importer

There is no evidence that Congress intended the CPSIA certification requirements found in Section 102 to apply to manufacturers, private labelers ***and*** importers. Although Section 201 of the CPSIA describes required certification requirements imposed upon a single manufacturer and a single private labeler (without once using the word "importer"), section 3(a)(11)of the CPSA confirms that a "manufacturer" is "any person who manufactures **or** imports a consumer product"

a. Section 102(a)(1)(A) indicates that "every *manufacturer* of a product...which is imported for consumption or warehousing or distributed in commerce (*and the private labeler* of such product)..."
b. Section 102(a)(2) states that "...before importing for consumption or warehousing or distributing in commerce any children's product....*every manufacturer of such children's product (and the private labeler of such children's product)*..."
c. Section 102(a)(2)(B) states that "*a manufacturer or private labeler* shall issue either a separate certification for each children's product..."
d. And, Section 102(g)(1) states that "every certificate required...shall identify *the manufacturer or private labeler*...."

There is no basis for the CPSC to have interpreted Section 201 to require conformity certification from a manufacturer, a private labeler **and** a product importer. If the U.S. importer performs product testing and certifies product conformity pursuant to CPSC regulations, such certification must be sufficient to permit product entry.

D. The CPSC must provide further guidance on "reasonable testing programs" before concluding that any conformity certification is false or otherwise inadequate

The CPSC has stated that unless a standard specifies a particular testing method or unless requires third party conformity testing, the General Conformity Certification required in Section 102(a)(1) can be based upon the testing of the product or upon a "reasonable testing program." The Agency has intentionally provided leeway to certificate issuers to determine for themselves the reasonableness of any selected testing program. While the type and frequency of testing are up to the issuer, the testing program must provide reasonable assurances that the product meets all CPSC requirements and is stringent enough to detect variations that would cause a product to fail. Despite the attractiveness of unregulated testing protocols, it is critical that the

CPSC consider some actual, real-life commercial realities and provide issuers further guidance on what may or may not constitute a reasonable testing program.

As a hypothetical: if the final assembly of a foreign-manufactured man's shirt occurs on January 1, 2009, can the issuer reasonably rely upon results of component testing dating from 2008 or 2007 as the basis of its conformity certification of the final assembled article? If an article of clothing intended for adults is identical in all respects to another article of like clothing except for a different screen print or fabric color is it reasonable to rely upon a test of the basic product type to support certifications of all like products, without regard to distinctions in product style which would not subject the variety of finished products to any additional standard, rule or regulation? If a product is exempted from testing pursuant to a particular standard, how can that product still be "tested" to verify conformance with that standard? Does this mean that no products are, in effect, actually exempted from any testing requirements? If it may be possible, or conceivable, that a consumer product may have a defect that could cause serious injury, does that mean that such a consumer product has to be certified to show conformance with the Federal Hazardous Substances Act? What would be a reasonable testing program to certify that a consumer product not subject to any particular rule or regulation under the FHSA in fact fully conforms with such an Act?

Without firm guidance on "reasonable testing programs," issuers will necessarily be competing with one another without equity, with some certain to adhere to much stricter testing methods than others. Moreover, providing issuers with specific reasonable testing parameters and guidance mitigates the risk of product seizure or destruction should the issuer-selected reasonable testing program be determined by the CPSC to not at all be so "reasonable."

E. Conformity certifications for hundreds of different products contained within a single shipment cannot "accompany" the product

The CPSC has recently published, together with a sample conformity certification, a list of frequently asked questions and answers about the CPSIA. This publication indicates that electronic certifications containing all required information will satisfy the requirements of Section 102 - so long as each *certificate* is identified by a unique identifier created in advance and made available with each shipment, is accessible via a World Wide Web URL or other electronic means. While this is certainly better than requiring that hundreds of separate paper product certifications accompany each and every shipment, requiring a unique identifier for each certificate that must be *available with each shipment* does little to cure the ambiguities contained within Section 102(g)(3) of the CPSIA.

Containers and shipments may contain hundreds or even thousands of different product types, each of which may have associated with it 1 or 2 or 3 separate conformity

certifications. It is unreasonable to ask the importer to assign separate unique identifiers to each such certification when, for example, the unique bill of lading or waybill number may be more easily linked to a list, by product description, of the certifications "accompanying" such shipment. AFTA believes that so long as a bill of lading or waybill number identifying a particular shipment is electronically linked to the product certifications "accompanying" that shipment, the requirements of subjection (g)(3) have been met.

F. Confidential and Proprietary Business Information Must Be Protected

Section 102(g)(1) authorizes the CPSC to require that the required certifications include at a minimum the following information:

- Identification of the manufacturer or private labeler issuing the certification, including each party's name, full mailing address and telephone number
- The date and place of manufacture;
- The date and place where the product was tested; and
- Contact information for the individual responsible for maintaining records of test results

Substantial commercial and financial injury would be caused to many participants in a product's distribution chain should this type of proprietary business information and protected trade secrets even inadvertently be disclosed without knowledge or authority of the certification issuer.

The competitive American marketplace exists because legitimate, safe consumer goods are available from wholesalers, distributors and resellers, in addition to original product manufacturers, throughout the global supply chain. As consumer goods travel downstream through the supply chain, in addition to remaining fully compliant with applicable U.S. laws, rules and regulations, these products also become more affordable. As a result, competition is created, and the need to protected proprietary business information becomes more critical.

The information contained within the required certifications must automatically and without requiring special marking as described in Section 6(3) of the CPSA, as amended, be considered confidential and barred from disclosure. Without question or caveat, any disclosure of the certificate contents other than to the CPSC as required by the CPSIA, would cause the issuer substantial, measurable economic and competitive harm and injury.

G. Special Protections Must Be Required to Protect the Information contained within electronic certifications

For all of the reasons described above, the content of required certifications under Section 201 must in all events be considered confidential and barred from disclosure. It is difficult, however, to protect the confidentiality of such information in the event of electronic certification. AFTA believes that the CPSC should require that electronic certifications be made available to the CPSC only on password protected websites, providing exclusive access to such site only to the CPSC.

Conclusion

AFTA supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that the benefits of freely, competitive international trade not be sacrificed in the wake of contagious rhetoric and public outcry. The certification requirements of Section 102 of the CPSIA must be satisfied by a single testing program undertaken by a single supply chain participant willing to certify product conformity to the CPSC as a condition of product entry. Necessary testing procedures must be fully described to the issuers of conformity certifications and the confidentiality of all information contained within the certifications must be maintained under all circumstances.

The wholesalers, importers, distributors and other businesses represented by the American Free Trade Association constitute a critical and relevant component of the U.S. consumer product distribution system. AFTA genuinely hopes to be included in any further efforts by the CPSC to further consult with industry members and stakeholders about the most effective means of implementing the CPSIA.

Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or Lee Sandler, Esq. directly at any time.

Sincerely,
American Free Trade Association

By: *Lauren V. Perez*
Lauren V. Perez

cc: Board of Directors
Gilbert Lee Sandler, Esq.

October 29, 2008

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

Re: Section 102 Certificate Requirements

To Whom It May Concern:

The Consumer Specialty Products Association (CSPA) supports the important mission of the Consumer Product Safety Commission ("Commission") to protect the public from unreasonable risk of injury. However, we have serious concerns with the Commission's recent interpretation of the new safety certification requirements for products subject to Section 102(a)(1) of the Consumer Products Safety Improvement Act (CPSIA). According to the Commission, Section 102 requires all products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies. CSPA urges the Commission to reevaluate this interpretation and remain consistent with the original intent of Congress' with regards to its implementation of the CPSIA.

CSPA is non-profit national trade association representing 250 companies engaged in the manufacture, formulation, distribution, and sale of consumer specialty products for household, institutional, commercial and industrial use. CSPA's member companies produce a wide range of products which includes home, lawn and garden pesticides, antimicrobial products, air care products, industrial and automotive specialty products, detergents and cleaning products, polishes and floor maintenance products, and various types of aerosol products. These companies put substantial resources into assuring that their products can be safely used and meet all applicable laws and regulations. Many of CSPA's member companies' products are regulated by the Consumer Product Safety Act (CPSA), and other Acts under the Commissions' jurisdiction, and therefore, will be affected by the amendments set forth in the CPSIA. The following comments highlight CSPA's concerns with the recent interpretations of Section 102 of the CPSIA by the Commission as announced at its October 2nd public stakeholder meeting.

I. Congress Did Not Intend for Section 102 to Apply to All Products Regulated by the Commission

Congress did not intend to create a procedurally burdensome certification process for all products manufactured in or imported into the United States via Section 102 under the CPSIA. According to the Commission's interpretation announced on October 2nd, Section 102(a)(1) requires certification of all products subject to any rule, ban, standard, regulation, or any other Act enforced by the Commission. The purpose of the certification is to vouch that a product complies with that particular CPSC-administered rule, ban, etc. This would require certification to accompany all products that are regulated by the precautionary labeling requirements of the Federal Hazardous Substances Act (FHSA) and the specialty packaging standards of the Poison Prevention Packaging Act (PPPA).

This overly broad interpretation of Section 102(a)(1) does not represent Congress's intent of this provision. Congress's intent was for certification to be required of children's products as Section 102 is prominently entitled "Mandatory Third Party Testing For Certain Children's Products." Additionally, Section 102 is housed under Title I of the CPSIA, which is entitled "Children's Product Safety." Every other section under Title I applies solely to children's products and makes no references to consumer products beyond this scope. This intent can further be realized with a thorough reading of the Congressional Record: "[t]he conference report establishes testing and certification requirements for children's products made for those ages 12 and under before they are sold in the U.S." (110th Cong. Rec. S7869 (daily ed. July 31, 2008) (statement of Sen. Sununu). This statement by Senator Sununu undoubtedly refers to the requirements and narrow scope of Section 102.

The consumer specialty products represented by CSPA, as described above, are not children's products and therefore, should not be subject to Section 102(a)(1). A children's product is a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors are taken into consideration:

- A statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

As previously noted, many CSPA-member companies manufacture products which are regulated by the FHSA and PPPA, and therefore require labeling that reads "KEEP OUT OF REACH OF CHILDREN" and in many cases, packaging that is child-resistant. Such products do not fall under the definition of a children's product.

The Commission also interprets this section to imply that a product still must comply with the certification requirements even if it is subject to a standard but exempt only from testing. CSPA

does not agree with this interpretation of Section 102 of the CPSIA. A plain reading of the statute reveals: the certification is based on "a test of each product or upon a reasonable testing program". Products subject to cautionary labeling under FHSA or special packaging standards under the PPPA appropriately do not always undergo testing by the consumer product manufacturer to conform to the requirements of those two regulations and should not be subject to the certification requirements of Section 102(a)(1). FHSA regulations at 16 CFR 1500.4 ("Human experience with hazardous substances") states that the manufacturer may rely upon data based on human experience in order to determine the hazards of the product. For many years the Commission has allowed manufacturers to rely on these data to support hazard labeling rather than assessing product hazards via the animal acute toxicity testing guidelines stated at 16 CFR 1500.3 and 1500.41. Sections 1500.3(c)(2)(i)(A), 1500.3(c)(3) and 1500.3(c)(4) address toxicity, corrosive, primary eye and skin irritation respectively. In each of these sections, the regulations clearly state that the hazard may be determined through human experience or by the methods recommended through the regulation. This clearly contradicts the provision of Section 102(a)(1) which would require a test of each product or product variation. In addition, it has been the Commission's longstanding policy to inform citizens concerned with the use of animal testing, that the toxicity testing methods stated in FHSA regulations were recommended and not required. As currently interpreted by the Commission, Section 102 would now mandate all products/formulas be tested using animals.

Regarding the testing provisions of the PPPA as required at 16 CFR 1700, the Commission has stated on numerous occasions that the product manufacturer may rely on test data generated by the manufacture of a senior friendly/child resistant packaging form. There again, the manufacture may choose to rely on the closure vendor's test data rather than repeating the testing.

CSPA urges the Commission to issue guidance that appropriately reflects the original intent of Congress of Section 102(a)(1) to focus application to children's products.

II. Certification Requirements Are Unnecessary for Consumer Specialty Products

The regulatory structure is already in place for consumer specialty products represented by CSPA. The FHSA requires product labeling of hazardous substances sold to households to help consumers safely use those products and to give them first aid information should an accident happen. It prohibits the sale or introduction into interstate commerce of any product which does not comply with these regulations.

At a minimum, the label on the immediate package of a hazardous product, and any outer wrapping or container that might cover up the label on the package must have the following information:

1. The name and business address of the manufacturer, packer, distributor, or seller;
2. The signal word "DANGER" for products that are corrosive, extremely flammable, or highly toxic;
3. The signal word "WARNING" or "CAUTION" for all other hazardous products;

4. An affirmative statement of the principal hazard or hazards that the product presents ("Flammable," "Combustible," "Absorbed Through Skin");
5. The common, usual or chemical name of the ingredient(s) that contribute to the labeled hazard;
6. Precautionary statements telling users what they must do or what actions they must avoid to protect themselves;
7. Where it is appropriate, instructions for first aid treatment to perform in the event that the product injures someone;
8. The word "Poison" for a product that is highly toxic, in addition to the signal word "Danger";
9. If a product requires special care in handling or storage, instructions for consumers to follow to protect themselves; and
10. The statement "KEEP OUT OF REACH OF CHILDREN".

CSPA asserts that the product label already serves as certification that a product complies with FHSA labeling requirements. As shown above, essentially the only information not currently on the label that is required of Section 102(a)(1) is the listing of the applicable consumer products regulation, the date and place of manufacture and the date a product is tested. As indicated above, testing is not typically required for products that comply with FHSA. And requiring additional certifications solely to obtain the date and place of manufacture and any applicable regulations is unnecessary. The Commission could develop much less burdensome regulations to obtain this information, if deemed important for the safe use and manufacture of consumer specialty products, such as requiring a company to maintain its own records matched with a date code. Additionally, Section 17 of the CPSA, as amended by the CPSIA, entitled "Imported Products," requires that all imports be *accompanied* by such a certification. In contrast, Section 19 states that it is unlawful for "any person to fail to *furnish* a certification required by this Act" (emphasis added). CSPA argues that the differentiation made between these two sections adds support that a FHSA-compliant label serves as certification under Section 102(a)(1) for domestically manufactured products.

More importantly, certification cannot take the place of compliance with the regulations. The Commission's enforcement needs to focus on compliance of the product and not waste resources in tracking compliance with certificates that restate factual statements already on product labeling.

CSPA requests that the Commission exercise its full and complete authority to declare that FHSA labeling serves as certification of compliance as required under Section 102.

III. Section 102 Certification Requirements are Financially Burdensome

The new self certification requirement under Section 102(a)(1) will impose an unnecessary financial and resource burden on U.S. companies, especially small businesses, and ultimately consumers, in a time when the economy is struggling and the financial markets are in disarray. These additional costs will be incurred at all levels of the supply chain from manufacturers to retailers to consumers.

Section 102(a)(1) certification requirements would require a costly and labor-intensive complex process to insure that a certificate accompanies all products and all shipments. In many product lines there are many varieties of products and tracking the certification of each and every one and providing details on the certification would be extremely difficult. In a single shipment of products to a retailer, the shipment may contain any number of different varieties of products, each requiring an individual certification. There may be one of one product type and several hundred of another product type. A shipment that contains 50 different products would require 50 certificates. If there was a single unit of a product, it would still require a certificate. The retailer could never be expected to match each certificate to the individual products, since it would be exceptionally labor intensive. Tracking certificates from multiple suppliers would require many retailers to hire additional staff to comply. For some companies, it may be more cost effective simply to discontinue sales of small volume products than to implement complex processes to comply with the certification requirements of Section 102(a)(1).

IV. November 12, 2008 Is An Unreasonable Date for Implementation

The consumer specialty product industry represented by CSPA was not aware of the Commission's overly broad interpretation of the requirements under Section 102 of the CPSIA until its October 2nd public meeting. Currently, manufacturers have absolutely no mechanism or staff to accomplish this task and would have to develop procedures from scratch. As such, the effective date of November 12, 2008 is unreasonable.

It is important that the Commission understands the basic project steps manufacturers must go through to implement the burdensome requirements of Section 102(a)(1). First, companies need to determine the information required on the certification. This is a burdensome administrative task that will take some time, especially for large companies with many hundreds of products in scope under the Commission's interpretation. Then, manufacturers will have to determine the most logical system to provide this information in the most efficient manner as possible to control additional costs to the consumer. In many instances, this will require additional staff and staff training to accomplish. Companies (manufacturers) will then have to modify software programs, as well as produce paper forms to produce the certifications. Additionally, it will be necessary for product manufacturers to communicate with distributor/customers and retailers about the certification program and ensure they are prepared to accept the additional paperwork as required.

CSPA strongly urges the Commission to exercise its full and complete authority to delay implementation of Section 102 as it applies to the consumer specialty product industry represented by CSPA until further detailed guidance can be developed.

V. Release of Confidential Business Information Will Not Further Safety

Virtually all companies consider the name of the manufacturer (in the case of private labeling or other third party manufacturing), to be highly confidential information. Such companies go to great lengths to keep such information secret, and would experience definite financial hardship if

the name or location of the manufacturer was disclosed, e.g. to competitors. The same is often true for the specific location of manufacture. For those reasons, the location should be permitted to be designated by country of origin rather than by a specific facility. The certifying "party" for which full contact information must be provided should be deemed to be the U.S. manufacturer, private labeler, or importer who sells the product to consumer retailers or distributors. In such situations of third party manufacturing, we recommend that a "coded" identifier available only to the Commission should be permitted in identifying such proprietary information, since such information is confidential and is available on such basis from the responsible certifying party. The right of a private labeler or company using third party manufacturing to keep confidential the actual name of the manufacturer should be respected.

VI. Any Certification Program Administered by the Commission Must Be Flexible

While CSPA asserts that Section 102 does not apply to all products regulated by the Commission, in particular those subject to FHSA precautionary labeling provisions and PPPA packaging requirements, it recommends that the certification process under Section 102 be one that is flexible and takes into account the difficulties these requirements impose on industry.

The Commission should issue clear guidance on what information must be provided and to whom and in what form under Section 102(a)(1). The Commission should allow for such information to be provided through alternative and electronic formats in all cases. The reality of today's marketplace is that it largely already involves electronic (not paper based) filings. Integration with the U.S. Custom and Border Protection's existing systems and time needed to implement properly is essential. We urge the Commission to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

In considering this format, flexibility is essential. For example, it has been suggested that certificate information could be stamped on shipping cartons, also avoiding the need for burdensome paper trails. Flexibility will help decrease the financial burden on companies and ultimately consumers. When identification of a "responsible individual" is required, reference to a title rather than an individual should suffice.

Another suggestion for products that would only require certification against labeling under the FHSA could be a general certification. As asserted above, FHSA labeling serves as certification of compliance as required under Section 102. The date of manufacture is not the issue compared to the proper labeling of the product. The label would not typically change based on when the product was produced. The label represents what is contained within the product. A general certification from the manufacturer could certify that all products are in compliance with the labeling requirements of FHSA and this document could be distributed electronically to manufacturers' customers. As all products must comply with FHSA, there is minimal benefit of multiple certifications as one general certification would perform the same function.

An internet based electronic certification system keyed to production dates by coding (i.e. UPC codes) should be permitted. Codes could be entered into a template whereby the Company could

obtain and provided the required information, thereby rendering the need for any printed documentation obsolete and unnecessary. These could be industry or Company maintained.

Conclusion

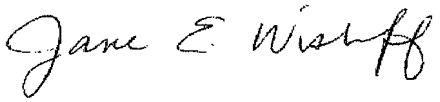
CSPA encourages the Commission to implement the CPSIA as intended by Congress and as efficiently as possible for industry compliance.

CSPA urges the Commission to exercise its full and complete authority to:

1. Issue guidance that appropriately reflects the original intent of Congress of Section 102(a)(1) to focus its application to children's products.
2. Declare that FHSA labeling serves as certification of compliance as required under Section 102(a)(1).
3. Delay implementation of Section 102 as it applies to the consumer specialty product industry represented by CSPA until further guidance can be developed.
4. Issue guidance outlining a flexible certification system under Section 102.

Once again, we appreciate the Commission's solicitation of stakeholder comments on this very important issue. If you have any questions regarding these comments, please do not hesitate to contact me at 202-833-7303 or jwishneff@cspa.org.

Sincerely,



Jane E. Wishneff
Regulatory Counsel & Director of International Affairs

Cc: The Honorable Nancy A. Nord, Chairman, U.S. Consumer Product Safety Commission
The Honorable Thomas Moore, Commissioner, U.S. Consumer Product Safety Commission
Cheryl A. Falvey, U.S. Consumer Product Safety Commission
Gib Mullan, U.S. Consumer Product Safety Commission
The Honorable John D. Dingell
The Honorable Joe Barton
The Honorable Daniel K. Inouye
The Honorable Ted Stevens
The Honorable Mark Pryor
The Honorable John Sununu

Stevenson, Todd

From: Jane Wishneff [jwishneff@cspa.org]
Sent: Wednesday, October 29, 2008 12:43 PM
To: CPSC-OS
Cc: Horner, John
Subject: Section 102 Certificate Requirements
Attachments: Comments to Section 102 Certificate Requirements Final.pdf

Importance: High

Please find attached comments from the Consumer Specialty Products Association regarding Section 102 Certificate Requirements under the Consumer Product Safety Improvement Act.

Please do not hesitate to contact me if you have any questions.

Jane E. Wishneff
Regulatory Counsel & Director of International Affairs
Consumer Specialty Products Association
900 17th Street, N.W., Suite 300
Washington, D.C. 20006
(202) 833-7303
jwishneff@cspa.org

This e-mail, including any attachments, contains information from the Consumer Specialty Products Association (CSPA) and is intended solely for the use of the named recipient or recipients and CSPA member companies. This email, including any attachments or hyperlinks within it, may contain information that is confidential, legally privileged or otherwise protected from disclosure. If you are not the intended recipient of this email, you are not entitled to use, disclose, distribute, copy, print, disseminate or rely on this email in any way. Even if you are the intended recipient or a CSPA member company, you may not distribute, disclose or otherwise disseminate this email or its attachments outside the membership of CSPA, without CSPA's prior written consent.

111

Stevenson, Todd

From: Millar, Sheila A. [Millar@khlaw.com]
Sent: Wednesday, October 29, 2008 12:54 PM
To: CPSC-OS
Cc: Falvey, Cheryl; gmullan@cpsc.gov; FJTA@aol.com
Subject: Section 102 Certificate Requirements
Attachments: 2008_10_29 V2 FJTA Sec. 102 Comments.pdf

Attached please find comments on behalf of the Fashion Jewelry Trade Association in connection with the above-referenced matter. Regards,

Sheila A. Millar
tel: 202.434.4143 | fax: 202.434.4646 |
millar@khlaw.com
1001 G Street, N.W., Suite 500 West |
Washington, D.C. 20001

Keller and Heckman LLP
Serving Business through Law and Science®

Washington, D.C. | Brussels | San Francisco | Shanghai

Visit our websites at www.khlaw.com or www.packaginglaw.com for additional information on Keller and Heckman.

Please consider the environment before printing this email.

This message and any attachments may be confidential and/or subject to the attorney/client privilege, IRS Circular 230 Disclosure or otherwise protected from disclosure.

If you are not a designated addressee (or an authorized agent), you have received this e-mail in error, and any further use by you, including review, dissemination, distribution, copying, or disclosure, is strictly prohibited. If you are not a designated addressee (or an authorized agent), we request that you immediately notify us of this error by reply e-mail and then delete it from your system.

KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Sheila A. Millar
(202) 434-4143
millar@khlaw.com

October 28, 2008

Via E-mail

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

Re: Comments on CPSIA Section 102: Requirements for Certificates for Conformity Testing and Third Party Testing

Dear Mr. Stevenson:

On behalf of the Fashion Jewelry Trade Association (FJTA), we appreciate this opportunity to submit these comments in response to the Consumer Product Safety Commission's (CPSC) Request for Comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). FJTA represents makers of fashion or costume jewelry in the U.S. (generally members do not produce vending machine, premium or novelty items) who are affected by the CPSIA. The fashion jewelry industry is about a $9 billion industry in the U.S.; many industry members are small businesses.

FJTA members are working hard on compliance programs to meet the requirements of the new legislation. The jewelry industry appreciates the staff's effort to provide guidance and information on the complex requirements involved, particularly the recent FAQs suggesting that electronic documents will be acceptable. We hope the staff will provide further guidance on the type of "unique identifier" referenced. Allowing for electronic documents will in general offer businesses, small and large, more flexibility in adopting the most cost-effective means available to them to comply with the obligations. However, we urge the Commission to exercise enforcement discretion and focus its efforts on education and compliance assistance in the early phases of implementation of the new legislation on certification and other aspects of the law.

Conformity assessments and certifications nevertheless present significant practical issues that we hope the Commission will address promptly to ensure uniform understanding of the requirements under the Act. Certifications evincing conformity assessments or third party testing will cover millions and millions of products. As technology improves and both the Commission and the business community gain more experience, flexible certification requirements will better enable the business community to respond quickly to developments, without the need for an overhaul of the compliance process, and without limiting the Commission's ability to revisit rules and requirements.

Practical Implications of the Certification Requirement for the Jewelry Industry

The Commission should clarify promptly several important aspects of certifications, including 1) the specific standards, rules, regulations and requirements that are covered by the provisions of Section 102, 2) procedures for maintaining business confidentiality of highly sensitive information such as the identity of a manufacturing facility, and 3) the information to be included in certifications of conformity assessments and third party testing, taking into account the actual process by which products are manufactured and tested and important business confidentiality considerations. FJTA urges the CPSC to consider the real world implications of the certification requirements for the many members of the business community, including the jewelry industry.

In the real world of fashion jewelry, a single shipment of jewelry is likely to include a variety of items, consisting of assorted bracelets, necklaces, rings, earrings, and the like. The products may be assembled in multiple factories, which are then tested by different laboratories and on different dates, with the end products destined for many different retail stores around the world. One FJTA member, a typical smaller jewelry company, reports that the company currently sends about twenty shipments of jewelry out each day, with an average of 100 *different* items in each shipment. Requiring certificates for each different item of jewelry means that the manufacturer must issue *2000 certificates of compliance a day,* every day. Larger companies face an even bigger burden. Recent indications that electronic certifications will be permissible will minimize the impact on these companies.

We provide below some further thoughts on the specific questions posed by the Commission.

1. Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal.

Flexibility is key given the array of businesses and products subject to the certification obligation. The CPSC should allow for electronic transmission of certificates, whether certificates of conformity or certificates reflecting third party testing of children's products, as an alternative to paper form. We are pleased that the Commission has recognized that requiring paper certificates in every case will merely result in massive paperwork production that is unnecessary in light of the increasing availability of electronic technology. Conducting business by electronic means has long been accepted and encouraged on a national level. For example, the Paperwork Reduction Act is intended to reduce the amount of paperwork produced by the government, and the Electronic Signatures in Global and National Commerce Act was enacted by Congress eight years ago to promote and safeguard electronic contracts. Congress specifically acknowledges the possibility of using of electronic certificates in Section 14(g)(4) of

the CPSA. We agree that the Commission has general authority to approve use of electronic certificates to satisfy the requirements of Section 14(a).

For imports, electronic transmission is routine as part of the normal customs entry process. Paperless certificates are widely accepted by other federal agencies, such as the Food and Drug Administration (FDA), whose certificate requirements allow for electronic transmission. Customs and Border Patrol (CBP) and the business community are accustomed to operating in a paperless environment where imports area concerned. Electronic vehicles allow for certificates to be available to all in the stream of commerce, including CPSC and CBP, to readily obtain a copy, which can easily be done via e-mail or web-based mechanisms.

In all instances where identification of a "responsible individual" is required, reference to a title (*e.g.*, "Quality Manager" or "Laboratory Director") rather than an individual should suffice. This reflects both privacy considerations and the practical reality that individuals do change jobs. Offering toll-free numbers and/or general website contacts to e-mail requests for copies of certifications, such as CPSIArecords@company.com, will allow ready access to information.

2. Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA.

Section 102 of the CPSIA, or Section 14(g) of the Consumer Product Safety Act as amended by the CPSIA, provides that "[e]very certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate." The term "accompany" can readily be interpreted to allow those subject to the certification obligation to provide either a paper certificate or to transmit the certificate electronically, contemporaneously with the shipment. A paper certification requirement will dramatically slow the importation process. In addition to unnecessarily overburdening Customs officials, the requirement will impede the flow of commerce, which will undoubtedly have detrimental effects for members of the business community.

Through adoption of the E-Sign Act and other initiatives, as noted above, the federal government has sought to facilitate the transition to electronic documents and to allow e-documents to be as accepted in business a paper documents. CPSC and CBP can always contact the importer, if the product is imported, or the domestic manufacturer, if it is not, to obtain the certifications which can be readily made available in electronic form, and the recent staff guidance is completely consistent with longstanding federal government practice to recognize electronic documentation for official government purposes.

There are many ways that shipments can be tied to the certifications. The Commission, for example, should allow for use of an Internet-based electronic certification system keyed to production dates or shipments by coding (*i.e.*, UPC codes, SKU numbers or other identifiers). A coding system would allow the manufacturer to input the required certificate information into a database, which could potentially be accessed by the Commission when conducting inspections. In the jewelry industry, different products with different UPC or SKU numbers may be made from identical components, mixed in different ways to make distinct items. In that example, a single certification should suffice to demonstrate compliance with applicable requirements. However, the FAQs suggest that electronic certifications need to be tied to a "unique identifier"; additional guidance on what sort of identifier would suffice is needed. More clarity is needed on this aspect. Further, there may be instances where all products may be certified to meet identified standards; the Commission should provide guidance as to whether an "all products" certification is acceptable, and, if not, whether multiple product identifiers can be included in the same certificate. The latter option would allow multiple products to be referenced in a single certificate but the certificate might be pages long.

Many jewelry companies consider the identity of the manufacturer to be highly confidential information. Even identification by city or province outside the U.S. could in many circumstances identify the actual manufacturer, a critical concern to the jewelry industry in these tough economic times. The requirements for certification include the "date and place of manufacture." However, Congress did not specify that the "place" of manufacture must be designated by full address and identifying information; rather, it specifies that "parties" must be identified by full contact information. We believe that references to the "parties" means the U.S. manufacturer or private labeler and the laboratory, since these are the entities that typically contract for testing. We urge the CPSC to allow the location of manufacture to be designated by country of origin rather than by a specific facility. As with its recognition that electronic certificates are acceptable, we believe that the Commission has the authority to adopt CBI procedures to assure that the goals of the Act in terms of allowing the Commission to identify the manufacturer are met without compromising highly sensitive commercial information. Alternatively, if the Commission believes that the manufacturing facilities must be identified by including full contact information, it should permit the manufacturer to provide this information on a coded basis; the identity of the manufacturer would be available to the CPSC upon request. A coding system for the manufacturer would also help preserve the confidentiality of manufacturers; the actual identity would of course be provided upon request by CPSC or CBP. We ask the Commission to quickly and clearly allow for a mechanism to maintain business confidentiality of sensitive information like the name and location of a manufacturer.

3. Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise.

Section 102 (Section 14(g) of the CPSA as amended) also provides that "a copy of the certificate shall be furnished to each distributor or retailer of the product." We support the

CPSC's view that this term allows for electronic transmission and agree that there is no reason why the term "accompany" and "furnish" should not be interpreted similarly in today's paperless economy.

We also concur with comments made by the staff in a recent public meeting that certificates do not have to be made available to consumers. This point should be explicitly clarified since it has become the subject of some confusion in connection with e-commerce sales. E-commerce shipments may involve a consumer placing an order with an online retailer, who in turn asks the manufacturer to directly ship the product to the consumer. The statute does not require that a certification "accompany" the shipment or be "furnished" *to the consumer*. In that example, the only means of satisfying the requirement to furnish the retailer with the certification is electronically, another practical reason to simply specify now that electronic certifications are broadly acceptable whether they "accompany" the shipment or are "furnished" to the distributor or retailer.

4. Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products.

We applaud clarification that electronic certifications will be acceptable. This could result in enormous cost savings for companies equipped to take advantage of the option of electronic filings. For example, if paper certificates were required, our small jewelry producer that ships 100 products to 20 customers a day would have to issue 100 different paper certificates to each customer – 2,000 certificates per day. Each certificate then must identify each manufacturing facility by full name, address, and contact information (information that is highly confidential and normally not disclosed commercially); the dates of manufacture; each laboratory conducting testing by full name, address, and contact information; and the dates of testing. Estimates for compliance with only this aspect of the CPSIA start at $100,000 if paper certificates are required. Paperwork costs are on top of costs of alternative materials, costs of altered manufacturing processes, and dramatically increased testing costs related to compliance with requirements of the legislation. Electronic filings could reduce this burden to posting 100 certificates, possibly fewer if multiple products can be included in a single certification.

Note, too, that the electronic route is not without its own considerable costs. An electronic reporting and recordkeeping system requires developing software, ensuring continued operation of the software, implementing training programs for use of the software, overseeing timely compliance with the certificate requirements, and maintaining electronic records. These may be significant for smaller companies. However, electronic could increase efficiency in responding to requests for certifications as all required information related to a product could be stored on a central database accessible to the importer, U.S. manufacturer, or other responsible business entity. Industry-wide accessible databases may also be an option, again, provided that confidentiality issues are addressed.

5. Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

In light of the enormous complexity of supply chains involved in jewelry manufacture, the burden of complying with conformity certificate requirement are exacerbated by the duplication inherent in the concept. The small jewelry manufacturer who ships 100 items to 20 business customers a day will benefit if only 100 certificates are needed, but in the world of mix and match components, fewer certificates may be necessary if multiple items containing the same components can be covered in a single certificate. Indeed, for multiple shipments of products covered by the same certification, the certifying entity might simply notify the importer, distributor or retailer that shipments are covered by an existing certification. Separate certifications by others in the supply chain seem unnecessary. The Commission, consistent with its authority under Section 3 of the CPSIA, should act promptly to eliminate duplication and excess paperwork and to authorize centralized systems of certifications, available through contacting the U.S. importer or manufacturer, or even common industry databases.

