

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Manufacturer |
| Tracking No. 80b284e4 |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0047
Comment from Richard Woldenberg

Submitter Information

Name: Richard Woldenberg
Address:
380 North Fairway Drive
Vernon Hills, IL, 60061
Email: rwoldenberg@learningresources.com
Phone: 847-573-8420
Fax: 847-281-1730
Organization: Learning Resources, Inc.

General Comment

I have attached my comment letter on the 15 Month Rule.

Attachments

CPSC-2010-0038-0047.1: Comment from Richard Woldenberg

August 3, 2010

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

Agency: Consumer Product Safety Commission (CPSC)

Re: Docket No. CPSC-2010-0038 Testing and Labeling Pertaining to Product Certification.

Dear Mr. Stevenson:

I am hereby submitting comments in response to the Solicitation of Comments on Testing and Labeling Pertaining to Product Certification (Docket No. CPSC-2010-0038) published in the Federal Register on May 20, 2010 (the "Proposed Rule").

The End of (Business) Life As We Know It:

As I sit down to record my comments on this rule, I take comfort in knowing that the CPSC admits what it is doing here. In a section entitled "Caveats and Possible Market Reactions to Third Party Testing Requirements", the agency acknowledges the severe impact of its new rule on manufacturers:

- a. Significantly increased costs,
- b. Incentive to redesign (presumably successful) products,
- c. Incentive to reduce features on products,
- d. Incentive to eliminate (presumably useful) components in finished goods,
- e. Incentive to reduce product lines,
- f. Exit the market altogether,
- g. Go out of business,
- h. Create barriers to entry for future business expansion, especially in specialty markets (non-mass market),
- i. Devastate niche markets (noting particularly the "special needs" educational market - sorry, blind kids!), and
- j. Incentive to delay or forgo product or manufacturing process improvements (to avoid testing costs).

Quite a stimulus program! Of course, the CPSC knows we can't meet this challenge alone. In "The Potential Effects of the Proposed Rule", the agency advises us to hire a few helpers:

- a. Lawyers to review CPSC regulations,
- b. Engineers and chemists to develop product specifications, conduct tests and design a program for production testing,
- c. Statisticians or consultants to determine the frequency, sample size and collection method for production testing, and
- d. Technicians, "perhaps working under the supervision of an engineer, chemist or similar professional", to perform production tests.

This certainly is a Brave New World for us. Luckily we have the CPSC to tell us what to do. Unfortunately, we can't afford an in-house legal department or teams of engineers, chemists or statisticians. We don't even have technicians. Incredibly, somehow we bumble on in our blissful, almost charming ignorance, having had only one recall of 130 pieces (we recovered every unit) out of perhaps 1,000,000,000 units sold in the last 26 years. No doubt all the pain the CPSC is promising us will be worth it . . . gotta keep everyone so safe.

Seriously, Is Anyone Listening?

On page 28338 of the Federal Register, the Proposed Rule reproduces the "reasonable testing program" as it stood before the December 10-11, 2009 workshop at the CPSC. The workshop (which we attended with three people who were each asked to appear as a panelist) was ostensibly for the purpose of giving "stakeholder feedback" on the so-called "15 Month Rule" (the Proposed Rule) and the component testing rule (also up for comment today, posted under separate cover). We gave detailed feedback on these rules - none positive - yet the Proposed Rule seems to have preserved the original, deeply-flawed concepts **intact**.

It is difficult not to conclude that the process of providing feedback to this CPSC is a sham. While Chairman Tenenbaum has long touted her "policy" of seeking feedback from all stakeholders including industry, judging from this rule, the commitment to seeking feedback does not involve maintaining an open mind. It appears that the most likely feedback to be well-received is feedback that ratifies what the agency already plans to do. Other feedback is "wrong", I guess. I doubt you will find this letter useful.

As time ebbs on and as the drumbeat of a CPSC bent on our destruction becomes more and more clear, the incentive to waste a few days preparing detailed comments also ebbs. Nevertheless, owing to the importance of this Proposed Rule, I am hereby submitting comments. I have no reason to be optimistic that you will consider my point of view with an open mind. This rule has all the earmarks of a *fait accompli*.

Deeply Flawed Economic Analysis.

The Proposed Rule devotes pages and pages to a tortured analysis of its purported compliance with the Regulatory Flexibility Act ("RFA"). This section of the Proposed Rule is a virtual admission of how unworkable the rule is (and the CPSIA testing scheme in general). As a starting point, the rule states: "*The objective of the rule is to reduce the risk of injury from consumer products, especially from products intended for children aged 12 years and younger.*" In my recent study of CPSC recall data posted on its website, I have found exactly ONE DEATH and THREE ASSERTED INJURIES from lead or lead-in-paint from 1999-2010. Please keep this statistic in mind as I review the economics of your "injury reduction" effort.

The flaws in the RFA analysis are clear in its discussion of testing costs for toys. The analysis acknowledges that it only accounts for out-of-pocket testing costs, nothing else. Significant additional (and ignored) costs include samples destroyed or damaged in testing, transportation of samples, administrative costs for managing testing, administration costs for managing the testing data, administrative costs for managing recordkeeping, an allocation of general management time, legal expenses relating to testing and so on. Depending on the scale of the business, I estimate that these costs (and distractions) will add 15%-50% to the out-of-pocket testing costs.

The RFA analysis concludes that testing a typical toy will cost \$1,262 per product. As an average, this might be a good number for our business. I would note, however, that the Proposed Rule posits that we will test multiple samples, sending in perhaps four separate samples per item to satisfy the bizarre "required high degree of assurance" standard. [The rule states clearly that testing one sample is never enough. Interestingly, we have never had the experience in the last 20 years that multiple safety tests of the same product reveals anything useful other than rapidly approaching poverty.] The rule's four-sample regime takes the testing cost per toy up to \$4,848 (by the calculation in the document) plus another \$2,500 for mechanical tests (because the rule posits that we will submit FIFTY samples for mechanical tests). That brings us up to \$7,348 per item, plus 54 destroyed samples. This implies a rough "all-in" cost of \$10,000 per item. We have 1,500

catalog items in our product line. Without a "reasonable testing program" in place (see below), we will have to test each item annually. This is a cost of \$15 million for our company EVERY YEAR. [We also sell custom items, a business that would presumably be terminated by this testing rule. That's several jobs down the drain.]

Does it surprise you to know that \$15 million in testing costs exceeds our annual profit? By far?

The RFA analysis is deeply flawed in other ways, too. The rule duly reports that "[a]ccording to a representative of a trade association, there are an estimated 50,000 to 60,000 individual toys on the market." Oh, really? Perhaps the CPSC shouldn't have consulted the International Hubcap Manufacturers Association for this information. A quick visit to the Amazon.com website reveals listings of 808,465 toys and games on August 3rd (<http://amzn.to/djtTVX>). Amazon is a customer of ours – I estimate that they list about one-third of all toys and games sold in the consumer market. Call it 2.5 million toys and games available to consumers in the U.S. But that's not all – the category also includes specialty items not present on consumer sites. For instance, our industry, the education industry, is largely invisible on consumer sites. I estimate that about one million SKUs are available to purchase at the annual convention of the International Reading Association. Millions of other SKUs are displayed at the national math show, the national science show and the national early childhood show. Add in special needs and other sub-markets – and you get well in excess of 4-5 million toys and games. So the RFA analysis might be off by 100x in its assessment of the toy market ALONE. That's not close. . . .

The RFA analysis goes on to conclude that the ENTIRE MARKET of products affected by the rule is 100,000–150,000 products. This includes "wearing apparel, accessories, jewelry, juvenile products, children's furniture, etc.", plus non-children's products and other children's products like ATVs, bikes, bunk beds and so on. It is hard to dignify this ridiculous data with a retort, except to note that it is absurd on its face. The apparel industry ALONE offers as many as 8,000,000 different children's SKUs for sale. The RFA analysis is fatally flawed.

At \$10,000 per SKU, the projected children's product testing costs will easily exceed \$50 billion per year. Remember the 11-year CPSC statistic on lead deaths and injuries – one death and three ASSERTED injuries? [There are no recorded injuries from phthalates or cadmium, by the way.] The 11-year compliance cost will exceed \$550 billion (in 2010 dollars), expended by U.S. companies to "reduce" this risk of injury. It would cost a lot less to wrap every American child in bubble wrap.

Small Businesses CANNOT SURVIVE THIS RULE.

Assuming we are supposed to take this rule seriously, the Proposed Rule is perhaps the best friend of the mass market yet invented by an agency seemingly bent on the destruction of the small business community. This letter documents again and again the unrealistic expectations and assumptions made by the authors of this rule with respect to businesses in general and small businesses in particular. Thousands of small businesses of every stripe and color will be affected by this rule. Are you seriously thinking that they will all hire statisticians, chemists and engineers to prepare the reams of data, plans and reports the CPSC expects? Once this massive, herculean effort is completed, who will be safer anyhow? I can think of someone – mass market companies who have been handed a game-ending cost advantage on a silver platter by the CPSC. This, combined with mass market companies' ability to create certified firewalled in-house labs, favors the big guy dramatically. No wonder the rule states again and again how prejudicial this rule is to small business. The CPSC knows what it's doing.

Small businesses will strain to even understand what is expected of them. The rule is obtuse, long-winded and full of arcania. Small business people may not have the time or skills to master this complex rule. When the CPSC turns to its attention to enforcement (as promised for 2011) and selects a few small businesses to whip into shape, the market will take note of the pain and a mass exit will result. I realize, however, that Cassandra-like predictions haven't influenced the CPSC in recent times. One of the Commissioners has even been quoted as saying that "anecdotes aren't evidence". It feels like we have to die to prove we were right. A few small businesses might just do that, if the agency waits long enough.

The Commission has asked for feedback on how to address these issues. The complexity of the CPSIA safety rules proves that they are unworkable. To repair this damage, the Commission must ask Congress to restore its ability to assess risk. I am assuming that the Commission would exercise this discretion with more common sense than is embodied in this rule. CPSC rules should be trimmed back to things that MATTER, only. Second, the agency should build its rules and its enforcement activity around DATA. Injury statistics tell the agency what is important. If a particular hazard generates ONE DEATH AND THREE ASSERTED INJURIES OVER 11 YEARS, you can safely relax your rules quite a bit (there are worse problems out there). Education might make a difference, however.

Finally, the Commission should NOT take ANY step if there is EVEN A SHRED OF DOUBT about the impact on small business. Small business is the major jobs creator in America. When you promulgate rules that choke the life out of small business or sharply reduce their incentive to invest, you are killing our economy. You have a heavy responsibility to keep this place running, even if it's an imperfect world. While it's sad that a child ever dies, the pain and suffering imposed on countless families from lost jobs, lost capital, lost access to needed products, and so on likely far exceeds it.

Reasonable Testing Program – Busy Work to Keep Us From Running Our Businesses.

The "Reasonable Testing Program" ("RTP") represents a choice presented to manufacturers of children's products under this rule. If we endure the expense and disruption of a RTP, we can cut our testing frequency (read, testing costs) in half. A very tempting prospect but the cost of a RTP seems too high, leaving us with a Hobson's Choice. We can't afford annual testing and we cannot afford a RTP. What should we do? What will anyone do?

Owing to the burden and complexity of RTPs, I predict EVERY REGULATED COMPANY will violate these rules. Since Ms. Tenenbaum has promised to turn to enforcement in 2011, the CPSC regulators should have a pretty easy time finding juicy targets. Every company will provide wonderful enforcement opportunities.

Although our testing program has been highly-effective over the last 26 years, our program would never meet these standards. We do not maintain the volume of paperwork that the new CPSC rule now requires. We know what we're doing, but we have not organized our files into a how-to manual. Perhaps the agency thinks every company in the country is an ISO 9001 company. They're not, and this kind of documentation is rare and breathtakingly expensive to prepare.

Having endured the CPSIA spectacle for two years now, I do not trust the seemingly flexible definition of necessary documentation. The pattern is that these seemingly open-ended terms (which may or may not describe our current recordkeeping) will mature into something rigid down the line. Even if they don't, we still face the risk that we will not measure up to the expectations of the CPSC enforcement officer at the time of reckoning. The feeling that we are being set up is inescapable. As noted above, given our record of performance, the agency should have NO concerns about how we go about our business. Nonetheless, I feel certain that these rules will bite me in the future.

Sample selection under the rule should not be based on any statistical formula (per the baffling presentation of Dr. Michael Greene at the December 2009 workshop). If the overall safety results of the company are strong, the choice of samples by the company or factories should be presumed compliant without further inquiry. Random selection (taking one off the shelf . . . without the assistance of a statistician) works just fine in our experience, and there is no evidence that testing multiple samples will accomplish anything but will certainly raise costs. Better sampling won't lower injury rates that already approach zero.

We currently do not use production testing and have zero production testing plans in place. With one recall in 26 years, I would assert this kind of testing is superfluous in our business and basically useless from a safety standpoint. It will significantly raise costs, however. The tedious exercise of preparing a pallet load of production testing plans to meet the new requirements is just plain busy work. One must ask what the CPSC was thinking when it penned this description of a production testing plan: "A production testing plan may include recurring testing or the use of process management techniques such as control charts, statistical process control programs, or failure modes and effects analysis (FMEAs) designed to control potential variations in product manufacturing that could affect the product's ability to comply with the applicable rules, bans, standards or regulations." Fancy words but . . . what planet are they from?

The requirement to list all the tests applicable to our items, again and again, to satisfy the RTP requirements is typical of mindless busy work asked of us. Does the CPSC think this will make ANY difference? Most businesses confirm safety tests with their testing lab partners anyhow. More bureaucracy, taken to new heights.

We don't have any remedial plans in place either. We are quite familiar with how to appropriately resolve compliance and quality issues, and have never had a problem with regulators in the exercise of our business judgment. The requirement to prepare a detailed written plan, just in case we have another recall in the next 26 years, is pure officiousness. This is yet another waste of our time, our money, our resources and our intellect.

The recordkeeping requirements of a RTP is well beyond our ability or interest to preserve for 1500 products produced in thousands of lots over the course of a year. Taking a "Dear Diary" approach to how we source, test, move, remediate, repair, investigate and otherwise manage children's products is completely unreasonable. This is especially ridiculous given our track record.

The Commission has asked what a RTP might cost us. I have a hard time estimating it because all the fun in our business would be gone. If we had to endure the bureaucratic nightmare this rule envisions, if anyone actually expects us to do all this to make simple plastic toys for schools, I would have to seriously consider our alternatives. So it might cost us our entire company. That's the whole enchilada, guys.

Remember, we don't have to make children's products, nor do we have to stick around for the next act of this tragedy. If the CPSC persists in ruining what was once a rather safe industry with a strong track record, the cost will be the entire market for children's products.

Is that a high enough price to give you pause? I know, I know, more anecdotes . . .

The Requirement to Document Procedures against Undue Influence is Unreasonable.

The "Undue Influence Procedures" requirement ("UIP") is essentially a requirement to document efforts to avoid fraud. If you're not inclined to commit fraud, there's little reason to set out your plan to not commit fraud. Here's our current policy - "Don't break the law or commit fraud". This has worked well for us, as we have never exerted undue influence in the last 26 years and have no plans to start now.