In our example of the small jewelry producer who ships 100 different items to 20 customers a day, the jewelry items may not only have been produced in multiple factories, but been tested by different laboratories on different dates. Some industry members rely on component tests, mixing and matching approved components to create a variety of products, all of which are safety-tested based on a reasonable testing program of the components. Some children's products may ultimately have to be tested by different laboratories as not every laboratory may be accredited to perform each test that may be required; the Commission should consider whether identifying one laboratory suffices so long as additional information on other tests is available. Alternatively, if the Commission determines that the date and identity of each laboratory must be included on certifications, the CPSC could assign a special code to indicate each accredited laboratory. The Commission should also look to adapting models, like continuing guarantees under the Flammable Fabrics Act, to satisfy certification obligations.

***

FJTA supports the Commission's efforts to reduce paperwork burdens, and leverage existing systems of testing, certification and continuing guarantees. FJTA appreciates the opportunity to submit these views and the staff's effort to provide clarity and guidance on the CPSIA.

Sincerely,

Sheila A. Millar

cc: Michael Gale

118

Stevenson, Todd

From: Christine Nelson [Christinen@manhattantoy.com]
Sent: Wednesday, October 29, 2008 1:09 PM
To: CPSC-OS
Subject: Request for comments section 102 CPSIA

Please note the below comments concerning:

1) Concerning the certificate needs to be with the shipment relating to imports: this can lead to delays in commerce. If customs or the CPSC is going to inspect an import container for certificates, this would potentially cause a delay in clearances and movement of goods through the supply chain. Is there consideration for the certificates to be part of the import documentation required for customs clearance?

2) Concerning the certificates requirement to contain the identification of the foreign or domestic manufacturer relating to imports; we import from various manufactures in Asia. If we must show the details of the Asian manufactures, ultimately our customer will then be given their details via the certificate. By providing certain customers/retailers with the sourcing information – this will enable them to go direct. Has there been any consideration to a work around this?

3) Many suppliers have a corporate office located in one location while the factory is in another and sometimes more than one factory. For example Hong Kong manufacturers have offices in Hong Kong but their factories are in China. Which location is to be on the certificate?

Christine A. Nelson | Global Logistics Manager | Manhattan Toy | 430 First Avenue North | Minneapolis, MN 55401 | **612-337-3834 (ph)** | 612-656-2048 (fax)

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

October 29, 2008

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

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION
2008 OCT 30 P 3: 33

RE: Section 102 Certificate Requirements

Dear Mr. Stevenson:

The National Association of Chain Drug Stores (NACDS) thanks the Consumer Products Safety Commission (CPSC) for the opportunity to provide comments on the requirements for certificates for general conformity testing and third party testing under Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

413 North Lee Street
P.O. Box 1417-D49
Alexandria, Virginia
22313-1480

NACDS represents traditional drug stores, supermarkets, and mass merchants with pharmacies. Its more than 170 chain member companies include regional chains with a minimum of four stores to national companies. NACDS members also include more than 1,000 suppliers of pharmacy and front-end products, and nearly 90 international members representing 29 countries. Chains operate more than 39,000 pharmacies, and employ a total of more than 2.5 million employees, including 118,000 pharmacists. They fill more than 2.5 billion prescriptions yearly, and have annual sales of over $750 billion. For more information about NACDS, visit www.NACDS.org.

General Comments

We appreciate CPSC's providing a number of materials and seminars on the CPSIA and we look forward to working with CPSC. The CPSIA places sweeping changes on the supply chain that will impact the chain pharmacy industry and our supply chain partners. The CPSIA expanded certification requirements to a vast number of products subject to Consumer Product Safety Act and to any similar rule, ban, standard, or regulation under any other Act enforced by CPSC. In addition, the CPSIA requirements have very short implementation time frames.

NACDS' members want to work with CPSC on compliance with the CPSIA requirements. Implementation is complicated and many questions still remain. For instance, several of our questions include:

- Which standards, bans, rules, and regulations are applicable to *specific* products?
- Whether general conformity or third party testing, or both, apply to *specific* products.
- How can retailers, such as pharmacies, know if a specific product complies with the required certifications, including multiple certifications?

(703) 549-3001
Fax (703) 836-4869
www.nacds.org

- How will the certificates accompany the product shipments?

In view of the massive changes that will result from the CPSIA and the outstanding questions, we thank you for consideration of the following areas where we would appreciate guidance and clarification from CPSC:

- Sufficient time and resources for education of supply chain stakeholders, including retailers, on the required certifications for specific products. We are concerned that the short 90-day timeframe from enactment to effective date will make it impossible for manufacturers, distributors, and retailers to be fully compliant by November 12. Many companies and trade associations learned only recently that CPSC interprets the CPSIA as applicable to any product subject to CPSC's authority, not only children's consumer products. We urge CPSC to issue guidance providing a time period of at least six months for affected companies to fully assess their manufacturing, distribution, and supply processes.
- We ask that CPSC also exercise enforcement discretion, such as a phased-in implementation for general conformity certifications by specific products or product categories, which would be accompanied with guidance on compliance. A phased enforcement approach would allow distributors and retailers to focus their efforts on specific products or categories on a gradual basis.
- We also ask CPSC for enforcement discretion with regard to certifications for child resistant packaging under the PPPA, in recognition that CPSC standards for this packaging have been in place for many years. We are not asking for exemptions from the requirements of the CPSIA, just enforcement discretion to allow at least six months for all stakeholders to adopt the requirements of the CPSIA.
- We request guidance and clarification to better understand how a retailer may know which products were manufactured after the compliance date.
- We request guidance and clarification on when retailers would be required to receive certifications and their obligations to provide certifications to CPSC for inspection.
- Retailer responsibilities with respect to certifications: whether certifications must be verified, and whether there are recordkeeping requirements for retailers.
- Guidance and clarification on whether a pharmacy company with their own distribution centers are required to pass certifications to its own retail pharmacy locations.
- Guidance for retailers with respect to private label products: whether retailers should expect private label manufacturers to provide the required certification(s), and how the certification(s) may be provided.
- Flexible options for implementation of the certification requirements, such as electronic. Also, a seamless process that would be as efficient and least disruptive as possible, irrespective of whether electronic or paper, for the requirements that the certifications "accompany" the shipment and be provided to retailers.

- We request guidance from CPSC on the specific standards, bans, rules, and regulations and the applicable specific products, e.g., a template or cross-walk of the covered products, or coding system.

NACDS provides the following comments on the specific requests from CPSC.

Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal
As discussed above, we ask for flexibility including allowance for electronic handling of the certifications to meet the CPSIA requirements. We also ask for clarification of the responsibilities of retailers such as when a copy of the certification must be provided to retailers and by which entity. We support developing a process that is efficient and works within the existing supply chain distribution practices and processes in order to minimize the disruptions to business practices for supply chain stakeholders as they comply with the CPSIA.

Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA
As we mentioned above, we ask that CPSC allow for flexibility in the requirement for the certificates to "accompany" the product shipments and for the meaning of immediate availability in view of the large volume of certificates. The CPSIA will affect thousands of products, some of which may have more than one certification, and the distribution supply chain is complex. We ask for consideration to allow processes that are as seamless as possible and coordinated within existing business practices to capture the most efficient and least disruptive means for compliance. In many instances, this may be electronic, and should allow for use of the types of supply chain documentation already in use, such as invoices, packing slips, or bills of lading.

Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailer of the product, electronically or otherwise
Similar to our comments above, we ask that CPSC allow flexibility for this requirement and that it be as seamless and coordinated within existing business practices as possible which may often be electronic. We have concerns with paper certificates due to the many thousands of shipments and the logistical difficulties of maintaining and retrieving the thousands upon thousands of paper certificates. Because of this, we ask that the CPSC consider allowing one electronic certificate to cover one product, unless the manufacturer makes changes to a product that would require a new certification. We do not see the reasons for providing the same certification for the same product repeatedly and ask that CPSC consider a streamlined compliance approach. In addition, we ask that CPSC give

consideration to allowing the supplier to maintain the certifications on their website so that retailers could access the certifications if necessary.

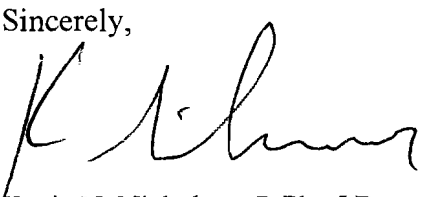
In the alternative, should CPSC not find our above recommendations acceptable, then we would ask for the certificates to be provided on documentation that is already in use, such as invoices, packing slips, or bills of lading.

Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products
As we have mentioned above, we see the need for a flexible approach with recognition that electronic certificates may be the preferable means in many instances. Paper certificates may be needed in some instances. However, in general we believe that paper certificates present numerous logistical and efficiency concerns due to the many thousands of shipments and the logistical difficulties of maintaining and retrieving the thousands upon thousands of certificates. Because of this, we also ask that the CPSC consider allowing one electronic certificate to cover one product, unless the manufacturer makes changes to a product that would require a new certification.

Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product
We have concerns about the requirement for multiple certifications for the same product that would seem to repeat the manufacturer's certifications. We ask the CPSC to consider as much discretion as possible to arrive at a workable system that would combine the information into one certificate. In view of the huge number of affected products, having the information on one certification would be operationally efficient for the CPSC and the supply chain stakeholders.

Thank you for the opportunity to share our views on the CPSC's request for information and comments on Section 102 in regards to the certification requirement. We would like an opportunity to discuss with you our concerns in detail. Please let me know when this would be possible. You may reach me at 703-837-4183 or knicholson@nacds.org, or Diane Darvey, Pharm.D., J.D., Director of Legislative and Regulatory Affairs, at 703-837-4182 or ddarvey@nacds.org. We look forward to meeting with you.

Sincerely,



Kevin N. Nicholson, R.Ph., J.D.
Vice President
Pharmacy Regulatory Affairs

RECKITT BENCKISER
NORTH AMERICA

Eileen J. Moyer
Director of Regulatory Relation
Phone: (973) 404-2718
Fax: (973) 404-5676
e-mail: eileen.moyer@reckittbenckiser.com

October 29, 2008

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

RE: Title I Section 102 Certificate Requirements of P.L. 110-314
Consumer Product Safety Improvement Act

Dear Madam/Sir,

I am submitting this letter on behalf of Reckitt Benckiser Inc. (Reckitt) in response to the Consumer Product Safety Commission (CPSC) staff request for comments on the Commission's implementation of the certification requirements of Section 102(a)(1) under Title I of the Consumer Product Safety Act. The CPSC staff has interpreted this section of the statute to require that compliance certifications be issued for each consumer product that is subject to CPSC rules under the Consumer Product Safety Act or similar requirements under any of the other acts administered by the CPSC.

Reckitt manufactures and markets a broad range of household care products such as Airwick® air fresheners, Woolite® detergents, Electrasol® automatic dish detergent and Old English® furniture care products. We have rigorous programs in place that ensure all our products are in compliance with the various laws and regulations they may be subject to.

We are not in agreement with the CPSC staff interpretation of Section 102 and believe that Congress did not intend to create such a procedurally burdensome certification process for all consumer products. Section 102 is within Title I of the Consumer Product Safety Improvement Act of 2008 (CPSIA) which is entitled "Children's Product Safety". Section 102 is entitled "Mandatory Third Party Testing for Certain Children's Products". The general conformity certification requirements under Section(a)(1) are entitled "Mandatory and Third Party Testing". The interpretation CPSC staff has detailed requires companies to provide certifications of compliance for all consumer products subject to a broad range of statutory and regulatory requirements regardless of whether testing (third party or self testing) is mandatory or whether

they are intended for use by children 12 years of age or younger. The household care products Reckitt manufactures and markets contain the statement "Keep Out of Reach of Children", clearly indicating that they are not children's products.

The certification requirements are extremely burdensome. Requiring a certification for each shipment is duplicative and unnecessary if there has been no change to the products involved. The requirement results in the need to expend resources on a program for which the ultimate benefit to retailers or consumers is unclear. Household consumer products, such as those marketed by Reckitt, that contain labeling and are packaged in accordance with existing laws and regulations should not have to be subject to these requirements. The labeling and packaging are already evidence of compliance with the applicable laws and regulations.

We respectfully request that the CPSC reexamine the applicability of Section 102(a)(1) as it pertains to household care products and issue guidance reflecting the intent of Congress that this provision applies to children's products. We also ask that the CPSC delay implementation of this provision until such guidance is provided.

Thank you for the opportunity to provide comments on this important issue.

Sincerely,

Eileen J. Moyer
Director of Regulatory Relations

cc: Nancy A. Nord, U.S. Consumer Product Safety Commission
Cheryl A. Falvey, U.S. Consumer Product Safety Commission
Gib Mullan, U.S. Consumer Product Safety Commission
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee
The Honorable Rodney Frelinghuysen, Congressman, NJ 11th District
The Honorable Frank R. Lautenberg, Senator, NJ
The Honorable Robert Menendez, Senator, NJ

Stevenson, Todd

From: Moyer, Eileen [Eileen.Moyer@reckittbenckiser.com]
Sent: Wednesday, October 29, 2008 3:06 PM
To: CPSC-OS
Subject: Reckitt Benckiser Comments - CPSIA Section 102(a)(1) Certification Requirements
Attachments: RB Letter to CPSC Nord on Certification 102808.doc

Dear Madam/Sir,

Attached is a letter expressing Reckitt Benckiser's concerns with the implementation of Section 102(a)(1) of the Consumer Product Safety Improvement Act of 2008.

Regards,

Eileen J. Moyer

Dir. of Regulatory Relations/Reckitt Benckiser Inc./399 Interpace Parkway, Parsippany, New Jersey 07054/Phone: (973) 404-2718;Fax: (973) 404-5676; Cell: (973) 229-4784

NOTICE

Please Consider the Environment before printing this Email
This email was sent from within the Reckitt Benckiser Group plc group of companies. This email (and any attachments or hyperlinks within it) may contain information that is confidential, legally privileged or otherwise protected from disclosure. If you are not the intended recipient of this email, you are not entitled to use, disclose, distribute, copy, print, disseminate or rely on this email in any way. If you have received this email in error, please notify the sender immediately by telephone or email and destroy it, and all copies of it.

We have taken steps to ensure that this email (and any attachments) are free from computer viruses and the like. However, it is the recipient's responsibility to ensure that it is actually virus free. Any emails that you send to us may be monitored for the purposes of ascertaining whether the communication complies with the law and our policies.

HDMA
Healthcare Distribution
Management Association

VIA ELECTRONIC TRANSMISSION

October 29, 2008

Via Electronic Transmission to cpsc-os@cpsc.gov

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

Re: Section 102 of the Consumer Product Safety Improvement Act (CPSIA); Requirements for Certificates for Conformity Testing and Third Party Testing; Request for Clarification and Delayed Implementation

Dear Secretary of CPSC:

On behalf of the Healthcare Distribution Management Association (HDMA), we are responding to the CPSC's request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our members' concerns in connection with Section 102's General Conformity Certificate (GCC) requirements that are scheduled to go into effect on November 12, 2008. Most important, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

By way of background, HDMA and its members are committed to patient safety by delivering life-saving health products and services through the healthcare supply chain. Primary, full-service healthcare distributors work with supply chain partners to deliver billions of units of medication each year to tens of thousands of retail pharmacies, nursing homes, clinics and providers, in all 50 states. HDMA and its members serve as the vital link in a healthcare system that assures medicine safety, quality, integrity and availability in the marketplace. HDMA and its members focus on providing value, removing costs and developing innovative solutions to deliver healthcare products safely and efficiently.

The purpose of this letter is to alert you to serious concerns on the part of the drug distribution industry in connection with the imminent implementation of the GCC requirements under the CPSIA and the ability of our industry to comply with these requirements by November 12, 2008. While we recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children, from hazardous products, we would like to highlight just a few of the many significant

901 North Glebe Road Suite 1000 Arlington, VA 22203
(703) 787-0000 (703) 935-3200 (Fax) www.HealthcareDistribution.org

concerns we have about this specific part of the CPSIA. These concerns form the basis for our request for clarification and delayed implementation of the GCC requirement.

Under Section 102, wholesale drug distributors must receive GCCs for affected products. Thus, we are concerned about CPSC's interpretation of the scope of Section 102, about manufacturers' ability to generate GCCs and furnish them in a manner that will permit distributors to receive them without disrupting their product receiving operations, and about potential requirements for distributors to pass GCCs.

Regarding the scope of coverage of Section 102, HDMA has the following comments:

- *The CPSIA Was Reasonably Interpreted by Industry as Limited to Children's Products.* Industry initially believed that the GCC requirement was intended only for children's products (as per the Section 102 heading entitled "Mandatory Third Party Testing for Certain Children's Products," and as per the definition of "children's product" in Section 235(a)(16)) and has only recently been advised by CPSC staff of their view that additional regulated consumer products may be affected. It would be unduly burdensome to impose the GCC requirements on all regulated products, particularly under such short time constraints at this point, especially when industry's interpretation of the language as drafted was entirely reasonable.

- *Scope Should Be Limited to Children's Products.* Prescription and over-the-counter drug products, as well as a long list of other products not considered actual "children's products" as referenced or defined under the CPSIA (in its preamble, definitions and title/section headings)[1] should not be subject to the GCC requirement. To extend the burdensome GCC requirements to any product that may pose a safety risk to children clearly exceeds the stated intent of the CPSIA in regulating only products intended for use by children 12 and under.

As noted above, HDMA strongly believes that it would not be appropriate to apply CPSIA's requirements to products other than actual "children's products." However, should broader implementation proceed, we want to bring to the CPSC's attention at least some of the many factors that must be fully assessed and resolved, with corresponding guidance developed, prior to implementation. Further, we would urge the Commission to use its enforcement discretion to allow a reasonable time frame for such guidance to be developed and for implementation to take place. Time is needed to allow industry – from manufacturers to distributors to retailers – to assess the requirements and to revise their operations accordingly without unduly disrupting the provision of vital medications.

From a distributor's perspective, Section 102's requirements for receiving and disseminating the GCC present the greatest concern and will further magnify the need for additional time and guidance prior to implementation. Specifically:

---

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products...", and Title I to the Act is entitled "Children's Product Safety". The definition of "children's product" in Section 235(a) is "a consumer product designed or intended primarily for children 12 years of age or younger".

- *Uniform Format for GCC is Needed.* Even if manufacturers are able to generate GCCs, until CPSC clarifies the form in which the GCC must appear, our members will not be able to assess what types of new systems they would need in order to receive GCCs and keep them together with the products with which they are associated. Wholesale drug distributors' expertise, as well as our operations, distribution center layout, equipment, computer systems and staffing are all designed to move literally millions of drug and healthcare products per day, through distribution centers to dispensers. The typical pharmaceutical distributor purchases drug products from over 1,000 different manufacturers. Without a uniform format in which certifications are provided by manufacturers, it will be extremely difficult for distributors to receive and appropriately account for the numerous certifications they receive. Any new requirement to receive and then pass GCCs will have to be evaluated carefully in order to permit compliance in an efficient and reliable manner. Simply put, this effort will take time.

- *Dissemination of GCCs Should Not Apply to Distributors.* As noted above, we question the applicability of Section 102 to the drug products that our members distribute. If such products are deemed subject to the GCC requirements, however, we also would question a possible additional interpretation of Section 102, that is, whether distributors might be required to pass GCCs to the retailer. If CPSC were to view Section 102 as requiring distributors to pass certifications to retailers, distributors urgently would need the Commission to provide guidance as to how GCCs should "accompany" the products covered by the GCC. Unless the GCCs can be incorporated, in a uniform manner, into paperwork that distributors already receive from manufacturers and pass to their customers, it will take time to develop systems to ensure that paper GCCs are appropriately distributed. Moreover, if CPSC permits electronic GCCs, such an approach would present its own implementation challenges and CPSC would have to permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems.

There are a number of additional significant concerns that should also be noted. Among them are:

- *Private Label Distributors Have No Guidance.* CPSC has not provided guidance to private labelers – that are not involved in any part of the manufacturing process – regarding whether they can rely on a manufacturer's test results, or whether they must conduct independent testing. Further, we believe that CPSC must explore many interrelated issues regarding private label distribution before such guidance could even be provided. For example, if the manufacturer must generate a GCC for such products, must the private labeler also generate a GCC and, if so, must the products be accompanied by both the manufacturer's and private labeler's GCCs?

- *Product Testing Cannot Be Implemented Timely.* Reasonable and representative testing requirements to support GCCs have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008.

- *Product Testing Should be Commensurate with the Degree of Risk.* Particularly for prescription drugs, the GCC requirement is unnecessary. As part of the FDA approval process for a prescription drug, the manufacturer must not only secure FDA approval of the drug and its specifications, but FDA approval of the packaging specifications, which include, when applicable, compliance with the Poison Prevention Packaging Act (PPPA). Repeat testing for compliance with the PPPA is unnecessary as long as the manufacturer adheres to Good Manufacturing Practices (GMPs) which help to ensure the continued integrity of the process. The FDA monitors compliance with GMPs and, therefore, PPPA-related safety risk for such products is minimal. Thus, a "reasonable testing program" (as required under the CPSIA) could involve one-time testing during the initial packaging development phase and only again if packaging specifications change. Simplification of the testing requirements also would simplify manufacturers' efforts to "furnish" the GCC to distributors and retailers, since very few changes in the subsequent GCCs would be needed.

Our concerns have been somewhat exacerbated by the Commission's lack of clear guidance on the implementation of Section 102. We fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task. However, given the myriad of questions and uncertainty, industry requires additional guidance to permit efficient and effective compliance.

Conclusion/Summary

HDMA strongly believes that the CPSIA's requirements should not be applied to products other than actual "children's products." Should implementation proceed more broadly, however, in view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC delay its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirement.

Alternatively, we urge the Commission to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If the Commission does not believe that it has the existing authority to take such action, then we would urge the CPSC to work with Congress to make these necessary adjustments to the CPSIA.

Finally:

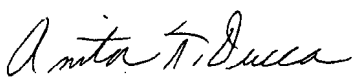
- Given the number of manufacturers and products potentially involved, and the complexity of the pharmaceutical supply chain, we urge the CPSC to clarify the form/format in which the GCC must appear. Further, it will be imperative that the form/format be uniform across manufacturers, importers and recipients to facilitate compliance.
- If the drug products that our members distribute are deemed subject to the GCC, we urge the Commission to interpret Section 102 as being satisfied once the manufacturer passes the GCC

directly to the distributor or retailer – that is, not require the distributor to then also "pass" the GCC to the retailer.

- We urge the CPSC to fully assess the many factors involved in compliance with Section 102, and to develop and issue guidance prior to implementation, including guidance for Private Label Distributors.
- When the Commission assesses the "reasonable testing program" requirement, we urge the CPSC to consider the extensive FDA approval requirements to which prescription drugs currently are subjected. HDMA believes that repeat testing to satisfy a GCC requirement is unnecessary, as long as child-proof packaging specifications do not change.

We hope that these comments are helpful as the Commission considers the many implementation questions it is sure to receive. If you have any questions concerning the issues raised above, please do not hesitate to contact me. I can be reached at 703-885-0240 or at aducca@hdmanet.org.

Sincerely,



Anita Ducca
Senior Director, Regulatory Affairs and Healthcare Policy

Stevenson, Todd

From: Ducca, Anita [aducca@hdmanet.org]
Sent: Wednesday, October 29, 2008 3:12 PM
To: CPSC-OS
Subject: HDMA Comments on the CPSIA
Attachments: Final HDMA Comment on CPSIA 10-29-08.pdf

Dear Sir or Madam,

Please find attached a copy of the comments that are being submitted on behalf of the Healthcare Distribution Management Association (HDMA) regarding Section 102 of the Consumer Product Safety Improvement Act (CPSIA).

If you have any questions, please do not hesitate to contact me.

Regards,

Anita T. Ducca
Senior Director, Regulatory Affairs and Healthcare Policy
Healthcare Distribution Management Association (HDMA)
901 North Glebe Rd., Suite 1000
Arlington, VA 22203
(703) 885-0240
Fax: (703) 935-3200
e-mail: aducca@hdmanet.org
www.HealthcareDistribution.org

TOMPKINS & DAVIDSON, LLP
Counselors At Law

5 Hanover Square
15th Floor
New York, NY 10004

phone (212) 944-6611
fax (212) 944-9779
e-mail -customs@tdllp.com

October 29, 2008

Via email to cpsc-os@cpsc.gov

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

RE: "Section 102 Certificate Requirements."

Dear Madame / Sir:

The following is submitted on behalf of our client, E & B Giftware, LLC, of 4 Executive Plaza, Yonkers, New York 10701, in response to the agency's request for public comments regarding procedures and implementation of *certificates* for *conformity testing* and *third party testing* pursuant to the Consumer Product Safety Improvement Act (The Act).

Background

The Act amends section 14(a)(1) of the Consumer Product Safety Act (CPSA) effective November 12, 2008, to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with any applicable Consumer Product Safety Commission (CPSC) rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC. The law further provides that the certificate be based on a test of each product or on a reasonable testing program. In addition, there are third party testing requirements for children's products, with staggered enforcement dates; the first being effective December 2008 regarding Lead Paint Testing.

Correspondent to the above, the Act also provides the following with respect to the newly required *certificates*:

> (1) IDENTIFICATION OF ISSUER AND CONFORMITY ASSESSMENT BODY.—Every certificate required under this section shall identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate shall include, at a minimum, 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.

(2) ENGLISH LANGUAGE.—Every certificate required under this section shall be legible and all content required by this section shall be in the English language. A certificate may also contain the same content in any other language.
(3) AVAILABILITY OF CERTIFICATES.—Every certificate required under this section shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy of the certificate to the Commission.
(4) ELECTRONIC FILING OF CERTIFICATES FOR IMPORTED PRODUCTS.—In consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product. Upon request, the manufacturer or private labeler issuing the certificate shall furnish a copy to the Commission and to the Commissioner of Customs.

Request for Comments

The CPSC has recognized, and requested comments and suggestions addressing, the anticipated difficulties of requiring that paper certificates "accompany" shipping containers and the products contained inside as well as "furnishing" paper to each distributor or retailer of the product. Comments were similarly requested regarding the issues and difficulties that would be engendered should the agency require multiple certifications for the same product and, finally, the feasibility of providing certificates to the agency electronically.

In that regard, we respectfully submit the following suggestions which in our opinion would achieve compliance with both the requirements of testing and providing the substantiating information in order to safeguard the American consumer, while at the same time reduce the administrative burden on both the agency and regulated companies, eliminate unnecessary delay in the entry process, and permit the clearance of cargo in a manner consistent with the Customs "paperless environment," while also protecting confidential business information and achieving results consistent with the Paperwork Reduction Act and Customs Modernization Act.

Comments and Suggestions

1. a) As a preliminary matter, the CPSC regulations should be revised to define *Certificate,* for purposes of section 14(a)(1) of the CPSA, as (1) the transmission to the CPSC of the information required under Section 102 of the Consumer Protection Safety Improvement Act and (2) an electronic "document," as well as a physical document.

b))(1) Tangential to the issue of providing multiple certifications for the same product, we also recommend that the CPSC apply a reasonable interpretation to the requirement that a *manufacturer* of a product that is imported issue a certificate. Based on the definition in 15 USC §2052(a)(11)[1], the requirement should be applied to permit the importer, at its option, as being the sole party responsible for providing the certificate / information. In this manner, not only is duplicative work and cost eliminated, but this interpretation also accommodates the need for proprietary information, i.e., the identity and address of the manufacturer to be kept confidential.

(b) (2) In any event, although all required information would of course be supplied to the CPSC, we respectfully submit that the identity and address of the manufacturer [as opposed to the importer – who is also defined as the manufacturer] be redacted when the certificate / information is provided to the retailer / distributor, be it in document format or accessible through a database, *See, infra*, points 2. and 3. This is required to protect business proprietary and confidential information.

2. Filing of Certificate / Information through the Automated Commercial System.

(a) One option would be to transmit the required compliance information in a manner similar to that used to submit to the Food & Drug Administration (FDA) the required *Prior Notice* information, as mandated by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the BT Act).

As we understand it, the following are the various methods used to transmit the required *Prior Notice* (PN) information to FDA:

ACS at the time of entry via the Automated Broker Interface (ABI) – This method uses the current FDA *OASIS*[2] interface and adds data elements for PN submission. This is designed to work with ABI entries filed by ABI filers.

ACS/ABI[3] independent PN (via the WP transmission) – This is an interface with FDA that allows ABI filers to submit PN data independent of any entry data. For PN submissions made via the

[1] The term "manufacturer" means any person who manufactures or imports a consumer product.
[2] The Operational and Administrative System for Import Support (OASIS) is an automated FDA system for processing and making admissibility determinations for shipments of foreign-origin FDA-regulated products seeking to enter domestic commerce. If a foreign product requires FDA approval, five specific data elements, in addition to the information required by U.S. Customs, must be submitted for FDA review. [*Commercial Description, FDA Manufacturer* - the site-specific location where the product is manufactured, produced or grown; *FDA Shipper; FDA Country of Origin*; and, *FDA Product Code*]. In addition, the OASIS system accommodates the transmission of five additional and optional data elements. Amongst these is the Affirmation of Compliance code (AofC code). By using a three letter AofC Code, the filer affirms the product identified in a FDA line meets requirements specific to each code.

ABI independent interface, the submitter will receive a confirmation number from FDA, which must be provided with the entry documentation by the entry filer. Any ABI filer (including in-bond only filers) may use this interface to submit a PN for use with in-bond shipments, informal entries, Foreign Trade Zone (FTZ) admissions and any other entry type that is not fully automated. In certain locations, the ABI system allows one to electronically upload a document.

FDA Prior Notice System Interface (PNSI) – This is FDA's Internet based system that allows anyone to supply PN information directly to FDA. For PN submissions made through PNSI, the submitter will receive a confirmation number from FDA, which must be provided with the entry documentation by the entry filer. This may be used for informal entries filed by non-automated importers (walk-up entries), in-bond shipments, FTZ admissions, carnets, Section 321 releases and any other type of non-automated entry or release. This data is submitted to the FDA PN System Interface at www.access.fda.gov .

(b) For purposes of furnishing a copy to each distributor or retailer, this could be accomplished by electronically providing a copy, for example, in PDF format.

3. Registering a Facility and Listing the Product

Alternatively, we suggest that consideration be given to allowing registration with CPSC of the manufacturer and / or listing the product / testing facility, similar to the registration and listing of manufacturers / importers and medical devices as currently employed by the FDA. Not only does the FDA database facilitate the importation of regulated product by providing the information to the FDA but the website allows consumers, e.g., to search the database for Registrations of Establishments and Owners and for specific product Listings; *See*
http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfRL/rl.cfm

The contemplated CPSC Registration would involve providing the details of the manufacturer [name, full mailing address, telephone number] and product[s] manufactured, whereas the Listing would be

[3] ACS is the system used by U.S. Customs and Border Protection to track, control and process all commercial goods imported into the United States. ACS facilitates merchandise processing, significantly cuts costs and reduces paperwork requirements for both Customs and the trade community.
The ABI is an integral part of ACS that permits qualified participants to file import data electronically with Customs. ABI is a voluntary program available to brokers, importers, carriers, port authorities, and independent service centers. Currently, over 96% of all entries are filed through ABI. ABI expedites the release of merchandise for the trade community. Entry summaries are electronically transmitted, validated, confirmed, corrected, and paid. Administrative messages keep participants informed of all current information and issues. See, http://www.accessdata.fda.gov/scripts/ORA/PCB/tutorial/les2_oasis.htm
In certain locations, an ABI participant is allowed to file documents directly with an assigned import specialist team.

for the specific product, including providing the date and place of manufacture, the date and place where the product was tested and contact information for the individual responsible for maintaining records of test results. Once the initial registration and listing processes are completed [resulting specific Registration and Listing numbers], the corresponding numbers may be submitted at the time of entry, to accompany the importation.

The retailers and distributors will be provided with the corresponding numbers; the public can search the database, similar to the FDA's current system, with the safeguard that only non-confidential information would be made public. *See*, http://www.fda.gov/cdrh/registration/search.html

Each of the above recommendations will provide the CPSC with a reputable method of substantiating that products distributed in commerce by domestic manufacturers or imported from foreign manufacturers have complied with the requirements of Section 14(a)(1) of the CPSA. In each case, the information is readily available for immediate inspection for compliance and enforcement, and can be tied to specific shipments of products as required by the CPSIA.

In addition, the *certificates* and information for the products would also be *furnished* to the distributors or retailer of the product, electronically or otherwise, as required.

Respectfully submitted,

Tompkins & Davidson, LLP

TOMPKINS & DAVIDSON, LLP
(Tel. No. 212 944-6611)
Counsel for Protestant
E & B Giftware, LLC

Of Counsel:
Louis S. Shoichet, Esq.
Barbara Y. Wierbicki, Esq.

Stevenson, Todd

From: Barbara Y. Wierbicki [bywierbicki@tdllp.com]
Sent: Wednesday, October 29, 2008 1:13 PM
To: CPSC-OS
Subject: "Section 102 Certificate Requirements"
Attachments: Section 102 Certificate Requirements.pdf

This e-mail, and any attachments thereto, are intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by e-mail and permanently delete the original and destroy any printout thereof. Thank you.

Office of the Secretary

Dear Madame / Sir:

Attached is a submission in response to the CPSC request for comments regarding the Section 102 Certificate Requirements.

We thank you for your attention and consideration.

Sincerely,
Barbara Y. Wierbicki, Esq.

Tompkins & Davidson, LLP
5 Hanover Square
15th Floor
New York, New York 10004
Phone number 212 944-6611 [X140] Fax number 212 944-9779
bywierbicki@tdllp.com

TOMPKINS & DAVIDSON, LLP
COUNSELORS AT LAW

5 Hanover Square, 15th Floor
New York, NY 10004

phone – 212 944 6611
fax – 212 944 9779
e-mail – tdlaw@tdllp.com

October 29, 2008

VIA FAX AND E-MAIL
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethlehem, MD 20814

Re: **Section 102 Certificate Requirements**

Dear Sir or Madam:

The following comments are being submitted based on review with various clients engaged in the licensing of trademarks and copyrights for consumer products, including children's consumer products, primarily in the clothing and accessories areas, in response to the agency's request for public comments regarding procedures and implementation of *certificates* for *conformity testing* and *third party testing* pursuant to Section 102 of the Consumer Product Safety Improvement Act (The Act). These comments relate to the request for comments on the use of electronic certificates as well as the issue of multiple certifications for the same product. Section 102(b) amends section 14 of the CPSA to add a section 14(g)(3) that requires that every certificate "shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product."