I am really sorry that there are bad people in the world, some small number of which may have at one time attempted to exert undue influence over one or more test labs. Perhaps the CPSC should concern themselves with the bad guys and leave the rest of us alone.

Material Change Rules Place Too Much Risk on Manufacturers.

The CPSC's rule on when to test after a "material change" is sufficiently open-ended to render the judgment on when to test fairly obvious - ALWAYS TEST. Deep within the Proposed Rule, Section 1107.10(b)(2)(ii) instructs "A material change is any change in the product's design, manufacturing process, or sourcing of component parts that a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the rules" "Due care" is defined as "the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances."

In other words, the agency's 20-20 hindsight can construct a case for testing for a material change for just about anything that "might" or "could" affect results or that a hypothetical "prudent person" might think of investigating. Of course, this issue only comes up in the context of an injury or a recall, so what are the odds that any judgment to NOT test would withstand inquiry by an angry CPSC? Zilch. So either you always test or you take a big risk. This is completely unfair and unreasonable.

Testing Frequency Must Be Left to the Manufacturer and to the Market.

A rule requiring manufacturers to test according to these standards every year is going to kill us and many other businesses. No one can afford the testing scheme outlined above, we least of all. If we must test according to these standards, we will be out of business quickly. It is equally unrealistic to imagine that testing cost savings from maintaining a RTP will hold much appeal since that project is so wasteful and gargantuan. Of course, a firewalled in-house lab would be nice for all of us small businesses, but that's unrealistic, too (not to mention undesirable). We have no realistic way to moderate these costs. Please see my other August 3 comment letter for an explanation of why I believe component and composite testing will likewise provide no relief.

Testing is supposed to assure product quality and compliance. If we have a good, long term record of safety, why can't we just carry on as we have, and deal with issues as they arise? That worked for 26 years. The new way is just unaffordable.

The "High Degree of Assurance" Standard is Unreasonable and Not Derived from the CPSIA.

The rule seems to conclude that a "high degree of assurance" is a necessary element of any "reasonable testing program". The importance of the "reasonable testing program" which was incorporated into the CPSIA as an alternative to third party testing for non-children's products, has been imputed to the children's product area as a way to reduce testing frequency, and with it, the "high degree of assurance" standard ("HDA") was likewise imputed. Thus, sliding down this slippery slope, the HDA standard has become part and parcel of the "15 Month Rule". Abracadabra.

The Commission has requested feedback on the meaning of the definition of HDA in Section 1107.2. Happily, the agency has rejected a strict statistical interpretation requiring "95% probability" of compliance. What should the definition be interpreted to mean? The "high degree of assurance" should be based on an overall assessment of the safety record of the company. It should NOT be based on the results of an

individual product, even if recalled or deemed dangerous. In our case, we have done business for 26 years, had one recall of 130 pieces out of about 1,000,000,000 pieces sold. All of these units were recovered. Thus, we believe there is zero probability that a recalled product is in the market. Our historical recall rate is approximately 130/1,000,000,000 or 0.00001% over a 26-year period.

With this record over so many years, our company should be deemed to have satisfied this HDA requirement and be endorsed as having a reasonable testing program without further inquiry. And if we DON'T deserve the HDA designation, then the CPSC should articulate what level of safety achievement would earn the designation.

Notably, the entire children's product industry also meets this requirement. Of the 899 recalls of children's products from 1999-2010, only one death and three asserted injuries from lead were recorded by the CPSC. Thus, the probability of being injured from lead by a children's product is nearly zero, given that literally billions of children's products are sold every year. [The apparel and footwear industry claims annual sales of about 4 billion units ALONE.] Industry recall rates are likewise well under 1% per annum. With injury statistics and recall rates in hand, the CPSC should GREATLY loosen the strictures of the "high degree of assurance" standard to focus its resources on activities that might actually injure someone.

One-to-One Product Testing Will Punish the Smallest Companies.

The prophylactic approach to testing adopted by the CPSC will inevitably put many small or micro businesses into bankruptcy, or drive them into unregulated markets to avoid the CPSIA's wasteful bureaucratic costs. If the law does not permit the agency to adopt sensible rules that allow businesses to manage their compliance risk as best they can (where the standards remain in place, but the government stops trying to tell businesses HOW to comply), then the Commission must finally tell Mr. Waxman what he doesn't want to hear – that his law is broken and can't be fixed. [Notably, these mini businesses most at risk have an exemplary record of safety and very low recall rates. NOTHING is gained by rules that crush the little guy.]

We in the small business community have suffered for two solid years while regulators have sought any possible way to avoid delivering this "unpleasant" message. I get the impression that the demise of our businesses would not be too great a cost for the agency to incur to avoid telling Congress what it doesn't want to hear. If the Commission is genuinely interested in a fix, it must take action with

Congress. I do not believe the agency can devise sensible regulations to fix this problem short of a legislative change.

Ban on Retesting Will Unnecessarily Create Crises at Small Businesses.

In our experience, test labs are neither infallible nor definitive in their understanding of U.S. safety laws and regulations. It is not unusual to experience failed test reports for reasons besides safety problems. In addition, children's products are not so pure and perfect in their composition that every test produces the same result. The CPSC itself instructed manufacturers to audit their test labs in the ironically-dated April 1, 2010 version of the Proposed Rule in response to industry complaints that test results varied from test lab to test lab. By forbidding retesting, the Proposed Rule removes discretion and appropriate problem resolution techniques from a commonplace quality event. You don't need to manage a very large portfolio of products before the probability of an ordinary course testing problem rises exponentially. This is a matter of mathematics. If retesting is banned, the CPSC is legislating a crisis of the week.

Again, CPSC injury data informs us that the nature of the problem is extremely modest. Historical injury rates are VERY low. This retesting rule is completely unnecessary and penal to all companies except perhaps mass market companies with greater resources. Small businesses won't have teams of engineers or statisticians around to save the day. Many small businesses will naively call the CPSC for "help", only to find out that they have created a worse crisis. Some small businesses may miss this point in the Proposed Rule and continue to retest, only to be punished later when the CPSC finds evidence of retesting at the time of a recall. Is this really how you want to regulate?

I would note that the justification for all this is bad acts: "[Retesting] may tempt unscrupulous parties to attempt to 'test the product into compliance'. . . ." To my knowledge, this behavior has little precedence and even so, it is an abuse that can be dealt with other ways. If honorable and law-abiding companies use retesting to resolve honest problems, no harm is being done. Punishing good guys because you are afraid that otherwise bad guys might benefit is excessive and inappropriately harsh.

The 10,000 Piece Limit for One-Time Testing is Arbitrary and Unfair.

The CPSC has failed to persuade that the 10,000 limit is an appropriate break point for testing. First of all, the limit is cumulative, not related to sales in a period or per annum. Second, the threshold bears no relationship to risk of injury. In other words, it's completely arbitrary. Why 10,000? Why not? In my view, that's not

enough to justify this rule. Many of the micro businesses that might benefit from this rule have NEVER had a recall. These are the people this rule will restrict. And the logic of this is . . . what, exactly?

Even more remarkable is the rule's insistence that these low volume items be tested annually after passing the 10,000 piece threshold. Small companies will never have a RTP so annual testing (or more frequently, if for instance the item is hand-assembled) will be mandated. Consider a product selling 2,000 piece per year. Under these rules, the incentive to drop it once it crosses the 10,000 threshold will be powerful. This reminds me of the incentive on small businesses to not hire a 26th employee to avoid an onslaught of Obamacare obligations. A tacit cap on sales will be imposed by this rule. Nice!

The solution to this problem is to require one-time testing before sale, and thereafter according to the business judgment of the manufacturer. Remember, the retailers that buy from the manufacturer will also have something to say about testing frequency, too. Not all solutions are better if imposed by the government.

Alternative Testing Technologies.

The ability to test at low cost with XRF is attractive. For our business, it is tempting to use an XRF gun but for two reasons: (a) cost, and (b) health risk. XRF guns cost \$30,000 each and have high annual maintenance costs (several thousand dollars a year). We might need several guns to manage our inventory volumes, a very costly prospect. XRF guns are portable x-ray machines. Notwithstanding the assurance of XRF gun manufacturers, I am quite reluctant to place an x-ray machine in the hands of a warehouse worker in our facility. This is an invitation to disaster. We likewise have no interest in hiring a highly-paid technician to wield the gun, or technicians to wield the guns. In any event, we cannot expose our employees to a possible risk of x-ray genetic damage. I am surprised that the CPSC doesn't take this risk more seriously. Is lead a worse problem than x-rays?

In any event, I fail to understand what would be accomplished by a XRF solution for small businesses. The process of XRF testing may be inexpensive, but would be disruptive. In any event, I don't see a connection to safety so I prefer a solution that restores sanity to our safety practices. Burning in a wasteful and disruptive process will only bog down our economy and our competitiveness. Until the CPSC can point to a risk factor relating to the little guys, one cannot rationally conclude that XRF makes this regulation better, just somewhat less worse.

In sum, the Proposed Rule is a dangerous rule with the acknowledged prospect of doing severe market damage. The CPSC knows this, having admitted it in writing in the text of the rule. There is no excuse to push forward with a defective rule on this scale. The Commission must talk honestly with Congress . . . before it's too late.

Thank you for considering my views on this important subject.

Sincerely,

Richard Woldenberg
Chairman
Learning Resources, Inc.
380 North Fairway Drive
Vernon Hills, IL 60061

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Other |
| Tracking No. 80b27e9d |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0048
Comment from Michael Gidding

Submitter Information

Name: Michael Gidding
Address:
3201 New Mexico Ave. N.W.
Suite 242
Washington, DC, 20016
Email: mjg@brown-gidding.com
Phone: 202-237-5267
Fax: 202-237-5259
Submitter's Representative: Michael Gidding
Organization: Brown & Gidding

General Comment

Attache please find comment from one of our clients who imports consumer products on the proposed rule for testing and certification

Attachments

CPSC-2010-0038-0048.1: Comment from Michael Gidding



August 3, 2010

Received CPSC
2010 AUG -4 P 12:30
Office of the Secretary
FOI

**VIA E-MAIL AND
FIRST CLASS MAIL**

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

***Comments: Testing and Certification Rule
Docket No. CPSC 2010-0038***

One of our clients has prepared the attached comments on the proposed rule establishing testing and certification requirements for consumer products subject to regulations that the Commission administers and has requested that we submit it to the Commission.

Please contact me if you need additional information or if I can clarify these comments in any way.

Sincerely yours,



Michael J. Gidding

CPSIA FR V 75 No. 97 Thursday May 20th 2010

Page 28339 – CPSC should reconsider its position that “Retesting, as a general matter should not be allowed because doing so may tempt unscrupulous parties to attempt to “test the product into compliance”

Retesting a product (or its components) may be appropriate if laboratory test results indicate “unacceptable or failing test results” provided that there is a “reasonable suspicion” that the tested sample may have been handled, stored and/or processed in a way that may have caused it to become contaminated, adulterated or subjected to abnormal conditions (e.g. deformed/decomposed by exposure to extremely elevated temperatures, heat, fire, etc.,) that render that tested “sample” as “not representative” of the product (or its components) that are being imported, warehoused or distributed.

The CPSC should recognize the possibility that it is foreseeable that a “qualified 3rd Party Laboratory” may need to need to analyze duplicates or replicates of product samples (especially when there is a test result approaching a failure limit). Retesting is common and helps assure the validity of the results and affirms that there has not been any cross-contamination during handling, storage or processing within the laboratory. The need to retest replicates and duplicates of samples is appropriate, especially, when a laboratory is required to perform complex sample preparation procedures (e.g., disassembly & sample or subcomponent grinding) where there is a possibility of tools or equipment that may contain residuals from other product samples that have previously been processed using the same tools or equipment. It is reasonable that a QC/QA professional, chemist, scientist, engineer or safety

professional may determine that a certain test is invalid based on sufficient and objective evidence that indicates the “tested” sample is not representative of the finished product in all “material respects.” The rationale used by these professionals to “invalidate” sample testing results must be well documented and include objective and sufficient scientific evidence, the basis and provide a scientifically defensible rationale to invalidate a particular test that would otherwise indicate a product failure or non-conformance.

Part B Reasonable Testing Program for Non-Children’s Products & Certificates of General Conformity

The CPSC should clearly state in the preamble and within the final rule requirements for a “reasonable testing program” to support issuance of a General Conformity Certificate regarding compliance with requirements of the PPPA for regulated substances in special packaging. The statement on the CPSCs FAQs Web page <http://www.cpsc.gov/about/cpsia/faq/102faq.html>) is extremely helpful to the regulated community and effectively clarifies that child resistance and senior friendly testing data (also known as protocol data) obtained in accordance with the procedures described under 16 C.F.R. 1700.20:

- (1) Can be relied upon as the basis for a “reasonable testing program” and issuance of a General Conformity Certificate.
- (2) There is no expiration date on these tests. (and)
- (3) There is no requirement to *[periodically]* retest provided the tests adequately reflect the current packaging used.

The CPSC should clarify (3) to reflect concept that if there is not a “material change” then retesting for CR is not required. CPSC providing a clear statement on triggers for CR retesting will avoid confusion in the regulated community, unnecessary and expensive (\$5-15K/package) re-tests that will overwhelm the testing capacity of “qualified CR testing firms.”

CPSC Training Guidelines for Testing & Labeling Pertaining to Product Certifications & Reasonable Testing Programs

CPSC should consider developing training guidelines for the regulated community and testing laboratories that explain key elements of a reasonable testing program for non-children’s and children’s products. The guidelines could include helpful training aids and presentations to increase the knowledge and understanding. The guidelines could include helpful examples and scenarios for most common issues (e.g., developing a random sampling program) and even infrequent but complex issues (e.g., traceability for raw materials and product components).

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Other |
| Tracking No. 80b27ea3 |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0049
Comment from Michael Gidding

Submitter Information

Name: Michael Gidding
Address:
3201 New Mexico Ave. N.W.
Suite 242
Washington, D.C., 20016
Email: mjg@brown-gidding.com
Phone: 202-237-5267
Fax: 202-237-5259
Submitter's Representative: Michael Gidding
Organization: American Honda Motor Company, Inc.

General Comment

On behalf of one of our clients, please see the attached comment on testing and certification.

Attachments

CPSC-2010-0038-0049.1: Comment from Michael Gidding

August 3, 2010

**VIA E-MAIL AND
FIRST CLASS MAIL**

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

***Comments: Testing and Certification Rule
Docket No. CPSC 2010-0038***

On behalf of American Honda Motor Company, Inc. (Honda), I submit the following comment on the proposed rule establishing testing and certification requirements for consumer products subject to regulations that the Commission administers.

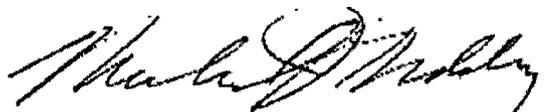
Proposed 16 CFR 1107.10(b)(5) establishes requirements for keeping records relating to the testing and certification of regulated consumer products. Proposed 16 CFR 1107.10(b)(5)(iii) would require that all such records be maintained in the United States. However, ISO 9001 requires manufacturers to maintain these types of records at the factory where a product subject to certification was manufactured. See ISO 9001:2008 (E) (4th ed.) section 4.2.4; see also, *id.*, at 7.1, 7.2.2, 7.3.2, 7.5.2, 7.6, 8.2.2, & 8.2.4. Rather than requiring foreign manufacturers to maintain duplicative and redundant records in the United States, the final rule should harmonize the Commission requirements with those of ISO.