We respectfully submit that the agency authorize a process under which the certificates that are required may be included along with invoice and other agency documentation currently required for Customs & Border Protection and other government agency clearance of imported merchandise, as an available alternative methodology to paper documentation or Internet based document access. We submit this method, which is familiar to importers as the means of providing required information, will satisfy The Act's mandates, while permitting review and clearance of cargo in a manner consistent with the Customs "paperless environment."

As background, in many product lines of licensed clothing and accessory merchandise, product is ordered and delivered on a replenishment basis. Many of our client's articles are sold in combination packages, the contents of which vary by customer and by shipment, in addition to being sold as individual items. For each licensing group under which clients produce such individual and packaged product, the retailer expectation is that there will be multiple designs that will be delivered on a rotating basis. It is commonplace, therefore, that over a two-to- three month cycle or season, to have anywhere from five to ten or more designs for each individual licensed character, and multiple characters being produced under each license, with these being exported on a rotating basis under different style designations, depending on the packaging and customer requirements. Literally, hundreds of designs might be produced overall during each quarter, resulting in thousands of styles or SKU's derived from the varying packaging of the designs.

For example, on a simple level, there may be five designs of a particular licensed character, all of which use no more than a combination of a maximum of six colors. The five individual designs will be shipped as individual items, and just as often repetitively shipped as

part of different collections, often combined with a different character of the licensor, with its own five designs and colors. The different sets are exported under different product styles or SKU's, depending on the character combinations as well as the SKU requirements of the different retail customers.

For companies utilizing assortments of licensed trademarked/copyrighted character merchandise, a simple assortment pack containing two articles of the same licensed figure, chosen from five images of that character, will have ten different possible combinations of the articles. An assortment of two items, one each of different characters from the same licensor group, will have 25 potential combinations. It is normal practice to have up to ten designs per character for each season or cycle. Also, in assortments with more pieces or characters, such as a package of socks or underwear, the possible combinations, each with its own potential style number or SKU, quickly climb into the three-digit, or even the four-digit, realm.

Thus, for companies operating in the licensed goods area, manufacturers and importers are faced with preparation of certificates covering different combinations of particular products that have been appropriately tested for conformity on an individual basis. The statute requires that the "certificate shall include, at a minimum, the date and place of manufacture, the date and place where the product was tested"; these, particularly the test date, will differ for each product (unless, perhaps, the agency authorizes use of very broad periods in such declarations). The creation of certificates becomes quite complex, due to differing manufacturing periods and test dates that may apply to the individual products in the packages, and the requirement that the proposed certificate format detail this information for multiple requirements. Any scheme to require that certifications accompany the product needs to take into account that the test

information for particular designs will be under a style designation that will not appear on carton markings of merchandise being examined at the pier or airport, as these will show the customer style numbers of SKU numbers for the packaged product, which serves to minimize inventory costs in processing the cartons through distribution centers.

The information as to the actual designs will ordinarily only be found in packing lists that contain the particular product component details and that accompany the invoice documentation provided to the Customs broker for purposes of filing Customs entries, which may require paper presentation, depending on the textile product, but will increasingly be paperless.

Accordingly, it is in keeping with longstanding Customs procedures that importers seek to have the CPSIA documentation be transmitted through the Customs broker as part of the entry documentation package, so that it is available for review in the same manner as other commercial documentation required by Customs and other agencies currently. In this way, the underlying certificates for individual products can accompany the packing list information on invoices covering shipment of individual products as well as invoices for combination products, avoiding the necessity for the ongoing creation of new complicated certifications for each different package set. The information will be available from the Customs broker in the examination context, just as the information for exams, such as the invoice, quota declarations for textile products, Fish & Wildlife information is available for processing in the paperless environment.

As staff is aware, the majority of entries are paperless, but invoice documentation and compliance information required by other agencies is transmitted to the offices of the Customs broker filing the entry. A multiple party certificate of compliance, or the three separate certificates, is similar to various additional declarations that have been required by Customs and

Border Protection for consumer products, such as textiles, apparel and footwear, over the years, including special origin declarations, supplementary export cost declarations, certificates under duty preference programs and Fish and Wildlife species information. Importers have experience with requirements for the inclusion of additional documentation for Customs and other agency clearance requirements. Inclusion of the certifications with corresponding invoice documentation should completely satisfy the requirement that certificates "accompany" the merchandise.

In the most recent notice on certifications, the agency staff proposed as an alternative to paper documentation, storage of documents on the internet, with password information presumably placed in invoice documentation. We submit that this may benefit only a small portion of the importing community, while authorizing inclusion of the certifications with invoice documentation is a procedure that importers have been comfortable with from long experience. Further, authorizing multiple alternatives for presentation of the certificates will enable companies to choose a system that best comports with their current operating methods.

Under CPSIA mandatory testing it is not required to test and re-test identical articles merely because they may be shipped under different style numbers due to the different assortments under which they are packaged, so reference to the individual component style numbers will be necessary. Our proposal that the certificates for each individual article in the packaged set be an acceptable alternative to the ongoing creation of certificates for each package combination, as long as the product information is included with packing list information, should serve to lessen the compliance costs significantly for companies involved in sale of licensed

product. Importers should be given a choice among multiple methodologies to evaluate which methodology will best apply in their circumstance.

We submit that the above proposal will provide the CPSC with a reputable method of substantiating that imported products distributed in commerce have complied with the requirements of the Act. In each case, the information is readily available for immediate inspection for compliance and enforcement, and can be tied to specific shipments of products as required.

We thank you for your consideration of the above.

Sincerely,

TOMPKINS & DAVIDSON, LLP

Robert T. Stack *(e-signature)*

Robert T. Stack, Esq.

Stevenson, Todd

From: Robert Stack [rstack@tdllp.com]
Sent: Wednesday, October 29, 2008 3:03 PM
To: CPSC-OS
Subject: Section 102 Certifcate Requirements
Attachments: CPSC Section 102 Comments.pdf

Dear Sir/Madam:

We have attached comments in response to your office's solicitation concerning means of transmitting the compliance certificates. These are also being faxed to your office to insure receipt.

Thank you in advance for your consideration.

Sincerely,

Robert Stack, Esq.

TOMPKINS & DAVIDSON, LLP
5 Hanover Square, 15th Floor
New York, NY 10004
PH: (212)-944-6611, ext. 130
FAX: (212)-944-9779

The contents of this message may be privileged, under the attorney - client privilege or under the attorney work product rule. Intended recipients should keep this message in a separate folder with other privileged communications relating to the same matter. If you have received this message in error and are not an intended addressee, please delete your copy of this message and notify the sender of this. Thank you

canadian apparel federation
fédération canadienne du vêtement

October 29, 2008

VIA E-MAIL- (Cpsc-os@cpsc.gov)
Office of the Secretary
Consumer Product Safety Commission
Room 502
4330 East West Highway
Bethesda, MD 20814

Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

I am writing on behalf of the members of the Canadian Apparel Federation (CAF) concerning Certification Requirements contained in the Consumer Product Safety Improvement Act (CPSIA). We have reviewed the information available on the CPSC web site and the information published just a few days ago concerning the general conformity certificate. My comments deal with general concerns regarding the provision of certificates and specific questions regarding the manner and form in which they are to be supplied or furnished.

At the outset, let me stress that our association and our members are working hard to ensure compliance with the requirements for certificates of conformity – as well as other provisions of the CPSIA. Within Canada, the Canadian Apparel Federation is, to our knowledge, the only trade association to be actively hosting workshops on this subject and educating its members concerning the provisions of this Act, and its ramifications for the supply chain. With nearly 600 members spread out across Canada we cannot physically reach all members, but we are holding information sessions in three major cities representing nearly 90 percent of the apparel production in Canada.

Despite our efforts, the timing of these changes has been very challenging for both our members and the association. In contrast to other consumer products the apparel industry has significant challenges regarding the provision of a general conformity certificate owing to what we view as the ambiguities in the requirements of CPSC. Contrary to other industries such as toys where there has been an ongoing dialogue and exchange of information regarding the

504-124 rue O'Connor St., Ottawa ON, K1P 5M9 ▮ Tel/Tél.: (613) 231-3220 ▮ Fax/Téléc.: (613) 231-2305 ▮ Email/courriel: info@apparel.ca

www.apparel.ca/www.vetement.ca

application of a specific standard to specific products, the CPSIA general conformity certificate demands an entirely new level of product standards surveillance and transparency for apparel producers. Given the timeframes for production and contrasting them to the timeframes imposed by the recent legislation, many companies throughout the supply chain in all regions of the world will simply not be able to meet the initial deadline of November 12th.

These comments are being submitted two weeks prior to the date of implementation. It is the first opportunity we have had since the passage into law of this legislation in August to comment on many of the elements contained within these regulations. We would have expected to have received notification of these provisions and had the opportunity to comment more fully. This affects all countries exporting to the United States, but because of our proximity, Canadian goods manufactured on or after November 12, 2008 will enter the U.S. before goods from most other countries, and for this reason we will encounter the problems associated with compliance before others.

We are concerned that the level of understanding in the U.S. and abroad concerning these measures will not allow for companies to meet their obligations. Many supply chain partners are simply unaware of the requirements and the need to furnish the information needed by their customers.

GENERAL COMMENTS

American consumers enjoy a competitive, commercial marketplace with a great variety of consumer goods, sourced from a myriad of global suppliers. It is important that well-intentioned product safety regulations do not unnecessarily impede critical international trade.

American consumers must be confident that the consumer products being sold within the commercial marketplace meet all applicable U.S. requirements and standards. For this reason, consumer goods should be permitted entry into the U.S. if the importer certifies, pursuant to a verifiable, compliant testing program, that the product conforms to all applicable CPSC standards, rules and regulations. It is an unreasonable duplicitous effort, however, to require both the importer *and* the foreign product manufacturer to issue conformity certifications for the identical product arriving in the same shipment. Requiring duplicitous certifications of both the manufacturer and the importer based upon replicated testing efforts will increase the costs of supplying genuine and safe consumer goods to the American marketplace, escalate retail prices and clearly obstruct international trade, without any resulting benefit in terms of enhanced product safety.

The following comments are summarized as follows:

1. While any manufacturer or importer can certify conformance, it is unnecessary to require both.
2. It is critical that manufacturers, importers and private labelers be able to rely upon a single reasonable or otherwise permissible testing protocol to support required certifications.
3. Because shipments or truckloads can contain hundreds or thousands of different product types, it is unreasonable to have every required conformity certificate "accompany" the product
4. More clarity as to reasonable testing is necessary before any certification can be declared false or otherwise unacceptable

These comments, while not specifically numbered as set forth in the Request for Comments and Information, collectively provide the information and comments requested by the CPSC in connection with Section 102 of the CPSIA.

A. Congress stated that its intent was not to require duplicative testing of consumer products

On December 19, 2007, regarding Section 102 of the CPSIA, Congressman John Dingell (D-MI) stated on the floor of the House of Representatives that: "the Committee intends for these requirements to be vigorously enforced, but it does not intend the provision to be interpreted to require unnecessary duplicative testing."

It is unnecessary for both the importer and the foreign manufacturer of the identical product to perform and pay for separate conformity testing. Although the CPSC has assured the trade that U.S. importers can rely upon a foreign manufacturer's product testing or reasonable testing program to support the importer's conformity certification, no such reciprocal provisions are specifically provided to foreign manufacturers, necessarily increasing the costs of U.S. market access.

There is no basis or reason to require duplicative product testing by different parties for the identical product. Such a requirement clearly contradicts the stated legislative history of the Act and unnecessarily increases the costs of foreign manufactured consumer goods. If the importer conducts and performs the required testing, reviews those test results and identifies itself as the issuer of the applicable product conformity certification, no further assurances or guarantees should be required.

B. <u>To condition entry of foreign-manufactured goods upon issuance of a conformity certification from both the importer and the manufacturer violates WTO's national treatment guarantees</u>

Paragraph 4 of Article III of GATT 1994 states the following: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* Article III was designed to eliminate discrimination between imported goods and domestically produced goods. Technical standards, such as the certification requirements set forth in Section 201, even if only inadvertently, necessarily act as discriminatory trade barriers, in favor of domestic producers.

Although Section 102 of the CPSIA applies equally to domestically manufactured and foreign produced consumer goods, domestically produced goods only require certification by the manufacturer and the private labeler while the CPSC is requiring that foreign manufactured goods be accompanied with certification by the manufacturer, the private labeler AND the importer. The additional certification requirement imposed only upon foreign manufactured consumer goods, together with the duplicative product testing programs described above, increases the cost of market access for imported goods and unnecessarily obstructs international trade in lawful and safe consumer products, for the benefit of only domestic producers. This violates of the National Treatment guarantees provided under GATT 1994 and creates a very real risk of challenge from U.S. trading partners.

C. <u>HR 4040 does not require certification by both the manufacturer and the importer</u>

There is no evidence that Congress intended the CPSIA certification requirements found in Section 102 to apply to manufacturers, private labelers ***and*** importers. Although Section 201 of the CPSIA describes required certification requirements imposed upon a single manufacturer and a single private labeler (without once using the word "importer"), section 3(a)(11)of the CPSA confirms that a "manufacturer" is "any person who manufactures **or** imports a consumer product"

a. Section 102(a)(1)(A) indicates that "every *manufacturer* of a product...which is imported for consumption or warehousing or distributed in commerce (*and the private labeler* of such product)..."

b. Section 102(a)(2) states that "...before importing for consumption or warehousing or distributing in commerce any children's product....*every manufacturer of such children's product (and the private labeler of such children's product)...*"

c. Section 102(a)(2)(B) states that "*a manufacturer or private labeler* shall issue either a separate certification for each children's product..."

d. And, Section 102(g)(1) states that "every certificate required...shall identify *the manufacturer or private labeler....*"

There is no basis for the CPSC to have interpreted Section 201 to require conformity certification from a manufacturer, a private labeler ***and*** a product importer. If the U.S. importer performs product testing and certifies product conformity pursuant to CPSC regulations, such certification must be sufficient to permit product entry.

D. <u>The CPSC must provide further guidance on "reasonable testing programs" before concluding that any conformity certification is false or otherwise inadequate</u>

The CPSC has stated that unless a standard specifies a particular testing method or unless requires third party conformity testing, the General Conformity Certification required in Section 102(a)(1) can be based upon the testing of the product or upon a "reasonable testing program." The Agency has intentionally provided leeway to certificate issuers to determine for themselves the reasonableness of any selected testing program. While the type and frequency of testing are up to the issuer, the testing program must provide reasonable assurances that the product meets all CPSC requirements and is stringent enough to detect variations that would cause a product to fail. Despite the attractiveness of unregulated testing protocols, it is critical that the CPSC consider some actual, real-life commercial realities and provide issuers further guidance on what may or may not constitute a reasonable testing program.

As a hypothetical: if the final assembly of a foreign-manufactured man's shirt occurs on January 1, 2009, can the issuer reasonably rely upon results of component testing dating from 2008 or 2007 as the basis of its conformity certification of the final assembled article? If an article of clothing intended for adults is identical in all respects to another article of like clothing except for a different screen print or fabric color is it reasonable to rely upon a test of the basic product type to support certifications of all like products, without regard to distinctions in product style which would not subject the variety of finished products to any additional standard, rule or regulation? If a product is exempted from testing pursuant to a particular standard, how can that product still be "tested" to verify conformance with that standard? Does this mean that no products are, in effect, actually exempted from any testing requirements? If it may be possible, or conceivable, that a consumer product may have a defect that could cause serious injury, does that mean that such a consumer product has to be certified to show conformance with the Federal Hazardous Substances Act? What would be a reasonable testing program to

certify that a consumer product not subject to any particular rule or regulation under the FHSA in fact fully conforms to such an Act?

Without firm guidance on "reasonable testing programs," issuers will necessarily be competing with one another without equity, with some certain to adhere to much stricter testing methods than others. Moreover, providing issuers with specific reasonable testing parameters and guidance mitigates the risk of product seizure or destruction should the issuer-selected reasonable testing program be determined by the CPSC to not at all be so "reasonable."

E. Conformity certifications for hundreds of different products contained within a single shipment cannot "accompany" the product

The CPSC has recently published, together with a sample conformity certification, a list of frequently asked questions and answers about the CPSIA. This publication indicates that electronic certifications containing all required information will satisfy the requirements of Section 102 - so long as each *certificate* is identified by a unique identifier created in advance and made available with each shipment, is accessible via a World Wide Web URL or other electronic means. While this is certainly better than requiring that hundreds of separate paper product certifications accompany each and every shipment, requiring a unique identifier for each certificate that must be *available with each shipment* does little to cure the ambiguities contained within Section 102(g)(3) of the CPSIA.

Containers and shipments may contain hundreds or even thousands of different product types, each of which may have associated with it 1 or 2 or 3 separate conformity certifications. It is unreasonable to ask the importer to assign separate unique identifiers to each such certification when, for example, the unique bill of lading or waybill number may be more easily linked to a list, by product description, of the certifications "accompanying" such shipment. CAFTA believes that so long as a bill of lading or waybill number identifying a particular shipment is electronically linked to the product certifications "accompanying" that shipment, the requirements of subjection (g)(3) have been met.

F. Confidential and Proprietary Business Information Must be Protected

i. Certifications Must, by Statute, include Confidential and Proprietary Business Information

All, or most of the information listed below is a proprietary trade secret and/or fits within the definition of confidential business information. Nevertheless, Section 102(g)(1) of the

CPSIA requires that all of this information be included within a certification required under the Act, and that copies of all such certifications be "furnished" to each distributor and retailer.

a. The date and place of manufacture;
b. The date and place where the product was tested;
c. Each party's name, full mailing address and telephone number (manufacturer, importer and private labeler); and
d. Contact information for the individual responsible for maintaining records of test results.

ii. Disclosure of Identified Confidential Business Information Contained Within A Conformity Certification Must Be Prevented

Recognizing the confidential and proprietary nature of the information contained within submissions to the CPSC, Section 6 of the CPSA prohibits the CPSC from disclosing any such identified confidential information submitted to the Agency by virtue of the CPSA. This same confidential business information must be protected regardless of to whom it is furnished or submitted.

Certificate issuers must be permitted to redact identified confidential business information from the copies of certifications required to be furnished to distributors and retailers under Section 102(g)(3) of the Act. The clear intention of Section 102(g)(3) of the CPSIA, which requires that certifications be furnished to distributors and retailers, is to enable downstream conformity verification. Such an objective does not depend upon disclosure of confidential trade secrets nor is it, to any degree, compromised by protection of that same proprietary business information.

G. Special Protections Must Be Required to Protect the Information contained within electronic certifications

For all of the reasons described above, the content of required certifications under Section 201 must in all events be considered confidential and barred from disclosure. It is difficult, however, to protect the confidentiality of such information in the event of electronic certification. The Canadian Apparel Federation believes that the CPSC should require that electronic certifications be made available to the CPSC only on password protected websites, providing exclusive access to such site only to the CPSC.

It seems clear that, at the very least, the first few months after the effective date of these changes will be chaotic to the entire business community, as well as the CPSC. We have been

advised that the American Apparel and Footwear Association (AAFA) has requested that the CPSC exercise its enforcement discretion to implement an "education period" starting November 12. We strongly support this recommendation and look forward to cooperating closely with CPSC, CBP and others to ensure compliance.

CONCLUSION

The Canadian Apparel Federation supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that the benefits of freely, competitive international trade not be sacrificed in the wake of contagious rhetoric and public outcry. The certification requirements of Section 102 of the CPSIA must be satisfied by a single testing program undertaken by a single supply chain participant willing to certify product conformity to the CPSC as a condition of product entry. Necessary testing procedures must be fully described to the issuers of conformity certifications and the confidentiality of all information contained within the certifications must be maintained under all circumstances.

The manufacturers, wholesalers, importers, distributors and other businesses represented by the Canadian Apparel Federation constitute a critical and relevant component of the U.S. consumer product distribution system. The Canadian Apparel Federation genuinely hopes to be included in any further efforts by the CPSC to further consult with industry members and stakeholders about the most effective means of implementing the CPSIA.

Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or Gerald B. Horn, Esq. (ghorn@strtrade.com) directly at any time.

Sincerely,

Canadian Apparel Federation

By: _____
Bob Kirke

cc: Gerald B. Horn
Lauren V. Perez

Stevenson, Todd

From: Bob Kirke [bkirke@apparel.ca]
Sent: Wednesday, October 29, 2008 3:02 PM
To: CPSC-OS
Subject: Comments on CPSIA section 102
Attachments: CPSIA comments - CAF.pdf

Please find attached our comments on the CPSIA

Regards,

Bob Kirke
Executive Director
Canadian Apparel Federation
504-124 O'Connor Street
Ottawa, ON K1P 5M9
T (613) 231-3220 x 224
F (613) 231-2305
E: bkirke@apparel.ca
W: www.apparel.ca

125

Stevenson, Todd

From: Ed DeCristofaro [ed@ldc85.com]
Sent: Wednesday, October 29, 2008 2:34 PM
To: CPSC-OS
Subject: Office of the Secretary, Consumer Product Safety Commission Room 502 4330 East West Highway Bethesda, Maryland, 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

LDC Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. LDC Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Edward N. DeCristofaro
President, LDC, Inc.
30R Houghton Street
Providence, RI 02904
401-861-4667
401-861-0429 (Fax)

FASHIONS Inc.
9800 CAVENDISH · SUITE 140
ST. LAURENT · QUEBEC · H4M 2V9 · CANADA
TEL. : 514·337·7686
FAX : 514·337·0389

October 29, 2008

Via E-Mail
Cpsc-os@cpsc.gov

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

Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

MJM Fashions, Inc. is a Canadian wholesale distributor, providing wearing apparel and similar articles to American retailers and distributors. MJM is pleased to offer these comments in response to the above-captioned Request for Comments and Information.

General Comments

Global consumers enjoy a competitive, commercial marketplace with a great variety of consumer goods, sourced from a myriad of global suppliers. It is important that well-intentioned product safety regulations do not unnecessarily impede critical international trade.

An imported product's global distribution and supply chain may include many, unrelated parties, having no relationship to one another. A domestically manufactured article may be exported from the United States and subsequently, lawfully reimported by a third party importer. A non-U.S. manufacturer may make an item and sell it to an authorized distributor, wholesaler or reseller outside of the United States. That distributor, wholesaler or reseller may sell the same product to another reseller, distributor or importer, located within or outside of the United States. The global distribution chain of an imported consumer good

may, in fact, include a variety of legitimate product wholesalers, distributors and resellers, without in any manner compromising the product's integrity or safety.

American consumers must be confident that the consumer products being sold within the commercial marketplace meet all applicable U.S. requirements and standards. For this reason, consumer goods should be permitted entry into the U.S. if the importer certifies, pursuant to a verifiable, compliant testing program, that the product conforms with all applicable CPSC standards, rules and regulations. It is an unreasonable duplicitous effort, however, to require both the importer *and* the foreign product manufacturer to issue conformity certifications for the identical product arriving in the same shipment. Requiring duplicitous certifications of both the manufacturer and the importer based upon replicated testing efforts will increase the costs of supplying genuine and safe consumer goods to the American marketplace, escalate retail prices and will clearly obstruct international trade, without any resulting benefit in terms of enhanced product safety.

The following comments are summarized as follows:

1. While any manufacturer or importer can certify conformance, it is unnecessary to require both.
2. It is critical that manufacturers, importers and private labelers be able to rely upon a single reasonable or otherwise permissible testing protocol to support required certifications.
3. Because shipments or truckloads can contain hundreds or thousands of different product types, it is unreasonable to have every required conformity certificate "accompany" the product
4. More clarity as to reasonable testing is necessary before any certification can be declared false or otherwise unacceptable
5. The Confidentiality of information contained within required certifications must be protected.

These comments, while not specifically numbered as set forth in the Request for Comments and Information, collectively provide the information and comments requested by the CPSC in connection with Section 102 of the CPSIA.

A. <u>Congress stated that its intent was not to require duplicative testing of consumer products.</u>

On December 19, 2007, regarding Section 102 of the CPSIA, Congressman John Dingell (D-MI) stated on the floor of the House of Representatives that: "the Committee intends for these requirements to be vigorously enforced, but it does not intend the provision to be interpreted to require unnecessary duplicative testing."

It is unnecessary for both the importer and the foreign manufacturer of the identical product to perform and pay for separate conformity testing. Although the CPSC has assured the trade that U.S. importers can rely upon a foreign manufacturer's product testing or reasonable testing program to support the importer's conformity certification, no such reciprocal provisions are specifically provided to foreign manufacturers, necessarily increasing the costs of U.S. market access.

There is no basis or reason to require duplicative product testing by different parties for the identical product. Such a requirement clearly contradicts the stated legislative history of the Act and unnecessarily increases the costs of foreign manufactured consumer goods. If the importer conducts and performs the required testing, reviews those test results and identifies itself as the issuer of the applicable product conformity certification, no further assurances or guarantees should be required.

B. To condition entry of foreign-manufactured goods upon issuance of a conformity certification from both the importer and the manufacturer violates WTO's national treatment guarantees

Paragraph 4 of Article III of GATT 1994 states the following: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* Article III was designed to eliminate discrimination between imported goods and domestically produced goods. Technical standards, such as the certification requirements set forth in Section 201, even if only inadvertently, necessarily act as discriminatory trade barriers, in favor of domestic producers.

Although Section 102 of the CPSIA applies equally to domestically manufactured and foreign produced consumer goods, domestically produced goods only require certification by the manufacturer and the private labeler while the CPSC is requiring that foreign manufactured goods be accompanied with certification by the manufacturer, the private labeler AND the importer. The additional certification requirement imposed only upon foreign manufactured consumer goods, together with the duplicative product testing programs described above, increases the cost of market access for imported goods and unnecessarily obstructs international trade in lawful and safe consumer products, for the benefit of only domestic producers. This violates of the National Treatment guarantees provided under GATT 1994 and creates a very real risk of challenge from U.S. trading partners.

C. HR 4040 does not require certification by both the manufacturer and the importer

There is no evidence that Congress intended the CPSIA certification requirements found in Section 102 to apply to manufacturers, private labelers ***and*** importers. Although Section 201 of the CPSIA describes required certification requirements imposed upon a single manufacturer and a single private labeler (without once using the word "importer"), section 3(a)(11)of the CPSA confirms that a "manufacturer" is "any person who manufactures **or** imports a consumer product"

a. Section 102(a)(1)(A) indicates that "every *manufacturer* of a product...which is imported for consumption or warehousing or distributed in commerce (*and the private labeler* of such product)..."
b. Section 102(a)(2) states that "...before importing for consumption or warehousing or distributing in commerce any children's product....*every manufacturer of such children's product (and the private labeler of such children's product)...*"
c. Section 102(a)(2)(B) states that "*a manufacturer or private labeler* shall issue either a separate certification for each children's product..."
d. And, Section 102(g)(1) states that "every certificate required...shall identify *the manufacturer or private labeler....*"

There is no basis for the CPSC to have interpreted Section 201 to require conformity certification from a manufacturer, a private labeler ***and*** a product importer. If the U.S. importer performs product testing and certifies product conformity pursuant to CPSC regulations, such certification must be sufficient to permit product entry.

D. The CPSC must provide further guidance on "reasonable testing programs" before concluding that any conformity certification is false or otherwise inadequate

The CPSC has stated that unless a standard specifies a particular testing method or unless requires third party conformity testing, the General Conformity Certification required in Section 102(a)(1) can be based upon the testing of the product or upon a "reasonable testing program." The Agency has intentionally provided leeway to certificate issuers to determine for themselves the reasonableness of any selected testing program. While the type and frequency of testing are up to the issuer, the testing program must provide reasonable assurances that the product meets all CPSC requirements and is stringent enough to detect variations that would cause a product to fail. Despite the attractiveness of unregulated testing protocols, it is critical that the CPSC

consider some actual, real-life commercial realities and provide issuers further guidance on what may or may not constitute a reasonable testing program.

As a hypothetical: if the final assembly of a foreign-manufactured man's shirt occurs on January 1, 2009, can the issuer reasonably rely upon results of component testing dating from 2008 or 2007 as the basis of its conformity certification of the final assembled article? If an article of clothing intended for adults is identical in all respects to another article of like clothing except for a different screen print or fabric color is it reasonable to rely upon a test of the basic product type to support certifications of all like products, without regard to distinctions in product style which would not subject the variety of finished products to any additional standard, rule or regulation? If a product is exempted from testing pursuant to a particular standard, how can that product still be "tested" to verify conformance with that standard? Does this mean that no products are, in effect, actually exempted from any testing requirements? If it may be possible, or conceivable, that a consumer product may have a defect that could cause serious injury, does that mean that such a consumer product has to be certified to show conformance with the Federal Hazardous Substances Act? What would be a reasonable testing program to certify that a consumer product not subject to any particular rule or regulation under the FHSA in fact fully conforms with such an Act?

Without firm guidance on "reasonable testing programs," issuers will necessarily be competing with one another without equity, with some certain to adhere to much stricter testing methods than others. Moreover, providing issuers with specific reasonable testing parameters and guidance mitigates the risk of product seizure or destruction should the issuer-selected reasonable testing program be determined by the CPSC to not at all be so "reasonable."

E. Conformity certifications for hundreds of different products contained within a single shipment cannot "accompany" the product

The CPSC has recently published, together with a sample conformity certification, a list of frequently asked questions and answers about the CPSIA. This publication indicates that electronic certifications containing all required information will satisfy the requirements of Section 102 - so long as each *certificate* is identified by a unique identifier created in advance and made available with each shipment, is accessible via a World Wide Web URL or other electronic means. While this is certainly better than requiring that hundreds of separate paper product certifications accompany each and every shipment, requiring a unique identifier for each certificate that must be *available with each shipment* does little to cure the ambiguities contained within Section 102(g)(3) of the CPSIA.

Containers and shipments may contain hundreds or even thousands of different product types, each of which may have associated with it 1 or 2 or 3

separate conformity certifications. It is unreasonable to ask the importer to assign separate unique identifiers to each such certification when, for example, the unique bill of lading or waybill number may be more easily linked to a list, by product description, of the certifications "accompanying" such shipment. MJM believes that so long as a bill of lading or waybill number identifying a particular shipment is electronically linked to the product certifications "accompanying" that shipment, the requirements of subjection (g)(3) have been met.

F. Certifications Must, by Statute, include Confidential and Proprietary Business Information

All, or most of the information listed below is a proprietary trade secret and/or fits within the definition of confidential business information. Nevertheless, Section 102(g)(1) of the CPSIA requires that all of this information be included within a certification required under the Act, and that copies of all such certifications be "furnished" to each distributor and retailer.

a. The date and place of manufacture;
b. The date and place where the product was tested;
c. Each party's name, full mailing address and telephone number (manufacturer, importer and private labeler); and
d. Contact information for the individual responsible for maintaining records of test results.

G. Disclosure of Identified Confidential Business Information Contained Within A Conformity Certification Must Be Prevented

Recognizing the confidential and proprietary nature of the information contained within submissions to the CPSC, Section 6 of the CPSA prohibits the CPSC from disclosing any such identified confidential information submitted to the Agency by virtue of the CPSA. This same confidential business information must be protected regardless of to whom it is furnished or submitted.

Certificate issuers must be permitted to redact identified confidential business information from the copies of certifications required to be furnished to distributors and retailers under Section 102(g)(3) of the Act. The clear intention of Section 102(g)(3) of the CPSIA, which requires that certifications be furnished to distributors and retailers, is to enable downstream conformity verification. Such an objective does not depend upon disclosure of confidential trade secrets nor is it, to any degree, compromised by protection of that same proprietary business information. .

The competitive American and global marketplaces exist because legitimate, safe consumer goods are available from wholesalers, distributors and resellers, in addition to original product manufacturers, throughout the global supply chain.

As consumer goods travel downstream through the supply chain, in addition to remaining fully compliant with applicable U.S. laws, rules and regulations, these products also become more affordable. As a result, competition is created, and the need to protected proprietary business information becomes more critical.

The information contained within the required certifications must automatically and without requiring special marking as described in Section 6 (3) of the CPSA, as amended, be considered confidential and barred from disclosure. Without question or caveat, any disclosure of the certificate contents other than to the CPSC as required by the CPSIA, would cause the issuer substantial, measurable economic and competitive harm and injury.

H. Special Protections Must Be Required to Protect the Information contained within electronic certifications

For all of the reasons described above, the content of required certifications under Section 201 must in all events be considered confidential and barred from disclosure. It is difficult, however, to protect the confidentiality of such information in the event of electronic certification. MJM believes that the CPSC should require that electronic certifications be made available to the CPSC only on password protected websites, providing exclusive access to such site only to the CPSC.

Conclusion

MJM supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that the benefits of freely, competitive international trade not be sacrificed in the wake of contagious rhetoric and public outcry. The certification requirements of Section 102 of the CPSIA must be satisfied by a single testing program undertaken by a single supply chain participant willing to certify product conformity to the CPSC as a condition of product entry. Necessary testing procedures must be fully described to the issuers of conformity certifications and the confidentiality of all information contained within the certifications must be maintained under all circumstances.

The commercial practices performed by MJM comply with all applicable rules, regulations, laws and standards of both the United States and Canada. Moreover, the wholesale trade constitute a critical and relevant component of the U.S. and international consumer product distribution systems. MJM and other impacted Canadian businesses genuinely hope to be included in any further efforts by the CPSC to further consult with industry members and stakeholders about the most effective means of implementing the CPSIA.

Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or its counsel, Gerald B. Horn, Esq. (ghorn@strtrade.com) directly at any time.

Sincerely,

MJM Fashions

By: _____
Frank Burke
CFO

cc: Gerald Horn, Esq.
Lauren V. Perez

Stevenson, Todd

From: Frank Burke [frank@mjmfashions.com]
Sent: Wednesday, October 29, 2008 2:30 PM
To: CPSC-OS
Cc: 'Gerald Horn'
Subject: Comments on CPSIA
Attachments: notes to cpsc.pdf

Please see the attached.

Frank Burke

514-337-7686 ext 111

Consumer Electronics Retailers Coalition

www.ceretailers.org

October 29, 2008

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

RE: Section 102: Comments on Requirements for Certificates for General Conformity Testing and Third Party Testing.

Dear Mr. Stevenson:

The Consumer Electronics Retailers Coalition (CERC) appreciates the opportunity to respond to The Consumer Product Safety Commission's (CPSC) Request for Comments and Information regarding Section 102's of the Consumer Product Safety Improvement Act (CPSIA) regarding the requirements for certificates for general conformity testing and third party testing. CERC is a public policy issue organization consisting of the major specialty retailers of consumer electronics products and retail associations. CERC members include Amazon.com, Best Buy, Circuit City, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading retail industry trade associations – NRF, NARDA, and RILA.

The CPSC requests comments in particular regarding the use of electronic certificates as well as the issue of multiple certifications for the same products. CERC agrees that these are two issues needing clarification by the CPSC very soon, in light of this provision's effective date - November 12, 2008. With both issues, CERC encourages the CPSC to consider that flexibility and efficiency is needed in order for every responsible party in the supply chain – manufacturers, importers, distributors and retailers – to comply.

I. The CPSIA's Use of the Terms "Accompany" and "Furnish" Do Not Preclude the Use of Electronic Certificates

Section 102(a)(1) amends the Consumer Product Safety Act (CPSA) by requiring manufacturers of any consumer product required to comply with CPSA or other Acts enforced by the CPSC to issue a certificate of compliance for that consumer product. Section 102(b) further amends the CPSA to require that the certificates "accompany" the applicable products or shipment of products subject to the certificate and that a copy of the certificate be "furnished" to each distributor or retailer of the products.

The CPSC's Request for Comments highlights the need to clarify the meaning of these terms and CERC supports the interpretations included in the issuance of the CPSC's recent Sample General Certification of Conformity, its Instructions, and the Answers included with its related Frequently Asked Questions (FAQs). In the FAQs, the CPSC indicates that an electronic certificate is "accompanying" a shipment if it is identified by a unique identifier and can be accessed via the World Wide Web URL or other electric means. The FAQs further states that a certificate is considered "furnished" if a manufacturer provides its distributors and retailers a reasonable means to access the certificate. CERC interprets this FAQ to allow for flexible means of distribution or availability, including electronically or having them otherwise accessible on the demand of a retailer or distributor.

CERC is pleased that the FAQs are consistent with and indicate support for concepts proposed by other retailer and manufacturer trade associations, such as RILA, NAM and CEA. Those industry proposals consistently include permitting the certificate to be electronic in nature. At least one industry group has supported the transmission and maintenance with other records required by 19 U.S.C. 1509(a)(1)(a) for entry of merchandise. Under any such electronic system, the certificates would be readily available upon request to the CPSC for enforcement purposes.

Furthermore, industry groups recommend that in permitting electronic devices, there are a number of methods by which a manufacturer might indicate certification of products: through labeling or marking of products, with indications of and the location of certifications clearly indicated on shipping crates, and/or in shipping documentation already maintained in the ordinary course of business, such as invoices, bills of lading, custom entry documents or other shipping documents.

Finally, CERC agrees with the comments of other industry groups recognizing that the CPSC's rules regarding certification processes and procedures must comply with the Paperwork Reduction Act when interpreting Section 102. Specifically, the Paperwork Reduction Act requires agencies to reduce information collection burdens, to implement new regulations in ways consistent with existing reporting requirements and to use information technology to reduce such burdens and agency efficiencies. CERC believes that the reliance on electronic certifications and access to electronic databases as proposed above helps the CPSC satisfy these requirements.

II. CERC Seeks Clarification regarding Parties Responsible for Certification

The CPSIA requires each manufacturer or private labeler to issue a certificate of conformity for all consumer products subject to any of the rules, bans or standards regulations under the CPSA or other Act enforced by the CPSC.[1] There has been significant confusion as to whether CPSIA intended to require multiple certifications by the manufacturer, importer and private labeler, where one exists. As Gib Mullen of the CPSC indicated on October 2, 2008, the CPSC by rule may exempt one party (presumably the importer or the private labeler) from certification responsibility.

[1] Under the Consumer Product Safety Act, the term manufacturer is defined to include a person who imports a consumer product. 15 U.S.C. 2052(a) (4).

In its Sample General Certification of Conformity and accompanying Instructions, the CPSC appears to indicate that the manufacturer and importer or manufacturer and private labeler are not both required to issue certifications. In the Instructions, under Item 4, the CPSC states that the manufacturer is not required to include the U.S. importer's address information "if the importer chooses to certify separately." Likewise, under Item 5, the CPSC states that the manufacturer is not required to include the private labeler's address information "if the private labeler chooses to certify separately."

CERC supports the implications of the Instructions the CPSC has provided and proposes that the CPSC indicate the same premise in its rules. Specifically, CERC recommends that the CPSC clarify in its rules that when the manufacturer issues a certification in compliance with the CPSIA, the importer or private labeler is not required to do the same. Indeed, to require each of these parties to separately certify a product would not make sense. An importer or private labeler does not have access to a product until after it has reached or been through U.S. Customs. CERC seeks clarification regarding the point at which in the process the importer or private labeler would be required to certify the product.

If required to separately certify, such certification by importers and private labelers would be based on the testing performed and certification of the manufacturer. CERC recommends that the CPSC state in its rules that an importer or private labeler is not required to separately certify when the manufacturer has provided certification. That certificate, including the information of a manufacturer, importer and/or private labeler, would be sufficient for issuance to the CPSC upon request.

For the purposes of furnishing the certificates to distributors and retailers, however, there may be circumstances under which information included in the underlying manufacturer's certificate is proprietary in nature and not appropriate for furnishing to a distributor or retailer. Under such circumstances, an importer or private labeler should be considered in compliance with the Act if they provide to distributors or retailers their own certificate relying on the information provided by the manufacturer's certificate.

CERC also requests that the CPSC include in its rules the statement made by Gib Mullen on October 2, 2008 clarifying that a retailer or distributor (without specific knowledge on conformity) who sells or offers for sale a nonconforming product may have a defense if it holds a certificate issued in accordance with section 14 of CPSA. This provision would clarify that while the CPSIA requires manufacturers (importers and/or private labelers) to furnish retailers and distributors with certificates, it is not the intent of the Act to have the retailers or distributors bear any of the liabilities associated with non-conformity of products, if they have no such specific knowledge of non-conformity.

In addition, the Act does not require a retailer or distributor, who is not an importer or private labeler, to maintain records of product certifications and due to the burdens imposed; CERC does not believe such recordkeeping should be required.

Conclusion:

CERC appreciates the opportunity to respond to the CPSC's Request for Comment and looks forward to the opportunity to continue working with the CPSC on the implementation of the certification provisions and of the CPSIA more generally.

Respectfully,

Christopher A. McLean
Executive Director
Consumer Electronics Retailers Coalition
317 Massachusetts Avenue, NE, Suite 200
Washington, DC 20002
(Tel.) 202.292.4600

Stevenson, Todd

From: Glen Cooney [glen.cooney@e-copernicus.com]
Sent: Wednesday, October 29, 2008 3:43 PM
To: CPSC-OS
Subject: Section 102 Certification Requirements
Attachments: CERC.CPSC.certification.comments.10.29.08(2).DOC

CPSC Staff:

Pease accept the attached document on behalf of the Consumer Electronics Retailers Coalition (CERC).

The attached letter offers comments and information on '**Section 102: Comments on Requirements for Certificates for General Conformity Testing and Third Party Testing.**'

Thank you,

Glen Cooney
e-Copernicus
317 Massachusetts Ave., NE, Suite 200
Washington, DC 20002
Office: 202.292.4600
Fax: 202.292.4605

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act regarding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Tanury Industries respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Tanury Industries respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

President / CEO
Tanury Industries

Stevenson, Todd

From: Michael A. Akkaoui [michael@tanury.com]
Sent: Wednesday, October 29, 2008 3:22 PM
To: CPSC-OS
Subject: Lead in Jewelry
Attachments: Comments for CPSC.doc

Dear Sir or Madam, please find the attached letter regarding preciuos metal jewelry exclusions.

Michael A. Akkaoui
President & CEO

Michael@Tanury.com

Tanury Industries
6 New England Way
Lincoln, RI 02865
USA

1-800-4-TANURY
401-333-9400 x 3207
401-333-3042 FAX

www.TANURY.com

Association Connecting Electronics Industries

Information Technology Industry Council
Leading Policy for the Innovation Economy

October 29, 2008

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

Subject: **Consumer Product Safety Improvement Act; Section 102 Certificate Requirements**

Attached please find comments and questions from the Consumer Electronics Association (CEA), the Information Technology Industry Council (ITI), and IPC – Association Connecting Electronics Industries on Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"). Collectively our associations promote growth in the U.S. consumer technology and information technology industries through technology policy, events, research, promotion, standards development and the fostering of business and strategic relationships. We represent thousands of corporate members. Among their numerous lines of business, our members design, develop, manufacture, and distribute products that will be subject to the new CPSIA requirements for certificates.

General Recommendations

Our members are committed to complying with the CPSIA. However, we are deeply concerned with the lack of clarity surrounding the requirements for certification, and fear that because of this lack of clarity many companies will struggle to achieve compliance with the new requirement, despite their best efforts. This is compounded by the fast-approaching November 12, 2008 deadline, which does not allow industry adequate time to educate its supply chain partners and to establish the new operating procedures required by the certification regime. We believe that absent urgent clarification from the Consumer Product Safety Commission ("CPSC" or "Commission") there will be tremendous disruption for manufacturers which will not serve U.S. consumers or improve the safety of products.

We therefore ask that the Commission consider the following:

- Before November 12, 2008, the Commission should issue an interpretation of the requirements for certification such that it resolves the key areas of ambiguity (as described in this letter). This is an essential precondition to the significant investment

which companies will need to make in order to design and implement the necessary systems and processes throughout their supply chains. In issuing this interpretation, we urge the Commission to strive for simplification of the requirements for certificates to "accompany" products and "be furnished to" retailers and distributors, such that the requirements adequately fulfill the objectives of the CPSIA, and no more.

- The Commission should issue an advisory that it will monitor compliance with the requirements for certificates and will not rigorously enforce or levy fines and penalties for a reasonable, fixed period of time, except for cases of flagrant violations, falsifications, and other criminal behaviors. Doing so will allow companies to obtain clear guidance from the Commission about the scope of and the means for satisfying the certification requirement, and to then implement the necessary processes in their supply chains.
- Some of the information required on certificates (e.g., identification of the foreign manufacturer, identification of the U.S. importer, identification of the private labeler) is considered proprietary by the manufacturer, importer or private labeler. The Commission must have a process in place to protect this critical information.
- Long term, the Commission should implement a centralized database for electronic filing. Such a centralized database would eliminate the need for thousands of separate and redundant electronic databases and would result in a significant reduction in industry compliance costs. This would help moderate potential price increases to consumers while increasing the overall coordination and effectiveness of the program.

Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available.

CEA, ITI and IPC agree with the recent FAQ from the Commission staff, which reads, "The CPSC staff's opinion is that so long as the Commission has reasonable access to the certificate electronically and it contains all of the information required by Section 102 of the CPSIA, electronic certificates can be used to satisfy the CPSIA." We believe that an existing document that currently accompanies a product, such as an invoice or bill of lading, should be used to direct an interested party to a website address to obtain the electronic certificate. By following the Electronic Certificate Program set out below, we believe this will satisfy the requirement for a certificate to "accompany" a shipment and the requirement to "furnish" a certificate to a distributor/retailer. Further, a certificate can easily be accessed by the Commission for immediate inspection for compliance and enforcement and can be tied to specific shipments of products as required by the Commission.

Electronic Certificate Program

To reduce the variability of manufacturers' and importers' websites, and to set a standard for accessibility, the Commission should establish basic rules for an electronic certificate program. The Commission should consider the following aspects when setting such rules:

- Manufacturers should be encouraged to use similar language in identifying the World Wide Web location of their certificates.
- The World Wide Web location provided with the product is a link directly to the electronic file of the certificate for the specific product, or to a searchable website.

Specific recommendations regarding multiple certifications

There is widespread confusion over multiple certifications. During the October 2, 2008 public meeting on certification, the Commission staff indicated that the manufacturer, importer and private labeler each must certify that a product is in compliance with CPSC rules, bans, standards, etc. We encourage the CPSC to examine mechanisms to streamline and simplify the multiple certification rules.

It is unclear, at this time, at what point in the supply chain each party must certify. For instance, if a product is manufactured in a foreign country, it is clear that the manufacturer must certify the product before it is imported into the U.S. However, the importer is also required to certify the product, but may not have access to the product until after it has left customs. Is this the point at which the importer is to add its certificate to the product? Similarly, the private labeler may not have access to the product until after it has been through customs. At what point is the private labeler required to certify the product? Is the manufacturer's original certificate sufficient at the point of importation to have the product imported into the US? Accordingly we encourage the Commission to require that only one party certify the product.

Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products

In part, the Paperwork Reduction Act requires agencies to:

- Section 3506 (b)(1)(A): reduce information collection burdens on the public;
- Section 3506 (c)(1)(C): assess the information collection burden of proposed legislation affecting the agency
- Section 3506)(c)(2)(A)(iv): minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology
- Section 3506)(c)(3)(C): reduce to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5
- Section 3506(c)(3)(E): implement in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond
- Section 3506(c)(3)(J): to the maximum extent practicable, use information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public

In light of these and other provisions of the Paperwork Reduction Act, the CPSC should reconsider the 'furnish' and 'accompany' requirements because they seem unduly burdensome. At the very least, the CPSC should consider implementing an on demand program for a fixed amount of time to allow industry adequate time to develop and launch complex and costly databases to meet the certification requirements of the CPSIA.

Concluding Comments

We are pleased with the CPSC staff's FAQ regarding the interpretations of "furnished" and "accompany" such that certificates can be provided electronically. Early industry estimates indicate that some companies could spend tens of millions of dollars to establish a paper certificate process, and spend more money to respond to questions and inquiries related to out-of-date paper certificates in circulation. We believe an Electronic Certificate Program will better ensure reasonable access to the certificate electronically, and thereby preserve the staff's interpretation on this matter.

We appreciate the opportunity to raise our concerns and outstanding questions with regard to the implementation of the requirements for certificates specified in the CPSIA. We look forward to continued, close cooperation as this important legislation is interpreted and implemented. Please do not hesitate to contact Ms. Megan Hayes, CEA, at mhayes@CE.org or 703-907-7660 or Joshua Rosenberg, ITI, at jrosenberg@itic.org or 202-626-5738 or Ron Chamrin, IPC, at RonChamrin@ipc.org or 703-522-0225 if you have any questions.

Sincerely,

Brian Markwalter
Vice President, Technology & Standards
Consumer Electronics Association

Richard E. Goss
Vice President of Environment and Sustainability
Information Technology Industry Council

Fern Abrams
Director of Environmental Policy and Government Relations
IPC – Association Connecting Electronics Industries

Stevenson, Todd

From: Megan Hayes [mhayes@ce.org]
Sent: Wednesday, October 29, 2008 3:33 PM
To: CPSC-OS
Cc: Megan Hayes
Subject: Section 102 Certificate Requirements
Attachments: CPSIAcertificationcomment-FINAL.pdf

Attached please find comments on Section 102 Certificate Requirements from the Consumer Electronics Association (CEA), the Information Technology Industry Council (ITI), and IPC – Association Connecting Electronics Industries. Please contact me directly should you have any trouble accessing the file.

Megan A. Hayes
Senior Manager, Technology & Standards
Consumer Electronics Association
1919 S. Eads Street
Arlington, VA 22202
Tel: 703-907-7660
Fax: 703-907-8113
email: mhayes@CE.org

* * Join the Dialogue: visit http://blog.CE.org/ * *

Stevenson, Todd

From: Julie Mattern [jmattern@shogrenindustries.com]
Sent: Wednesday, October 29, 2008 3:46 PM
To: CPSC-OS
Subject: CPSIA section 102 comments/questions

Section 102 comments/information and questions.

Shogren Incorporated is a distributor of infant, girls and women's hosiery products. We are an importer of goods but also manufacture domestically. Our comments and/or questions are listed below.

1- Pertaining to the electronic certificates, what is considered a reasonable access for the Commission to be able to view the certificates? Do manufactures need to set up their own websites to carry their certifications or will the CPSC start a database to send them to? As a nation that is trying to "Go Green" we need a reasonable and easy way to supply this certification requirement without having the loads of paperwork that this will create. Can we email the certificates to the retailer, to each individual store or retail distribution center instead of having a paper certificate to accompany each style/shipment?

2- Shogren is getting emails from all of our different retailers and they are customizing the laws and certificates for themselves which is making it very difficult to understand and keep clear what we need to do for each individual retailer. Can the CPSC regulate and enforce a certificate that will be used for all so that the retailers do not confuse the issue of making the certificates retailer specific?

3- The date of compliance to have the third party testing and certificates is very short and unreasonable. Can that date be changed?

4- As a hosiery supplier of many decades, we know through experience that there is no lead or phthalates in the yarns, dyes and chemicals used to finish hosiery products. Can there be an exemption for hosiery on these lead and phthalates laws?

5- On the certification certificates, do we need to be specific of only style or do we need to test and list by style/color/size?

6- These new laws for a hosiery vendor make it very costly to test and maintain all of the certificates that we will need for a company that may do up to a 1000 styles annually. This will hurt small companies financially that will need pay for testing and to add additional staff to maintain these requirements that are irrelevant to hosiery.

7- Does the certification requirement also go for women's products? Or is it only for children's products 12 and under?

Thank you for your time.

Julie Mattern
Shogren Inc.
Product Dev/Compliance Supervisor
Email:jmattern@shogrenindustries.com
Ph: 704-786-5617 ext. 2124
Direct line: 704-262-2124
Fax: 704-786-8405

GARAGE®

GRG USA LLC, A Delaware Limited Liability Company

Via E-Mail
Cpsc-os@cpsc.gov

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

Request for Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

GRG USA LLC is the US subsidiary of Groupe Dynamite Inc., which owns and operates over 250 retail establishments under the banners Garage, Dynamite and Chado. The first US Garage location was opened approximately twelve (12) months ago and there are currently 9 retail stores in operation on the East Coast of the United States and one more to open by the end of November. Twice each week, to replenish stock and inventory, these retail stores receive shipments of women's apparel from Groupe Dynamite's warehousing facilities in Canada.

GRG USA LLC is both the U.S. importer and the reimporter of these articles of clothing. In 2007, GRG applied for and obtained a binding CBP ruling (N010954 – see attached), permitting the Company to import inventory into the United States, export those same products to Groupe Dynamite in Canada for warehousing and minor alteration (governed by a Warehousing Agreement entered into between the parties), and subsequently reimport those products back into the United States to replenish retail store inventories, while claiming complete or partial duty exemption under either HTS 9801.00.20 in the case of goods held only for warehousing, or HTS 9802.00.50 for goods undergoing minor repairs, none of which affect the basic nature of the merchandise.

Summarily, GRG USA LLC offers the following comments:

- **Conformity Certification Issued by GRG USA, LLC should enable entry and distribution of any such regulated products;**

MAILING ADDRESS: 5592 FERRIER, TOWN OF MOUNT ROYAL, QC, CANADA, H4P 1M2 TEL: 1-888-3GARAGE FAX: 514-733-3663 WWW.GARAGE.CA

- **Electronic Access to Certifications Requires Clarification and a Delay in Enforcement; and**
- **Confidential and Proprietary Business Information Must be Unambiguously Protected By the CPSC**

GRG appreciates the opportunity to submit these comments and confirms its ongoing commitment to ensure American consumers the safety of imported consumer goods.

I. Conformity Certification Issued by GRG USA, LLC should enable entry and distribution of any such regulated products

A. To condition entry of foreign-manufactured goods upon issuance of a conformity certification from both the importer and the manufacturer violates WTO's national treatment guarantees

Paragraph 4 of Article III of GATT 1994 states the following: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."* Article III was designed to eliminate discrimination between imported goods and domestically produced goods. Technical standards, such as the certification requirements set forth in Section 201, even if only inadvertently, necessarily act as discriminatory trade barriers, in favor of domestic producers.

Although Section 102 of the CPSIA applies equally to domestically manufactured and foreign produced consumer goods, domestically produced goods only require certification by the manufacturer and the private labeler while the CPSC is requiring that foreign manufactured goods be accompanied with certification by the manufacturer, the private labeler AND the importer. The additional certification requirement imposed only upon foreign manufactured consumer goods, together with the duplicative product testing programs described above, increases the cost of market access for imported goods and unnecessarily obstructs international trade in lawful and safe consumer products, for the benefit of only domestic producers. This violates of the National Treatment guarantees provided under GATT 1994 and creates a very real risk of challenge from U.S. trading partners.

B. HR 4040 does not require certification by both the manufacturer and the importer

There is no evidence that Congress intended the CPSIA certification requirements found in Section 102 to apply to manufacturers, private labelers ***and*** importers. Although Section 201 of the CPSIA describes required certification requirements imposed upon a single manufacturer and a single private labeler (without once using the word "importer"), section 3(a)(11)of the CPSA confirms that a "manufacturer" is "any person who manufactures **or** imports a consumer product"

a. Section 102(a)(1)(A) indicates that "every *manufacturer* of a product...which is imported for consumption or warehousing or distributed in commerce (*and the private labeler* of such product)..."
b. Section 102(a)(2) states that "...before importing for consumption or warehousing or distributing in commerce any children's product....*every manufacturer of such children's product (and the private labeler of such children's product)...*"
c. Section 102(a)(2)(B) states that "*a manufacturer or private labeler* shall issue either a separate certification for each children's product..."
d. And, Section 102(g)(1) states that "every certificate required...shall identify *the manufacturer or private labeler....*"

There is no basis for the CPSC to have interpreted Section 201 to require conformity certification from a manufacturer, a private labeler ***and*** a product importer. If the U.S. importer performs product testing and certifies product conformity pursuant to CPSC regulations, such certification must be sufficient to permit product entry.

II. Electronic Access to Certifications Requires Clarification and a Delay in Enforcement

A. Permitted CPSC Access to Electronic Conformity Certifications Improves Upon Previous Rulemaking, but remains ambiguous and unclear

Recently, the CPSC indicated that so long as each required certification bore a unique identifier and was accessible to the Agency via the World Wide Web, that certification will be considered to have appropriately "accompanied" the shipment. While this is certainly an improvement over required paper documentation verifying conformity of each and every separate consumer product contained within a single shipment, ambiguity remains as to both the nature of the unique identifiers and as to how notification of those unique identifiers should, instead of the certifications themselves, actually "accompany" the product/shipment.

B. CPSC Access to Electronic Conformity Certifications requires expensive and time consuming upgrades to existing IT systems mandating an enforcement delay until November 12, 2009

The CPSC has numerous times represented to industry stakeholders that it is more committed to ensuring compliance with the CPSIA than with enforcing the penalties and forfeiture provisions of the Act. While access to electronic certifications is a "smarter" solution for compliance with Section 102(g)(3), creating such an electronic password protected database (necessary to maintain confidentiality of proprietary business information) will be both expensive and time consuming. In order to facilitate implementation of secure and comprehensive IT systems able to track product conformity certifications through entire product life cycles, the CPSC must delay enforcement of the Act until at least November 12, 2009.

1. A sufficient IT system would need first to track shipments of products imported into the U.S., by bill of lading number (the unique identifier of each shipment) and a description of each product type contained within the shipment, linked to the unique identifiers of applicable product conformity certifications.
2. Then the system would need to track that shipment as its contents are warehoused in Canada. The system would need to indicate where each individual product within the shipment was to be stored together with a linked unique identifier corresponding to the product conformity certifications applicable to that particular product.
3. The system would then need to pick and pack shipments of these same individual products back to U.S. retail stores, reflecting a new bill of lading number and a new description of the product types contained within that shipment, linked to the unique identifiers of applicable conformity certifications.
4. When the shipments are delivered to retail outlets in the United States, the system would finally need to be programmed to provide limited access to the non-confidential information contained within the conformity certifications linked via unique identifiers to the actual products in-store in order to fully comply with the requirements of Section 102(g)(3).

The programming required for the type of system described above will be expensive and time consuming. While conceivably able to function as the suggested system model to facilitate compliance with Section 102 requirements, it will be impossible to reap the benefits of such a system until thoughtful development and full implementation is possible. Under the very best of

circumstances, these necessarily comprehensive IT systems may not be realized for at least a calendar year after the November 12, 2008 effective date.

Because the alternative to electronic access proposes unreasonable commercial practices (e.g. literally stuffing shipping containers with possibly thousands of pages of certifications in order to "accompany" the hundreds of different products contained within a single shipment), it is incumbent that CPSC delay full enforcement of Section 102(g)(3) until at least November 12, 2009, in order to provide certification issuers sufficient opportunity to design and install IT systems if not identical, at least similar, to that described above.

III. Confidential and Proprietary Business Information Must be Protected

A. Certifications Must, by Statute, include Confidential and Proprietary Business Information

All, or most of the information listed below is a proprietary trade secret and/or fits within the definition of confidential business information. Nevertheless, Section 102(g)(1) of the CPSIA requires that all of this information be included within a certification required under the Act, and that copies of all such certifications be "furnished" to each distributor and retailer.

a. The date and place of manufacture;
b. The date and place where the product was tested;
c. Each party's name, full mailing address and telephone number (manufacturer, importer and private labeler); and
d. Contact information for the individual responsible for maintaining records of test results.

B. Disclosure of Identified Confidential Business Information Contained Within A Conformity Certification Must Be Prevented

Recognizing the confidential and proprietary nature of the information contained within submissions to the CPSC, Section 6 of the CPSA prohibits the CPSC from disclosing any such identified confidential information submitted to the Agency by virtue of the CPSA. This same confidential business information must be protected regardless of to whom it is furnished or submitted.

Certificate issuers must be permitted to redact identified confidential business information from the copies of certifications required to be furnished to distributors and retailers under Section 102(g)(3) of the Act. The clear intention of Section 102(g)(3) of the CPSIA, which requires that certifications be furnished to distributors and retailers, is to enable downstream conformity verification.

Such an objective does not depend upon disclosure of confidential trade secrets nor is it, to any degree, compromised by protection of that same proprietary business information.

Conclusion

GRG USA, LLC supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that resulting rulemaking recognize commercial realities and appreciate the benefits provided to American consumers because of the great variety of product supply chains and distribution routes. It is sincerely hoped that comments and suggestions contained within this communication, and as summarized below, are fairly considered and implemented.

- The certification requirements of Section 102 of the CPSIA must be satisfied by conformity certification issued exclusively by an importer.
- Certificate issuers must be permitted to furnish copies of certifications to distributors and retailers with all identified confidential trade secrets duly redacted; and
- the CPSC must delay full enforcement of the Act for a period of at least one calendar year to permit creation of databases and computer programs able to facilitate compliance with all such requirements.

GRG looks forward to being a part of continuing CPSC efforts to consult with industry members and stakeholders about the most effective means of implementing the CPSIA. Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or its counsel, Gerald B. Horn, Esq. (ghorn@strtrade.com) directly at any time.

Sincerely,
GRG USA, LLC
By its Sole Member, GRG USA Holdings Inc.

By: _____
Christian Roy
Vice President, Legal Affairs

cc: Gerald B. Horn, Esq.
Lauren V. Perez

Stevenson, Todd

From: Christian Roy [croy@dynamite.ca]
Sent: Wednesday, October 29, 2008 4:15 PM
To: CPSC-OS
Cc: Luc Bourdeau; Gerald Horn
Subject: Request for Comments and Information - Section 102 of the CPSIA
Attachments: 2008-10-29 - CPSC.pdf

Please see enclosed letter.

Best Regards,

Christian Roy
Vice President, Legal Affairs and Corporate Secretary
GRG USA LLC
c/o Groupe Dynamite Inc.
5592 Ferrier
Town of Mount-Royal, Quebec H4P 1M2
Tel: (514) 733-3962 #723
Fax: (514) 905-4194

WARNING: This electronic transmission contains confidential information intended only for the person(s) named above, and is privileged. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or any other use of this email is strictly prohibited. If you have received this transmission by error, please notify us immediately by return email and destroy the original transmission immediately and all copies thereof.

October 29, 2008

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

Re: Section 102 Certificate Requirements: Request for Clarification and Delayed Implementation

To Whom It May Concern:

Fossil Partners, L.P. is responding to the Consumer Product Safety Commission's (CPSC) request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our comments and concerns in connection with the Section 102 General Conformity Certification (GCC) requirements that are scheduled to go into effect on November 12, 2008. In addition to our comments, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

We have serious concerns in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children's products, we would like to highlight just a few of the many significant concerns that we have about the GCC requirements:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products.*** Our company, along with countless others, initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products..."; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

2280 N. Greenville Ave. • Richardson, Texas 75082 • 972.234.2525 • Fax 972.234.4669

additional regulated consumer products may be affected. If it is determined that the GCC requirement applies to all regulated consumer products, it would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Essential guidance to industry with respect to the interpretation of, and compliance with, many key provisions, including the GCC requirements of the CPSIA, has not yet been provided as noted below.

    - ***CPSC Guidance and Advice Has Not Been Timely.*** CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool.

    - ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance.*** Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

    - ***Insufficient Regulatory Guidance on Specific Testing Standards.*** There has been insufficient guidance on specific regulations, bans and standards for certain products, and compliance by November 12th in the absence of such guidance is essentially impossible. Since most products have never had a certification requirement, such as wearing apparel that is subject to 16 CFR Part 1610: Standard for Flammability of Clothing Textiles, many questions exist as to what testing is appropriate for certification (e.g. does finished apparel now require testing, can companies rely on pre-production fabric testing)?

    - ***Uncertainties About Voluntary Standards That May Require GCC.*** While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not at all clear whether products covered by certain voluntary standards that may be used by CPSC as policy guidance might, in fact, require a GCC.

    - ***Uncertainties Regarding Reason for Certification.*** It is unclear why certificates must be issued for items that do not require testing. For instance, wearing apparel under 16 CFR Part 1610: Standard for Flammability of Clothing Textiles, does not require testing on certain products made entirely of some specific fabric types (e.g. wool, nylon, polyester). However, CPSC staff has advised that a GCC must be issued for these products. If no testing is required, it would seem that the GCC provides no additional consumer protection.

- ***No Guidance Provided to Retailers on Record Management.*** There has been no guidance provided to retailers as to how they must manage and maintain records of GCCs that are provided to them. It is unclear whether they can maintain records at a corporate level or whether GCCs must be available at individual stores. There is no guidance as to whether these GCCs must be provided to consumers. There is no guidance as to whether retailers can rely on records maintained in electronic databases hosted by their vendors or whether they need to host the electronic versions on their own servers or have paper copies. In the absence of such guidance it is difficult, if not impossible, for retailers to ensure they are in compliance with the law.

- ***Private Labelers Have No Guidance***. We manufacture many products under license from trademark owners. These trademark owners are not involved in the manufacturing and distribution process. Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can) or whether they must conduct their own testing, and whether or how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

  - Private Labelers who operate solely as trademark owners/licensors and are not involved in any aspect of manufacturing, importing, distributing, or retailing, should not be required to issue a GCC at all.

  - If Private Labelers who are trademark owners/licensors are required to issue GCC's, but they are not in the chain of distribution, they should be permitted to rely on other GCC's from other parties in the actual chain of distribution. To require such Private Labelers to somehow insert themselves into the distribution chain in order to physically remove samples of product for testing, and to conduct independent testing, is an unconscionable burden on such licensors and is certainly not what Congress intended. This would irreversibly alter the manner in which licensors may have to conduct business (e.g., would licensors be required to take possession of shipments under this scenario?).

  - If Private Labelers are required to issue GCC's, and they are not in the distribution chain, how and when would they be required to furnish the GCC's to retailers? How would they correlate and time the furnishing of the GCC's to specific shipments sent by distributors to retailers?

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC just issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be

acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

Our concerns have been somewhat exacerbated by the Commission's lack of clear guidance on the implementation of Section 102. We fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task. However, CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain, with only a single means of inquiry via the online tool, and due to the myriad of questions, guidance simply has not been given in a timely fashion to assist industry entities seeking compliance.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC delay its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge the Commission to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If you believe that you do not have the existing authority to take such action, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Sincerely,

Randy S. Hyne

Vice President, General Counsel

Stevenson, Todd

From: Heather Brunelli [HBrunelli@fossil.com]
Sent: Wednesday, October 29, 2008 4:28 PM
To: CPSC-OS
Cc: Randy Hyne
Subject: Section 102 Certificate Requirements
Attachments: CPSC Section 102 comments.pdf

Attached please find our comments.

133

Stevenson, Todd

From: Thomas [Cadsmith@cox.net]
Sent: Wednesday, October 29, 2008 4:28 PM
To: CPSC-OS
Subject: Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

[Cadsmithing, LLC respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Cadsmithing, LLC respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

[
Thomas Cavagnaro
Cadsmithing, LLC
info@cadsmithing.com
480 632 1595
fax 80 632 1598

FOOD MARKETING INSTITUTE

October 29, 2008

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

Re: Comments on CPSIA Section 102: Requirements for Certificates for Conformity Testing and Third Party Testing

Dear Mr. Stevenson:

The Food Marketing Institute[1] (FMI) submits the following comments on behalf of the supermarket industry and the wholesalers that serve them in response to the Consumer Product Safety Commission's ("CPSC" or "Commission") Request for Comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). FMI represents a variety of retail entities, from national chains to independent supermarkets and from niche food markets that specialize in exotic produce to "big box" warehouses that sell a full assortment of consumer products in addition to food. Different retailers have different customer bases, needs and capabilities in terms of supply chain management.