The final rule should allow foreign manufacturers certified to ISO 9001 that have a corporate subsidiary or other substantial corporate presence in the United States to maintain these records solely at the place of manufacture. It should also require that those records be made available to the Commission for inspection, either in hard copy or electronically, through the U.S. subsidiary or other U.S. corporate entity within a reasonable time after the agency makes a request for them pursuant to section 16(b) of the Consumer Product Safety Act.

I appreciate the opportunity to comment on behalf of Honda. Please

contact me if you need additional information or if I can clarify these comments in any way.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael J. Gidding". The signature is written in a cursive style with a large, prominent initial "M".

Michael J. Gidding
Brown & Gidding, P.C.
3201 New Mexico Avenue, N.W.
Suite 242
Washington, D. C. 20016

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Other |
| Tracking No. 80b27eae |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0050
Comment from Michael Gidding

Submitter Information

Name: Michael Gidding
Address:
3201 New Mexico Ave. N.W.
Suite 242
Washington, D.C., 20016
Email: mjpg@brown-gidding.com
Phone: 202-237-5267
Fax: 202-237-5259
Submitter's Representative: Michael Gidding
Organization: Brown & Gidding

General Comment

On behalf of one of our clients who manufactures and imports consumer products, attached please find comments on the proposed testing and certification rule.

Attachments

CPSC-2010-0038-0050.1: Comment from Michael Gidding

CPSIA FR V 75 No. 97 Thursday May 20th 2010

Page 28339 – CPSC should reconsider its position that “Retesting, as a general matter should not be allowed because doing so may tempt unscrupulous parties to attempt to “test the product into compliance”....

Retesting a product (or its components) may be appropriate if laboratory test results indicate “unacceptable or failing test results” provided that there is a “reasonable suspicion” that the tested sample may have been handled, stored and/or processed in a way that may have caused it to become contaminated, adulterated or subjected to abnormal conditions (e.g. deformed/decomposed by exposure to extremely elevated temperatures, heat, fire, etc.,) that render that tested “sample” as “not representative” of the product (or its components) that are being imported, warehoused or distributed.

The CPSC should recognize the possibility that it is foreseeable that a “qualified 3rd Party Laboratory” may need to need to analyze duplicates or replicates of product samples (especially when there is a test result approaching a failure limit). Retesting is common and helps assure the validity of the results and affirms that there has not been any cross-contamination during handling, storage or processing within the laboratory. The need to retest replicates and duplicates of samples is appropriate, especially, when a laboratory is required to perform complex sample preparation procedures (e.g., disassembly & sample or subcomponent grinding) where there is a possibility of tools or equipment that may contain residuals from other product samples that have previously been processed using the same tools or equipment. It is reasonable that a QC/QA professional, chemist, scientist, engineer or safety

professional may determine that a certain test is invalid based on sufficient and objective evidence that indicates the “tested” sample is not representative of the finished product in all “material respects.” The rationale used by these professionals to “invalidate” sample testing results must be well documented and include objective and sufficient scientific evidence, the basis and provide a scientifically defensible rationale to invalidate a particular test that would otherwise indicate a product failure or non-conformance.

Part B Reasonable Testing Program for Non-Children’s Products & Certificates of General Conformity

The CPSC should clearly state in the preamble and within the final rule requirements for a “reasonable testing program” to support issuance of a General Conformity Certificate regarding compliance with requirements of the PPPA for regulated substances in special packaging. The statement on the CPSCs FAQs Web page <http://www.cpsc.gov/about/cpsia/faq/102faq.html> is extremely helpful to the regulated community and effectively clarifies that child resistance and senior friendly testing data (also known as protocol data) obtained in accordance with the procedures described under 16 C.F.R. 1700.20:

- (1) Can be relied upon as the basis for a “reasonable testing program” and issuance of a General Conformity Certificate.
- (2) There is no expiration date on these tests. (and)
- (3) There is no requirement to *[periodically]* retest provided the tests adequately reflect the current packaging used.

The CPSC should clarify (3) to reflect concept that if there is not a "material change" then retesting for CR is not required. CPSC providing a clear statement on triggers for CR retesting will avoid confusion in the regulated community, unnecessary and expensive (\$5-15K/package) re-tests that will overwhelm the testing capacity of "qualified CR testing firms."

CPSC Training Guidelines for Testing & Labeling Pertaining to Product Certifications & Reasonable Testing Programs

CPSC should consider developing training guidelines for the regulated community and testing laboratories that explain key elements of a reasonable testing program for non-children's and children's products. The guidelines could include helpful training aids and presentations to increase the knowledge and understanding. The guidelines could include helpful examples and scenarios for most common issues (e.g., developing a random sampling program) and even infrequent but complex issues (e.g., traceability for raw materials and product components).

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Trade Association |
| Tracking No. 80b27ec0 |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0051
Comment from Kyra Mumbauer

Submitter Information

Name: Kyra Mumbauer
Address:
1667 K St NW Ste 1000
Washington, DC, 20006
Email: kmumbauer@plasticsindustry.org
Phone: 202-974-5214
Fax: 202-296-7005
Submitter's Representative: Kyra Mumbauer
Organization: Society of the Plastics Industry, Inc. (SPI)

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0051.1: Comment from Kyra Mumbauer



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

August 3, 2010

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

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

Dear Mr. Stevenson:

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

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

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

1667 K Street, NW, Suite 1000
Washington, DC 20006-1620

www.plasticsindustry.org

202.974.5200 tel
202.296.7005 fax

www.npe.org



**THE
INTERNATIONAL
PLASTICS
SHOWCASE**

April 1-5, 2012
Orange County Convention Center
Orlando, Florida

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Kyra M. Mumbauer".

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

cc: Randy Butturini

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: August 04, 2010 |
| Received: August 03, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Trade Association |
| Tracking No. 80b27f1a |
| Comments Due: August 03, 2010 |
| Submission Type: Web |

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

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

Document: CPSC-2010-0038-0052
Comment from Bill Perdue

Submitter Information

Name: Bill Perdue
Address:
P.O. Box HP-7
High Point, NC, 27261
Email: bperdue@ahfa.us
Phone: 336-884-5000
Organization: American Home Furnishings Alliance

General Comment

See attached file(s)

Attachments

CPSC-2010-0038-0052.1: Comment from Bill Perdue



August 3, 2010

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

RE: **CPSC Docket No. CPSC-2010-0038 Testing and Labeling Pertaining to Product Certification**

Dear Mr. Stevenson:

The American Home Furnishings Association (AHFA) welcomes the opportunity to provide comments to the U. S. Consumer Product Safety Commission (CPSC) on its proposed rule on testing and labeling pertaining to product certification. The furniture industry produces finished goods that are suitable for all ages. Its products range from juvenile furniture to youth furniture to various types of general purpose household furniture. This proposed rule will impact monetarily every furniture manufacturer, importer and distributor in a significant way. Yet we do not foresee any commensurate increase in the safety of our products that will be provided to consumers.

AHFA is located in High Point, N.C., and is the largest trade association of home furnishings companies in the world. AHFA represents more than 240 leading furniture manufacturers and distributors, plus about 200 suppliers of various components to the furniture industry worldwide. Educational programs, public relations initiatives, government representation, environmental programs and key member services offered by AHFA are designed to promote the growth and global leadership of our member companies.

1. **The State of the Furniture Industry**

As CPSC has documented in its Preliminary Regulatory Analysis, the last twenty years have seen a significant decline in domestic furniture production of both case goods as well as upholstery. Some industry leaders estimate that the decline has been 50% in just the past ten years. From 2000 to 2008, the Congressional Budget Office found that employment in the domestic furniture manufacturing industry declined over 28%.¹ In 2009, the Department of

¹ Congressional Budget Office, Factors Underlying the Decline in Manufacturing Employment since 2000, December 23, 2008.

Commerce found that a number of factors (excluding the implementation of the CPSIA) had created a perfect storm for the economy in general and the furniture industry in particular. It predicted a major downturn for the industry for 2008 and 2009.² Unfortunately, this prediction has come true and the furniture industry has been trending downward as the housing market and credit markets have suffered. This testing rule undoubtedly will accelerate this decline as more manufacturers will be forced to go offshore in order to minimize the cost of the testing that is required by the CPSIA. More American skilled labor jobs will disappear as a result. In many cases, small domestic furniture manufacturers have been forced out of business because they were not able to afford the testing costs. In other cases, small furniture manufacturers abandoned their plans to go into youth furniture and concentrated on general purpose household furniture. Many of our members have simply ceased to do business and closed up their factories.

It is difficult to sort out the root cause of each of these events and attribute it to any one reason. Rather, as the Department of Commerce pointed out, a number of factors besides the CPSIA converged to create the perfect storm for the furniture industry. The housing collapse, the rise in unemployment, the anti-dumping issues, the flammability standards, the Lacey Act amendments, the US-Canada Softwood Lumber Dispute, and competition from imports have all contributed to the decline of the industry. Moreover, the monetary impact of these CPSIA testing regulations does not occur in a vacuum. Rather the CPSIA mandated costs are compounded by the costs to comply with the EPA regulations on formaldehyde and boilers that will take effect in the same time period. The regulatory burden has been further exacerbated by the increasing prices of the raw materials that we must have to build our products as well as the hikes that we are seeing in shipping rates that we must absorb to get our products to consumers. While our members have tried to hold the line in passing these costs on to the consumer, some have now started to announce price increases this summer. It is unknown how these increases will influence future consumer spending on furniture and other household furnishings.

2. Elements of Reasonable Testing Program

Given this bleak picture, we would like to focus our comments on just a few aspects of the proposed rule. CPSC proposed five elements of a reasonable testing program for non-children's products. Generally, the furniture industry believes that these elements fall within the elements of their existing quality assurance and quality control programs and support them. Generally the Quality Control Departments in the industry are small, averaging 5 to 10 employees, because the industry itself consists of many small businesses. The reasonable testing program outlined by the agency might require some of them to add an additional employee or two. However, it is the record-keeping costs to demonstrate compliance which will prove to be daunting.

² Harris, John, U. S. Department of Commerce Industry Report, Furniture and Related Products NAICS Code 337.

3. Reasonable Testing Program

The cost for furniture manufacturers to comply with the proposed reasonable testing program varies. There is a significant difference between children's furniture and non-children's furniture, between imported furniture and domestically produced furniture. There is also a difference between mass produced furniture at the low end and more customized furniture at the higher price point just as there is between high volume and low volume manufacturers. However, for purposes of these comments, we will attempt to characterize the average range of testing costs simply between children's furniture and non-children's furniture.

Non-children's furniture is subject to one mandatory safety standard, namely the lead in paint and surface coatings ban found at 16 CFR 1303. CPSIA mandated testing and certification is required for the coatings or finishes on non-children's furniture. It generally impacts case goods, although some upholstery will have wood trim that would have to be tested as well. It would be normal for an average size furniture manufacturer to have 3,000 skus in case goods. In the United States, it costs approximately \$50 per piece to test a finish at an outside testing laboratory. While not required, most domestic furniture manufacturing facilities simply do not have the capability of performing the chemical analysis of the paint or surface coating in-house so they must rely upon the services of third party testing laboratories.

Furniture manufacturers that do high volume, mass production of case goods can frequently rely upon the Certificate of Conformity of their paint supplier because they do not alter the paint or other finishes that are supplied to them in any way before applying it to the furniture. These companies use XRF guns (at \$30,000 per gun with a life expectancy of five years) to verify that the paint or surface coating panel complies with 16 CFR 1303. The cost of the labor to test and record the XRF results is estimated to be in the range of \$60,000. So the total testing cost to this type of furniture manufacturer (high volume, mass production) would be relatively low, approximately \$70,000 per facility per year.

It is a very different picture for those furniture manufacturers who specialize in higher quality but lower volume pieces that can be offered in any number of custom finishes, ranging from 30 to over 2,000 possible combinations of finishes. These pieces tend to be made to order and frequently there are just one or two pieces per finish formulae. The manufacturer only orders materials in small quantities and on an "as needed" basis so a batch can be as small as a single 55 gallon drum or a five gallon bucket. Each custom finish consists of a minimum of 10 different materials and can go considerably higher, each of which will have to be tested and certified to be in compliance with 16 CFR 1303. The furniture manufacturer must create a panel for each possible combination of finishing materials and then have it analyzed by a third party testing facility. Then he uses an XRF gun to verify that the pieces that utilize that particular custom finish do in fact comply with 16 CFR 1303. It is estimated that it will take 6-10 company associates to track this testing and compile it into Certificates of Conformity. Overall, these members have estimated the cost to comply with the proposed rule for non-children's products to range from \$200,000 to \$410,000 annually. Obviously, this type of furniture manufacturer will have to pass these costs ultimately on to the consumer.

4. Cost Associated with Various 3rd Party Testing

It is difficult to estimate the cost of testing for children's products when the Commission has not yet decided on the definition of a children's product. In the furniture market, juvenile furniture such as cribs, changing tables, toy boxes and youth size chair and table sets are clearly understood to be children's products. But the status of youth furniture is unknown. It consists of lower priced bedroom furniture that is really marketed to persons from six to sixty because many of these pieces are as likely to be used in first apartments, second homes, and guest rooms as in children's bedrooms. Until this issue is resolved by the Commission, the furniture industry is treating all juvenile and youth furniture as children's products and testing accordingly.

In addition to the lead paint ban at 16 CFR 1303, children's furniture is subject to the total lead content ban, the phthalate ban, the tracking label requirement, the sharp edges and sharp point tests, and the small parts ban. In addition, there are the product specific standards such as the bunk bed standard, the crib standard, and the toddler bed standard. This raises the cost of testing considerably. Rather than just one test to demonstrate compliance with 16 CFR 1303, the same bed that is deemed to be youth furniture requires 29 tests at a third party testing facility recognized by CPSC. So the \$50 lead paint test for one finish on a general purpose bed now jumps to an average of \$1,450 for a youth bed. If that bed were a bunk bed, testing would cost an additional \$600 to \$800 per design bringing the costs of testing a youth bunk bed to over \$2000 per design. If that youth bed was a crib, the cost to test that in the United States is approximately \$765. Likewise, the cost to test a toddler bed in the United States is approximately \$750.

Many manufacturers of youth bedroom offer suites that consist of 3 to 60 different pieces of furniture, such as desks, entertainment centers, bookcases etc. One manufacturer has estimated that testing for these pieces costs approximately \$235 per sku. These suites can be found in 8 to 10 different patterns or designs. The \$2,000+ quickly becomes an average annual expenditure of \$1.4 million for testing costs alone on youth furniture. This does not include the cost of the products themselves, the cost to ship the products to the third party testing facility, the cost of random sampling, or the cost for employees to track and administer the record keeping requirements of the proposed rule.