Although all of FMI's members are retail food stores or wholesalers and, therefore, focus on retail sales of foods and food products, today's "food retailers" also offer a wide variety of other consumer products, from household cleaners to vases, books and magazines, DVDs, toys, kitchen towels, cookware, cosmetics, over the counter and prescription drugs and many other items. FMI members are working hard to understand and ensure compliance with Section 102 and other requirements of the CPSIA, but need more guidance on some of the potentially complex supply chain and records management issues raised by the conformity assessment provisions. As discussed more fully below, we urge the Commission to adopt a flexible approach, such as the one

[1] Food Marketing Institute (FMI) conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of $680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

HEADQUARTERS:
2345 Crystal Drive, Suite 800
Arlington, VA 22202-4801
T 202.452.8444
F 202.429.4519

WASHINGTON OFFICE:
50 F Street, NW, 6th Floor
Washington, DC 20001-1530
T 202.452.8444
F 202.220.0873

www.fmi.org
fmi@fmi.org

outlined in CPSC's recent guidance document, regarding retailers' and distributors' obligations with respect to the conformance certificates that the CPSIA requires manufacturers to provide to our members.

In brief, Section 102 of the CPSIA requires manufacturers of products subject to a consumer product safety rule under the CPSIA or a similar rule ban, standard, or regulation under any other Act enforced by the Commission to certify (1) that the product complies with the applicable standards and (2) the standards with which the product complies. In addition, Section 102 requires a certificate "to accompany" the applicable product or shipment of products and requires manufacturers to "furnish" a copy of the certificate to each distributor or retailer of the product. The Commission recently updated its guidance explaining these latter provisions as follows:

Q. Must each shipment be "accompanied" by a certificate?

A. Yes, the law requires that each import (and domestic manufacturer) shipment be "accompanied" by the required certificate. The requirement applies to imports and products manufactured domestically. *CPSC staff believes that an electronic certificate is "accompanying" a shipment if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and available with the shipment.*

Q. Must I supply the certificate to my distributors and retailers?

A. You are required to "furnish" the certificate to your distributors and retailers. CPSC staff believes that *this requirement is satisfied if you provide your distributors and retailers a reasonable means to access the certificate.*

General Certification of Conformity: Sample, Instructions for Completion and Frequently Asked Questions at http://www.cpsc.gov/about/cpsia/cpsia.html (updated October 27, 2008) (emphasis added).

Retailers and distributors have been struggling to understand the statutory language and what they must do in order to comply with the new requirements. Although the statute requires the certificates to "accompany" certain consumer products and requires manufacturers to "furnish" these certificates to distributors and retailers, the statute is remarkably silent on what, if anything, retailers and distributors are required to do with these certificates. Nonetheless, based on the statutory language and the interpretation offered by CPSC staff, we have the following comments and recommendations.

We ask the Commission to recognize that records maintenance and tracking can be extraordinarily burdensome for retailers, particularly independent operators, and it would be unrealistic and unfair to expect retailers and distributors to maintain these certificates,

particularly in the absence of any statutory requirement for them to do so. Depending on the scope of products that the Commission ultimately determines to be covered by the statutory certification requirement and whether a paper certificate would need to be included with each shipment, grocery stores could become buried in mountains of paperwork. We strongly urge the Commission not to take this route.

Electronically including the information with each shipment to a distributor or retailer would obviate the physical paperwork challenges, but electronic tracking itself may be problematic. First, not all retailers utilize electronic systems. Second, even those retailers and distributors that use electronic systems are not prepared to receive and maintain the myriad different certifications that might be coming at them from a wide variety of consumer products manufacturers. Working with suppliers to obtain standardized information and re-engineering systems would be a significant challenge that the supermarket industry is not prepared to handle.

We do, however, believe that the Commission staff has suggested a viable alternative in the interpretation set forth in the Q+A document excerpted above, *i.e.*, permitting manufacturers to satisfy their obligation to provide the information to their customers by establishing a website and posting the information there. As you know, conducting business by electronic means has long been accepted and encouraged on a national level through, for example, the Electronic Signatures in Global and National Commerce Act ("E-Sign Act") and the Paperwork Reduction Act. Congress specifically acknowledges the possibility of using of electronic certificates in Section 14(g)(4) of the CPSA. Indeed, the current importation process is already essentially electronic. Therefore, as explained more fully below, we believe it is appropriate for the Commission to adopt the centralized website database approach here.

First, as a matter of law, this approach satisfies the statutory requirements and congressional intent. Congress was obviously trying to ensure that the information establishing compliance of the products was available. A website to which retailers and distributors have access is a minimally burdensome means to accomplish the intended goal. Moreover, the burden is borne by the entities responsible under the statute for providing the information and in what is likely to be a minimally burdensome way for them. Requiring distributors and retailers to bear the burden of establishing systems to maintain certificates is not consistent with the statutory language. The website approach would also allow access to the information for inspection and review by regulatory officials, including CPSC and Customs and Border Patrol (CBP) personnel, in a manner that would be more efficient for the agencies than physically tracking down paper certificates.

Second, the centralized website database approach is sound policy. Establishing a central website would eliminate unnecessary paperwork and the attendant costs of sending and storing enormous amounts of paper. Instead of requiring each product and each shipment of mixed products to be accompanied by the many pieces of paper related to certification of each product's compliance with different standards or regulations, the website approach collects the information in one remotely accessible location. Tracking paper certificates would create logistical complexities

and duplicative paperwork. Requiring retailers and distributors to build new electronic systems would be costly as well. Using a centralized website will also permit information to be available for products that are sold through a retailer's internet site and shipped directly from the manufacturer to the consumer. Thus, a centralized website approach obviates many operational challenges while still fulfilling the statutory goal.[2]

The Commission should, however, clarify the term "unique identifier" that is used in the Q+A document. We would encourage the Commission to utilize something like a product code or number that can be found on the product itself to obviate the need for tracking the product through the supply chain and to ensure that the information in the centralized website can always be connected to a product, even after it has been sold to a consumer.

The procedural aspects of Section 102 on which the public was asked to comment raise collateral issues as well that we respectfully ask the Commission to consider. In particular, we need more guidance on which products are covered. For example, as a jurisdictional matter, the Commission has long recognized the authority of the Food and Drug Administration (FDA) to regulate foods, food additives, food packaging and other food-contact materials under the Federal Food, Drug, & Cosmetic Act. We assume that the CPSC will defer to FDA on questions that arise under the CPSIA related to food and food-contact products in a manner consistent with the Commission's Memorandum of Understanding (MOU) with FDA.

In addition, the statute states that the products covered are those that are subject not only to the CPSA but also to "similar rules, bans, standards or regulations." In public meetings, the CPSC staff has indicated that certifications will be required in connection with Federal Hazardous Substances Act (FHSA) labeling and Poison Prevention Packaging Act (PPPA) requirements. Our industry was surprised by this interpretation as we do not view typical FHSA labeling requirements or PPPA packaging to be "similar" to a consumer product safety standard for purposes of Section 102. In addition, it is not clear to us that mandating certifications for products that self-evidently comply with their regulations will serve the public good.

That is, products that are labeled in accordance with the FHSA or packaged in accordance with the PPPA are self-evidently in compliance with the relevant regulations, unlike, for example, the lead level in a children's product that cannot be ascertained simply by looking at it. A certificate that "certifies" that a product is properly labeled under the FHSA (when all one would need to do is look at the label) will not make that product any safer, nor make the consumer better informed (since certifications do not have to be furnished to consumers). The same logic applies to products subject to the PPPA packaging requirements. If a manufacturer erroneously concluded that child-resistant packaging was not required for a particular product, it would not furnish a certificate; conversely, a manufacturer that properly packages a product requiring child-resistant

---

[2] We understand that, at the October 2, 2008 public meeting, the Commission recommended that manufacturers retain certificates of conformity for at least three years. Utilizing a centralized website would allow the information to be maintained indefinitely.

packaging in the proper packaging has no need to certify that the product has child-resistant packaging. The fact is self-evident. If the products are not in compliance with the applicable regulations, then they are misbranded or violative products, subject to adverse action under the applicable statutes. Requiring an additional level of "certification" under the CPSIA is duplicative and unnecessary.

FMI believes that it is within the CPSC's authority to exclude, by rule or guidance, from the Section 102 certification requirements those products subject to FHSA or PPPA requirements. Under Section 3 of the CPSIA, the CPSC has the authority to "issue regulations, as necessary, to implement this Act and the amendments made by this Act." Thus, the Commission can clearly determine that FHSA labeling or PPPA packaging is not "similar" to other referenced consumer product safety standards, rules, bans or regulations for purposes of the certification requirements of Section 102. Accordingly, we urge the Commission to exercise its discretion in this regard.[3]

Finally, the identity of the "manufacturer" of a covered consumer product is often viewed as confidential business information. The Commission has authority to allow for procedures to maintain business confidentiality of this information, possibly through use of a "CBI" designation or through a coding system under which the actual identity of the manufacturer is shielded through the supply chain but subject to disclosure by the certifier to the CPSC and to CBP.

* * *

FMI appreciates the opportunity to submit our comments on this matter and looks forward to working with the Commission staff to clarify the requirements. Of course, if you have any questions regarding our comments or if we may be of assistance in any way, please do not hesitate to contact me.

Sincerely,

Deborah R. White
Senior Vice President &
Chief Legal Officer

[3] We note that such discretion would not prevent the CPSC from determining, for other purposes of other provisions of the Act, that the FHSA and PPPA each qualify as a "similar rule, regulation, standard, or ban" for those specific purposes.

HEADQUARTERS:
2345 Crystal Drive, Suite 800
Arlington, VA 22202-4801
T 202.452.8444
F 202.429.4519

WASHINGTON OFFICE:
50 F Street, NW, 6th Floor
Washington, DC 20001-1530
T 202.452.8444
F 202.220.0873

www.fmi.org
fmi@fmi.org

Stevenson, Todd

From: Susan Arena [SArena@fmi.org]
Sent: Wednesday, October 29, 2008 4:29 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements
Attachments: CPSC_conformance_certificates_comments_10-08.pdf

Please find attached the Food Marketing Institute's comments on CPSIA Section 102: Requirements for Certificates for Conformity Testing and Third Party Testing on behalf of the supermarket industry and the wholesalers that serve them.

Let me know if you have any questions. Thank you.

Susan Arena
Manager, Legal and
Regulatory Affairs
Ph: (202) 220-0615
Fax: (202) 220-0870

This email message is intended only for the addressee(s) and contains information that may be confidential. If you are not the intended recipient, please notify the sender by reply email and immediately delete this message. Use, disclosure or reproduction of this email by anyone other than the intended recipient(s) is strictly prohibited.

Baker Hostetler

Baker&Hostetler LLP

312 Walnut Street
Suite 3200
Cincinnati, OH 45202-4074

T 513.929.3400
F 513.929.0303
www.bakerlaw.com

Robin E. Harvey
direct dial: 513.929.3409
rharvey@bakerlaw.com

October 29, 2008

VIA E-MAIL CPSC-OS@CPSC.GOV

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

Re: Comments of Ganz U.S.A., LLC in Response to The Consumer Product Safety Commission's Request for Comments and Information Regarding Section 102 CPSIA Requirements for Certificates for Conformity Testing and Third Party Testing

Dear CPSC Secretary:

Attached you will find the Comments of Ganz U.S.A., LLC in Response to The Consumer Product Safety Commission's Request for Comments and Information Regarding Section 102 CPSIA Requirements for Certificates for Conformity Testing and Third Party Testing for filing. Please do not hesitate to contact me with any questions.

Sincerely,

Robin E. Harvey

REH/jmr

Enclosure

502093048.1

BEFORE THE U.S. CONSUMER PRODUCT SAFETY COMMISSION

RESPONSE TO THE CONSUMER PRODUCT SAFETY COMMISSION'S REQUEST FOR COMMENTS AND INFORMATION REGARDING SECTION 102 CPSIA REQUIREMENTS FOR CERTIFICATES FOR CONFORMITY TESTING AND THIRD PARTY TESTING

COMMENTS OF GANZ U.S.A, LLC

Robin E. Harvey
Baker & Hostetler, LLP
312 Walnut Street, Suite 3200
Cincinnati, Ohio 45202-4074
(513) 929-3409
rharvey@bakerlaw.com

Counsel for Ganz U.S.A., LLC

October 29, 2008

I. INTRODUCTION

The Consumer Product Safety Commission made public its Request for Comments and Information regarding § 10(c) of the consumer Products Safety Improvement Act ("CPSIA") requirements for General Conformity Certificates and third party testing certificates, Ganz U.S.A., LLC ("Ganz") has reviewed the CPSC's request and files these comments in response.

II. IDENTITY OF THE COMMENTOR

Ganz is a distributor of gift and homeware items throughout the United States. Ganz is a U.S. importer who participates in a group of companies that source product from many places throughout the world. The giftware business is a highly competitive business. The sources of its products are among Ganz's most proprietary trade secrets and confidential business information. To require Ganz to disclose this proprietary information publically would put it at a severe competitive disadvantage. The Commenter believes that its statement below will provide a framework for meeting the regulatory requirements for providing information regarding the conformity of its products to consumer product safety rules, bans, standards and regulations while simultaneously protecting proprietary information for companies such as Ganz.

III. POSITION OF THE COMMENTOR

Ganz wishes to specifically address the issue of inclusion or exclusion of proprietary information from the certificates for general conformity and third party testing. According to § 14(g) of the Consumer Product Safety Act ("CPSA" or "the Act") the identity of the manufacturer must be disclosed on the certificates for general conformity and third party testing. Ganz considers the identity of the manufacturers of the products it distributes to be proprietary information that it wishes to protect from public disclosure. Section 6 of the CPSA provides that "nothing in this Act shall be construed to require the release of any information described by subsection (b) of § 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public." Section 552 of title 5 exempts certain types of information from public disclosure by federal agencies – including "trade secrets and commercial or financial

information." Given the clear mandate in Section 6 of the Act, and §552 of title 5, the CPSC is required to prevent the public disclosure of proprietary information in the certificates of general conformity and for third party testing.

Ganz does recognize the importance of the CPSC's goals in protecting consumers and requiring that certain information be easily ascertainable should a product not be in conformity. With the standards set forth in the CPSIA, Ganz believes that something short of full disclosure of manufacturer information could achieve the CPSC's goals and protect Ganz's and other similarly situated companys' interests in their proprietary information. Prior to the recent CPSIA amendments to CPSA Section 14(c), that provision recognized the use of "marks" on labels that were to provide the same information about manufacturers as the certificates now described in Section 14(a).

Ganz proposes a system be developed for the general conformity and third party testing certificates that also protects against disclosure of proprietary information by utilizing marks or codes. Since the name of the manufacturer and its specific location are the proprietary information Ganz is seeking to protect, the certificates themselves will display a code in the place provided for the name of the manufacturer and on the separate line for identifying the place of manufacture if different from the manufacture's address. Should a need arise such as a problem with a product requiring the CPSC to have the information about the manufacturer and the location of manufacture, Ganz would provide that information to the CPSC based upon the code on the certificate consistent with requirements of 5 USC § 552.

IV. CONCLUSION

In conclusion Ganz supports a code system for identifying the manufacturer of a product on the certificates of general conformity and third party testing. Such an approach protects the proprietary information of the company while still allowing the CPSC access to the necessary information should a problem arise.

Stevenson, Todd

From: Robb, Janice [jrobb@bakerlaw.com] on behalf of Harvey, Robin [RHarvey@bakerlaw.com]
Sent: Wednesday, October 29, 2008 4:29 PM
To: CPSC-OS
Cc: Harvey, Robin
Subject: Comments of Ganz U.S.A. in Response to CPSC's Request for Comments and Information Regarding Section 102 CPSIA Requirements for Certificates for Conformity Testing and Third Party Testing
Attachments: Filing ltr.pdf; Ganz Comments.pdf

<<Filing ltr.pdf>> <<Ganz Comments.pdf>>
Attached you will find a letter and Comments of Ganz U.S.A., LLC for submission/filing to the CPSC. Thank you and please do not hesitate to contact me with any questions.

Regards,

Robin E. Harvey

T 513.929.3409
F 513.929.0303
www.bakerlaw.com

Robin Harvey
rharvey@bakerlaw.com

Baker & Hostetler LLP
312 Walnut Street, Suite 3200
Cincinnati, Ohio 45202-4074

136

Stevenson, Todd

From: charina@bijouinc.com
Sent: Wednesday, October 29, 2008 5:30 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Bijou Jewelers, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Bijou Jewelers, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Charina Fenton

Bijou Jewelers, Inc.
13801 Danielson Street
Poway, CA 92064
Phone: 858.668.3519
Fax: 858.668.3520

Stevenson, Todd 137

From: Mark Hanna [mark@beloro.com]
Sent: Wednesday, October 29, 2008 4:30 PM
To: CPSC-OS
Subject: Third part testing

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Richline Group, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth□s crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Richline Group, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Mark C. Hanna

Richline Group, Inc.

Mark Hanna
Richline Group
Ph: (401) 429-2111 **Fax:** (401) 633-6661

138

Stevenson, Todd

From: Dan Fuhrman [dan@lazahav.com]
Sent: Wednesday, October 29, 2008 5:36 PM
To: CPSC-OS
Subject: Comments about the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

LA ZAHAV USA respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2.LA ZAHAV USA respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
df
Dan Fuhrman
VP
La Zahav USA

139

Stevenson, Todd

From: WBCJEWEL@aol.com
Sent: Wednesday, October 29, 2008 4:34 PM
To: CPSC-OS
Subject: CPSIA

10/29/08

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

East West Imports respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. East West Imports respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
William Crosier

East West Imports

RODE & QUALEY

MICHAEL S. O'ROURKE
PATRICK D. GILL
R. BRIAN BURKE
WILLIAM J. MALONEY
ELEANORE KELLY-KOBAYASHI

ATTORNEYS AT LAW
55 WEST 39TH STREET
NEW YORK, N.Y. 10018
(212) 944-7333

FACSIMILE: (212) 719-1828
WEBSITE:
WWW.RODE-QUALEY.COM
E-MAIL:
TRADELAW@RODE-QUALEY.COM

Memorandum

TO: Office of the Secretary, Consumer Product Safety Commission

FROM: Michael S. O'Rourke

DATE: October 29, 2008

RE: Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"")

On behalf of our clients, we take this opportunity to provide the Commission with comments and information regarding the requirements for certificates for general conformity testing and third party testing as required by the CPSIA. The Commission staff has indicated an interest in receiving comments and information on five specific questions:

I. Specific recommendations for how the certificates for the products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal.

RESPONSE: The key words in Section 102(b) are "accompany" and "furnished." The primary definition of "accompany" is: "to send with: add to: . . . " *Webster's New World Dictionary, College Edition,* page 9. The definition of "furnish" is: "to supply, provide." *Id.* at 588.

Outlined below is a suggested methodology which will provide a means for a certificate to accompany the shipment and to be available to be furnished to the appropriate parties in a timely manner.

1. Prior to the export of the goods the manufacturer or importer (including private labeler) will create a certificate meeting the requirements for general certification or third-party certification.

2. The importer or third party logistics provider will scan the certificate into its system along with the other entry specific documents relating to the product identified on the certificate.

3. When the goods are exported, an electronic version of the commercial invoice, packing list, on board bill of lading or airway bill, and other documents will have been created for Customs entry purposes. When this occurs, the general certificate or third-party certificate will be included with the documents which are used to make the Customs entry; however, the certificate will not be submitted to CBP. The certificate, along with the other documents, will "accompany the applicable product or shipment." As with any other document associated with this entry, the certificate can, upon request, be made available electronically or may be converted into a hard document.

4. If CPSC desires to inspect the shipment, it is assumed it will do so in conjunction with CBP. CBP has in place regulations and practices providing for the inspection of arriving cargo, either at the port of entry or at a centralized examination station (Customs regulations, Part 118). Part 151 of the Customs regulations provides a detailed methodology which Customs currently employs to

inspect cargo for variety of reasons. We suggest that these procedures should apply to CPSC inspections.

5. To conduct an inspection, the documents associated with the shipment will be obtained by CBP from its system. If CBP is informed by CPSC that an inspection is desired, CBP will inform the importer, either directly or through the importer's customs broker, of the need to provide the certificate, either in an electronic or hard format. In this way a copy of the certificate will be "furnished" to CPSC and CBP.

6. CPSC may use the certificate to inspect the merchandise. The certificate will include the necessary information for the CPSC to determine if the products conform with the CPSIA and any necessary or required standards, bans, rules, etc.

7. From a timing standpoint, the certificate will be available when needed by CPSC and CBP.

8. Cost - Required certificates will be created prior to the exportation of the merchandise. The certificates will contain all of the necessary information. Those certificates will be specific as to manufacturer, accredited third-party laboratory, importer (private labeler) and product; therefore, in those instances where a single container contains products manufactured by a variety of manufacturers or a number of products manufactured by a single manufacturer, but covering many different styles or items, there will be a series of certificates, all in an electronic document package that accompanies the merchandise as it moves from the place of manufacture to the United States. From a cost standpoint for each shipment rather than creating multiple copies of the certificates and inserting them

into cartons, master cartons or some part of the container, using an electronic format will result in certificates that both exist and accompany the shipment. Cost in time and money will be further reduced because only those particular certificates needed by CPSC or CBP for a specific inspection or review will be available in an electronic format or a hard format.

II. Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA.

RESPONSE: As outlined above, "accompany" means "to send with." When entries are made into the United States a set of documents is necessary for entry purposes. These documents are transmitted to CBP in an electronic format. These electronic documents must accompany the goods in order to make an entry. The addition of the certificate to this set of documents, in an electronic format, created before the time of shipment, will result in that document, the certificate, "accompanying the shipment" just as the commercial invoice, packing list, airway bill or other document accompanies the merchandise when it moves from the country of export to the United States. This electronic certificate will accompany the goods, but will not be part of the documents used to make entry.

As for the availability for immediate inspection, should immediate inspection be required, in any case certain necessary documentation will be needed to conduct such an inspection. When this occurs, CBP or CPSC will inform the importer of the need to provide the electronic copy of the certificate and that certificate will be forwarded to CBP or CPSC for inspection purposes. Importers

will be eager to cooperate quickly because of their desire to obtain release of the cargo.

III. Specific recommendations for how the certificates for the products should be "furnished" to the distributors or retailers of the product electronically or otherwise.

RESPONSE: The certificate should be furnished or supplied electronically. The distributors or retailers of the product will be better able to maintain accurate records relating to the specific product if certificates are transmitted electronically. If a paper document is required, given the number of entries made by many retailers, the file folder for a specific product will quickly be so large as to be unwieldy. On the other hand, if these files are kept electronically, the distributor or retailer will be able to easily retrieve information relating to a particular style or SKU # and maintain an orderly record of certificates for each shipment of its products. Again, the ability of the importer to forward this information, in real time, to the distributor or retailer certainly meets the Act's requirement that the certificates be furnished or supplied on a timely basis.

IV. Specific comments or concerns regarding the provision of either paper or electronic certificates accompanying the product.

RESPONSE: The use of paper certificates to accompany the products will create a series of problems and will be inefficient.

1. Because the certificate must accompany the product, the certificate must be identifiable to a specific Customs entry. An electronic format

allows for the document to accompany the product just as other documents relating to that shipment are transmitted in an electronic format.

2. A paper document presents a series of questions including determining where and how a paper document will be placed with the shipment so as to "accompany" the shipment at the time of entry. If a paper certificate is used, that certificate must be available at that point in the shipping process before the goods are packed into a container. If paper document is used, it is likely that the certificate will have to be placed inside of a carton thereby requiring the carton to be marked in some way so if an inspection occurs, CBP or CPSC will be able to determine what carton has the necessary certificate. If a container has products from more than one factory or more than one item from the same factory, either multiple general or third party certificates will be required. Again, this will require the shipping department at the factory to ensure that the certificate is placed in a particular carton represents the certificate for the product in question.

On the other hand, if this is done electronically, the product, certificate, and shipments can be aligned more easily. Electronic data can include appropriate carton marking numbers so as to allow easy identification of the desired portion of the shipment sought to be inspected.

3. The number of paper documents that would be created in typical shipping season will create challenges for record keepers.

V. Specific concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

RESPONSE: It is likely that a particular product, manufactured at one site and inspected by an accredited third party laboratory may be sold to more than one customer. Certainly entries of that product could be made at a variety of ports within the same week. Before the product is exported the first time, the manufacturer, on a product-by-product basis, will have to determine, using an accredited third party laboratory, if the product meets the necessary CPSIA or other requirements. If the accredited third party test indicates that the product meets the standards, then at some point in the future there may be a requirement for additional test(s) to enable the manufacturer, importer and/or private labeler to have the level of certainty that the product continues to meet all the necessary requirements under the CPSIA. A blizzard of paper will be created if all of these certifications have to be in a paper format. We respectfully submit that it would be more efficient for all parties if the certifications are electronic. In this way both the manufacturer and the importer and/or private labeler would have an electronic certificate on file for each product. That electronic certificate will "accompany" the product each time it left the manufacturer and entered the United States. When an accredited third party laboratory retests the merchandise, the new certificate will "accompany" the shipment. Upon request, these certificates can be "furnished" to CPSC or CBP quickly and efficiently.

Fm81023k.jmt.295

Stevenson, Todd

From: Michael S. O'Rourke [msor888@rode-qualey.com]
Sent: Wednesday, October 29, 2008 4:34 PM
To: CPSC-OS
Subject: Response to Request for Comments and Information - Section 102 CPSIA
Attachments: MEMO_RE_SECTION_102_CPSIA.pdf

Dear Mr. Stevenson:
As requested, please see attached comments.
Rgds,
Mike O'Rourke

Stevenson, Todd 141

From: David Lampert [david@lesterlampert.com]
Sent: Wednesday, October 29, 2008 4:35 PM
To: CPSC-OS
Subject: Comments on CPSIA section 102...

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Lester Lampert, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Lester Lampert, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

David Lampert, President
Lester Lampert, Inc.

Lester Lampert, Inc.
57 E. Oak Street
Chicago, IL 60611
312.944.6888

http://www.lesterlampert.com

CONFIDENTIAL: THE INFORMATION CONTAINED IN THIS COMMUNICATION MAY CONTAIN INFORMATION THAT IS PROPRIETARY, CONFIDENTIAL AND/OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, FEDERAL COPYRIGHT LAW. IT IS INTENDED ONLY FOR THE EXCLUSIVE USE OF THE INDIVIDUAL OR ENTITY

NAMED ABOVE AND ANY STATUTORY OR COMMON LAW PROTECTION IS NOT WAIVED BY VIRTUE OF THIS HAVING BEEN SENT. ANY UNAUTHORIZED USE, DISCLOSURE, DISTRIBUTION, DISSEMINATION, OR COPYING OF THIS TRANSMISSION, AND/OR THE INFORMATION CONTAINED HEREIN, IS STRICTLY PROHIBITED AND MAY BE SUBJECT TO LEGAL RESTRICTION OR SANCTION.

142

Stevenson, Todd

From: Andrew Schildcrout (HR) [ASchildcrout@hannahrose.us]
Sent: Wednesday, October 29, 2008 4:26 PM
To: CPSC-OS
Subject: lead in precious metal jewelry

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

[COMPANY NAME] respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Hannah Rose Company, LP (TX) respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

[Andrew Schildcrout]

Andrew Schildcrout
Hannah Rose Company, LP

143

Stevenson, Todd

From: James Binnion [jim@xpmcorporation.com]
Sent: Wednesday, October 29, 2008 4:36 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act (CPSIA) regarding testing for lead in all children's products

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Extrusion Patterned Metals Corporation respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Extrusion Patterned Metals Corporation respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

James Binnion
Vice President
Extrusion Patterned Metals Corporation
jim@xpmcorporation.com
www.xpmcorporation.com

144

Stevenson, Todd

From: Amy Bertelli [amy@goldeneyesantafe.com]
Sent: Wednesday, October 29, 2008 4:37 PM
To: CPSC-OS
Subject: Comments - Section 102 of the Consumer Product Safety Improvement Act

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Jewelry made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)]. Such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

Thank you for your attention.

Respectfully yours,

Amy Bertelli
The Golden Eye
115 Don Gaspar
Santa Fe, NM 87501
505-986-9896 office
505-984-0040 or 800-784-0038 store
amy@goldeneyesantafe.com
www.goldeneyesantafe.com

Stevenson, Todd

145

From: Mark Hutto [ahutto@charter.net]
Sent: Wednesday, October 29, 2008 4:37 PM
To: CPSC-OS
Subject: Jewelry Lead Certificates

To Whom it May Concern,

I am an small importer of Tungsten rings, they are by nature lead free as well as the silver jewelry I import from Thailand. You should not require a certificate on these products as they are by nature lead free and such contamination would be clearly visible. In the case of tungsten rings they would not form correclty or feel right. Silver jewelry would be too soft to be marketable. I ask you not to drive our business out of profitablility by creating regulations that create unnecessary costs and time to my product.

Thanks,
Mark Hutto
Tizaworld, Inc.
Medford OR
541-488-4312

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

October 29, 2008

RAWLINGS SPORTING GOODS COMPANY, INC. ("RAWLINGS") RESPONSES TO CPSC'S REQUEST FOR COMMENTS AND INFORMATION, SECTION 102 OF THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT ("CPSIA") REQUIREMENTS FOR CERTIFICATES FOR CONFORMITY TESTING AND THIRD PARTY TESTING

Request 1: Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available to the CPSC for inspection, electronically or otherwise, taking into account the timing and cost of any such proposal.

Response: Rawlings believes the best way to accomplish this is to e-mail these certificates to the CPSC. This should only be done upon request of the CPSC, and the documents should be kept confidential. They could be uploaded to a File Transfer Protocol ("FTP") website, where only the CPSC has access.

Rawlings believes the identity of the foreign manufacturer creates a business confidentiality problem. Often, this information is not revealed to the customers (distributors and retailers), so requiring it to be placed on the certificates creates a problem.

Request 2: Specific recommendations for how the certificates, electronic or paper, can "accompany" the shipment of products such that they (i) can be available for immediate inspection for compliance and enforcement, and (ii) can be tied to specific shipments of products as required by the CPSIA.

Response: Rawlings believes this can best be achieved by having the supplier attach the certificates to the Bill of Lading. In the future, the certificates could be uploaded to an FTP website of the Ports, rather than physically accompanying the goods.

Request 3: Specific recommendations for how the certificates for the products should be "furnished" to the distributors and retailer of the product, electronically or otherwise.

Response: Rawlings believes this should be accomplished by establishing an FTP website that can be accessed by our distributors and retailers.

Request 4: Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products.

Response: See response to number 3 above.

Request 5: Specific comments or concerns regarding multiple certifications by a foreign manufacturer, importer and/or private labeler for the same product.

Response: Rawlings believes multiple certifications for the same product are redundant, and could create unnecessary confusion.

In summary, Rawlings thanks the Commission for the opportunity to comment on essential matters. We recognize the burden that the Commission is under to implement the provisions of this new Act, and we are grateful for the opportunity to provide information regarding the real world business practices and pressures that we are under so that the Commission is able to promulgate practical regulations that minimize the disruption to our well-established, efficient business practices. By implementing practical regulations, the CPSC can create a situation that is workable, and will promote the goals of the new Act.

Contact Information:

John D. Flynn
Vice President – General Counsel
Phone: 479-464-6616

Stevenson, Todd

From: Flynn, John [John.Flynn@jtsports.com]
Sent: Wednesday, October 29, 2008 4:38 PM
To: CPSC-OS
Subject: FW:
Attachments: Comments on CPSC regs.doc

Re: Section 102 Certificate Requirements

Enclosed are comments of Rawlings Sporting Goods Company, Inc. re the CPSIA.

John D. Flynn
Vice President, General Counsel
479-464-6616

Stevenson, Todd 149

From: James Binnion [jbin@mokume-gane.com]
Sent: Wednesday, October 29, 2008 4:39 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act (CPSIA) regarding testing for lead in all children's products

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

James Binnion Metal Arts respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. James Binnion Metal Arts respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

James Binnion

jbin@mokume-gane.com
James Binnion Metal Arts
http://www.mokume-gane.com
360-756-6550

148

Stevenson, Todd

From: Gary Dawson [goldworksart@earthlink.net]
Sent: Wednesday, October 29, 2008 4:40 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Dawson Corporation, DBA Goldworks respectfully submits the following comments and requests the following guidance from the Commission:

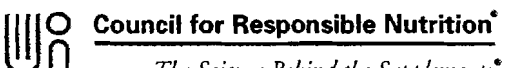
1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. [Dawson Corporation, DBA Goldworks respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Gary Dawson
Goldworks Jewelry Art Studio
169 E Broadway
Eugene, OR 97401
541-343-2298
www.goldworksart.com
Quality & Integrity...Always



October 29, 2008

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

Via E-Mail and Facsimile

Re: Section 102 Certificate Requirements

To the Commission:

The undersigned trade associations, representing the manufacturers, distributors, and retailers of a broad array of products, are writing to request that the Commission exercise enforcement discretion with respect to the new general conformity certification requirement imposed by the Consumer Product Safety Improvement Act of 2008 (CSPIA). A formal stay of enforcement, as well as clear implementation guidance from the Commission, is necessary to prevent the severe business disruptions that could otherwise result from manufacturers' practical inability to fully comply with the certification requirement by the effective date of November 12, 2008.

Individual associations will be providing additional comments regarding the applicability of the general conformity certification requirement to the products manufactured or distributed by their member companies and other issues relating to implementation and compliance as they affect manufacturers, distributors and retailers. Although the Commission has asked for comments by Wednesday, October 29, 2008, we ask that the Commission remain open to hearing additional concerns and questions that undoubtedly will arise as our member companies continue to grapple with the logistics challenges of complying with the certification requirement.

The CSPIA (P.L. 110-314) was signed into law on August 14, 2008. Section 102(a)(1) of the Act imposes a general conformity certification requirement that takes effect ninety days following enactment (November 12th).

Compliance with this requirement entails preparing a certificate to "accompany the applicable product or shipment of products," attesting to the product's conformity with all Commission "rules, bans, standards, or regulations applicable to the product."

The general conformity certification provision is contained within the "Children's Product Safety" title of the act and, specifically, within a section titled "Mandatory Third Party Testing for Certain Children's Products." Many companies and their trade associations learned only recently that the Commission interprets this provision as applicable to any product subject to the Commission's authority, not only children's consumer products. Some of the undersigned associations believe that this interpretation is not correct and that the CSPIA specifically does not apply to their industry. These individual positions are expressed in separate letters to the Commission. Nevertheless, without adequate time to both research and discuss these positions with the Commission, we are unified in asking the Commission to exercise enforcement discretion.

Our immediate concern is that the short 90-day timeframe from enactment to effective date for the certification requirement makes it impossible for manufacturers and distributors to be fully in compliance by November 12th, and raises significant compliance concerns and potential supply chain disruptions for pharmacy and other retailers.

Enforcing the new certification requirement beginning November 12th, rather than providing clear guidance allowing for a more reasonable implementation period, could result in a massive supply disruption affecting many thousands of products and a broad cross-section of the economy.

Especially in today's economic environment, the prospect of this supply disruption is a serious threat to manufacturers, distributors, and retailers. We urge the Commission to issue at the earliest possible opportunity a clear statement providing a time period of at least six months for affected companies to fully assess their manufacturing, distribution, and supply processes, help ensure that all questions regarding compliance are answered fully, and implement the new certification requirement in a way that is both transparent and effective.

All manufacturers of products potentially subject to the general conformity certification requirement already are subject to the underlying substantive requirements of the statutes and regulations enforced by the Commission. Our request for the Commission to exercise enforcement discretion regarding certifications does not alter the ongoing obligations of our member companies to fully comply with those substantive requirements. There should be no concern, therefore, that allowing for a longer compliance period would have any consumer safety implications.

Thank you very much for considering our views and concerns, and we look forward to working closely and constructively with the Commission on this critical issue.

Sincerely,

Council for Responsible Nutrition
Consumer Healthcare Products Association
Consumer Specialty Products Association
Healthcare Distribution Management Association
National Association of Chain Drug Stores
Natural Products Association
Personal Care Products Council

cc: Ms. Patsy Semple, Executive Director

Stevenson, Todd

From: Fish, Andrew [AFish@chpa-info.org]
Sent: Wednesday, October 29, 2008 4:44 PM
To: CPSC-OS
Cc: Semple, Patricia
Subject: Comments on Section 102 Certificate Requirements
Attachments: Coalition Comment Letter on CPSIA Section 102.pdf

Please see attached a joint comment letter submitted on behalf of a coalition composed of the following members:

Council for Responsible Nutrition
Consumer Healthcare Products Association
Consumer Specialty Products Association
Healthcare Distribution Management Association
National Association of Chain Drug Stores
Natural Products Association
Personal Care Products Council

We appreciate your careful consideration of these comments.

Yours,

Andy

Andrew C. Fish
Senior Vice President, Legal & Government Affairs
and General Counsel
Consumer Healthcare Products Association
900 19th Street, NW Suite 700
Washington, DC 20006
202-429-3511
afish@chpa-info.org

150

Stevenson, Todd

From: info@janetaylor.com
Sent: Wednesday, October 29, 2008 4:41 PM
To: CPSC-OS
Subject: precious metals testing for lead

To Whom It May Concern,

Please exempt makers of precious metals jewelry to the testing for lead in the Consumer Product Safety Improvement act.
These materials do not pose a danger to the public and it would be too costly to the industry to require testing.
Thank you for your attention to our concerns.

Sincerely,

Tina Cornell
Jane Taylor Jewelry
www.janetaylor.com

151

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

October 30, 2008

Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission (CPSC)
4330 East West Highway, Room 502
Bethesda, MD 20814

Dear Mr. Stevenson:

The following comments are submitted on behalf of the Footwear Distributors and Retailers of America (FDRA). FDRA is the trade association representing an estimated three-quarters of all footwear sales in the United States through its retailer, importer, distributor and manufacturer members.

The U.S. footwear sector, which marketed approximately 2.4 billion pairs of shoes to U.S. consumers in 2007, is proud of its record of offering safe and reliable footwear. Given the billions of pairs of footwear sold each year, there have been remarkably few footwear safety recalls for any reason. (The few recalls there have been have primarily been associated with small parts.)

Indeed, we are not aware of any recall of footwear because of failure to comply with the lead paint limit.

According to U.S. Department of Commerce data, the U.S. imported 329,435,000 pairs of children's shoes in 2007. Also, tens of millions more pairs of children's shoes were imported under headings that do not break out juvenile products separately, such as slippers, protective items (like rubber boots), etc.

In light of this history, we respectfully urge the CPSC to interpret the regulatory requirements of the new law in as reasonable a way as possible, employing practical and flexible solutions that reflect, to the extent possible, sound current trade practices, and, which, in the end, impose as little cost and burden on the trade as possible, consistent with the intent and purpose of the law.

Introduction. Section 102(a)(i) of the Consumer Product Safety Improvement Act (CPSIA) requires that each manufacturer and importer of any consumer product issue a certificate that the product complies with all applicable CPSC mandates. CPSIA Section 102(b) requires that the certificate "accompany the applicable product or shipment of products covered by the certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product".

The CPSC staff seeks comments on five issues raised by the certificate requirement.

Certificate Availability. The first two issues relate to how the certificates can be made available to the CPSC for inspection and how the certificate can "accompany" the shipment such that it can be available for "immediate inspection" and how it can be tied to a specific shipment of products.

FDRA suggests that in the case of imports, the obligations that the certificate "accompany" the shipment and that it be available to the CPSC for immediate inspection, can be satisfied by employing procedures normally used today by United States Customs and Border Protection (CBP). As is explained below, we believe that this is the most practical avenue available.

Importers routinely provide certificates of compliance that "accompany" the shipment and that are made available to government agencies at entry. This is done as part of the entry package, typically held by the importer's customs broker.

For example, importers who claim a tariff preference are required to obtain certificate of origin from the exporter or manufacturer and to have it available with the shipment upon entry. The certificate is not presented to CBP unless requested. It is usually in the entry package held by the broker, who maintains it electronically or in hard copy as is appropriate to its system. 19 C.F.R. § 181.21(a) (NAFTA).

Providing the certificate required by Section 102 of the CPSIA, likewise, should not create a problem for traders or the CPSC if the requirement is implemented in a similar manner. In our experience, requiring that a paper certificate physically accompany the imported product in the shipping carton has never been required for any certificate.

We submit that the most practical method of implementing the section would be for the certificate to be included as part of an entry package. These packages typically include a commercial invoice, packing list, bill of lading, and CBP forms. The entry package is transmitted by the overseas entity, such as a forwarder or exporter, to the importer's customs broker. The broker in most cases files the CBP forms electronically, and the balance of the entry package (invoices, packing list, etc.) are not presented unless requested by CBP. The CBP forms include information about the merchandise, importer, country of origin, etc. Normally it is the broker who receives and responds to the CBP request for these documents.

As noted above, certificates of various sorts are required at entry. In many cases the certificates are not necessary for customs clearance and we understand that the same will be true of the Section 102 certificate. The certificate is retained in an entry file maintained by the importer and/or its customs broker and presented to CBP or other agency on request. This approach would certainly be effective for the CPSC certification.

The approach offers the significant benefit of being well understood by traders. It takes advantage of existing procedures and will be an administrative convenience to CSPC inspectors. Once an inspector identifies a shipment for which a certificate is required for inspection, the importer or its customs broker could be contacted with a request to provide a certificate.[1] The certificate would be transmitted electronically or in paper form as appropriate.

Tying the certificate to a specific shipment should not be a difficulty. FDRA assumes that the certificate will reference a product identifier, such as a style number, purchase order, etc. The invoice and packing list will reference the same product identifier and purchase order. Since it can be tied to an invoice it will be readily apparent that the certificate applies to a specific shipment.

Not only is the approach described above fully in conformity with the statutory requirement that the certificate "accompany" the shipment and consistent with the usual and well established method for importers to make other documents available upon request to CBP, the approach would also be the most efficient for CPSC regulatory and enforcement activities.

The CPSC staff at the port could, from their desk, initiate the request for the certificate, which could rapidly be furnished either electronically or in paper form as appropriate. This approach is vastly preferable to searching out paper certificates enclosed in sealed cartons in any particular shipment. The approach suggested by FDRA would be much more administratively effective and convenient for CPSC staff.

Using the entry package as the means of accompanying the shipment and furnishing it upon request to the CPSC should, of course, be only one option for satisfying these requirements. We support a flexible approach and welcome the recent FAQ guidance provided by the CPSC staff that endorses a system of web-based certificates tied to physical markings or identifiers that are available with each shipment. As firms become more sophisticated and web-based systems come on stream for storing and accessing the certifications, based on identifiers with or affixed to each shipment, this approach may become widely used.

Furnishing the Certificate to Distributors and Retailers. The staff has also expressed interest in how the certificate should be furnished to distributors or retailers. Since the CPSIA does not specify the method by which the certificate must be furnished, we submit that providing distributors and retailers with a "reasonable means to access the certificate" would, as noted in the recent CPSC staff FAQ, satisfy the statute.

This requirement typically does not present difficulties when the importer moves the shipment directly to the distributor or retailer without having to break up the shipment in its distribution center. In these cases, the importer could routinely provide a copy of the certificate, electronically or hard copy as appropriate, along with the normal commercial documentation, invoice, packing list, etc.

The difficulty arises when the importer, typically a seller of nationally branded shoes, breaks up the shipment and places the product into inventory.

In such cases, shipping cartons are typically disaggregated at the warehouse and customer orders are filled from inventory, often aggregating into a single order, the same style or pattern from various batches on shelves, coming from different production runs. This is referred to as the "pair picking" process.

At this point it will become extremely difficult to marry a particular pair of shoes to a specific certificate without a great deal of effort and expense.

At present, most individual shoe box internal marking and product identification systems, whether numerical or electronic, do not differentiate between different production runs of the same pattern or style. There has never been any commercial reason to do so. Absent this capacity, footwear brands might have to resort to affixing the certificate to the box of each pair of shoes, to ensure that

[1] FDRA assumes that CPSC inspectors will select these shipments by reviewing CBP entry data.

every downstream distributor or retail customer received the matching certification for every pair sent to them out of inventory. We submit that this is unduly burdensome and impractical.

Even for those shoe brands that use a product identification label on the shoe itself that permits differentiation between different production runs of the same pattern or style, matching the compliance certification for individual pairs shipped would be a huge manual exercise. Each shoebox would have to be opened to ascertain the product identifier and match it with the appropriate certificate to be sent down the supply chain. Given that thousands and thousands of orders are pair picked daily in even one warehouse, this approach is likewise highly impractical.

FDRA strongly recommends that the obligation to "furnish" the certificate be satisfied by a general statement of compliance that such item has been tested and meets the applicable lead level limit. This would be provided to the retailer or distributor by the brand, accompanied by an undertaking whereby the brand would provide the distributor or retailer with reasonable access to the certificate for each pair in the shipment. Such access to the matching compliance certificate for all pairs shipped would be provided upon request by the retailer or distributor. Following the request, the corresponding certification could be determined and sent electronically or hard copy as appropriate.

Thus, one method of implementing such a request system would be a web-based system. The importer could advise that the certificate is available on a website maintained by the importer for communications with distributors and retailers. Using the web-based system, the retailer or distributor would identify the pattern or style, including information from the label on the shoe, and download the matching certification. It is now common for businesses to communicate in this fashion and there is no reason to prohibit its use here.

Confidentiality. One of the certificate requirements is the name and address of the manufacturer of the product.

Importers often wish to protect their source of supply and typically do not disclose the name of the manufacturer to their customers. In some cases, the identity of the source of merchandise is considered sensitive commercial information. Release of this information to customers and potential competitors could have an adverse effect on an importer's business.

FDRA recommends that importers be allowed to withhold the name and address of the manufacturers in certificates furnished to distributors and retailers. The importer would, of course, maintain such information, provide it to the CPSC upon request and have it available as needed in a recall.

Form of Certificate. The CPSIA does not mandate a particular form or medium for the certificate. FDRA suggests that importers be allowed wide flexibility in terms of the certificate form and the means of transmission.

The majority of documentation used in international trade is transmitted electronically. This is the most efficient method and certainly should be allowed. There is no advantage to requiring a paper certificate. However, FDRA does not suggest that paper certificates be prohibited. While FDRA believes that the great majority of importers will elect to use an electronic format, there may be firms that would rather use a paper format; both mediums should be permitted.

Multiple Certificates. FDRA supports the ability to use multiple certificates in appropriate circumstances. This would somewhat reduce the administrative and logistical challenges implicit in the certification requirement. The use of a single certificate executed by multiple parties should also be at the option of the importer. Again, flexibility is a key element in ensuring that importers can satisfy the certificate requirement without unnecessary expense and effort.

FDRA appreciates the opportunity to comment on this important matter and urges that its views be adopted.

Sincerely,

Peter T. Mangione

Stevenson, Todd

From: Peter Mangione [ptmangione@fdra.org]
Sent: Wednesday, October 29, 2008 4:24 PM
To: CPSC-OS
Cc: Pellegrini, John B.
Subject: Section 102 Certificate Requirements
Attachments: 10-23 SECTION 102 JP Changes.doc

Dear Mr. Secretary -- Enclosed pls find the comments submitted on the above captioned subject by the Footwear Distributors and Retailers of America.

Pls let me know if you have any questions.

Thank you.

Peter T. Mangione
President
202 737 5660

152

DIAL

®

A Henkel Company

VIA Electronic Mail
Cpsc-o@cpsc.gov

October 29, 2008

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

RE: Section 102 Certificate Requirements

To Whom it May Concern:

Thank you for the opportunity to file comments regarding Section 102 of the Consumer Product Safety Improvement Act (CPSIA), which requires certification for general conformity testing. The Dial Corporation, a Henkel company, supports the efforts of the Consumer Product Safety Commission (CPSC) in safeguarding consumers by working to ensure that the products it regulates are safe for use by consumers, when used as directed. Dial, a major manufacturer of consumer products, including household, laundry, and air care products regulated by the CPSC, supports the comments submitted by its trade associations, the Consumer Specialty Products Association (CSPA) and the Soap and Detergent Association (SDA).

As a consumer products manufacturer, Dial follows established standards and procedures to make sure it is fully compliant with the requirements of the Consumer Product Safety Act, the Federal Hazardous Substances Act (FHSA), and the Poison Prevention Packaging Act (PPPA). Safety is of utmost importance to Dial when it develops, manufactures, distributes and sells products to consumers. Dial also understands the need to strengthen the ability of the Agency to address unsafe products in the marketplace, and believes that the new law passed by Congress provides CPSC with the necessary tools to address the challenges it faces.

At the same time, though, Dial is concerned about the Agency's interpretation that all products regulated by CPSA or under similar Acts administered by CPSC must certify general conformity testing with the added requirement that the compliance certificate accompany the product's shipment through the distribution chain. The Agency bases this interpretation on the statute's language that this section applies "to any other Acts administered by the Agency", which for Dial are primarily the precautionary labeling requirements under the FHSA and the child resistant packaging requirements under the PPPA.

As proposed by CPSC, Dial would need to test its products to ensure that they were properly labeled under FHSA or were packaged appropriately under the PPPA. We currently adhere to established procedures for each of our products to determine its coverage under the CPSA,

The Dial Corporation
15501 North Dial Boulevard
Scottsdale, AZ 85260-1619
USA

www.dialcorp.com
www.henkel.us
Phone 480.754.3425

FHSA, and PPPA. Our existing product label should serve as certification that the product complies with FHSA labeling requirements. Further, Dial believes that the Agency should place the new statute's requirement for certification in the context of the intent of Section 102, which clearly applies to children's products, not all consumer products within the authority of the agency's statutes.

This new requirement, if implemented expansively by the Agency, would not lead to "safer" consumer specialty products, which traditionally are not used by children. Instead, certifying compliance with general conformity testing would increase costs to manufacturers in currently difficult economic times. Companies would need to establish new processes, including determining the information required for certification (not clearly delineated in the statute), the format in which to present the information, and a way for the paperwork to follow the product. Manufacturers would need to communicate with distributors and retailers about the new requirements to encourage their development of systems to accept and retain the paperwork.

According to CPSC staff, the certification requirement takes effect on November 12, 2008, which is an unachievable date given all that is required. The CPSC should use its authority to delay implementation of Section 102 until the scope is fully addressed and if determined applicable to a broad range of consumer products, further guidance is developed. Additionally, those covered under these new requirements should be given sufficient time to develop adequate systems to ensure full compliance.

The CPSC, in turn, should adopt flexible requirements and formats in order to reduce compliance costs and supply disruptions. The Commission should allow for alternatives to paper certificates, including electronic formats and filings. Flexible formats are also essential, including allowing for the location of the manufacturer to be designated by country of origin rather than by a specific facility so as to protect what may be considered confidential information. A coded system could be established to allow CPSC access to proprietary information.

Dial urges the Commission to reconsider its interpretation that Section 102 covers a broad range of consumer products, not just children's products. Further, to allow time for discussion and implementation for those products deemed covered, Dial urges a delay in the effective date. Even if the scope were clear, 90 days is insufficient time to establish a process to provide general conformity certificates, to attach them to the product through the distribution channels, and to educate distributors and retailers on the certificate's purpose. Finally, Dial urges CPSC to allow a great deal of flexibility in implementing the new requirement, as well as issuing guidance to aid in compliance.

We appreciate CPSC's solicitation of stakeholder comments and its interest in implementing this important new law expeditiously. If you have any questions, please feel free to contact me at (480) 754-2208.

Sincerely,

Suzanne Hagen
Manager, Regulatory Affairs

Stevenson, Todd

From: Suzanne.Hagen@us.henkel.com
Sent: Wednesday, October 29, 2008 2:31 PM
To: CPSC-OS
Subject: Comments of The Dial Corporation, a Henkel Company on Section 102 of the CSPIA
Attachments: CPSIA Section 102.pdf.txt

Please find attached a pdf file with Dial's comments on Section 102 of the CSPIA.

Warm regards,
Suzanne Hagen
Manager, Regulatory Affairs
The Dial Corporation, a Henkel Company
15101 N. Scottsdale Road
Scottsdale, AZ 85254
480.754.2208 ph
480.754.6180 fax
suzanne.hagen@us.henkel.com

Disclaimer:
This message may contain confidential and/or privileged information. If you are not the intended recipient please do not use its contents for any purpose, advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.

Diese Nachricht enthält möglicherweise geheime und/oder vertrauliche Informationen. Sollten Sie nicht der beabsichtigte Empfänger sein, ist es verboten den Inhalt für irgendeinen Zweck zu verwenden. Retournieren Sie die e-mail unverzüglich an den Sender und löschen Sie diese Nachricht und die Anhänge ohne eine Kopie zu behalten.

153

Stevenson, Todd

From: rainbow sapphire [marketing@rainbowsapphire.com]
Sent: Thursday, October 30, 2008 1:19 AM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act (CPSIA)

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

Gentlemen:

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Rainbow Gems Inc. respectfully submits the following comments and requests guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free, (excluding miniscule trace amounts of lead, the natural Pb contaminants found in the earth's crust,) such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Rainbow Gems Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thanking you in advance for your kind attention and reply to our comments,
respectfully yours,
Jeffrey Krasner
Managing Director
Rainbow Gems Inc. d/b/a
the rainbow sapphire collection®

SANDLER, TRAVIS & ROSENBERG, P.A.
ATTORNEYS AT LAW
THE WATERFORD
5200 BLUE LAGOON DRIVE
MIAMI, FLORIDA 33126-2022

(305) 267-9200
FAX: (305) 267-5155
EMAIL:
WWW.STRTRADE.COM

DONNA L. BADE*
ROBERT J. BECERRA
PEGGY LOUIE CHAPLIN*.
DAVID COHEN*
CHARLES L. CROWLEY*
LENNY FELDMAN
T. RANDOLPH FERGUSON*
MORGAN FROHMAN*
C. MICHAEL HATHAWAY*
GERALD B. HORN*
ZHAOKANG JIANG*
EDWARD M. JOFFE▼
NICOLE KEHOSKIE*
MATTHEW K. NAKACHI*
LARRY T. ORDET
MELISSA MANDELL PAUL
MELISSA MILLER PROCTOR
ARTHUR PURCELL*
LAURA SIEGEL RABINOWITZ *
BETH C. RING*
LEONARD L. ROSENBERG
GILBERT LEE SANDLER
ELISE A. SHIBLES*
KRISTEN SMITH*
DEBORAH B. STERN
MICHELLE STOPKA
MARK TALLO*
THOMAS G. TRAVIS
THOMAS V. VAKERICS*
KENNETH WOLF*
NANCY J. WOLLIN

RONALD W. GERDES (1947-2005)

*NOT ADMITTED IN FLORIDA
▼BOARD CERTIFIED INTERNATIONAL LAW

NICOLE BIVENS COLLINSON
DONNA CHUNG
MARK HANEY
JO BRONSON HARRIS
ELAN LIANG
SHAWN MCCAUSLAND
JENNIFER A. MULVENY
W. CHAD NESBIT
CATHERINE NG
LAUREN V. PEREZ
DZUNG PHAM
JOHN J. PISKADLO
RHODA SALUS
EDWARD G. STEINER
DENNIS J. WAKEMAN
ADRIAN A. WILLIAMS
TRADE ADVISORS

MYLES J. AMBROSE*
P. TRISTAN BOURGOIGNIE
DOUGLAS M. BROWNING*
STEPHEN L. BUCKLIN*
LEON I. JACOBSON*
TODD G. KOCOUREK
LEE MERMELSTEIN*
L. JANÁ SIGARS
OF COUNSEL

SANDLER & TRAVIS
TRADE ADVISORY SERVICES
MIAMI - WASHINGTON, DC
DETROIT – MEXICO CITY
OTTAWA - SÃO PAULO
CONSULTING SERVICES

October 30, 2008

Via E-Mail
Cpsc-os@cpsc.gov

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

Request for Comments and Information – Section 102 of the CPSIA

Dear Sir or Madam:

This response to the above described Request for Comments and Information is submitted on behalf of our client, Anvil Knitwear, Inc. ("Anvil").

Anvil is a leading designer, manufacturer and marketer of high quality active wear, selling its products primarily into the "imprinted" or "decorated" segment of the U.S. apparel industry. Anvil offers an extensive line of activewear products and accessories in a variety of styles, colors and fabrics, designed for men, women and children, including long and short sleeve t-shirts, polo shirts, ringers/baseballs, henleys, garment-dyed tees and fleece, athletic shorts, caps, towels, robes and bags.

Anvil Knitwear has a history of over 30 years in its business segment. Anvil's corporate headquarters is in New York City with manufacturing facilities in Honduras and Nicaragua and textile facilities in North Carolina, and offshore. Anvil employs approximately 6,000 people worldwide. Anvil products are available under its own brand names, including the Anvil Logo, Anvil®, chromaZONE™ by Anvil, Cotton Deluxe® Towels Plus® by Anvil and under private label.

Anvil works with designers to provide retail clients particular product lines, customized by the designer after Anvil imports into its warehouse basic plain t-shirts. Once imported, the individual products contained within the cartons are separated and comingled with existing inventory according to product style. When a retail order is placed for a particular item, the designer receives and purchases from Anvil its plain shirts, picked and packed according to desired product styles. The designer then finishes these garments to the specification of the ultimate retail consumer. This type of business practice referred to as "pick and pack" distribution is a very common commercial practice amongst international distributors of consumer products.

On behalf of Anvil, the undersigned appreciates the opportunity to submit these comments and looks forward to continued dialog between the Agency and the importing community to ensure that implementation of the CPSIA does not even inadvertently result in unnecessary global trade disruptions.

I. Manufacturers and Private Labelers of products exempted by standard, rule, ban or regulation from testing to evidence conformity must not be required to issue Conformity Certifications based upon mandatory product testing.

Section 102 of the CPSIA requires that manufacturers and private labelers issue certifications of product conformity for each product imported for consumption or warehousing, or distributed in commerce. Certifications of conformity with CPSC-administered standards, rules, regulations or bans are required for every such regulated consumer good. Each general conformity certification must be based on product testing or a reasonable testing program, and each childrens product certification must be based on third party testing by accredited assessment bodies.

Many standards, rules, regulations and/or bans administered by the CPSC specifically exempt particular products from their testing requirements. This is because the CPSC has determined that these particular products are safe, and that testing is not necessary to evidence such conformity. CPSC, appreciating the costs and business delays caused by requiring product conformity tests of even those products known to be safe, exempted these products from the required product testing. CPSC has even

recommended to manufacturers of apparel, for example, that business best practices should include purchasing and manufacturing from fabrics exempted from the product testing requirements under the Fabric Flammability Act. ,

Section 102 of the CPSIA requires conformity certifications, based upon product testing, for all regulated consumer goods, even those exempted from applicable testing requirements. To be clear, this means that products already known to be safe and specifically exempted, per a product standard, from product testing to confirm conformity with that same product standard, will now be required to undergo product testing to confirm conformity with the product standard that exempts that product from product testing! This is not only illogical, it contradicts and will severely compromise the marketplace confidence governing trade in exempted products.

Respectfully, it cannot be that Congress intended manufacturers and importers to test products in order to confirm compliance with a standard or regulation that explicitly states no such testing is required.

II. It is presently impossible for pick-n-pack operations to comply with Section 102(g)(3).

As described above, once an imported shipment arrives at Anvil's warehouse, the products are separated and shelved according to product style. The importer and manufacturer have issued certifications of conformity sufficient to permit entry and commercial distribution, after which the inventory is literally put away. Eventually, finished goods orders will come in to the warehouse, and a variety of different product styles will be "picked" from the shelves to be "packed" into a carton for shipment to the designer for further finishing prior to retail delivery.

For a reason of legitimate commercial and liability reasons, downstream retailers and distributors are now requiring copies of manufacturer and importer conformity certifications as a condition of sale. This creates a very real problem for pick n' pack operators. It is unlikely if not impossible to expect these legitimate and necessary product distributors to, as of November 12, 2008, possess an IT or any other system able to satisfactorily link product certifications "accompanying" the originally imported shipment to the variety of different product styles from a myriad of different shipments that may be packed together for delivery ultimately to a retailer.

III. Enforcement of the Act must be delayed until at least November 12, 2009 to facilitate development of the automated systems that will be the only means for normal pick-n-pack distribution operations to comply with Section 102(g)(3).

Without a doubt, access to electronic certifications is a "smart" idea to enable compliance with Section 102(g)(3). However, creating such an electronic password protected database (necessary to maintain confidentiality of proprietary business information) will be both expensive and time consuming.

1. A sufficient IT system would need first to track shipments of products imported into the U.S., by bill of lading number (the unique identifier of each shipment) and a description of each product type contained within the shipment, linked to the unique identifiers of applicable product conformity certifications.
2. Then the system would need to track that shipment as its contents are separated, shelved and comingled in a warehouse.
3. The system would need to indicate where each individual product within the originally imported shipment was shelved in the warehouse, together with a linked unique identifier corresponding to the product conformity certifications applicable to that particular product.
4. The system would then need to pick and pack shipments of a variety of individual product styles to the next distributor with a new bill of lading number.
5. The system must be able to at that point connect the originally linked product certification identifiers to that newly identified shipmen in order to ensure that all required product conformity certificates "accompany" the product.

Because the alternative to providing CPSC with electronic access to conformity certifications proposes unreasonable commercial practices (e.g. literally stuffing shipping containers with possibly thousands of pages of certifications in order to "accompany" the hundreds of different products contained within a single shipment), it is incumbent that CPSC delay full enforcement of Section 102(g)(3) until at least November 12, 2009, in order to provide certification issuers sufficient opportunity to design and install IT systems if not identical, at least similar, to that described above. .

Enforcement of the Act must be postponed until November 12, 2009. It is absolutely necessary that the development of such systems be able to occur with thought, time and consideration. Under the very best of circumstances, full industry implementation of these necessarily comprehensive IT systems may not be realized for, optimistically, a calendar year after the November 12, 2008 effective date. While it may be possible to, one day, develop and implement an automated system that would be capable of such intricate tracking of product, location, conformity certification and unique original in bound shipment identifiers, such as the bills of lading numbers, no such system will or can be developed and installed by November 12, 2008.

Conclusion

Anvil Knitting supports the increased authorities provided to the CPSC to ensure product safety. It is important, however, that resulting rulemaking recognize commercial realities and appreciate the benefits provided to American consumers because of the great variety of product supply chains and distribution routes. It is sincerely hoped that comments and suggestions contained within this communication are fairly considered and implemented.

Anvil looks forward to being a part of continuing CPSC efforts to consult with industry members and stakeholders about the most effective means of implementing the CPSIA. Should the Agency wish to discuss the matters raised herein, or any other, please contact the undersigned or Beth Ring, Esq. (bring@strtrade.com) directly at any time.

Sincerely,
Sandler, Travis & Rosenberg, P.A.

By: *Lauren V. Perez*
Lauren V. Perez
Vice President, Regulatory Matters

Cc: Anvil Knitting
Beth Ring, Esq.

Stevenson, Todd

From: Lauren Perez [LPerez@strtrade.com]
Sent: Wednesday, October 29, 2008 11:49 PM
To: CPSC-OS
Cc: Beth Ring
Subject: Response to Request for Comments and Information - CPSIA Section 102
Attachments: anvilcommentstocpsc102908.doc

Please see attached and contact us should you wish to discuss any of the matters raised in further detail.

Sincerely,

Lauren

Lauren V. Perez
Vice President of Regulatory Matters
Sandler, Travis & Rosenberg, P.A.
5200 Blue Lagoon Drive, Suite 600
Miami, Florida 33126
(t) 305-267-9200, ext. 120
(f) 305-267-5155
(c) 706-870-6874
lperez@strtrade.com
www.strtrade.com

The information contained in this email message and any attachments is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please destroy it and remove it immediately from your PC and server, and notify us by return email that it was received in error. Thank you.

155

Stevenson, Todd

From: Arthur Haber [ahaber1071@gmail.com]
Sent: Thursday, October 30, 2008 12:24 AM
To: CPSC-OS
Subject: comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA)

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Rubin Arthur & Co respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Rubin Arthur & Co respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Arthur Haber
Rubin Arthur & Co
2180 Park Avenue North #310
Winter Park, Florida 32789
407-629-6500 Fax: 206-337-2548

October 30, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

B.A. Ballou and Company Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. B.A. Ballou and Company Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Jean E. Sousa

Jean E. Sousa
Marketing Manager
B.A. Ballou and Company Inc.

BALLOU Findings

800 Waterman Avenue
East Providence, RI 02914

Stevenson, Todd

From: Jean Sousa [jsousa@ballou.com]
Sent: Thursday, October 30, 2008 7:04 AM
To: CPSC-OS
Subject: CPSIA Letter
Attachments: Consumer Commission - Lead Letter.doc

Please read the attached...thank you.
Jean

Jean E. Sousa
Marketing Manger
Ballou Findings
jsousa@ballou.com

Stevenson, Todd 157

From: Kate Hines [kate@katehines.com]
Sent: Thursday, October 30, 2008 8:00 AM
To: CPSC-OS
Cc: MJSA
Subject: CPSIA

10/30/08

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

[COMPANY NAME] respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. [COMPANY NAME] respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Kate Hines

kate hines inc
150 chestnut street
providence, ri 02903
land 401.331.5509
cell 401.529.4459

Stevenson, Todd

158

From: morris spil [morriss@samuelspil.com]
Sent: Thursday, October 30, 2008 8:04 AM
To: CPSC-OS
Subject: Section 102 of Safety Improvement Act

Dear Sir or Madam,
The Commission staff has invited comments on Section 102 of the Consumer Improvement Act (CPSIA) regarding requirements for third party testing and certificates of general conformity testing.

Section 102 (a) (1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with the CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Samuel Spil Company respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free (to the exclusion of minuscule trace amounts of lead - i.e natural Pb contaminants found in the earth's crust), such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Samuel Spil Company respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully Yours,
Morris Spil
Samuel Spil Company

159

ACCESS BUSINESS GROUP

October 29, 2008

The Honorable Nancy Nord
Acting Chair & Commissioner
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

RE: Section 102 Certificate Requirements - *Consumer Product Safety Improvement Act (CPSIA)*

Dear Commissioner Nord:

The following letter is intended as a response to the CPSC staff request for comments regarding Section 102 – Certificate Requirements.

Access Business Group with Amway, the nearly 50 year old multilevel marketing company, are members of the Alticor Corporation family of companies. Access Business Group manufactures products for Amway distribution as well as offering contract manufacturing services for household, personal care and cosmetic products.

As set forth in the posted CPSC comment request, Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer (including importer) of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSA or similar requirements under any of the other Acts administered by the CPSC. The certificate must be based on a test of each product or on a reasonable testing program. This requirement is effective November 12, 2008. In addition, Section 102(b) adds section 14(g)(3) that requires that every certificate "shall accompany the applicable product or shipment of products covered by the same certificate and a copy of the certificate shall be furnished to each distributor or retailer of the product."

FHSA General Compliance Products

As legislatively titled, this section addresses mandatory third party testing for certain children's products. We believe that this is the principle charge for the Commission. As CPSC develops testing procedures and implementing regulations, it is important that existing statutory language and requirements be taken into consideration. In some cases, existing product safety requirements already mandate the information required to be available under longstanding provisions. Methods of identifying this information already appears on product

7575 Fulton Street East Ada, MI 49355 USA

labels, sometimes as a certification mark but often by stipulated label warning language.
Many of our products such as cleaning products or those in pressurized packaging are subject to various federal requirements s under the Federal Hazardous Substances Act (FHSA). FHSA clearly defines those requirements as an adequate notification for consumers and as an assurance of compliance with the Act. Thus, the label in itself is a statement of product certification.

This suggests that any further certification requirement would be duplicitive and redundant without achieving additional consumer safety or information for the CPSC. As such it contravenes the principle of sound regulation – any regulation should accomplish its intended goal with a minimum interference in the marketplace.

PPPA General Compliance Products

Similarly, the Poison Prevention Packaging Act requires use of qualified closures that meet carefully described criteria. The very presence of these closures is an implied certification of that compliance and a sufficient announcement to the CPSC of the manufacturer/packager's certification. We believe that the separate requirement for certification is burdensome and unnecessary.