5. 3rd Party Testing of Children's Products

Manufacturers of children's furniture cannot give any data on the cost for the record-keeping requirements because they do not yet know the storage capacity they will need for to demonstrate compliance with the rule. No one currently has the computer capacity to handle the data storage that will be required by this proposed rule. Some companies have started discussions with various professionals to design a system for this purpose but no concrete proposals have been received. Furniture manufacturers of non-children's products have reported that the cost to create the system to collect their data on 16 CFR 1303 compliance was

approximately \$100,000 and the cost of records maintenance was in the range of \$30,000-\$50,000 per year. Based on this, furniture manufacturers of children's products are certain that it will cost them in excess of \$100,000 to build and program such a system. These furniture companies will require additional staff to maintain and update the system and that will require the expenditure of at least \$30-50,000 a year per person. These costs, as well as the costs to maintain a program against undue influence, add nothing of value to the product.

6. Effective Date

Those companies that believe that their products will be determined to be children's products believe that they will not be able to comply with the testing rule within the proposed 180 days. They simply do not have the staff or the resources to get the 3rd Party testing done on all the products that could fall within the definition of children's product and record it in a data collection and storage system that has yet to be designed and implemented in that time frame. They need at least 365 days of lead time in order to accomplish these tasks in any orderly and cost efficient way. Therefore, the furniture industry requests that the agency consider extending the Stay of Enforcement until February 2012.

7. Random Samples

No furniture manufacturer reported that it had staff that was capable of developing a random sampling plan. Rather, the members saw this requirement as one that would drive more manufacturers off shore because of the increased cost to hire statisticians to develop such plans and the additional cost to implement a random sampling plan.

8. Component Part Testing

The furniture industry does support the concept of component part testing and congratulates the Commission for recognizing the need for this rule. While some manufacturers cannot avail themselves of component part testing for the lead paint ban, our member companies generally report that it has helped reduce the testing costs associated with components such as paint and the metal hardware for their furniture products. AHFA would encourage the Commission to continue to look for other component products that could be included within the scope of this policy.

9. Market Reactions to 3rd Party Testing Requirements

The costs of third party testing for juvenile and youth furniture certainly will have to be passed on to the consumer. In many cases, this will create an "upside down" market. Now youth furniture will become more expensive than "adult" bedroom furniture. The concern within our industry is that hard pressed consumers will not be willing to pay the price of third party tested and certified youth furniture. Instead parents will purchase adult bedroom suites for their children because this furniture now will be less expensive. So who exactly will be

protected by all of this third party testing and recordkeeping in the end? Only privileged children whose parents can afford to pay the price increases that compliance with all these regulations will require. Eventually all of this tested and certified youth furniture will work its way down to the less privileged segments of our society through the second hand market but that will take many years to accomplish as case goods have a particularly long life in the home.

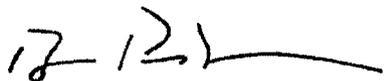
This rule, in particular, penalizes domestic furniture production. For U.S. based furniture manufacturers, they not only have to incur the costs of all the additional testing and record-keeping, but they must pay a premium to do so. Third Party Conformity Assessment Bodies charge more to test consumer products in the United States than they do to test them overseas. For instance, to test a crib in the United States averages \$765 per design but that test by the same laboratory only costs \$520 if done in China. Likewise, to test a toddler bed in the United States costs \$750 but only \$450 in China. The furniture industry will have no choice but to close down more and more factories in the United States and take those jobs off shore to avail it of the lower testing costs as well as record keeping costs overseas. While there are other factors impacting our industry, we believe that CPSIA alone will be the biggest factor in causing job loss in the domestic furniture industry.

10. Conclusion

The AHFA supports a reasonable testing program for both Non-Children's furniture as well as Children's furniture. However, the emphasis is on the word reasonable because the costs for testing children's products will be quite high as we have shown here. While our industry certainly wants robust standards for classic children's products such as cribs, changing tables, and toddler beds, we do not believe that it makes sense to include youth furniture within the scope of the definition of children's products. That would allow the furniture industry to focus its limited resources on third party testing and certification of true children's products. It may also allow many manufacturers to comply sooner with the requirements of this rule and obviate the need for a further extension of the Stay of Enforcement.

We also support the Commission's proposal to allow component part testing for lead in paint and in the substrate. While the overall regulatory burden on our industry is considerable, component part testing does reduce it somewhat. The Commission's stated desire to lighten the testing burden posed the CPSIA amendments is to be commended.

Sincerely,



VP Safety, Health, Environment, Product Standards
bperdue@ahfa.us
336.884.5000, x1017



PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 04, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Other |
| Tracking No. 80b294e6 |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0053
Comment from DuPage Woodworkers Club

Submitter Information

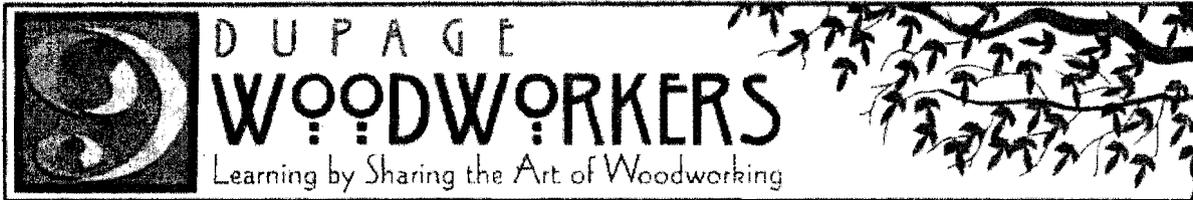
Name: Richard Ogren
Address:
Downers Grove, IL,
Submitter's Representative: Richard Ogren
Organization: DuPage Woodworkers Club

General Comment

See Attached

Attachments

CPSC-2010-0038-0053.1: Comment from DuPage Woodworkers Club



July 7, 2010

Office of Chairman Inez Tenenbaum
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Chairman Tenenbaum:

The DuPage Woodworkers' Club has recently become aware of the Consumer Product Safety Improvement Act and is very concerned with its implications. Our club is heavily involved in charity woodworking and our reading of the provisions of the act indicates that we will need to discontinue some of our work and drastically change the remainder.

We have two significant programs that seem to be in jeopardy. The first is providing custom wood articles for the church where we meet. We are not affiliated with the church but meet there and provide the woodworking services as part of our goal of giving back to the community. Bare wood projects would not be acceptable and a finish is required to match the other pieces the church has acquired in the past.

The second program involves making wooden toys that are given to the church and other charitable organizations in the county for distribution to needy children throughout the year especially at Christmas. Last year we created over 700 toys. The idea that we now are required to have these handcrafted toys certified will bring the program to a halt. In last year's program we carefully monitored the toys for size and material used to process the toys. We don't have loose parts and any finish we used in the processing was deemed safe from the manufacturer.

We applaud your efforts in trying to eliminate lead and other toxic substances in the United States and the precautions we have taken in the past have included acquiring finishes and glues from American manufacturers. We already follow the guideline in your Arts and Crafts publication, "When possible choose the safest material available (e.g., those with few or no cautionary labels.)"

We do our best to create safe items to donate and believe that they are totally safe. The issue becomes not one of safety but of certifying the safety. Even though our club currently has 138 members we do not have the financial wherewithal to pay for certification and will need to discontinue the activity when the regulations take full effect. We urge you to exempt, or at least provide relief to, organizations like ours from the onerous certification requirement.

Sincerely,

Richard Ogren - President
4533 Linscott Ave.
Downers Grove, IL 60515

Copy to:

Judy Biggert, Peter Roskam, Richard J. Durbin, Roland W. Burris

Received CPSC
2010 JUL 19 A 11:23
Office of the Secretary
FOI

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 04, 2010 |
| Status: Posted |
| Posted: August 04, 2010 |
| Category: Trade Association |
| Tracking No. 80b295bb |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0054
Comment from Industrieverband IVGT

Submitter Information

Name: Dr. Klaus-Jurgen Kraatz
Address:
Frankfurt, Germany,
Submitter's Representative: Dr. Klaus-Jurgen Kraatz
Organization: Industrieverband IVGT

General Comment

See Attached

Attachments

CPSC-2010-0038-0054.1: Comment from Industrieverband IVGT

IVGT**Industrieverband****Veredlung - Garne - Gewebe - Technische Textilien e.V.**Mainzer Landstraße 55
60329 Frankfurt/M

Industrieverband IVGT * Mainzer Landstraße 55 * 60329 Frankfurt/M

Mr. Todd A. Stevenson
Secretary of the Consumer Product Safety Commission
4330 East Highway
Bethesda, Maryland 20814-4408
USAOffice of the Secretary
FOI
2010 JUL 23 A 7:34
Received CPSC
Wednesday, 14 July 2010

Dear Mr. Stevenson,

our association represents the majority of the German Textile Industry. We represent spinning, weaving and finishing mills as well as the producers of technical textiles. Among our producers are also silk weavers. Our association represents a total branch turnover of 7.5 billion USD.

The Consumer Product Safety Commission has proposed a new rule: 16 CFR part 1107 "Testing and Labeling Pertaining to Product Certification". The publication dates from May 20, 2010 and allows for commentaries indicating a deadline for August 3, 2010.

The German manufacturers of silk fabrics for customers in the US, i.e. mainly the clothing industry, are only indirectly concerned to the extent the testing requirements specified by 16 CFR 1610 "Standard for the Flammability of clothing textiles" remaining charged. However, we would like to remind the US government that regulation 16 CFR 1610 contains an exemption for plain surface fabrics with a weight of 2.6 ounces per square yard and higher as well as for all the fabrics, which are entirely made from fibers or a combination of the following: acrylic, modacrylic, nylon, olefin, polyester as well as wool, whereas silk is not part of this exemption.

We do not think that there is a significant justification for this distinction. Silk is a fiber being based on protein. It reacts to fire in a similar way as does wool, i.e. it does not burn. Thus the natural properties of both fibres are far better than e.g. nylon, olefin, polyester and other fibres which are on the list granting the exemption.

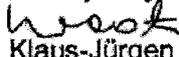
Therefore we would kindly ask you to consider, whether silk could be added to the exemption list due to the lack of risk for American consumers. The producers of silk fabrics anywhere in the world importing such fabrics into the US have to bear so far a burden, which does not seem to be justified.

Please refer to a report of the European Association representing the European silk manufacturers documenting the safety fire behaviour of silk fabrics produced in Europe. I trust that this report will be sent to you directly.

If you need further information, please do not hesitate to contact us.

We thank you in advance for considering our request in the context of the actual draft 16 CFR part 1107.

Yours very truly,


Dr. Klaus-Jürgen Kraatz
Director General IVGT

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 10, 2010 |
| Status: Posted |
| Posted: August 10, 2010 |
| Category: Other |
| Tracking No. 80b2d7ee |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0055
Comment from Fun Maker Limited

Submitter Information

Name: Steven Tsui
Address: Hong Kong,
Submitter's Representative: Steven Tsui
Organization: Fun Maker Limited

General Comment

See Attached

Attachments

CPSC-2010-0038-0055.1: Comment from Fun Maker Limited

FUN MAKER LIMITED

16/F Kailey Tower,
16 Stanley Street, Central,
Hong Kong.

Tel : (852) 2411 2245

Fax : (852) 3909 1678

23rd July, 2010

Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502, 4330 East West Highway
Bethesda, MD20814
USA

Re: Docket No. CPSC-2010-0038

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

Reference is made to the above. We are a Hong Kong based toys product development, marketing and sales company with our major market of sales and distribution in the United States of America. In reference to the above, we have recently conducted meetings with our manufacturing partners, with their factories operating under very strict rules and regulations already. We shared very much their views and opinion and the potential Implication to our business and the industry as a whole. Accordingly, we write to express our comments and suggestion on the captioned.

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

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

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

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

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

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

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

The Random Samples rule imposes extreme high risk and heavy financial burden to manufacturers. The current business model of most manufacturers is to ship products that have been checked, inspected and or tested for compliance by their own team or their appointed representative. Under

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

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

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

Manufacturer and overseas factory make frequent product improvement during production to enhance safety margin. The requirement to submit a sufficient number of samples of the materially changed product for testing by a 3rd party conformity assessment body period to certifying the change is costly and very time consuming. This will definitely deter the manufacturer and overseas factory's good intention to make continuous improvement effect to enhance the safety margin of children's product. We are extremely worried that this will result in lower safety assurance of children's product. We would like to recommend that if the manufacturer and or the overseas

factory have testing facility that conforms to ISO 17025:2005 – General requirements for the competence of testing and calibration laboratories, the manufacturer and or the overseas factory testing facility are allowed to conduct the certification of material change themselves.

Yours faithfully

Fun Maker Limited



Steven Tsui
President



PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 10, 2010 |
| Status: Posted |
| Posted: August 10, 2010 |
| Category: Trade Association |
| Tracking No. 80b2d99b |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0056
Comment from The Art & Creative Materials Institute, Inc.

Submitter Information

Name: Deborah Fanning
Address: United States,
Submitter's Representative: Deborah M. Fanning
Organization: The Art & Creative Materials Institute, Inc.

General Comment

See Attached

Attachments

CPSC-2010-0038-0056.1: Comment from The Art & Creative Materials Institute, Inc.



THE ART & CREATIVE MATERIALS INSTITUTE, INC.
Street Address: 1280 Main St., 2nd Fl.
Mailing Address: P. O. Box 479
Hanson, MA 02341 USA
Tel. (781) 293-4100 Fax (781) 294-0808
Website: www.acminet.org

August 6, 2010

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

Re: Testing and Labeling Pertaining to Product Certification [CPSC Docket No. CPSC-2010-0038]

Dear Sir:

These comments are being submitted by The Art and Creative Materials Institute, Inc. (ACMI). We have reviewed the rule proposed by the Consumer Product Safety Commission (CPSC) on the Testing and Labeling Pertaining to Product Certification. ACMI appreciates the opportunity to formally submit our comments on this proposed rule, although we have submitted this information numerous times in the past two years in letters and visits to the Commission. After these numerous attempts to obtain an opinion from the CPSC, we still find ourselves an industry in jeopardy without receiving an opinion in writing as to the meaning of our exemption in the Consumer Product Safety Improvement Act (CPSIA) or whether the Labeling of Hazardous Art Materials Act (LHAMA) is a labeling rule in the Federal Hazardous Substances Act (FHSA) which would not require testing and certification to LHAMA in CPSIA. We find that submitting our comments without these determinations from CPSC and the lack of a final interpretation of the definition of a "children's product" is an almost impossible task because we do not yet know how our industry is legally impacted by CPSIA.

In addition, since CPSC has not given guidance to retailers that compliance to testing mandated in CPSIA needs only to be testing performed by an ILAC-certified laboratory approved by CPSC, ACMI manufacturers still face enormous testing costs because retailers are demanding testing at their preferred labs. Some manufacturers are being required to do the same tests at as many as four ILAC-certified labs, all approved by CPSIA. On our last visit to CPSC, we reported that a survey of a small number of our members revealed testing costs ranging from \$315 to \$71,098 for LHAMA; from \$120 to \$15,931 for "children's products"; from \$125 to \$25,188 for duplicate testing at retailers' preferred labs; from \$100 to \$3,750 for testing not required by CPSIA; from \$655 to \$87,554 for the total of these costs. Many

LOOK FOR THESE SEALS.....



of these reported costs were for one product line or even one color in a product line. Multiply those costs by the number of colors in a product line and the number of product lines produced, and the costs are astronomical, putting many art material manufacturers out of business. ACMI is fearful that some of the ACMI member-manufacturers will leave ACMI's outstanding certification program where they have their products evaluated for LHAMA and acute hazards in FHSA for a laboratory where they get their CPSIA testing done. This exodus could destroy ACMI's certification program that has been offering art material manufacturers and their consumers a nationally-consistent art material evaluation and labeling program and assistance to CPSC over the years by monitoring the art material industry. ACMI has already experienced a loss in membership for financial reasons.

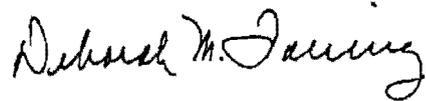
Art material manufacturers are facing economic problems with retailers who are demanding duplicative third-party testing for products that are not children's materials and for regulations that are not covered by CPSIA, apparently such as LHAMA. Unfortunately, at the beginning of the administration of CPSIA in 2008, LHAMA was a regulation on a list of regulations that manufacturers and retailers were told to look to in determining their obligations under CPSIA. Later, in November 2009, CPSC said that products regulated by FHSA labeling laws did not require general conformance certificates or third-party testing certificates but did not specify that LHAMA was included in the FHSA labeling laws, so retailers still believe that art materials must be tested for LHAMA compliance. ACMI recommends that CPSC issue a more definitive statement regarding LHAMA as an FHSA labeling law as well as the guidance it has given in this interpretative rule for the definition of children's products that most art materials are general use products.

Regarding component testing, ACMI believes that this would benefit its manufacturers on a marginal basis only. For instance, component testing might be helpful in product packaging materials but not likely in the art materials themselves.

ACMI has brought or sent to CPSC a significant amount of information about its certification program which certifies compliance to LHAMA, acute hazards in FHSA, and state art material labeling laws. In those meetings or information packets, we have indicated that ACMI would like to open its certification program to conformance to CPSIA. Since 1940, ACMI has sponsored a certification program for children's art materials, certifying that these products are non-toxic and meet voluntary standards of quality and performance. ACMI's certification program has received the endorsement of experts in the field of toxicology and is one of the finest industry programs in existence. The program has been a responsive one, evolving to meet new challenges and to include more products. In 1982, the program was expanded to include certification of a broad spectrum of art and craft materials, including adult products, ensuring that health warning labels are affixed on adult materials where appropriate. All children's materials certified by ACMI are non-toxic and cannot bear health warning labels. ACMI has a random testing program in which ACMI purchases art materials on retail shelves for formula verification and ingredient testing. Today ACMI has over 220 members and has certified over 60,000 art, craft and other creative materials. Over the years of the existence of CPSC, ACMI has worked closely with CPSC to ensure compliance to all laws and regulations administered by CPSC. ACMI would be happy to provide CPSC with more information about its outstanding certification program.

ACMI respectfully asks CPSC to answer our requests for an opinion on our exemption in CPSIA itself and whether LHAMA is an FHSA labeling rule. We also urge CPSC to allow well-respected, conservative certification programs like ACMI to provide compliance to CPSIA.

Sincerely,

A handwritten signature in cursive script that reads "Deborah M. Fanning".

Deborah M. Fanning
Executive Vice President

Of Counsel
Martin J. Neville, Esq.
Mary Martha McNamara, Esq.



PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 11, 2010 |
| Status: Posted |
| Posted: August 11, 2010 |
| Category: Trade Association |
| Tracking No. 80b2e0df |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0057
Comment from Juvenile Products Manufacturers Association, Inc.

Submitter Information

Name: Mike Dwyer
Address: United States,
Submitter's Representative: Mike Dwyer
Organization: Juvenile Products Manufacturers Association, Inc.

General Comment

See Attached

Attachments

CPSC-2010-0038-0057.1: Comment from Juvenile Products Manufacturers Association, Inc.



Received CPSC

2010 AUG -6 P 2:05

August 3, 2010 Office of the Secretary
FOIOffice of the Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

**RE: JPMA COMMENTS NOTICE OF PROPOSED RULEMAKING ("NPR"):
Testing and Labeling 75 Fed. Reg. 28336, to be codified as 16 CFR Part 1107
CPSC DOCKET Number: 2010-0038
Testing of Component Parts; 75 Fed. Reg. 28208, to be codified as 16 CFR Part
1109; CPSC DOCKET Number: 2010-0037**

Dear Mr. Stevenson:

Thank you for the opportunity to comment on the Consumer Product Safety Commission's ("CPSC" or "Commission") proposed rule that would establish requirements for a reasonable testing program and Component Parts for compliance and testing for children's products. The proposed rule would implement section 14(a) and (d) of the Consumer Product Safety Act ("CPSA"), as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"). The Juvenile Products Manufacturers Association, Inc. ("JPMA") has previously commented on a variety of CPSIA issues related to testing and certification of Juvenile products and has described how its Certification Program operates to assure conformance to existing ASTM Standards governing durable infant products in the U.S. marketplace. These comments address the proposed requirements of 16 CFR Part 1107 and 1109. They are especially relevant given the fact that CPSC is also tasked with developing mandatory rules complementary to the existing array of ASTM standards applicable to durable infant products as further defined under Section 104 of the CPSIA. JPMA reserves the right to supplement or amend its comments as appropriate.

We support the concepts cited in the proposed rules, which permit companies that are exercising 'due care' as part of good manufacturing practices under an alternate test rule to rely upon such process. We also support the opportunity to utilize component testing as an integral part of a manufacturer's quality assurance program. We welcome the added flexibility on periodic testing if a manufacturer of children's products adopts a reasonable testing program, and the elimination of the verification requirement to test with a second third-party conformity assessment body. We are submitting the following suggestions for providing greater clarity in the proposed rule.

Juvenile Products Manufacturers Association, Inc.

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 •
856.439.0525

E-mail: jpmahint.com • Website: www.jpma.org



A. Component Testing Reduces Test Burden on Manufacturers

We agree with CPSC's adoption of a regulatory approach that permits component testing in lieu of complete finished product testing for certification of Compliance to requirements of the CPSA. Clearly, component testing can be much more practical and efficient. This is both cost effective for manufacturers and protective of consumers. The Commission's recognition that such approach can reduce the heavy cost burden of congressionally mandated testing on small businesses. Proposed 16 CFR Part 1109 appropriately places the responsibility on a finished product certifier for assuring that supplier certified components are used in finished goods production. U.S. situate manufacturers and brand owners willingly assume the responsibilities related to certifying finished product compliance, based upon these.

The rules should also permit utmost flexibility in development of record keeping requirements. Such flexibility is essential since different quality assurance processes are employed by different industries and companies dependent upon the industry, the product, and the materials involved with production. Requirements to integrate multiple systems to compile data points across millions of product component parts should be avoided so long as companies, upon request, can provide reasonable data customary in a particular industry, so as to verify that certified components were used in finished production. With reasonable process controls in place to avoid substitutions of certified parts on the production line, the need for burdensome record keeping and reporting requirements can be avoided or reduced.

Under the proposed provision governing *Documentation by testing party* our understanding that, as per § 1109.5(c), third-party conformity-assessment bodies can certify "that *all testing was performed in compliance with section 14 of the CPSA and part 1107 of this chapter.*" Terminology should be clarified, to refer to "*all testing of component parts by that body,*" rather than "*all testing.*" Clearly the manufacturer, not the testing body, is responsible for obtaining the samples and ensuring that they are identical in all material respects to the component parts used in the finished product.

B. Recordkeeping Requirements Must Not be Unduly Burdensome

The estimates for recordkeeping time and expense are severely underestimated, based upon most industry's experience in meeting the requirements of the existing Interim Enforcement Policy which does not have the extensive recordkeeping requirements now proposed in the NPR. The industry's experience with the current policy is that it is extremely burdensome, and the more extensive requirements contained in the new NPR would be even more costly and excessively burdensome. The draft rules would impose voluminous and unsustainable record-keeping and documentation requirements on manufacturers of all sizes as it relates to reasonable testing plan documents, verification test plans, remedial action plans, etc. CPSC has specifically asked for input in this rule regarding the burden of recordkeeping and whether or not it adds 'practical utility'. The collection of this information on every item is not necessary for the proper performance

Juvenile Products Manufacturers Association, Inc.

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 •
856.439.0525

E-mail: jpm@ahint.com • Website: www.jpma.org



of CPSC's functions. Having to integrate multiple systems to compile data that no one will look at across hundreds of thousands of products should not be needed as long as companies can provide reasonable data customary in a particular industry 'upon request'.

The draft rule thoroughly underestimates the cost of compliance and recordkeeping such as this that will be unnecessarily required to document compliance with safety standards, particularly for small business that comprise most of the U.S. economy. Some of the required record keeping is redundant, such as product specifications that are contained in test reports, and production plans for multiple factories. Fees for outsourcing these services, as may be required for many small businesses if rules are inflexible, could be significant and burdensome to many small businesses. Under *Traceability* (§ 1109.5(e)), certifiers can't rely "on component part testing conducted by another testing party unless such component parts are traceable." CPSC should be clear that this requires only traceability to the source of the tested component part, not to the source of the pieces of that component part. This is consistent with other provisions that reinforce this understanding [See (§ 1109.4(b)) with reference to a part's separate testing; § 1109.4(m) focuses on the supplier and manufacturer of the component part that is being certified; and references to the Paperwork Reduction Act requiring at Vol.75 No.9 Reg. at 28217]. The Commission should also clarify that it is sufficient for the finished-product certification to "identify" the testing party's compliance with § 1109.5(f) by reference to the testing party's having provided the required documentation to the finished-product manufacturer issuing certifications for the entire product. The Commission's position on *Traceability regarding testing of paint* (§ 1109.11(c)(3)). Should not be literally interpreted, so long as the manufacturer can show the source of that batch, consistent with the more general definition and requirement of traceability.

Under § 1107.10(b)(1)(iii), the Commission would require that each manufacturing site have a "separate" product specification, but there is no compelling reason for imposing this requirement. A single product specification should suffice, particularly when the finished-product certificates—plus, for children's products, the tracking labels—will identify the place of manufacture. 15 U.S.C. § 2063(g)(1), as added by CPSIA § 102(b) (certificates); see § 2063(a)(5), as added by CPSIA § 103 (tracking labels). The Commission should remove this requirement [This should be applicable to § 1107.10(b)(3)(ii)].

Under Certification Test requirements under § 1107.10(b)(2)(ii) the definition should be modified to refer only to changes that "reasonably could affect" compliance. Under § 1107.10(b)(3)(i), the Commission should clarify that manufacturers have the flexibility to create a testing plan that accounts for their making many kinds of products. Such flexibility would be consistent with the recognition in proposed § 1107.10(a) that a reasonable testing program covers multiple "consumer products." This could avoid overly burdensome record keeping as well.



Under § 1107.10(b)(5)(iii)&(iv), the Commission should also clarify that it is permissible to maintain records electronically for inspection by the CPSC upon request; allow English translation of records upon demand rather than requiring original in English only; and to clarify under §§ 1107.10(b)(2)(ii) & 1107.23, to require a record-keeping requirement for only as long as the product, *without a material change*, is in production or imported by the manufacturer plus five years.

C. Definitions Under Proposed § 1107.2 Need Greater Clarification

The term "High Degree of Assurance" under § 1107.2 is important, so we suggest that the Commission amend the proposed rule to avoid any misunderstandings based on its discussion of the definition in the Supplementary Information.

The proposed definition's reference to relying on "knowledge of a product and its manufacture" strikes us as helpful. We agree with CPSC's conclusion that a numerical target for defining what constitutes a "high degree of assurance" is misplaced in the context of Good Manufacturing Practices (GMP) based programs which are to be encouraged. An evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture is clearly preferable to establishment of a fixed numerical target. The Commission staff has appropriately recognized that numerical targets as a basis for determining compliance with a high degree of assurance could result in greater testing demands on small manufacturers without any corollary benefit of quality assurance.

We fully support the flexibility afforded by the proposed definition as being evidentiary based with recognition that manufacturers' process control processes can often assure better product integrity and is clearly preferable to numerical sampling targets. We believe the goal across a broad range of different products subject to different manufacturing requirements and material sourcing must be a standard that is evidence-based upon a reasonable demonstration of process controls to assure conformance to manufacturing requirements. While such process controls may include statistical sampling, such sampling alone is not preferable to GMP and the Final Rule should clearly state this to be the case.

The term "Identical in all material respects" under proposed § 1107.2 defines this term to mean that "there is no difference with respect to compliance to the applicable rules between the samples and the finished product." This definition cannot be absolute. The regulation should define the term to mean that "a manufacturer possess a reasonable belief that, there is no difference between the samples and the finished product is not materially compliant."

Juvenile Products Manufacturers Association, Inc.

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 •
856.439.0525

E-mail: jpma@ahint.com • Website: www.jpma.org



Finally, the term "Manufacturing process" under § 1107.2 defines "manufacturing process" to include "personnel used to create the component parts and assemble a finished product." This should not be construed that any change in the employees who are involved in the production of a part or product is equivalent to a change in manufacturing process. Such a result would be unreasonable and should be omitted as a basis for defining manufacturing processes.

D. Reliance on Good Manufacturing Process Programs Should Be Encouraged in the Rule

The CPSIA neither defined the term "reasonable testing program" nor required the Commission to issue regulations defining it. Nevertheless, we believe such programs vary from industry to industry and within product categories. In this regard CPSC has broad administrative discretion to recognize the need for flexibility in construing reasonableness of particular programs. We also note that a reasonable test program is only considered reasonable and customary within an industry and with due consideration of the product being manufactured. Inflexibility of the rules would presumably disallow a company's reliance on adherence to well recognized product based certification programs and guidelines, because they do "not include any provision for a 'safe harbor' enforcement policy based on a manufacturer's participation in a voluntary or industry-sponsored program"

Since the rules require all manufacturers to develop and implement extensive internal compliance mechanisms, whenever an issue or recall arises, the CPSC will have to examine that company's unique compliance mechanisms to evaluate their adequacy. The draft rules should clearly allow for recognition of "safe harbors" based upon adherence to national standards as verified by reasonable industry based certification programs that manufacturers may utilize as evidence of their good faith commitment to attain a high degree of assurance that their products meet or exceed applicable federal safety standards. The staff has recognized that such programs may be considered as evidentiary in meeting the requirements under the NPR, but has not yet recognized its authority to provide for such safe harbors claiming the CPSIA did not make such specific provision (pg. 28339 in preamble). However, we note that a specific statutory safe harbor is not a precondition to the authority of the agency under its rulemaking and enforcement authority to recognize such safe harbors. They should provide for such recognition of programs such as the JPMA Certification Program.

Many companies have already been issuing Children's Product Certificates since November of 2008 in accordance with Section 14 (a)(1) of the CPSA. The requirements for those certificates have been clearly documented in CPSA sections 14(a) and 14 (g), listing the specific information that must be on the certificate. Companies have established processes, formats and in many cases, invested in IT solutions to prepare and transmit these certificates in accordance with the law. Retailers are relying upon such certificates as they can with the benefit of reduced liability under Section 19 of the CPSA as amended by the CPSIA.