General Compliance Certification Requirement

Access Business Group has noted the CPSC staff has supported electronically accessible certificates as acceptable to meet the intent of the CPSIA. .We further suggest that CPSC be flexible in accepting schemes for presenting certification that that meet the intent of the legislation while acknowledging the complexity of logistics among varying product categories and businesses. As identified above, existing marking, labeling or packaging requirements which indicate certification should also be deemed acceptable to meet requirements.

The amount of information provided by coded manufacturing data (date code or lot code) already used to identify individual lots of production for a variety of business purposes should be considered adequate to meet the intent of the certification requirement of correlating product and manufacturer and the substantiation of product compliance. CPSC should require additional certification information only when a reasonable individual might fail to understand the certification or identify the manufacturer/ marketer.

Marketing Alternatives not Clearly Covered

Amway is a leader in responsibly marketing products through multilevel marketing channels of distribution. This is but one mechanism of an ever changing marketplace in the United States. The rules that CPSC is expecting to implement that requirements of CPSIA will require careful consideration and

adaptation to be implemented in that flexible marketplace. Some consideration should also be given to direct to consumer marketing via the internet and resale of goods via "flea markets" and other entrepreneurial outlets. Again, we plead for flexibility in enforcement when the parties involved are making a best effort to comply.

Implementation Deadlines

In view of the arguments presented above and the sweeping nature of CPSC regulations both in type and number of products, we believe that the implementation date is unrealistic. Both the November 12 implementation of the General Compliance requirements and the specified dates for the 3rd party certification of children's products are aggressive and may not be possible for some manufacturers, especially those with limited resources. In this time of economic upheaval, it is reasonable for CPSC to exercise discretion in implementing CSPIA.

Access Business Group strongly urges the consideration of these comments and requests the Commission exercise its full and complete authority to delay implementation of Section 102 until further and more considered guidance can be developed.

Thank you for the opportunity to comment on implementation of this extremely important legislation. Should you or your staff require further assistance please contact me at eMail **bob.hamilton@accessbusinessgroup.com** or phone number (616) 787-7697.

Sincerely,

Robert W. Hamilton
Regulatory Policy Director
Access Business Group
Mail Code 50-3P
7575 Fulton Road, East,
Ada, MI 49355

ACCESS BUSINESS GROUP

DATE:_____

TO CPSC - NANCY NORD ACTING CHAIR	FROM BOB HAMILTON
FAX # (301) 504-0127	PHONE # 616-787-7697
COMPANY CPSC	Technical Regulatory Affairs R&D FAX # 616-787-5625

Total number of pages, including this cover sheet: 4

If you do not receive all pages, please call the phone number indicated above.

MESSAGE:

Follow up submission to electronic.

CONFIDENTIALITY NOTE: The documents accompanying this facsimile message contain information belonging to Access Business Group which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original document to us.

RE: "Request for Comments and Information Section 102 of the Consumer Product Safety Improvement Act ('CPSIA') Requirements for certificates and conformity testing and third party testing"

Dear Office of the Secretary:

I am writing on behalf of the Healthcare Compliance Packaging Council (HCPC) in response to the request for comments/information cited above. The HCPC is a not-for-profit trade association that was formed in 1990 to promote the many benefits of unit dose packaging for over-the-counter (OTC) and prescription (Rx) drug products. For more information about the HCPC, I invite you to visit our website at www.unitdose.org.

Over nearly two decades, the HCPC has developed expertise with regard to CPSC's child-resistant/senior-friendly test protocol (CR/SF protocol). HCPC staff has worked with CPSC personnel over the years on a host of issues related to the CR/SF protocol and both organizations have served together on the ASTM subcommittee that oversees child-resistant packaging (ASTM D10.31) as well as the Poison Prevention Week Council.

The following comments regarding Section 102 of the CPSIA are, therefore, based on the perspective gained from this expertise.

CPSIA

In reviewing Title I of the CPSIA in its entirety, the HCPC asserts that the legislative intent is clearly focused on children's products and, as such, should not be applied to provisions of the Poison Prevention Packaging Act of 1970 (PPPA). Specifically, Congress must be aware that requiring a certificate ensuring conformity with 16 CFR 1700-1750 that is "...based on a test of

131 E. Broad Street, Suite 203
Falls Church, Virginia 22046
(P) 703/538-4030
(F) 703/538-6305
www.unitdose.org

October 29, 2008

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

RE: "Request for Comments and Information Section 102 of the Consumer Product Safety Improvement Act ('CPSIA') Requirements for certificates and conformity testing and third party testing"

Dear Office of the Secretary:

I am writing on behalf of the Healthcare Compliance Packaging Council (HCPC) in response to the request for comments/information cited above. The HCPC is a not-for-profit trade association that was formed in 1990 to promote the many benefits of unit dose packaging for over-the-counter (OTC) and prescription (Rx) drug products. For more information about the HCPC, I invite you to visit our website at www.unitdose.org.

Over nearly two decades, the HCPC has developed expertise with regard to CPSC's child-resistant/senior-friendly test protocol (CR/SF protocol). HCPC staff has worked with CPSC personnel over the years on a host of issues related to the CR/SF protocol and both organizations have served together on the ASTM subcommittee that oversees child-resistant packaging (ASTM D10.31) as well as the Poison Prevention Week Council.

The following comments regarding Section 102 of the CPSIA are, therefore, based on the perspective gained from this expertise.

CPSIA

In reviewing Title I of the CPSIA in its entirety, the HCPC asserts that the legislative intent is clearly focused on children's products and, as such, should not be applied to provisions of the Poison Prevention Packaging Act of 1970 (PPPA). Specifically, Congress must be aware that requiring a certificate ensuring conformity with 16 CFR 1700-1750 that is "...based on a test of

131 E. Broad Street, Suite 203
Falls Church, Virginia 22046
(P) 703/538-4030
(F) 703/538-6305
www.unitdose.org

each product or upon a reasonable testing program..." is simply impossible under any reasonable time frame considering that the CPSC has never required that Rx and OTC packages that are subject to PPPA requirements be tested for compliance with the CPSC protocol.

Moreover, under the Federal Food, Drug, and Cosmetic Act, Congress has placed jurisdiction for establishing labeling requirements for all drug products offered for sale in the United States with the U.S. Food and Drug Administration (FDA). It would be well beyond CPSC's jurisdiction, therefore, to create new certification requirements under Section 102 of the CPSIA without delving into drug labeling issues over which CPSC has no jurisdiction, experience, or authority.

Indeed, considering that the Federal courts have opined on the issue of legislative intent under the PPPA with regard to CPSC v. FDA jurisdictional issues,[1] it is well established that the Commission is responsible for determining what constitutes acceptable CR/SF packaging, but that FDA is responsible for ensuring that drug products are manufactured, labeled, and shipped properly.

For all of these reasons, the HCPC urges CPSC to declare that Section 102 of the CPSIA does not apply to products subject to provisions of the PPPA.

Should CPSC disagree, however, and insist that Section 102 of the CPSIA does apply to Rx and OTC drug products, the only means of realistically complying with a certification program would be through the Internet. CPSC currently maintains a page on its website that features electronic images of various drug packages that have been voluntarily submitted by manufacturers along with results of CR/SF protocol testing.

If CPSC were to allow this page to serve as a "certificate," it would provide physicians, pharmacists, and pharmacy personnel a means of verifying compliance with PPPA requirements without necessitating additional labeling of drug products. In other words, if package developers elect to put their formats through protocol testing and supply CPSC with test scores and electronic images of the tested package, those images/scores would be instantly available to anyone who has Internet access and, as such, could serve as a certification of compliance with PPPA requirements.

On behalf of the entire HCPC, I thank you for the opportunity to file these comments. Please feel free to contact me directly should you have any questions or need any additional information.

Sincerely,

Peter G. Mayberry
Executive Director

[1] *Nutritional Health Alliance v. Shalala, 318 F.3d 92 (2nd Cir. 2003)*

HEALTHCARE
COMPLIANCE
PACKAGING
COUNCIL

FAX COVER SHEET

Name: Office of the Secretary

Company: CPSC

Phone:

Fax: 301-504-0127

From: Peter Mayberry

Date: October 29, 2008

Re: Comments

Message: See attached.

131 E. Broad Street, Suite 206
Falls Church, VA 22046
703/538-4030
703/538-6305
www.unitdose.org

161

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

October 28, 2008

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

Re: Section 102 Certificate Requirements: Request for Clarification and Delayed Implementation

To Whom It May Concern:

Townley, Inc. is responding to the Consumer Product Safety Commission's (CPSC) request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our comments and concerns in connection with the Section 102 General Conformity Certification (GCC) requirements that are scheduled to go into effect on November 12, 2008. In addition to our comments, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

We have serious concerns in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children's products, we would like to highlight just a few of the many significant concerns that we have about the GCC requirements:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products***. Our company, along with countless others, initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that additional regulated consumer products may be affected.

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products..."; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

Townley

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

If it is determined that the GCC requirement applies to all regulated consumer products, it would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Essential guidance to industry with respect to the interpretation of, and compliance with, many key provisions, including the GCC requirements of the CPSIA, has not yet been provided as noted below.

    - ***CPSC Guidance and Advice Has Not Been Timely.*** CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool.

    - ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance.*** Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

    - ***Insufficient Regulatory Guidance on Specific Testing Standards.*** There has been insufficient guidance on specific regulations, bans and standards for certain products, and compliance by November 12th in the absence of such guidance is essentially impossible.

    - ***Uncertainties About Voluntary Standards That May Require GCC.*** While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not at all clear whether products covered by certain voluntary standards that may be used by CPSC as policy guidance might, in fact, require a GCC.

- ***Private Labelers Have No Guidance.*** Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can) or whether they must conduct their own testing, and whether or how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

    - Private Labelers who operate solely as trademark owners/licensors and are not involved in any aspect of manufacturing, importing, distributing, or retailing, should not be required to issue a GCC at all.

    - If Private Labelers who are trademark owners/licensors are required to issue GCC's, but they are not in the chain of distribution, they should be permitted to

Townley

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

rely on other GCC's from other parties in the actual chain of distribution. To require such Private Labelers to somehow insert themselves into the distribution chain in order to physically remove samples of product for testing, and to conduct independent testing, is an unconscionable burden on such licensors and is certainly not what Congress intended. This would irreversibly alter the manner in which licensors may have to conduct business (e.g., would licensors be required to take possession of shipments under this scenario?).

- If Private Labelers are required to issue GCC's, and they are not in the distribution chain, how and when would they be required to furnish the GCC's to retailers? How would they correlate and time the furnishing of the GCC's to specific shipments sent by distributors to retailers?

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC just issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

- ***Protection of Proprietary Manufacturer Information Not Yet Addressed by CPSC.*** Companies consider the names and addresses of manufacturers to be highly proprietary business confidential information that is rarely disclosed to distributors or retailers. Alternate methods of designating this information on the GCC (e.g., confidential codes assigned by CPSC, etc.) have not been addressed by CPSC and we are very concerned about being required to disclose this information to third parties without adequate regulatory protection.

Our concerns have been somewhat exacerbated by the Commission's lack of clear guidance on the implementation of Section 102. We fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task. However, CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain, with only a single means of inquiry via the online tool, and due to the myriad of questions, guidance simply has not been given in a timely fashion to assist industry entities seeking compliance.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC delay its

Townley

389 Fifth Avenue- Suite 1100
New York, NY 10016
Tel: 212- 779-0544
Fax: 212-779-4192

implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge the Commission to make clear that CPSC will recognize good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If you believe that you do not have the existing authority to take such action, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Sincerely,

Helen Burgos

Operations Assistant

Stevenson, Todd

From: Helen Burgos [helen@TownleyGirl.com]
Sent: Thursday, October 30, 2008 11:17 AM
To: CPSC-OS
Subject: Extension
Attachments: CPSC EX.DOC

Hi,

Please see attach for letter.

Thanks,

Helen Burgos
Operations Assistant
Townley Inc.
Tel: (212) 779 0544 x144
Helen@townleygirl.com

VAN FLEET ASSOCIATES, INC.

1800 DIAGONAL ROAD SUITE 490 ALEXANDRIA, VA 22314
TEL (703) 836-6401 FAX (703) 836-6406

October 29, 2008

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

Re: Section 102 Certificate Requirements

Dear Todd:

Enclosed herewith are comments submitted for the record on behalf of Parris Manufacturing Company of Savannah, TN.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Walt A. Sanders, Esq.
Vice President Law & Government Affairs

Enclosure

Cc: Craig Philips, President, Parris Manufacturing Company

Submission by Parris Manufacturing, Inc.

In Response to:

Request for Comments and Information
Section 102 of the Consumer Product Safety Improvement Act ("CPSIA")
Requirements for certificates for conformity testing and third party testing

October 29, 2008

Parris Manufacturing Company is a family owned Tennessee toy company. Our history is rich in American culture. At the start of World War II, when draftees by the thousands were being sent to the Army and Navy training camps, there were no rifles available for training purposes. Parris Manufacturing Company, already expert in woodworking, was asked by the Department of Defense to make dummy training rifles for new recruits to use until real rifles could be made available. More than 2 million of these training rifles were made for the Army and Navy and the Company earned the coveted Army-Navy "E" Award for its contribution to the war effort.

After the war was over, the company switched its production lines over to manufacturing toy rifles and pistols. These toy guns were made with the same skill and care that the company had used in making the Army and Navy training rifles. Parris Manufacturing Company officials did not want to manufacture only military toy guns, so they quickly added frontier and cowboy style rifles, pistols and pistol holster sets. Every replica in the company's line is based on a rifle, musket or pistol that played an important part in our country's history. To commemorate the Civil War, Parris produces replicas of a Civil War musket and pistol. The company also manufactures replicas of a Davy Crockett rifle, Kentucky rifles and pistols similar to weapons carried by frontiersmen-- Daniel Boone and Davy Crockett. Parris also manufactures replicas of guns used in American Revolution.

Parris supports the efforts of the United States Congress in enacting the Consumer Product Safety Improvement Act and understands the frustration of the U.S. Consumer Product Safety Commission in its efforts to implement the CPSIA. Notwithstanding the many positive aspects of this Act in promoting the safety of consumer products, we are concerned with certain provisions that will make it very difficult to comply with the Act. We are particularly concerned with the practical means by which our company will comply with Section 102 of the Act which will require us to issue certificates of general conformity with the laws and regulations of the CPSIA. We ship many small toy guns, holsters and other items that comply with all laws and regulations and we are simply looking for a way to simplify the process of compliance. For example, we ship many separate items which, as a group, comply with all applicable laws and regulations, but under the new CPSIA requirements, Parris would spent countless hours and resources sending paper certificates with each item when grouping these items together would accomplish the same goal with much less labor intensive efforts. For these reasons, we would like to submit the following recommendations:

Recommendations for conformity assessment and certification:

Section 14(g) of the Consumer Product Safety Act ("CPSA"), as amended by the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), sets new certification requirements for products subject to CPSC-administered regulatory regulations or standards. In some cases, existing product safety requirements already mandate the information required to be available under longstanding provisions under 14(a) applicable to CPSA Standards. Methods of identifying this information can appear on a product via a label, certification mark or other marking or certification requirements.

Other verification schemes are also recognized by CPSC. For example under FFA certification requirements, a continuing "Guaranty" may be relied upon. In our complex economy manufacturers, importers, distributors, retailers and U.S. CBP need to have input both as to the form of certification and the method of transmittal, regardless of the time required to implement properly.

- We believe this is clearly recognized in the congressional directive in Section 14(g)(4) providing for electronic filing of information related to imported product. Therefore, we urge the CPSC to accept a flexible scheme of regulation that fully recognizes the complexity of logistics which vary among product categories and businesses.

- In this context, deem existing marking or labeling requirements which indicate certification, acceptable to meet section 14(g) requirements to the extent applicable. The CPSC needs to allow for methods that permit efficient effective flexible ways to identify required information by easy reference (including seamless electronic data formats, and grouping of products). Otherwise, such obligations could result in burdensome, environmentally unsound policies that confuse businesses and unduly impede commerce.

Acceptance of Electronic or Web Based Data is Essential

- The CPSC should issue clear guidance on what information must be provided, to whom, and in what form. The CPSC should allow for such information to be provided through alternative and electronic formats in all cases. The reality of today's marketplace is that it largely already involves electronic (not paper based) filings. Integration with CBP's existing systems and time needed to implement properly is essential. There are no viable alternative to such flexibility in today's global marketplace. A one size fits all approach should be avoided given the broad scope of defined products to be subject to such certification. We urge the Commission to consider obligations under the Paperwork Reduction Act and legislation such as the E-Sign Act and recognize as broadly as possible the validity of electronic documentation and records in today's economy.

Certification Language in Existing Commercial Paper and Formats

- For product manufactured on or after the effective date (November 12, 2008) we believe that the following paragraph can be added to customary import (if applicable) and shipping documentation maintained in the ordinary course of business (i.e. Pos, Bills of Lading, Custom Entry Documents, Shipping or Packing Documents; including electronic entries):

  "These products [reference a product description, SKU numbers, etc.] or applicable component parts thereof are hereby certified by the undersigned [manufacturer, private labeler or importer of record designated on form] to meet all applicable U.S. Consumer Product Safety Commission standards, including: [list the applicable CPSC standards, rules, bans or requirements broadly here.] These products were manufactured in [insert month and year] in [insert country of manufacture]. Representative testing of samples was conducted in conformance with the applicable standard and is maintained by the Product Safety Director who can be contacted at the address above."

- In considering this format, flexibility is essential. The certifying "party" for which full contact information must be provided should be deemed to be the U.S. manufacturer, private labeler, importer or distributor. The location of manufacture should be permitted to be designated by country of origin rather than by a specific facility. Some companies consider the "Name of the Company" of manufacture to be a piece of highly proprietary information. This may be especially true of private label products. In such situations, we recommend that a "coded" identifier available only to the CPSC should be permitted in identifying such proprietary information, since such information is confidential and is available on such basis from the responsible certifying party. Alternatively, it has been suggested that such information could be stamped on shipping cartons, also avoiding the need for burdensome paper trails. When identification of a "responsible individual" is required, reference to a title rather than an individual should suffice.

- Component parts of an entire product, such as separate guns and holsters, may be tested for compliance with lead limits on different dates. Each of these components, once verified to meet the lead limits, we should be able to incorporate in a variety of finished products and a <u>single shipment</u> might include product made from such components. The CPSC should clarify a certificate for a shipment product may cover such circumstances. In addition, consideration should be given to the fact that a reference to the specific standards or regulations met may not be necessary if test reports or conformity assessments in turn identify the specific standards or requirements involved. Existing Section 14 allows the CPSC to, by rule, designate one or more "manufacturers" or "private labelers" as the "persons" who shall issue required certifications. Similarly, the CPSC should use its authority to allow a reference to be made to a single laboratory on certifications, since all underlying test information must remain available via the designated responsible individual.

Passive and Web Based Electronic Certification Should be Permitted

- An internet based electronic certification system keyed to production dates by coding (i.e. UPC codes) should be permitted. Codes could be entered into a template whereby the Company could obtain and provided the required information, thereby rendering the need for any printed documentation obsolete and unnecessary. These could be industry or Company maintained. Similarly, some industries that already use RFID technology in their products for inventory, distribution and sales management could encode information as part of existing protocols. Both could be used in conjunction with a continuing certification approach or separately.

Certification "Seals" or "Markings" To Denote Compliance

- Some industry segments use existing conformity assessment marks that are attached to products as part of a voluntary certification program. These programs often incorporate ASTM, ANSI or internationally recognized standards that necessarily incorporate applicable mandatory U.S. regulatory requirements, standards or regulations, and require records of testing to be maintained by the manufacturer, safety laboratory and/or accrediting body. The CPSC should recognize the accreditation mark as denoting "Certification" for purposes of the CPSIA. Many of these regimes incorporate conformity assessment production sampling of components and /or finished production samples and recognize that any substantive change to the design of the product results in required re-certification by the laboratory or accrediting body. In such cases, no further issuance of a "certificate" would be necessary and CPSC and CBP officials should be permitted to rely upon the presence of the certification mark as evidence of compliance with Section 14(g).

Flexibility is Essential

- As CPSC considers implementing regulations for the CPSIA, it is essential that an integrated systematic approach to regulation be undertaken, with due recognition of existing Section 14 statutory language and requirements. Substance needs to take precedence over form. Clearly, the imperatives of the marketplace economy require a flexible approach that permits a varied approach accepting of alternate means of denoting certification to whatever requirements are mandated for each product segment or category. We believe that Congress recognized the need for systemic integration and flexibility. Failure to adequately recognize the realities of the marketplace could result in severe systemic bottlenecks. The real economy necessitates that a variety of means to denote certification need to be recognized by the CPSC.

Stevenson, Todd

From: Walt Sanders [wsanders@vmgthehill.com]
Sent: Thursday, October 30, 2008 4:25 PM
To: CPSC-OS
Cc: 'Parris Mfg Company'; 'Cathy Crowell'
Subject: Section 102 Certificate Requirements
Attachments: certificate of conformance comments.pdf

Enclosed are comments submitted on Section 102 Certificate Requirements.

Walt A. Sanders
Vice President Law & Government Affairs
Van Fleet Associates, Inc.
1800 Diagonal Road, Suite 490
Alexandria, VA 22314
(703) 836-6403 (ph)
(703) 728-2431 (cell)
(703) 836-6406 (fax)

163

JAGUAR
PRECISION MANUFACTURING

October 30, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Jaguar Precision Manufacturing respectfully submits the following comments:

1. Whereas, jewelry and accessories made exclusively of precious metal are by their nature lead-free (to the exclusion of miniscule trace amounts of lead [i.e. natural Pb contaminants found in the earth's crust]), such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.
2. Jaguar Precision Manufacturing respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for you kind attention to our comments

Respectfully yours

B. Sanny Rahardja
General Manager
Jaguar Precision Manufacturing

307 W. 36th Street 7th Floor, New York, NY 10018
P 212.869.0197 • F 212.869.1970
www.jaguarprecisionmfg.com

Stevenson, Todd

From: Sanny Rahardja [sanny@jaguarprecisionmfg.com]
Sent: Thursday, October 30, 2008 5:53 PM
To: CPSC-OS
Subject: CPSIA
Attachments: CPSIA excempt.pdf

Dear Sir/Madam,

Please find my comments attached

Kind Regards,
Sanny Rahardja

General Manager
Jaguar Precision Manufacturing
307 West 36th Street
New York, NY 10018
212-869-0197

The contents of this material are confidential and proprietary to Jaguar Casting Company, Inc. d.b.a. Jaguar Precision Manufacturing, and may not be reproduced, disclosed, distributed, or used without the expressed permission of an authorized representative of Jaguar Precision Manufacturing. Any other use is expressly prohibited. If you are not the intended recipient, please delete the message and notify the sender.

Stevenson, Todd 164

From: JKTOPQ007@aol.com
Sent: Thursday, October 30, 2008 6:51 PM
To: CPSC-OS
Subject: (no subject)

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Top Quality Setting Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Top Quality Setting Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
Josef Klein

Josef Klein
Top Quality Setting Inc.

Plan your next getaway with AOL Travel. Check out Today's Hot 5 Travel Deals!

Stevenson, Todd 165

From: Rob Augustine [rob.augustine@dairemount.com]
Sent: Thursday, October 30, 2008 4:00 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act -

Ms. Nancy Nord, Acting Chairman
Consumer Product Safety Commission, Room 502
4330 East West Highway
Bethesda, Maryland 20814

Dear Ms. Nord,

I am writing to provide comments about Section 102 of the CPSIA. Specifically as it relates to third-party testing and certificates of conformity testing for products made of precious metals which are sold as fine jewelry.

We are a manufacturer of fine jewelry which is comprised of 14 karat gold, 18 karat gold, or platinum. All of these items are made of gold or platinum alloy. We are required by applicable law to mark the actual gold quality or platinum content accompanied by our registered trademark on each item of jewelry we manufacture and sell.

Precious metal alloys used in fine jewelry are lead-free by definition. "Lead is simply not used in the alloys and serves no purpose in today's precious metal jewelry. Indeed, if gold contains more than 200 ppm of lead, it becomes so brittle that it is useless for casting or fabrication. (See "Origin and Effects of Impurities in High Purity Gold," David J. Kinneberg, Stephen R. Williams, and D. P. Agarwal, 31 (2) Gold Bulletin, pages 58 - 67 (1998))." Cited in statement from the Manufacturing and Jewelry Suppliers of America. See especially page 64 of the Origin and Effects Article which states that: "Lead is one of the most (if not the most) detrimental of bullion impurities in applications requiring mechanical working and high ductility."

Given that manufacturers of fine jewelry require lead free gold alloy, we believe that the CPSC can exempt such precious metals from regulation. Indeed, the state of California has led the way in this area by specifically permitting these gold, platinum and palladium alloys for jewelry. We understand that Massachusetts has also followed California's lead in this area.

We are requesting that the CPSC grant to precious or fine jewelry an exemption from the broad regulation of all jewelry which includes costume and other non-precious jewelry. Based on the evidence cited above and the experience of California, it is clear that fine or precious jewelry should be exempt from the Consumer Product Safety Improvement Act's requirements.

Thank you for your consideration of this letter. We sincerely hope that an additional regulatory burden will not be placed on our industry as it is not needed to assure the lead-free safety of solid gold karat jewelry or platinum.

Sincerely yours,

Robert J. Augustine

Robert J. Augustine
CFO and Counsel

Dana Augustine, Inc.
300 Chastain Center Boulevard
Suite 315
Kennesaw, GA 30144

Main: 770-499-8932
Fax: 770-499-8974
Direct Dial: 678-819-0070
Cell: 678-923-8433

E-Mail: rob.augustine@dairemount.com

CONFIDENTIALITY NOTICE: This e-mail communication, including any attached files ("Communication"), was sent by or on behalf of an attorney and may contain material that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. This Communication is solely for the use of the intended individual even if addressed incorrectly. If the address is incorrect, or if for some other reason, you are not the intended recipient or the person responsible for delivering this Communication to the intended recipient, you are prohibited from retaining, using, disseminating, forwarding, printing, or copying this Communication. If you have received this Communication in error, please delete it and immediately notify the sender via return e-mail or telephone (770-499-8932). Thank you for your assistance.

166

Stevenson, Todd

From: Gilnei Marcondes [gilnei@skillus.com]
Sent: Thursday, October 30, 2008 11:29 AM
To: CPSC-OS
Subject: Section 102 of CPSIA
Attachments: Gilnei Marcondes (gilnei@skillus.com).vcf

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Skillus Corporation respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Skillus Corporation respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Gilnei Marcondes
Market Leader

SKILLUS CORP.
www.skillus.com
Phone: (954) 581-6788
Fax: (954) 581-6790
IM: gilnei@skillus.com
Skype: gilnei_skillus

Stevenson, Todd 167

From: Nancy Iadeluca [Dragonlady@TheSilverdragon.com]
Sent: Thursday, October 30, 2008 11:33 AM
To: CPSC-OS
Subject: The Silver Dragon and CPSIA requirements

Office of the Secretary
Consumer Product Safety commission
433 East West Highway
Bethesda, Md. 20814

To Whom It May Concern,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act regarding requirements for third party testing and certificates of general conformity testing.

Section 102 (e)(1) of the CASSIA to require each manufacturer of any consumer product to issue a certificate that the product complies with CAPS rules or similar requirements under any of the other acts administered by the CPSC.

The Silver Dragon submits the following comments and requests the following guidance from the commission.

1. Whereas jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free, such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. The Silver Dragon requests the commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your attention to my comments.

Nancy Iadeluca

The Silver Dragon
100 Central St
Warwick, R.I. 02886

Dragonlady@TheSilverdragon.com

www.tsdJewelry.com

Jewelry made in America...giving American's jobs.

EMBY
Jewelry LLC
D/B/A Diamond Delight

Office of the Secretary
Consumer Product Safety Commission,Room 502
4330 East West highway
Bethesda , Maryland 20814

Date : 10/30/08

Dear Sir or Madam,
The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or impoeter of any consumer product to issue a certificate that the product complies with CSPC rules under CPSIA or similar requirements under any of the other acts administered by the CPSC.

EMBY JEWELRY LLC, respectfully submits the following comments and requests the following guidance from the commission.

1. Whereas,jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, it's testing requirements, and general conformity certificate requirements.

2. EMBY JEWELRY LLC , respectfully requests the commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to it's testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Annie Chien
[EMBY JEWELRY LLC]

592 Fifth Avenue, 11th Floor . New York, N.Y. 10036 . (212) 282-1111 . Fax: (212) 282-1122

Stevenson, Todd

From: Annie Chien [annie@embyintl.com]
Sent: Thursday, October 30, 2008 12:10 PM
To: CPSC-OS
Subject: CPSIA
Attachments: EXEMPTION LETTER TO CPSIA.xls

Hi,

Attached please find the exemption letter to CPSIA from Emby Jewelry LLC.

Best Regards,

169

Stevenson, Todd

From: rweissohio@aol.com
Sent: Thursday, October 30, 2008 11:44 AM
To: CPSC-OS
Subject: (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.precious metals

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

A.Weiss & Son Inc respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. A. Weiss & Son Inc respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Robert Weiss Pres
A. Weiss & Son Inc

Stevenson, Todd 170

From: Jennifer Dewey [dewey.jenn@gmail.com]
Sent: Thursday, October 30, 2008 11:36 AM
To: CPSC-OS
Subject: RE: Section 102 CPSIA - From Fine Jewelry Designer, Jennifer Dewey

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Jenn Dewey Designs respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Jenn Dewey Designs respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Jennifer Dewey

Jenn Dewey Designs
PO Box 4172
Telluride, CO 81435
www.jennsjewels.com
dewey.jenn@gmail.com
--
Jennifer Dewey
Jenn Dewey Designs
www.jennsjewels.com
970.519.0021
dewey.jenn@gmail.com

Stevenson, Todd

From: Jed Furphy [jed@innocadtech.com]
Sent: Thursday, October 30, 2008 2:45 PM
To: CPSC-OS
Subject: CPSIA Section 102

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Innovative CAD Technologies respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Innovative CAD Technologies respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Jed Furphy

Jed Furphy
Sales and Marketing Director
845-267-3414 x109
jed@innocadtech.com
www.innocadtech.com

Please consider your environmental responsibility before printing this e-mail

InnovativeCAD
TECHNOLOGIES
tel 845·267·3414 · fax 845·267·3501
617 Corporate Way, Suites 6-7 M · Valley Cottage, NY 10989

SP 102 / 172

Adwar Casting Co., Ltd.

120 South Long Beach Road, Rockville Centre, NY 11570

* PHONE (516) 678-7755 * FAX (516) 678-7756 * ORDERS ONLY (800) 255-7755

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

2008 NOV -4 P 2:48
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Adwar Casting Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Adwar Casting Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Sincerely,

Keith Adwar
Vice- President
Adwar Casting Co.

2008 OCT 35 P 2:34
OFFICE OF THE SECRETARY
FREEDOM OF INFORMATION

173

Stevenson, Todd

From: JA Mfg., Inc. [jamfg@verizon.net]
Sent: Thursday, October 30, 2008 2:05 PM
To: CPSC-OS
Subject: Consumer Product Safety Improvement Act

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

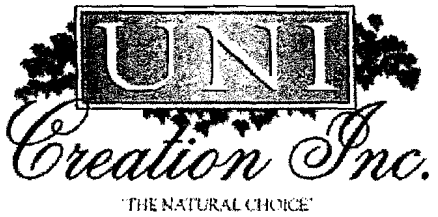
JA Jewelry Manufacturing Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. JA Jewelry Manufacturing Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,
Walter E. Aguirre
President
JA Jewelry Mfg., Inc.



Office of the Secretary
Consumer Product Safety Commission,Room 502
4330 East West highway
Bethesda , Maryland 20814

Date : 10/30/08

Dear Sir or Madam,
The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or impoeter of any consumer product to issue a certificate that the product complies with CSPC rules under CPSIA or similar requirements under any of the other acts administered by the CPSC.

UNI-CREATION,INC respectfully submits the following comments and requests the following guidance from the commission.

1. Whereas,jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, it's testing requirements, and general conformity certificate requirements.

2. UNI-CREATION,INC respectfully requests the commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to it's testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Shreyash mehta
[UNI-CREATION,INC]

592 Fifth Avenue, 11th Floor . New York, N.Y. 10036 . (212) 282-1111 . Fax: (212) 282-1122

175

Stevenson, Todd

From: Joe [joe@rhudysjewelry.net]
Sent: Thursday, October 30, 2008 1:10 PM
To: CPSC-OS
Subject: Testing lead in precious metals and gems in fine jewelry

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Rhudy's Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Rhudy's Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Joseph J. Brunais
Rhudy's Inc.

176

Stevenson, Todd

From: Shah, Amit [amitshah@interjewel.com]
Sent: Thursday, October 30, 2008 12:18 PM
To: CPSC-OS
Cc: Mehta, Punit
Subject: CPSIA regulation

Interjewel U.S.A., Inc.

580 Fifth Ave., Suite # 1512, New York, NY 10036
Tel # (212) 869-7801 Fax # (212) 869-4062

October 30, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third- party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Interjewel U.S.A., Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1) Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by nature lead –free [(to the exclusion of miniscule trace amounts of Lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, testing requirements, and general conformity certificate requirements.

2) Interjewel U.S.A., Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and the subject to its testing requirements and general conformity requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Amit Shah
Controller
Interjewel U.S.A., Inc.
Tel # 212-869-7801 X 108
Fax # 212-869-0254
Email: amitshah@interjewel.com

177

Stevenson, Todd

From: David DePorter [David@zarlene.com]
Sent: Thursday, October 30, 2008 12:04 PM
To: CPSC-OS
Cc: zarlene1@bellsouth.net
Subject: Comments on Section 102 of the CPSIA

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Zarlene Imports respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Zarlene Imports respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

David DePorter
General Manager
Zarlene Imports, Inc.
1550 East Oakland Park Blvd.
Ft. Lauderdale, FL 33334
954.566.4081

178

The Marfo Company

799 N. Hague Avenue
Columbus, Ohio 43204-1424
(614) 276-3352 • Fax (614) 276-2279

October 30, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

The Marfo Company respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. The Marfo Company respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Bill Giovanello

Bill Giovanello
Marfo Company

Stevenson, Todd

From: Jean Frase [jfrase@marsala.com]
Sent: Thursday, October 30, 2008 10:42 AM
To: CPSC-OS
Subject: Section 102 of the CPSIA
Attachments: Ltr CPSC, Oct 08.jpg

Please view attached letter.