Juvenile Products Manufacturers Association, Inc.

15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 •
856.439.0525

E-mail: jpma@ahint.com • Website: www.jpma.org



The Commission needs to clarify that the form of delivery of title, should not in and of itself, require additional testing, documentation and certification and that retailers can rely upon domestically located supplier certifications without duplication of testing and certification requirements.

E. Random Sampling

Under proposed section 16CFR 1107.22 and throughout the Proposed Rule, CPSC has clearly stated that manufacturers "*may develop the scope and details of their reasonable testing program based on knowledge and expertise regarding their product and its manufacturing processes*" (pg. 28345 in preamble). CPSC should clarify that this approach applies to sampling aspects of permitted alternate test programs. Manufacturers, as part of their reasonable testing programs, should be allowed to define their sampling plans and rationales based upon customary practice for particular products.

Undue Influence (§ 1107.24)

Since the term "undue" is not defined, nothing herein should be construed as prohibiting a manufacturer from exercising its customary and reasonable right to challenge erroneous test results based upon a belief that they are inaccurate. Such rights should be expressly distinguished from exercising undue influence. This rule should take into account that the bodies to be safeguarded against undue influence will already be either independent or at least firewalled from any undue influence, 15 U.S.C. § 2063(f)(2), added by CPSIA § 102(b); *and* that these bodies will be subject to the threat of withdrawal of accreditation if they nevertheless succumb to any undue influence, *id.* § 2063(e)(1)(A). We would recommend deleting the requirements of annual training and of signing and retention of statements.

Thank you for the opportunity to provide comments on this important rulemaking. If additional information or data is required please contact the undersigned.

Sincerely,

Mike Dwyer

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 11, 2010 |
| Status: Posted |
| Posted: August 11, 2010 |
| Category: Trade Association |
| Tracking No. 80b2e0e8 |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0058
Comment from Shenzhen Toys Industry Association

Submitter Information

Name: C. K. Ma
Address:
Shenzhen, China,
Submitter's Representative: C. K. Ma
Organization: Shenzhen Toys Industry Association

General Comment

See Attached

Attachments

CPSC-2010-0038-0058.1: Comment from Shenzhen Toys Industry Association

深圳市玩具行业协会

Shenzhen Toys Industry Association

5, Aug, 2010

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

Re: Comments on Proposed 16 CFR Part 1107 Subpart C- Children Product Certification

We are writing to express our comments on the proposed rule of the testing and labeling pertaining to the product certification (16 CFR Part 1107) which issued by CPSC. First of all, we apologize for our late comments, but we hope you could read all our comments.

After we have the full understanding on this proposed rule about the Children Product Certification, we have made the conclusion on the main points with our comments and as follow:

"First, the periodic testing is required. Manufacturer must conduct the periodic testing at least annually by the third-party conformity assessment body"

We think the periodic testing is unnecessary. It is because when a product is created, the initial product sample inspection by China Entry-Exit Inspection and Quarantine Bureau is required to ensure that it complies with all European Union, United States and China product safety standards. China Entry-Exit Inspection and Quarantine Bureau keep all the initial product sample inspection records in the China Customs that the product is only allowed to export when this product has the record in China Customs. In addition, China Entry-Exit Inspection and Quarantine Bureau will conduct the random sample in-line inspection to inspect a number of samples in the production twice a year, if any

1

地址：深圳市八卦一路 617 栋 709 室

Add: Rm709, Yihua Building No. 617 Bagua 1st Road, Shenzhen, China

Tel: (86)755-82094079 Fax: (86)755-82267905

product fails the inspection, they will also not allow it to export the product.

Besides, we, as the manufacturer, have the high degree of self-discipline that we strictly supervise our products safety. Also, 90% of manufactories have their own testing laboratory which conforms with the international laboratory standard that we have a series of internal product safety testing already in order to maintain the high degree of product safety and quality assurance.

In addition, most customers require the testing by the third-party conformity assessment body per each order before the manufacturer exports the goods, either the orders are for the same chain stores in different places or different customers in different places, in order to ensure the high degree of product safety.

Under the above strict product safety inspections by China Entry-Exit Inspection and Quarantine Bureau, the third-party conformity assessment body and manufactories, we firmly believe that it is enough to have the high degree of product safety assurance. If there is the periodic testing in future, it will make the inspections repeat seriously. As a result, we think the periodic testing is unnecessary.

"Second, for the production of less than 10,000 units is exempt from this one year periodic requirement"

We think that 10,000 units order per year is a small order quantity for the chain stores in United States that the US importers order more than this amount for chain stores, they will order 100,000 units, even 1,000,000 units normally. Besides, because there is no clear definition on 10,000 units criteria, we cannot fully understand about it. If the manufacturer needs to conduct the periodic testing for every 10,000 units order in the same year, we think the manufacturer cannot afford such high financial burden and the human resources cost.

"Third, the samples for the periodic testing must be selected by the random sample to ensure those samples produced since the last periodic test has the equal chance of selection. "

As we need to wait for the testing result issues before export the goods, we worry about that the third-party conformity assessment body, such as BV and SGS, does not have enough staff to handle all testing, if it is true, it will cause to delay the goods delivery time. In addition, the random sample selection is very time-consuming which this random sample rule will interfere the market operation and the manufacturers' cash flow seriously,

Also, the random samples rule is not the rule that can guarantee all the products in the production population are in high degree of quality assurance, because it is just a random checking.

So, we think the random samples rule is not necessary as the manufacturers have the high degree of self-discipline.

" Fourth, the re-certification is required after any material change, including the material change and structure in product design, Manufacturing Process and sourcing of material which the re-certification can be conducted independently on a component part for the component part testing without the full product."

The manufacturers change the product materials only when they face the shortage of material supply and when they want to improve the product.

So, to the manufacturer, product material change is very common. In order to maintain the good production efficiency with good product safety and quality, they will use the same quality level of material but just in different brand.

In the proposed rule, the material change definition is not clear defined. We have questions on whether using the same quality level of component part but just the different brand is regarded as the material change or not. Besides, as we mentioned before, the initial product sample inspection by China Entry-Exit Inspection and Quarantine Bureau has provided the high degree of product safety assurance already. So, if each material change is needed to test by the third-party conformity assessment body for the re-certification, it is very unreasonable, you could ask the related production experts about the factory production process, then you could find the answer.

" Last, the Remedial action is required if the manufacturer fails any test in the Children Product Certification and the Manufacturer must keep all required records for 5 years."

As you may know, the largest suppliers in US, such as the chain stores, usually divide the order to small order and distribute the same product to different states in US. If the manufacturers keep all required record of each product for 5 years, the high financial cost caused will be the heavy burden to the manufacturers. So, we believe that it is unreasonable and unrealistic as most of the manufacturers cannot meet this requirement.

To conclude, Shenzhen is the largest toys manufacturing base in the world, which Shenzhen occupies 30% of China Toys export. Most of the toys manufacturers in Shenzhen think those rules in the Children Product Certification are unworkable and unreasonable. In fact, after the toys recall incidents in 2008, both manufacturers and importers have highly focused which they made lots of improvement on the product

safety already, in addition, the China government enhance the supervision on product safety makes the product safety problems occur rarely. Now, the product safety problems in China are not made by the manufacturers, it is just because some importers buy those unsatisfied manufacturers' products. In fact, we pay highly attention on US product safety rules and regulations. We hope that you could have a full understanding to the Toys Industry in China then you may find that some rules in the Children Product Certification are unworkable and unnecessary.

We deeply hope that CPSC could review and discuss on executing the Children Product Certification and labeling, because there are questions on the workability of operating Children Product Certification. We heard that some of the manufactories said that they may give up the US market as US has increased the import barriers. However, Shenzhen Toys Industry Association does not want them to take this action, because we know that the whole China toys industry wants to do better and we would like to produce more new and creative toys for the US children.

We expect CPSC could use a simple and workable way, but not the complex way to supervise US consumer product market.

Yours Sincerely,



Mr. C.K. Ma
President
Shenzhen Toys Industry Association

Website: <http://www.sztoys.com>

E-mail: sztia@126.com

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 11, 2010 |
| Status: Posted |
| Posted: August 11, 2010 |
| Category: Trade Association |
| Tracking No. 80b2e117 |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0059
Comment from International Association of Users of Artificial & Synthetic Filament Yarns and of Natural Silk

Submitter Information

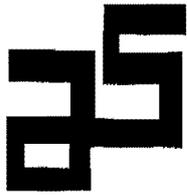
Name: Pierre VAN MOL
Address: Belgium,
Submitter's Representative: Pierre VAN MOL
Organization: International Association of Users of Artificial & Synthetic Filament Yarns and of Natural Silk

General Comment

See Attached

Attachments

CPSC-2010-0038-0059.1: Comment from International Association of Users of Artificial & Synthetic Filament Yarns and of Natural Silk



Received CPSC

2010 AUG 11 A 7 45

Office of the Secretary
FOI**A.I.U.F.F.A.S.S.**

Association Internationale des Utilisateurs de Fils de Filaments Artificiels et Synthétiques et de Soie Naturelle

International Association of Users of Artificial and Synthetic Filament Yarns and of Natural Silk

9051 Ghent, 16th July 2010Mr. Todd A. STEVENSON
Secretary of the Consumer Product Safety Commission4330 East West Highway
BETHESDA, MARYLAND 20814-4408
U.S.A.

Dear Mr. STEVENSON,

Let us introduce ourselves, we are AIUFFASS, the International Association of Users of Artificial and Synthetic Filament Yarns and of Natural Silk.

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

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

Nevertheless we would like to remind you that the regulation 16 CFR 1610 exempts plain surface fabrics weighing 2.6 ounces per square yard and more as well as all fabrics made entirely from the following fibres or combinations thereof : acrylic, modacrylic, nylon, olefin, polyester, wool but NOT SILK.

This is scientific nonsense...

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

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

The European Silk Forum (ESF), grouping the European silk business within AIUFFASS, has produced a detailed report in Europe which documents the safety fire behaviour of Silk fabrics produced in their factories. Please find the documents concerned in enclosure.

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

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

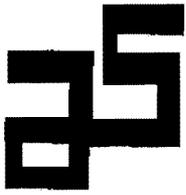
With our best regards.

A handwritten signature in black ink, appearing to read 'Pierre Van Mol', written over a horizontal line.

Pierre VAN MOL
Secretary General AIUFFASS

Enclosures : 4

Enclosure 1



A.I.U.F.F.A.S.S.

Association Internationale des Utilisateurs de Fils de Filaments Artificiels et Synthétiques et de Soie Naturelle

International Association of Users of Artificial and Synthetic Filament Yarns and of Natural Silk

Silk and U.S. Consumer Product Safety Improvement Act

The U.S. market is fundamental for the European silk industry and the U.S. Consumer Product Safety Improvement Act is severely affecting European exporters of silk products.

A.I.U.F.F.A.S.S. has promoted a thorough scientific investigation on the flammability of silk, as well as several tests on silk samples.

On the basis of the study it is clear that **there is no sufficient scientific and technical reason for excluding silk from the list of low-flammability textile fibres.**

A.I.U.F.F.A.S.S. therefore asks the European Union to intervene immediately with U.S. Administration, in order to obtain the exemption of silk from tests provided by Standard CFR 1610, as well as already foreseen for wool, polyester, nylon, acrylic, modacrylic, olefin.

1) Some economic background.

In 2008, EU exports of silk products towards the U.S. market reached at least 128 million euro (at least because silk dresses can not be statistically isolated anymore, hence they are not included in this figure). They represent 20 % of total EU exports and if we exclude temporary traffic (OPT) even 25 %. They play a fundamental role for a lot of small and medium European silk mills, which are mainly (but not only) concentrated in Como (Italy), Lyon (France), Macclesfield (United Kingdom) etc.

The complex certification procedure introduced by U.S. authorities for flammability is affecting severely these enterprises. European silk sales always consist of several lots of small quantities and they regard fashion articles which always vary deeply, according to various colours and various patterns developed on various kinds of fabrics. For this reason the economic impact of CPSIA certification procedures on E.U industry is very relevant, also because customers are used to reverse it entirely on the suppliers.

In the meanwhile the rationale for excluding silk from the list of low-flammability textile materials is very, very, very, very doubtful .

2) Some scientific argument on burning behaviour of silk

L.O.I (Limiting Oxygen Index) is the most reliable measure of flammability characteristics of materials which is commonly adopted by scientific community all over the world.

Everybody knows that L.O.I. for silk is only slightly inferior to wool. It is well above L.O.I. of other fibres such as acrylic, polyester and nylon, which are actually included in the low flammable materials list.

In addition to this, silk doesn't melt while it burns, on the contrary of synthetic fibers as nylon or polyester. The fibres that melt cause, on the skin, burns greater than the burns caused by fibres that carbonize but don't melt.

It is very difficult to understand the reason why silk has been compared with cellulosic fibres, instead of being included with wool or other synthetics which are even less safe to the consumer than silk.

3) An experimental investigation

A.I.U.F.F.A.S.S. has promoted several tests carried out by different testing houses in France (Intertek) and Italy (Centro Tessile Serico and Stazione Sperimentale per la Seta) . They regard 168 different

fabric samples, produced by about 40 different companies, in accordance with the Standard 16 CFR 1610. (see annexed test reports)

The results are summarized into following table:

| Mass per unit area of samples | Number of samples | Original state test | | Refurbished state test | | RESULT | |
|-------------------------------|-------------------|---------------------|---------|------------------------|---------|---------|---------|
| | | Class 1 | Class 3 | Class 1 | Class 3 | CLASS 1 | CLASS 3 |
| 0-30 g/m ² | 69 | 52 | 17 | 47 | 5 | 47 | 22 |
| 30-60 g/m ² | 58 | 58 | 0 | 58 | 0 | 58 | 0 |
| 60-90 g/m ² | 41 | 41 | 0 | 41 | 0 | 41 | 0 |
| TOTAL | 168 | 151 | 17 | 146 | 5 | 146 | 22 |

The following remarks must be introduced:

- 1) All the samples with a mass per unit area grater than 30 g/sm – which are by far the big majority of silk items- are in class 1 and therefore they are fully acceptable.
- 2) As far as samples with a mass per unit area lower than 30 g/sm are concerned , only some of them have not been found acceptable according to the Standard CFR 1610 . But we point out that:
 - the Standard prescribes an initial desiccation of test samples (0% residual humidity) and therefore is altering reality. Silk in the natural state and under normal conditions of use, as silk garment, is a hygroscopic material and its relative humidity is normally about 11% and never less than 9%
 - According to the the Standard, the samples were preliminarily treated at 105° C. If the specimens are conditioned at 20° C and 65 % relative humidity, as it happens usually for most standard test methods for textile materials, even these light fabrics are class 1.
 - even the lightest silk fabrics are only 0,1- 0,5 seconds below the limit set for conformity, which is 3,5 seconds. It is just a fraction of a second. Considering the experimental uncertainty associated with the method, which is strongly connected with the behaviour of the operator, a sample might easily be found acceptable by one laboratory and not acceptable by another.