Thanks,

Bill Giovanello

179

Stevenson, Todd

From: Silverfield Mfg.Co., Inc. [silverfield@cox.net]
Sent: Thursday, October 30, 2008 10:24 AM
To: CPSC-OS
Subject: CPSIA

Importance: High

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Silverfield Mfg. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Silverfield Mfg. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Joe Faella

Silverfield Mfg. Co., Inc...since 1978
9 Woodvale Drive

Johnston, RI 02919 * USA
P: 401-228-3398
F: 401-453-5767

180

Stevenson, Todd

From: Jonathan Cohen [jgcky@earthlink.net]
Sent: Thursday, October 30, 2008 10:17 AM
To: CPSC-OS
Subject: Section 102 of the Consumer Product Safety Improvement Act

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

The I.B. Goodman Company respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. The I.B. Goodman Company respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Jonathan Goodman Cohen
President

I. B. Goodman Company
120 E. Third Street
Newport, KY 41071
Phone: (800) 543-1945 x 206
Fax: (859) 261-2179
Email: Jgcky@earthlink.net
www.ibgoodman.com www.zejewelry.com

Notice by I.B. Goodman Company
The information contained in this email message (including any attachments) is privileged and/or confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

Stevenson, Todd

From: Andy Tessler [atessler@ix.netcom.com]
Sent: Thursday, October 30, 2008 9:59 AM
To: CPSC-OS

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Andrew Tessler respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. [COMPANY NAME] respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Andrew Tessler

182

Stevenson, Todd

From: John Chalson [john@honora.com]
Sent: Thursday, October 30, 2008 9:41 AM
To: CPSC-OS
Subject: CPSIA Requirements

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Honora Industries respectfully submits the following comments and requests the following guidance from the Commission:

1 Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earths crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Honora Industries respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

John Chalson

John Chalson
Honora Industries
18 E. 48th St., 3rd Flr.
New York, NY 10017
john@honora.com
Tel: 212-584-7363
Fax:212-371-0003

183

Stevenson, Todd

From: Vernon Kamath [vkamath@debeers.com]
Sent: Thursday, October 30, 2008 9:36 AM
To: CPSC-OS
Cc: Eva M. Abadia
Subject: reguarding the Law effect on feb

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

DeBeers respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, it's testing requirements and general conformity certificate requirements.

2. DeBeers respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Thank You

Vernon Kamath
DeBeers Finance
20 West 55th Street (7th floor)
New York, NY 10019

Phone : 212.751.2341
Fax : 212-317-8618

The information in or attached to this email may be confidential and may be legally privileged. It is intended only for the use of addressee. If you are not the intended recipient you must not disclose, copy, distribute, retain this message or any part of it, or take any action with reference to it. If you have received this e-mail in error, please notify the sender and delete the message from your system immediately. Any statement and/or opinion in this email not related to this company's business is solely that of the author and De Beers Diamond Jewellers US, Inc. does not take responsibility for such statements or opinions.
VIRUS WARNING The recipient should check this email and any attachments for viruses. De Beers Diamond Jewellers US, Inc. accepts no liability for any damage caused as a result of a virus transmitted by this email.
De Beers Diamond Jewellers US, Inc. reserves the right to monitor all e-mail messages passing through its network.
Registered Office: De Beers Diamond Jewellers US, Inc. c/o the Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 1980, County of New Castles.
www.debeers.com

184

CPSC
Room 502
4330 East West Highway
Bethesda, Maryland 20814

Subject: Section 102 Certificate Requirements

Dear Sirs,

After review of the CPSIA and participation in meetings concerning the new Act we are concerned greatly about a couple of the new requirements. Our greatest concern is with the requirement to test all products in final form. In our business we produce over 3000 styles in a season and there are several components which may be used across many styles. This would mean that we would be required to test the same item well over 1000 times. In our opinion it would be more beneficial to test these components in the component stage and link them through third party tracking to the final garment test. By doing this it would allow us to have more resources available to test and audit during a season to ensure that we continue to receive product that complies.

Our second concern is not being able to composite like components for testing. Testing up to four like components will allow us to speed up the testing process without invalidating the test results, again make resources available during entire seasons to continue to audit.

Sincerely,

Jim Eidson
Vice President, Quality Assurance

185

PhRMA

October 31, 2008

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

Re: Section 102 Certificate Requirements

Dear Sir or Madam:

The Pharmaceutical Research and Manufacturers of America ("PhRMA") is writing in response to the Consumer Product Safety Commission's (the Commission's) recent request for comments on the implementation of Section 102 of the Consumer Product Safety Improvement Act (CPSIA). PhRMA is a voluntary, nonprofit association that represents the country's leading pharmaceutical research and biotechnology companies, which are devoted to inventing medicines that allow patients to live longer, healthier, and more productive lives. Member companies are leading the way in the search for new cures. In the past decade alone, PhRMA members invested approximately $300 billion to develop new medicines.[1]

The CPSIA requires that every manufacturer and private labeler of a product which is subject to a consumer product safety rule under any act enforced by the Commission and which is "imported for consumption or warehousing or distributed in commerce" shall issue a certificate that certifies, "based on a test of each product or upon a reasonable testing program," that the product complies with all such rules, bans, standards, etc. applicable to the product under any act enforced by the Commission.[2] This "general conformity certification" requirement takes effect on November 12, 2008.

PhRMA member companies are committed to maintaining the safety of prescription drugs. Manufacturers of prescription drugs are regulated in a comprehensive manner by the Food and Drug Administration (FDA), which oversees, among other things, drug manufacture, packaging, and marketing.[3] Notwithstanding the FDA's thorough oversight, we understand that Commission staff have taken the position that manufacturers of prescription drug products must comply with the new certification requirements of the CPSIA.

---

[1] *See* PhRMA, *Pharmaceutical Industry Profile 2007* at 42 (2007).

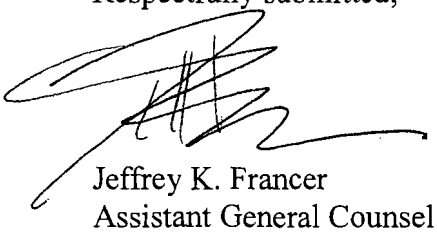
[2] CPSIA § 102(a)(1); 15 U.S.C. § 2063(a)(1).

[3] *See* 21 U.S.C. § 301 *et seq.*

In satisfying the requirements of the Federal Food, Drug, and Cosmetic Act (FDCA), manufacturers of prescription drugs follow rigorous manufacturing and packaging requirements designed to assure that medicines are safe and effective for patients.[4] Given these detailed requirements, as well as the FDA's frequent inspections of these processes, we request that the Commission exercise enforcement discretion with respect to the new requirements of Section 102. If the Commission does not choose to exercise enforcement discretion in the long term, we respectfully request that the Commission allow pharmaceutical manufacturers at least six months to implement systems necessary to comply with these new requirements. Such activities would typically include changes in information systems, creation of new standard operating procedures, and additional training.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me at (202) 835-3419 or jfrancer@phrma.org.

Respectfully submitted,



Jeffrey K. Francer
Assistant General Counsel

cc: Nancy A. Nord, Esq.
Acting Chairman

---

[4] *See* 21 C.F.R. part 211.

186

Stevenson, Todd

From: egemen@uniquesettings.com
Sent: Friday, October 31, 2008 12:37 PM
To: CPSC-OS
Subject: lead free jewelry

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regerding requirements for third party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

DC Group DBA Unique Settings Of NY respectfully submits the following comments and request the following guidance from the Commission:

1. Whereas,jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead free [to the exclusion of miniscule trace amounts of lead (i,e. natural Pb contaminants found in the earth's crust)],such productsshould be expressly excluded from the scope of the CPSIA,its testing requirements,and general conformity certificate requirements.

2.DC Group DBA Unique Settings Of NY respectfully requests the Commision's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Egemen Barlas
DC Group DBA Unique Settings Of NY

tweenbrands

October 30, 2008

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

Re: Section 102 Certificate Requirements: Request for Clarification and Delayed Implementation

To Whom It May Concern:

Tween Brands, Inc. is responding to the Consumer Product Safety Commission's (CPSC) request for comments on Section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). We appreciate the opportunity to share with the Commission our comments and concerns in connection with the Section 102 General Conformity Certification (GCC) requirements that are scheduled to go into effect on November 12, 2008. In addition to our comments, and for the reasons set forth below, we respectfully request a delay in the implementation of the GCC requirements.

We have serious concerns in connection with the imminent implementation of the GCC requirements required under the CPSIA and the ability of industry to comply with these requirements by November 12, 2008. While we certainly recognize that the enactment of the CPSIA will help to advance consumer protection, especially for children's products, we would like to highlight just a few of the many significant concerns that we have about the GCC requirements:

- ***Industry Is Not Prepared for Broad Coverage of GCC's: Language of CPSIA Was Reasonably Interpreted by Industry as Limited To Children's Products***. Our company, along with countless others, initially believed that the GCC requirement was intended only for children's products based on early comments from CPSC staff members and on a reasonable interpretation of the language of the CPSIA (i.e., the Act's preamble, headings, titles, and definitions all refer to children's products)[1] and has only recently been advised by CPSC staff that additional regulated consumer products may be affected. If it is determined that the GCC requirement applies to all regulated consumer products, it

[1] The preamble to the CPSIA states that it is "an Act to establish consumer product safety standards and other safety requirements for children's products..."; Title I to the Act is entitled "Children's Product Safety"; the Section 102 heading is entitled "Mandatory Third Party Testing for Certain Children's Products"; and, the definition of "children's product" in Section 235(a)(16)) is "a consumer product designed or intended primarily for children 12 years of age or younger".

would be unduly burdensome to impose the GCC requirements on all such products under such a short time constraint at this point, especially where the initial interpretation of the language as drafted was entirely reasonable.

- ***Lack of CPSC Guidance on Key Provisions Warrants Delayed Implementation.*** Essential guidance to industry with respect to the interpretation of, and compliance with, many key provisions, including the GCC requirements of the CPSIA, has not yet been provided as noted below.

    - ***CPSC Guidance and Advice Has Not Been Timely.*** CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain with only a single means of inquiry via the online tool.

    - ***Product Testing Cannot Be Implemented Timely Without CPSC Guidance.*** Reasonable and representative testing requirements to support GCC's have not been defined by Congress or CPSC and cannot feasibly be implemented on or before November 12, 2008 without more specific guidance from CPSC.

    - ***Insufficient Regulatory Guidance on Specific Testing Standards.*** There has been insufficient guidance on specific regulations, bans and standards for certain products and compliance by November 12th in the absence of such guidance is essentially impossible. For example:

        - ***Lead in Fabrics***: CPSC has advised that all fabrics used in wearing apparel must be tested for lead. This is unprecedented in the apparel industry and there is absolutely no guidance on testing standards and sampling procedures. Furthermore, it is unconscionable that industry would be required to immediately embark on an entirely new testing program without any studies indicating the potential presence of lead in apparel fabrics and whether it could pose it a hazard, especially in view of the fact that the CPSIA is requiring CPSC to first study the use of formaldehyde in textiles and apparel and whether it may pose a hazard before requiring any testing or restriction.

        - ***Fabric Flammability***: Fabric that is used for wearing apparel is subject to 16 CFR Part 1610: Standard for the Flammability of Clothing Textiles, and is often tested prior to production of the finished garment. Does finished apparel now require testing in order to comply with the GCC requirements? Again, there is no guidance on this specific standard.

    - ***Uncertainties About Voluntary Standards That May Require GCC.*** While it appears from the language of the CPSIA that products subject to voluntary safety standards do not require GCC's, it is not at all clear whether products covered by

certain voluntary standards that may be used by CPSC as policy guidance might, in fact, require a GCC.

- ***Private Labelers Have No Guidance***. Private Labelers (i.e., trademark owners) that are not involved in any part of the distribution stream of a licensed product have no guidance as to whether they can rely on a manufacturer's test results (as importers can) or whether they must conduct their own testing, and whether or how their GCC must somehow be included in documents sent by licensees to retailers. There is absolutely no guidance on this point.

- ***Critical GCC Paperwork Flow Guidelines and Electronic System Considerations Have Not Been Addressed By CPSC***. Even if manufacturers are able to generate GCCs, many distributors and importers currently do not have systems in place to disseminate to their customers the GCCs that they would receive. In addition, while CPSC just issued a notice dated October 24, 2008 indicating that access to an electronic GCC using a unique identifier would be acceptable, there has been no specific guidance from CPSC or U.S. Customs and Border Protection (CBP) as to how GCC's (or the unique identifier) should physically "accompany" imported shipments. CPSC should permit a reasonable implementation period in order for manufacturers, distributors, and retailers to develop compliant and interoperable systems for GCC dissemination.

- ***Protection of Proprietary Manufacturer Information Not Yet Addressed by CPSC.*** Companies consider the names and addresses of manufacturers to be highly proprietary business confidential information that is rarely disclosed to distributors or retailers. Alternate methods of designating this information on the GCC (e.g., confidential codes assigned by CPSC, etc.) have not been addressed by CPSC and we are very concerned about being required to disclose this information to third parties without adequate regulatory protection.

Our concerns have been somewhat exacerbated by the Commission's lack of clear guidance on the implementation of Section 102. We fully acknowledge the fact that this sweeping legislation has burdened CPSC with an enormous regulatory task. However, CPSC guidance regarding its interpretation of the GCC requirements is difficult to obtain, with only a single means of inquiry via the online tool, and due to the myriad of questions, guidance simply has not been given in a timely fashion to assist industry entities seeking compliance.

In view of the significant penalties under the CPSIA for non-compliance, and in view of the inability of industry to obtain timely guidance from CPSC when the CPSIA is either silent or unclear concerning the GCC requirements, we respectfully request that CPSC delay its implementation and enforcement of the GCC requirement. This would permit CPSC and industry to partner in resolving these and many other uncertainties associated with the GCC requirements. Alternatively, we urge the Commission to make clear that CPSC will recognize

good faith efforts made by companies to comply with the law and will not focus on any inadvertent violations of portions of the law related to GCC paperwork during a reasonable implementation period. If you believe that you do not have the existing authority to take such action, then we urge you to work with Congress to make these necessary adjustments to the CPSIA.

Thank you for your consideration of this submission.

Sincerely,

Ronnie Robinson
EVP Supply Chain
TweenBrands, Inc.
614.775.3630 Direct
rrobinson@tweenbrands.com

cc: The Honorable John D. Dingell, Chairman
The Honorable Joe Barton, Ranking Member
U.S. House of Representatives Energy and Commerce Committee
Washington, DC 20515

The Honorable Daniel Inouye, Chairman
The Honorable Kay Bailey Hutchison, Ranking Member
U.S. Senate Commerce Committee
Washington, DC 20510

SM JSV 188

Stevenson, Todd

From: Lee Edelman [marcopolopm@verizon.net]
Sent: Sunday, November 02, 2008 2:53 PM
To: CPSC-OS
Subject: Section 102 of the Consumer Product Safety Improvment Act
Attachments: Lead testing Letter CPSC,MJSA.doc

Dear Sir or Madam,
Please find attached a letter of comment pertaining to Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.
Thank you for your consideration,
Lee Edelman
President
Marco Polo Precious Metals

November 3, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with DPSC rules under the CPSIA or similar requirements under any of the other acts administered by CPSC.

Marco Polo Precious Metals respectfully submits the following comments and request the following guidance from the Commission:

1. Jewelry and accessories made exclusively of precious metals and gemstones are by the requirements of their manufacture lead free. Marco Polo alloys precious metals and fabricates them into products which are used in the manufacture of precious metal jewelry, as a result we can speak with authority as to the metal content, including lead in precious metals jewelry. All alloying starts with gold, silver of the highest purity (99.9%+to 99.99%+) that is often accompanied by spectrographic analysis that always shows that lead is not present. These metals are then alloyed with such metals as copper, ruthenium and iridium of the same high purity. To do otherwise in fabricating karat gold, platinum and silver alloys would produce an inferior and unacceptable product. In fact, lead, even in trace amounts, alloyed with gold makes it brittle and unworkable for jewelry. Thus the very fact that a piece of gold jewelry has been made is proof that lead is not present. As a result precious metals jewelry by its nature is lead-free. Further, to

require testing of all manufacture of precious metals jewelry would put an undo and impossible requirement on an industry that consists, for the most part, of very small manufacturers or individual jewelers who are producing a one-of-a-kind piece. Thus precious metal products should be expressly excluded form the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. Marco Polo precious Metals respectfully requests the Commission's Further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you or your kind attention to our comments.

Respectfully yours,

Lee Edelman
President

102 189

NARRAGANSETT JEWELRY CO.
C&J JEWELRY CO. INC.
100 DUPONT DRIVE, PROVIDENCE, RI 02907
TEL. 401.944.2200 FAX 401.942.3478

November 3, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

C & J Jewelry respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. C & J Jewelry respectfully requests the commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully,

Frank D'Angelo
Chief Operating Officer

Stevenson, Todd

From: Linda Hall [lhall@candjjewelry.com]
Sent: Monday, November 03, 2008 9:59 AM
To: CPSC-OS
Subject: testing for lead
Attachments: 11.03.08 Cosumer Product Safety Commission.pdf

Mr. Frank D'Angelo asked that I email you the attached letter.

Thank you.

Linda Hall
C&J Jewelry
401.944.2200 x156
401.942.3478 fax

10✓
190

Stevenson, Todd

From: Kathleen McEnery [thebeadqueen2004@yahoo.com]
Sent: Monday, November 03, 2008 1:54 PM
To: CPSC-OS
Subject: Re: Section 102(a) (1)

Office of the Secretary

Consumer Product Safety Commission, Room 502

4330 East West Highway

Bethesda, Maryland 20814

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

The Bead Queen respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2.The Bead Queen respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Kathleen McEnery
The Bead Queen

191

Stevenson, Todd

From: Geoff MacMillan [gmacmillan@alumausa.net]
Sent: Monday, November 03, 2008 12:27 PM
To: CPSC-OS
Subject: Precious metal jewelry testing

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

ALUMA USA, INC. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. ALUMA USA, INC. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Geoffrey MacMillan, Director
ALUMA USA, INC.

Geoffrey MacMillan
ALUMA USA, INC.
480 Tesconi Circle Suite B
Santa Rosa CA 95401
Tel. 707-545-9344 x214
Fax. 707-545-9350
eMail. gmacmillan@alumausa.net

192

Stevenson, Todd

From: Adrian T. Gad [agad@atginternationalandco.com]
Sent: Monday, November 03, 2008 4:57 PM
To: CPSC-OS
Subject: URGENT: CPSC Comments Needed Today!

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

A.T.G. International & Co. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements and general conformity certificate requirements.

2. A.T.G. International & Co. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements, and general conformity certificate requirements.

Thank you for your kind attention to our comments.

Respectfully yours,

Adrian T. Gad
President / Founder
A.T.G. International & Co.
(917) 721-3736
www.atginternationalandco.com

Stevenson, Todd

From: Friedman, Warren [Warren.Friedman@hud.gov]
Sent: Monday, November 03, 2008 5:55 PM
To: CPSC-OS
Subject: Section 102 Certificate Requirements

In soliciting comments regarding requirements for certificates for general conformity testing and third party testing under Section 102 of the Consumer Product Safety Improvement Act ("CPSIA"), the Consumer Product Safety Commission ("CPSC"), the CPSC noted that it was interested in, among other subjects, "Specific comments or concerns regarding the provision of either a paper or electronic certificate accompanying products" (www.cpsc.gov/about/cpsia/102rfc.pdf, par. 4, bullet 3).

The CPSC should continue to keep in mind the Electronic Signatures In Global and National Commerce Act ("E-SIGN"; 15 U.S.C. Sections 7001-7031). In particular:

Sec. 7001(a), General rule of validity, and its par. (a) and subpar. (a)(1) provide the general statutory approach toward the use of electronic records:

> "(a) In general. Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II of this chapter), with respect to any transaction in or affecting interstate or foreign commerce –
>
> "(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form".

Sec. 7031, Principles governing the use of electronic signatures in international transactions, requires the Secretary of Commerce to promote their use.

> "(a) Promotion of electronic signatures.
>
> "(1) Required actions. The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) [of Section 7031(a)] and in a manner consistent with section 7001".

Although this directly applies to the Secretary of Commerce, the relationship of this Section to the CPSC's rulemaking and guidance issuance authority should be considered by the CPSC.

The CPSC should also keep in mind the protective provisions of:

Sec. 7001(c), Consumer disclosures, including the requirements for:

> "(1) Consent to electronic records ...
>
> "(2) Other rights ..."

and other protective provisions under Section 7001 and elsewhere.

If you have questions, please feel free to contact me.

Warren Friedman, Ph.D., CIH
Senior Advisor to the Director
HUD Office of Healthy Homes and Lead Hazard Control
451 7th St. SW (8236)
Washington, DC 20410-3000
202-402-7574 / 202-708-0014 (fax)

Warren.Friedman@HUD.gov

Sec 102 194

STULLER

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION
2008 NOV -4 P 2:40

October 29, 2008

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

Dear Sir or Madam,

The Commission staff has invited comments on Section 102 of the Consumer Product Safety Improvement Act (CPSIA) regarding requirements for third-party testing and certificates of general conformity testing.

Section 102(a)(1) amends section 14(a)(1) of the CPSIA to require each manufacturer or importer of any consumer product to issue a certificate that the product complies with CPSC rules under the CPSIA or similar requirements under any of the other acts administered by the CPSC.

Stuller, Inc. respectfully submits the following comments and requests the following guidance from the Commission:

1. Whereas, jewelry and accessories made exclusively of precious metals and gemstones are by their nature lead-free [to the exclusion of miniscule trace amounts of lead (i.e. natural Pb contaminants found in the earth's crust)], such products should be expressly excluded from the scope of the CPSIA, its testing requirements, and general conformity certificate requirements.

2. Stuller, Inc. respectfully requests the Commission's further guidance and clarification regarding the scope of products covered under the CPSIA and subject to its testing requirements and general conformity certificate requirements.

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION
2008 OCT 35 P 2:34

Thank you for your kind attention to our comments.

Respectfully yours,

Charles D. Lein
President/COO
Stuller, Inc.

Business 337.262.7700 National 800.877.7777 Fax 337.981.1655 P.O. Box 87777, Lafayette, LA 70598-7777 email: info@stuller.com www.stuller.com

Sept 102
195

Stevenson, Todd

From: christina [christinakim30@hotmail.com]
Sent: Tuesday, November 04, 2008 8:07 PM
To: CPSC-OS
Subject: new rules and regulations CPSIA

Hi!
My name is Christina in Agabang USA in California.
I am doing a children sleepwear program with Costco wholesales clubs.
It is not Flame retardant it's going to be the tight fitting long John's.

As I know, the CPSC has recently enacted some very complex new rules and regulations that will possibly effect the item(s) we are producing for Costco Wholesale.
Just what I am looking for; where to start...?
1) We are using SGS 3rd party testing for our items. Agabang must provide Costco with a certification of conformity on every item that falls under any CPSC regulation or rule. I am wondering what SGS can do for the certification. The test must be the appropriate test as prescribed by the CPSC for each particular item. Also we must provide to Costco certification that such has been completed. Are we okay with SGS testing for their requirements?

2) I want to know if things have changed under this new CPSIA... and to get updated information.
Pls advise me how/if there changes will affect. What do I do to get complete certification? where can I contact?

Thank you so much in advance for all your help.....
Christina Jo

agabang
Agabang USA Inc.
2710 South Broadway
Los Angeles, CA 90007
Ph. (213) 745-8020/ Fax (213) 745-8626
christina@agabangusa.com

Bio-Lab, Inc.
A Chemtura Company
P.O. Box 300002
Lawrenceville, GA 30049-1002

678-502-4000 **tel**

October 24, 2008

Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Gib:

BioLab, Inc., a Chemtura Company is a manufacturer of pool & spa supplies and household cleaning products. Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products
- Congress's intent was on children's products ~~as~~ it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on U.S. companies in a time when the economy is struggling and the financial markets are in disarray
- The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.

We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Marcy Cowan

Marcy Cowan, Esq.
Assistant General Counsel
Consumer Products

Cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
Senator Saxby Chambliss
Senator Johnny Isakson
House Representative John Linder
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

Sec 102 149

Recochem Inc.
Your Partner in Formulating Solutions

Consumer Division, Central District
131 East Drive, Brampton, Ontario
Canada L6T 1B5
Tel: 905-791-1788 Fax: 905-791-7140
www.recochem.com

October 28, 2008

Nancy A. Nord
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Section 102. Mandatory third party testing for certain children's products, as found in the Consumer Product Safety Improvement Act 2008.

Dear Nancy:

Recochem is a Canadian leader in the manufacturing and distributing of household solvents, paint thinners, windshield washer fluids and antifreeze/coolant for automotive and industrial applications.

This new initiative certainly came as a surprise to the entire industry since it was "buried" under **section 102 Mandatory third party testing for certain children's products,** in the Consumer Product Safety Improvement Act 2008. It was so well "buried", that the Consumer Specialty Products Association (the industry association we rely on in the USA) did not even find out about this new initiative until the beginning of October, well after it became law.

Recochem, just like most of the companies affected by this new initiative, does not manufacture Children's product.

In a presentation made by the CPSC in early October, it was indicated that imports could be stopped at the border if not accompanied by this Certificate of Conformity, which would have a devastating effect to the Canadian export and US import industry since most industries in Canada are not even aware of the CPSC's initiative. I can assure you that Recochem and all the other industries exporting into the US on November 12, 2008, will not be ready to comply with the new Certification initiative. It is simply not enough time to create an infrastructure to generate a certificate for every product and for every batch.

For Recochem, these new measures would involve a large amount of document tracking and reconciliation to assure that every batch of every product is "accompanied" by a Certificate of Conformity.
Every day, Recochem alone, makes four shipments to the US of products that have to and are compliant with the Federal Hazardous Substance Act, namely the 16 CFR Part 1500 – Hazardous substances and articles: Administration and enforcement regulations as well as 16 CFR part 1700 Poison Prevention packaging (requiring Child Resistant closure). The same products are also sold in Canada and have to meet very similar regulations for the safety of the consumers.

Recochem Inc.
Your Partner in Formulating Solutions

Consumer Division, Central District
131 East Drive, Brampton, Ontario
Canada L6T 1B5
Tel: 905-791-1788 Fax: 905-791-7140
www.recochem.com

Canada being the largest import export partner with the United States, one would think that someone at the CPSC would have called their counterpart in Canada to make sure Canadian industries were getting ready to meet their new initiative.

Although we support the important mission of the Consumer Product Safety Commission (CPSC), we have serious concerns with the CPSC's interpretation of the new safety certification requirements for products subject to CPSC-administered regulatory regulations or standards as set forth in the CPSIA.

- The CPSC's interpretation of Section 102 of the CPSIA requires all consumer products subject to standards or requirements administered by the CPSC, to be accompanied by a certification of conformity specifying all applicable CPSC requirements with which the product complies.
- We are not in agreement with the Commission's interpretation and believe Congress did not intend to create a procedurally burdensome certification process for all consumer products.
- Congress's intent was on children's products as it pertains to certification as Section 102 of the CPSIA is titled 'Mandatory Third Party Testing for Certain Children's Products'
- The new self certification requirement will impose an unnecessary financial and resource burden on Canadian companies exporting in a time when the economy is struggling and the financial markets are in disarray.

The requirements of Section 102 are complex and burdensome, making the effective date of November 12, 2008 unreasonable.
We urge the CPSC to focus on children's products as was the original intent and to issue a memorandum of understanding which would delay implementation until the Commission can provide clarity and direction on the new safety certification requirements.

Sincerely,

Robin Le Sage
Compliance and Technical Information Manager
Recochem Inc.

Cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission
The Honorable John D. Dingell, Chair, House Energy & Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy & Commerce Committee

yu 10 110

ECOLAB®

John G. Wood
Director, Product Registration & Compliance
T 651.293.4149
F 651.225.3122
Email address: john.wood@ecolab.com

October 31, 2008

Mr. Gib Mullan
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Consumer Product Safety Commission Interpretation of Section 102(a)(1) of the Consumer Product Safety Improvement Act (CPSIA) entitled "Mandatory Third Party Testing for Certain Children's Products"

Dear Mr. Mullan:

Ecolab Inc. (Ecolab) is a manufacturer of industrial and institutional cleaning, laundry and sanitizing products, some of which are offered in discount club stores for purchase by consumers. While Ecolab supports the mission of the Consumer Product Safety Commission (CPSC or Commission), Ecolab has serious concerns with the Commission's interpretation of the new safety certification requirements in Section 102(a)(1) of the Consumer Products Safety Improvement Act (CPSIA). CPSC is currently interpreting Section 102(a)(1) to require all products subject to the CPSC's Federal hazardous Substances (FHSA) regulations and the Poison Prevention Packaging Act (PPPA) regulations to certify compliance with those regulatory requirements. For the reasons stated below, Ecolab urges the Commission to carefully reevaluate this interpretation and remain consistent with the original Congressional intent of Section 102 of CPSIA.

The Commission's Website document "Consumer Product Safety Improvement Act (CPSIA) Frequently Asked Questions" defines a "children's product" and how the age cutoff is determined with the following:

"A 'children's product' means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors will be considered:

- A statement by the manufacturer about the intended use of the product, including a label on the product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

370 Wabasha Street N St. Paul, MN 55102

Section 102 of the Act is entitled "Children's Product Safety. The Congressional Record states "the conference report establishes testing and certification requirements for children's products made for those ages 12 and under before they are sold in the U.S." (110th Cong. Rec. S7869 [daily ed.] July 31, 2008). It is clear from this statement that Congress did not intend to impose this certification requirement on products which are not designed and sold for use by children of 12 years of age or less. In addition, the definition of a children's product as quoted above from the Commission's own document further documents Section 102(a)(1) of CPSIA does not provide a basis for the current interpretation that all consumer products are subject to the safety certification requirements.

Also, consumer products which are not intended for use by children must bear the following label statement as required by 16 CFR Part 1500.3 (b)(14)(J)(1) "Keep out of reach of children" or its practical equivalent. If a product is designed for use by children, item (2) of this section requires adequate directions must be on the product label for the protection of children from the product's primary hazards. The product label in either instance serves as certification that the product complies with the self executing FHSA labeling and safety regulations. Therefore, the additional certification of Section 102(a)(1) is pointless and provides no added information to the customer which is not already addressed on the product label.

As stated above, the Commission is broadly interpreting section 102 to require any consumer product, regardless of whether or not the product is intended for use by children, to comply with the certification requirements. Based on the Congressional Record statement quoted above, Ecolab does not agree with the Commission's interpretation. CPSC is interpreting the statute to require manufacturer certification based on, "a test of each product or upon a reasonable testing program." Products subject to hazard labeling under the FHSA regulations at 16 CFR Part 1500 and special packaging standards under the PPPA regulations at 16 CFR Part 1700 do not always undergo testing by the product manufacturer to conform to these requirements and should not be subject to certification requirements. For many decades, the FHSA regulations at 16 CFR Part 1500.4 (Human experience with hazardous substances) indicates the manufacturer may rely upon data based on human experience to determine primary product hazards. In addition, the toxicity guidelines suggested by the Commission at 16 CFR Part 1500.3 for "Highly Toxic", "Corrosive", and "Irritant" all state these toxicity endpoints may be determined by either "human experience" or by the recommended acute toxicity tests performed on laboratory animals. Manufacturers use a variety of data points to assess product hazards such as published toxicity studies for end use products, raw material toxicity data as well as human exposure data. These data are used to substantiate and document product hazard labeling rather than conducting animal toxicity tests. The requirement of Section 102(a)(1) clearly contradicts this longstanding policy and would require acute toxicity testing of each product or variation of a specific product. Reliance on known human experience rather than animal acute toxicity studies allows the manufacturer to determine the product hazards under real world conditions. The use of human experience/exposure data assessments to determine product hazards was presented at the September 16-17, 2003 workshop "The CPSC From A to Z" in which the CPSC staff participated.

In the mid 1990's the Commission revised the PPPA regulations to broaden the testing requirements to include senior adult and children test panels to establish revised Poison prevention packaging standards at 16 CFR Part 1700.15. This new standard required manufacturers of consumer products requiring child resistant packaging to have on file certification or actual testing data demonstrating the child resistant packaging met the new

senior friendly/child resistant performance standard. In the wake of this regulatory change, the Commission held a workshop to review this new requirement with industry. At that workshop, manufacturers were told by senior Commission staff that the manufacturer could either rely on the packaging vendor certification (based on vendor testing) or rely on their own testing of any senior friendly/child resistant testing. Again, the interpretation that certification based on a test of each product or upon a reasonable testing program would require every consumer product manufacturer to conduct the required testing and disallow reliance on the packaging vendor's data.

To require actual acute toxicity testing and disallow reliance on vendor senior friendly/child resistant packaging data will impose unnecessary financial and resource burdens on U.S. companies in a time when the economy is greatly struggling and financial markets are in complete chaos and disarray.

The requirements of Section 102 are very complex and burdensome, making the effective compliance date of November 12, 2008 impossible and unreasonable.

Based on these comments, Ecolab respectfully requests the Commission to focus certification requirements solely on products designed for use by children as stated in the Congressional Record and to issue a memorandum of understanding which would delay implementation. In addition, we request the Commission take the time to provide much needed clarity and direction on this new safety certification requirements.

Sincerely,

John G. Wood

John G. Wood
Director, Product Registration & Compliance
Regulatory Affairs
Ecolab Inc.

Cc: Nancy A. Nord, Acting Chairman, Consumer Product Safety Commission
Cheryl A. Falvey, General Counsel, Consumer Product Safety Commission