LAST VERSION TO DISCUSS – 8 mars 2010

Project: “Evaluation of flammability properties of silk fabrics for the US market”

Italian and French common contribution

Preliminary remarks

The US legislation on the flammability of fabrics

The US Consumer Product Safety Commission (CPSC), an independent federal agency established in 1972, is charged with protecting the public from the risks of injury or death from thousands of types of consumer products that pose a fire, chemical, mechanical or electrical hazard.

Over the years CPSC has issued several regulations on the risks involved in the use of consumer products. As concerns flammability, the Commission has issued and amended acceptability standards for products in accordance with the **Flammable Fabric Act (FFA)**. This includes the following textile products and relevant standards:

- clothing textiles (adults' and children's): 16 CFR 1610
- vinyl-based plastic films: 16 CFR 1611
- children's night clothes: 16 CFR 1615-1616
- carpets and floor coverings: 16 CFR 1630-1631
- mattresses: 16 CFR 1632-1633.

In 2008 CPSC amended and issued the Consumer Product Safety Commission Improvement Act (CPSIA), which was signed into law on August 14, 2008. The Act prescribes that all materials produced starting from November 12, 2008 and distributed in commerce in the United States must be accompanied by a certificate attesting the product compliance with all the rules, standards or regulations aimed at guaranteeing safety on the basis of a test of each product or a reasonable testing program. Such tests must be performed by an independent subject or, in certain cases, by a third party conformity assessment body accredited by CPSC. The clothing textile products subject to FFA and standard 16 CFR 1610 are not among those that must be accompanied by the conformity certification, as made known by the Federal Register (Vol. 74, No. 25) on February 2, 2009 and the subsequent extension published in Vol. 74, No. 247 on December 28, 2009, anyway their conformity must be guaranteed by testing them as specified by the standard.

The Standard for the flammability of clothing textiles: 16 CFR 1610

The latest amendment to the Standard for the flammability of clothing textiles 16 CFR 1610 was published in the Federal Register (Vol. 73, No. 58) on March 25, 2008.

All clothing textiles (fabrics and garments) for adults and children (except children's night clothes, which are subject to Standards 16 CFR 1615-1616) fall within the scope of Standard 16 CFR 1610. This does not apply to:

- hats that, as such or part of a garment, do not provide a covering for the neck, face or shoulders,
- gloves longer than 35.56 cm, unless they are attached to or form part of another garment,
- footwear that does not consist of hosiery in whole or part, unless the article is attached to or form an integral part of another garment,
- interlinings or reinforcing textile materials, i.e. the fabrics located between an outer shell and an inner lining in a garment.

The standard mentions a few special cases where products can be exempted from testing. These are:

- plain surface fabrics weighing 88.8 g/m^2 (2.6 oz/ya^2) or greater, regardless of fiber content,
- plain or raised surface fabrics, regardless of fabric weight, made, entirely or in a combined form, from the following fiber types: acrylic, modacrylic, nylon, olefin, polyester, wool.

This exemption is based on the results of numerous trials conducted over the years that have demonstrated the conformity of these materials to flammability requirements.

The Standard establishes three classes of flammability performance of textiles based on the burn time of specimens:

Class 1: textiles exhibiting normal flammability

Class 2: applies only to raised surface fabrics exhibiting intermediate flammability

Class 3: textiles subject to rapid and intense burning, thus dangerously flammable.

Fabrics designated as class 1 and class 2 can be used for clothing purposes, use of class 3 textiles is forbidden and prosecuted by law.

Plain surface fabrics are designated as class 1 if they exhibit a burn time of 3.5 seconds or greater and as class 3 when the burn time is below this limit.

Raised surface fabrics are designated as class 1 if they exhibit a burn time exceeding 7 seconds, as class 2 when the burn time is between 4 and 7 seconds and as class 3 when the burn time is lower than 4 seconds.

The sample of fabric is first tested in its original state (ready for use as a clothing article), then, if found acceptable (class 1), subjected to further testing after having been refurbished as required. Before running the test, the specimens need to be conditioned in an oven at 105°C for 30 minutes, then placed in a desiccator and left to cool for at least 15 minutes.

The test procedure requires that a flame impinge on a specimen mounted at a 45 degree angle from the base of the burning chamber for 1 second. The specimen burn time is determined as the cotton stop

thread placed at a distance of 127 mm from the point of ignition is broken. The results of five tests are averaged and if the value obtained exceeds 3.5 seconds for plain surface fabrics, the sample is designated as class 1 (preliminary classification). This means that, according to the test method, it must be refurbished before

further testing in order to remove water soluble matters or residues of substances from degradation processes caused by the solvents used in possible flame-retardant finishings. The method prescribes a dry cleaning treatment followed by laundering of the sample at 49°C and tumble drying at 66°C. The specimens taken from the refurbished sample are desiccated and tested again for flammability as described above.

The project

Centro Tessile Serico* has studied the burning behavior of the various kinds of silk fabrics processed in Italy that are most commonly exported to the US following a request of Stazione Sperimentale per la Seta**, which provided financial support and supervision to the project.

40 samples of fabrics originating from about 10 different companies were tested for this survey in October through December 2009. Mass per unit area of samples was in a range between 18 g/m² (the lightest silk fabrics available) and 90 g/m² (upper limit for standard application). A variety of fabric construction, processing state (crude, degummed, natural, dyed, printed, etc.) and finishing variables were included. For each sample, a technical card was filled in by the manufacturer with following details:

- Composition (100% silk)
- Mass per unit area (maximum 88.8 g/m²)
- Type of fabric and relevant weaving, contexture and yarn type (muslin, organdy, chiffon/voile, crepe, twill, satin, creponne, charmeuse, pongé, etc.)
- Processing state (crude, degummed, natural, dyed, printed, etc.)
- Finishing (soft, soil-release, flame-retardant, etc.)

Three samples designated as class 3 in the original state test were subjected to a second test after a conditioning treatment of at least 24 hours in the standard atmosphere commonly applied for textiles (20°C, 65% R.H) skipping the desiccation step at 105°C in oven.

In France the manufacturers of silk fabrics have also studied the burning behavior of various kind of silk fabrics of their production which have been tested in different testing house in France (Intertek, Thor), in Italy (ICQ GLOBAL) and in Canada (CTT Group). 36 samples of fabrics were tested in July 2009 through february 2010. Mass per unit area of samples was in a range between 16 g/m² (the lightest silk fabrics available) and 80 g/m² (upper limit for standard application). A variety of fabric construction, processing state (crude, degummed, natural, dyed, printed, etc.) and finishing variables were included.

All the fabrics tested in the different testing houses were designed as Class 1

Results

The results obtained in the tests of the 40 Italian samples are gathered in Annex 1 and summarized in the following Table:

| Mass per unit area of samples | Number of samples | Original state test | | Refurbished state test | | RESULT | |
|-------------------------------|-------------------|---------------------|----------|------------------------|----------|-----------|----------|
| | | Class 1 | Class 3 | Class 1 | Class 3 | CLASS 1 | CLASS 3 |
| 0-30 g/m ² | 23 | 17 | 6 | 17 | 0 | 17 | 6 |
| 30-60 g/m ² | 10 | 10 | 0 | 10 | 0 | 10 | 0 |
| 60-90 g/m ² | 7 | 7 | 0 | 7 | 0 | 7 | 0 |
| TOTAL | 40 | 34 | 6 | 34 | 0 | 34 | 6 |

The results obtained in the tests of the French samples are summarized in the table below :

| Mass per unit area of samples | Number of samples | Original state test | | RESULT | |
|-------------------------------|-------------------|---------------------|----------|-----------|----------|
| | | Class 1 | Class 3 | CLASS 1 | CLASS 3 |
| 0-30 g/m ² | 10 | 10 | 0 | 10 | 0 |
| 30-60 g/m ² | 20 | 20 | 0 | 20 | 0 |
| 60-90 g/m ² | 6 | 6 | 0 | 6 | 0 |
| TOTAL | 36 | 36 | 0 | 36 | 0 |

The fabrics processed in the raw state show burn times slightly exceeding the average . As concerns coloration and finishing variables, there are no significant differences between printed and dyed fabrics as well as between samples subjected to a soft/antistatic finishing and those treated with non-slip agents (As concerns the influence of fabric construction, the burning rate order is as follows:

- I. Crepes, creponnes and georgettes (high rates)
- II. Plain cloths/taffetas
- III. Sateens
- IV. Chiffons, voiles and organdies (slow rates).

To study the influence of sample humidity, in Italy three samples designated as class 3 in the original state test run as prescribed by the method were tested again skipping the desiccation step at 105°C in oven. It was observed that the common humidity degree of fabrics causes burn times to increase by approx. 0.5 seconds, which would result in class 1 designation. It should be borne in mind that such an absolute dry state as that required for the test never occurs in the real conditions of use of textiles.

It was also observed that in most cases washing the samples causes burn times to increase to such an extent as to make a very light silk fabric formerly belonging to class 3 compliant with class 1 requirements. So it can be inferred that, in practical use, these kinds of fabrics are likely to improve their burning behavior with care treatments.

None of the samples received for these trials had been subjected to a flame-retardant finishing treatment (as declared by the manufacturers).

The worst result obtained in these tests of silk products is 2.9 seconds (nearly 85% of the required criterion for class 1 designation), so only 0.6 seconds below the limit set for conformity. But since this is also the range of laboratory uncertainty associated with the method, there is a tangible risk that a sample might get different classifications if tested in several laboratories.

Comparative trials were conducted with the French testing house Intertek. The results obtained on the four samples tested (only in the original state) are summarized in the following Table:

| | <i>Average burn time (seconds)</i> | | <i>RESULT (CLASS)</i> | |
|----------|------------------------------------|----------------------------------|-----------------------|-----------------|
| | <i>CTS</i> | <i>Intertek</i> | <i>CTS</i> | <i>Intertek</i> |
| Sample 1 | 2.8 | 2.5 | 3 | 3 |
| Sample 2 | 3.1 | 2.5 | 3 | 3 |
| Sample 3 | 3.6 | Does not ignite/ extinguishes | 1 | 1 |
| Sample 4 | 4.5 | 4.8 | 1 | 1 |

On-demand testing activity at Centro Tessile Serico in 2009

In 2009 Centro Tessile Serico received several requests for flammability tests according to Standard 16 CFR 1610 from different companies. In total, 92 silk samples were tested

The results combined with those obtained before provide in Italy and France provide a global base for evaluation totaling 168 samples;

The results are summarized in the following table :

| | | Original state test | | RESULT | |
|-------------------------------|-------------------|---------------------|-----------|------------|-----------|
| Mass per unit area of samples | Number of samples | Class 1 | Class 3 | CLASS 1 | CLASS 3 |
| 0-30 g/m ² | 69 | 52 | 17 | 52 | 17 |
| 30-60 g/m ² | 58 | 58 | 0 | 58 | 0 |
| 60-90 g/m ² | 41 | 41 | 0 | 41 | 0 |
| TOTAL | 168 | 151 | 17 | 151 | 17 |

So we can observe that only 10% of the samples tested will not respect the USA requirements.

There is not any consumer risk because :

- Silk and wool, exempted fiber, are both protein fibers; there are both animal fibers with a closed chemical formulae.
- The silk Limit Oxygen Index value, physical constant which define the fire behavior of polymers is higher g for silk than for the polyamide, for the polyester and closed to LOI value of wool wich are all exempted fibers
- In practical use, the consumer never wear a silk article over dried at 105°C for 30min as conditioned are the samples before the test. The silk is in equilibrium with 10 to 12% HR
- If 10% of the samples seems time to time designed class 3; it depends of the range of laboratory uncertainty associated with the method of wich value is around 10%



Evaluation of the influence of sample humidity

| Test report | Customer | Weaving | State of fabric (raw/degummed) | Dyed/printed | Finishing | Mass per unit area (g/m ²) | Test with desiccation (105°C for 30 min) | | Test with conditioning (20°C, 65% R.H. for 24 hours) | |
|-----------------------------|---------------------|--------------------------|--------------------------------|--------------|------------|--|--|----------------|--|----------------|
| | | | | | | | Average burn time (s) | Result (class) | Average burn time (s) | Result (class) |
| 2904380-001/ 1000108-001 | <i>confidential</i> | creponne | degummed (China) | printed | antistatic | 21 | 2.9 | 3 | 3.6 | 1 |
| 2904405-002/ 1000109/001 | <i>confidential</i> | plain cloth/ creponne | degummed (China) | printed | antistatic | 22 | 3.1 | 3 | 3.5 | 1 |
| 2904912-002/ 1000110-001 | <i>confidential</i> | plain cloth | half degummed | acid dyeing | steaming | 22 | 3.1 | 3 | 3.8 | 1 |

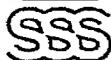
Enclosure 3



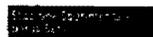
Summary of CTS on-demand tests (2009)

| Test report | Customer | Mass per unit area (g/m ²) | Original state test | | Refurbished state test | | RESULT(class) |
|-------------|---------------------|--|-----------------------|----------------|------------------------|----------------|---------------|
| | | | Average burn time (s) | Result (class) | Average burn time (s) | Result (class) | |
| 2902655-003 | <i>confidential</i> | 18 | DNI/BE | 1 | 4.3 | 1 | 1 |
| 2900412-001 | <i>confidential</i> | 19 | 2.7 | 3 | - | - | 3 |
| 2903607-001 | <i>confidential</i> | 20 | 4.1 | 1 | 4.6 | 1 | 1 |
| 2901037-003 | <i>confidential</i> | 20 | 3.4 | 3 | - | - | 3 |
| 2901037-006 | <i>confidential</i> | 20 | 3.2 | 3 | - | - | 3 |
| 2900990-002 | <i>confidential</i> | 20 | 5.2 | 1 | 3.6 | 1 | 1 |

| Test report | Customer | Mass per unit area (g/m ²) | Original state test | | Refurbished state test | | RESULT(class) |
|-------------|---------------------|--|-----------------------|----------------|------------------------|----------------|---------------|
| | | | Average burn time (s) | Result (class) | Average burn time (s) | Result (class) | |
| 2900810-001 | <i>confidential</i> | 20 | 5.0 | 1 | 3.9 | 1 | 1 |
| 2900626-001 | <i>confidential</i> | 20 | 3.9 | 1 | 3.4 | 3 | 3 |
| 2900405-002 | <i>confidential</i> | 20 | 3.7 | 1 | 4.0 | 1 | 1 |
| 2900957-001 | <i>confidential</i> | 21 | DNI/BE | 1 | 4.8 | 1 | 1 |
| 2902558-001 | <i>confidential</i> | 22 | 4.5 | 1 | 6.2 | 1 | 1 |
| 2902469-002 | <i>confidential</i> | 22 | 3.4 | 3 | 4.9 | 1 | 3 |
| 2902469-001 | <i>confidential</i> | 22 | 2.6 | 3 | - | - | 3 |
| 2900656-001 | <i>confidential</i> | 22 | DNI/BE | 1 | 3.6 | 1 | 1 |
| 2900398-001 | <i>confidential</i> | 22 | 3.4 | 3 | - | - | 3 |

Textile Research
Centre

| | | | | | | | |
|-------------|---------------------|-------|--------|---|--------|---|---|
| 2902664-001 | <i>confidential</i> | 23 | 4.2 | 1 | 4.9 | 1 | 1 |
| 2902655-001 | <i>confidential</i> | 23 | DNI/BE | 1 | DNI/BE | 1 | 1 |
| 2902336-002 | <i>confidential</i> | 23 | 3.7 | 1 | 3.4 | 3 | 3 |
| 2901844-001 | <i>confidential</i> | 23 | 3.6 | 1 | 3.9 | 1 | 1 |
| 2901688-001 | <i>confidential</i> | 23 | 3.5 | 1 | 3.8 | 1 | 1 |
| 2900578-002 | <i>confidential</i> | 24 | 3.6 | 1 | 3.7 | 1 | 1 |
| 2903159-003 | <i>confidential</i> | 25 | 3.5 | 1 | 3.8 | 1 | 1 |
| 2902465-003 | <i>confidential</i> | 25 | 3.5 | 1 | 4.4 | 1 | 1 |
| 2902445-001 | <i>confidential</i> | 25 | 5.1 | 1 | 3.7 | 1 | 1 |
| 2901761-002 | <i>confidential</i> | 25 | 4.0 | 1 | 4.9 | 1 | 1 |
| 2901584-001 | <i>confidential</i> | 25 | 3.1 | 3 | - | - | 3 |
| 2901037-001 | <i>confidential</i> | 25 | 4.4 | 1 | 4.1 | 1 | 1 |
| 2900990-001 | <i>confidential</i> | 25 | DNI/BE | 1 | 2.9 | 3 | 3 |
| 2900810-002 | <i>confidential</i> | 25 | 4.7 | 1 | 3.2 | 3 | 3 |
| 2900343-005 | <i>confidential</i> | 25 | 3.4 | 3 | - | - | 3 |
| 2901083-002 | <i>confidential</i> | 25 | 4.2 | 1 | 3.0 | 3 | 3 |
| 2901561-001 | <i>confidential</i> | 26 | 4.9 | 1 | 3.6 | 1 | 1 |
| 2900540-001 | <i>confidential</i> | 26 | 3.1 | 3 | - | - | 3 |
| 2900367-001 | <i>confidential</i> | 26 | 2.7 | 3 | - | - | 3 |
| 2900696-001 | <i>confidential</i> | 27 | 2.7 | 3 | - | - | 3 |
| 2902977-001 | <i>confidential</i> | 28 | 4.2 | 1 | 5.6 | 1 | 1 |
| 2902749-001 | <i>confidential</i> | 33 | 5.1 | 1 | 5.6 | 1 | 1 |
| 2902850-001 | <i>confidential</i> | 34 | 7.0 | 1 | 7.5 | 1 | 1 |
| 2900295-002 | <i>confidential</i> | 34 | 4.6 | 1 | 5.4 | 1 | 1 |
| 2903607-007 | <i>confidential</i> | 35 | 7.6 | 1 | 6.9 | 1 | 1 |
| 2900405-001 | <i>confidential</i> | 35 | 4.7 | 1 | 5.0 | 1 | 1 |
| 2902465-002 | <i>confidential</i> | 36 | 5.2 | 1 | 7.5 | 1 | 1 |
| 2900970-001 | <i>confidential</i> | 36 | 5.1 | 1 | 7.4 | 1 | 1 |
| 2902740-001 | <i>confidential</i> | 35-40 | 4.5 | 1 | 4.2 | 1 | 1 |
| 2900229-001 | <i>confidential</i> | 38 | 4.2 | 1 | 5.3 | 1 | 1 |
| 2902628-001 | <i>confidential</i> | 40 | 4.2 | 1 | 3.5 | 1 | 1 |
| 2902000-001 | <i>confidential</i> | 40 | 5.7 | 1 | 6.2 | 1 | 1 |



| | | | | | | | |
|-------------|--------------|-------|---------|---|---------|---|---|
| 2900907-001 | confidential | 42 | 4.5 | 1 | 6.2 | 1 | 1 |
| 2900295-001 | confidential | 42 | 5.5 | 1 | 6.9 | 1 | 1 |
| 2902664-003 | confidential | 43 | 7.7 | 1 | 8.6 | 1 | 1 |
| 2902486-003 | confidential | 43 | 7.9 | 1 | 7.9 | 1 | 1 |
| 2901037-007 | confidential | 44 | 6.5 | 1 | 6.2 | 1 | 1 |
| 2902125-001 | confidential | 38-53 | 3.7 | 1 | 3.9 | 1 | 1 |
| 2902486-001 | confidential | 46 | 8.3 | 1 | 9.4 | 1 | 1 |
| 2902445-002 | confidential | 46 | 7.7 | 1 | 7.8 | 1 | 1 |
| 2901200-002 | confidential | 46 | 7.6 | 1 | 7.5 | 1 | 1 |
| 2901200-001 | confidential | 46 | 6.9 | 1 | 7.5 | 1 | 1 |
| 2903159-002 | confidential | 50 | 10.3 | 1 | 10.4 | 1 | 1 |
| 2900498-001 | confidential | 51 | 7.5 | 1 | 9.3 | 1 | 1 |
| 2900364-001 | confidential | 52 | 7.5 | 1 | 8.5 | 1 | 1 |
| 2901761-001 | confidential | 55 | 8.8 | 1 | 8.8 | 1 | 1 |
| 2901037-004 | confidential | 55 | 6.0 | 1 | 6.2 | 1 | 1 |
| 2901322-002 | confidential | 58 | 9.1 | 1 | 9.3 | 1 | 1 |
| 2901322-003 | confidential | 58 | 8.6 | 1 | 8.7 | 1 | 1 |
| 2903700-001 | confidential | 60 | 10.7 | 1 | 10.1 | 1 | 1 |
| 2902850-002 | confidential | 60 | 12.0 | 1 | 11.9 | 1 | 1 |
| 2902486-006 | confidential | 60 | 12.6 | 1 | DNI/BE | 1 | 1 |
| 2902486-004 | confidential | 60 | 9.3 | 1 | 12.9 | 1 | 1 |
| 2900724-001 | confidential | 60 | 7.6 | 1 | 9.7 | 1 | 1 |
| 2900565-001 | confidential | 61 | 8.4 | 1 | 8.7 | 1 | 1 |
| 2901603-001 | confidential | 60-65 | 1DNI/BE | 1 | 9.6 | 1 | 1 |
| 2900405-003 | confidential | 63 | 10.1 | 1 | 11.3 | 1 | 1 |
| 2900343-003 | confidential | 63 | 9.7 | 1 | 10.6 | 1 | 1 |
| 2901037-005 | confidential | 65 | 9.2 | 1 | 1DNI/BE | 1 | 1 |
| 2903033-001 | confidential | 66 | 12.3 | 1 | DNI/BE | 1 | 1 |
| 2900343-004 | confidential | 66 | 9.0 | 1 | 10.4 | 1 | 1 |
| 2903615-001 | confidential | 67 | 8.8 | 1 | 11.5 | 1 | 1 |
| 2903824-001 | confidential | 68 | 11.5 | 1 | DNI/BE | 1 | 1 |
| 2902664-002 | confidential | 68 | 13.4 | 1 | DNI/BE | 1 | 1 |



| | | | | | | | |
|-------------|---------------------|-------|---------|---|--------|---|---|
| 2902443-001 | <i>confidential</i> | 68 | 11.6 | 1 | 10.4 | 1 | 1 |
| 2901963-001 | <i>confidential</i> | 68 | 8.7 | 1 | DNI/BE | 1 | 1 |
| 2903223-001 | <i>confidential</i> | 70 | 7.8 | 1 | 9.4 | 1 | 1 |
| 2901620-001 | <i>confidential</i> | 70 | 10.4 | 1 | 12.5 | 1 | 1 |
| 2901037-002 | <i>confidential</i> | 70 | 8.4 | 1 | 9.2 | 1 | 1 |
| 2900343-001 | <i>confidential</i> | 70 | 8.6 | 1 | 9.1 | 1 | 1 |
| 2901562-001 | <i>confidential</i> | 71-73 | 1DNI/BE | 1 | 11.6 | 1 | 1 |
| 2900586-001 | <i>confidential</i> | 74-82 | 9.9 | 1 | 9.4 | 1 | 1 |
| 2903724-001 | <i>confidential</i> | 80 | DNI/BE | 1 | DNI/BE | 1 | 1 |
| 2900748-001 | <i>confidential</i> | 83 | 11.3 | 1 | 13.4 | 1 | 1 |
| 2902445-005 | <i>confidential</i> | 86 | 13.7 | 1 | 12.9 | 1 | 1 |
| 2900985-002 | <i>confidential</i> | 88,2 | 8.3 | 1 | 8.6 | 1 | 1 |
| 2903163-001 | <i>confidential</i> | 96 | DNI/BE | 1 | DNI/BE | 1 | 1 |

DNI = Did Not Ignite

IBE = Ignited But Extinguished

INTERSOIE France - 26 février 2010

| Quality | Fiber content | Weight g/m2 | Finishing | Testing house | Report N° | Classification according to 16CFR1610 |
|------------------------|------------------------|-------------|----------------------|-------------------------------|-----------------|---------------------------------------|
| Mousseline 3578/1 | Silk 100% | 34 | Printed and finished | Intertek | FRAT09003578 | Class 1 |
| Mousseline | Silk 100% | 28 | Degummed | Thor Laboratory | 2053A/09/RB | Class 1 |
| Elastic fabric | Silk 97% - Elasthan 3% | 38 | Degummed | Thor Laboratory | 2053A/09/RB | Class 1 |
| Quality 5768 Col 2 | Silk 100% | 16 | Dyed and finished | Thor Laboratory | 1220/09/ABN | Class 1 |
| Quality 5850 col 117 | Silk 100% | 21.5 | Dyed and finished | Thor Laboratory | 1220/09/ABN | Class 1 |
| Mousseline A093/140 | Silk 100% | 27 | Printed | Intertek | FRAT09003359 | Class 1 |
| Twill léger T65018/140 | Silk 100% | 43 | Dyed | Intertek | FRAT09003359 | Class 1 |
| Crêpe georgette | Silk 100% | 44 | Degummed | Intertek | FRAT09003359 | Class 1 |
| Carré 70x70 pongé | Silk 100% | 44 | Printed and finished | CTT Group St Hyacinthe Canada | 2994-001-33263A | Class 1 |
| Scarve charmeuse | Silk 100% | 46-49 | Dyed | CTT Group St Hyacinthe Canada | 2994-001-33263A | Class 1 |
| Mousseline 140X140 | Silk 100% | 20 | Printed and finished | CTT Group St Hyacinthe Canada | 2994-001-33263A | Class 1 |
| Mousseline 2.2x0.8 | Silk 100% | 20 | Printed and finished | CTT Group St Hyacinthe Canada | 2994-001-33263A | Class 1 |
| jersey | Silk 100% | 80 | Printed and finished | CTT Group St Hyacinthe Canada | 2994-001-33263A | Class 1 |

Enclosure 4

INTERSOIE France - 26 février 2010

| | | | | | | |
|-----------------------------|-----------|-----------|----------------------|----------|--------------|----------------|
| Quality 495 color N4 | Silk 100% | 50 | Dyed | Intertek | FRAT10000585 | Class 1 |
| Quality 495 color 4H | Silk 100% | 50 | Dyed | Intertek | FRAT10000585 | Class 1 |
| Quality 495 color G2 | Silk 100% | 50 | Dyed | Intertek | FRAT10000585 | Class 1 |
| Quality 440 color N4 | Silk 100% | 46 | Dyed | Intertek | FRAT10000585 | Class 1 |
| Quality 440 color L3 | Silk 100% | 46 | Dyed | Intertek | FRAT10000663 | Class 1 |
| Quality 440 color K2 | Silk 100% | 46 | Dyed | Intertek | FRAT10000663 | Class 1 |
| Quality 388 color natural | Silk 100% | 44 | Dyed | Intertek | FRAT10000049 | Class 1 |
| Quality 440 color white 91 | Silk 100% | 46 | Dyed | Intertek | FRAT10005994 | Class 1 |
| Quality 495 color Natural | Silk 100% | 50 | Degummed | Intertek | FRAT10005994 | Class 1 |
| Quality 448 color Natural | Silk 100% | 76 | Degummed | Intertek | FRAT10005994 | Class 1 |
| Quality 120 color dark red | Silk 100% | 27 | Dyed | Intertek | FRAT10005086 | Class 1 |
| Quality 512 color black 900 | Silk 100% | 28 | Dyed | Intertek | FRAT10005086 | Class 1 |
| Quality U791S/U790S | Silk 100% | 73 | Printed and finished | Intertek | FRAT10000323 | Class 1 |
| Quality U201G | Silk 100% | / | Printed and finished | Intertek | FRAT10000322 | Class 1 |
| Quality U810M | Silk 100% | 80 | Printed and finished | Intertek | FRAT10000321 | Class 1 |

INTERSOIE France - 26 février 2010

| | | | | | | |
|-------------------------------|-----------|----------------|----------------------|------------|--------------|----------------|
| Quality U017G5 | Silk 100% | 52 | Printed and finished | Intertek | FRAT10000320 | Class 1 |
| Quality U63G | Silk 100% | 18 – 20 | Printed and finished | Intertek | FRAT10000318 | Class 1 |
| Quality U540G | Silk 100% | 18 – 20 | Printed and finished | Intertek | FRAT10000317 | Class 1 |
| Quality U520G | Silk 100% | 30 – 32 | Printed and finished | Intertek | FRAT10000317 | Class 1 |
| Quality U016G | Silk 100% | 79 | Printed and finished | Intertek | FRAT10000315 | Class 1 |
| Quality U011P | Silk 100% | 80 | Printed and finished | Intertek | FRAT10000314 | Class 1 |
| Quality 5161 color 2 black | Silk 100% | 59 | Dyed | ICQ GLOBAL | IT 09 29291 | Class 1 |
| Quality 5161 color RL82 | Silk 100% | 59 | Dyed | ICQ GLOBAL | IT 09 29297 | Class 1 |

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: August 25, 2010 |
| Status: Posted |
| Posted: August 25, 2010 |
| Category: Trade Association |
| Tracking No. 80b3ac04 |
| Comments Due: August 03, 2010 |
| Submission Type: E-Mail |

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

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

Document: CPSC-2010-0038-0060
Comment from American Apparel & Footwear Association (AAFA)

Submitter Information

Name: Kevin Burke
Address: United States,
Submitter's Representative: Rebecca Mond
Organization: American Apparel & Footwear Association (AAFA)

General Comment

See Attached.

Attachments

CPSC-2010-0038-0060.1: Comment from American Apparel & Footwear Association (AAFA)



August 3, 2010

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

RE: REQUEST FOR COMMENTS DOCKET NO. CPSC-2010-0037 & CPSC-2010-0038

On behalf of the American Apparel & Footwear Association (AAFA) – the national trade association representing the apparel and footwear industry and its suppliers – I am writing in response to the request for comments by the Consumer Product Safety Commission (CPSC or “the Commission”) regarding proposed rules, “Conditions and Requirements for Testing Component Parts of Consumer Products” (proposed Component Part rulemaking) and “Testing and Labeling Pertaining to Product Certification” (proposed Product Certification rulemaking). As the two proposed rulemakings are closely related, we will address both in the below comments.

Conditions and Requirements for Testing Component Parts of Consumer Products

In general, we are very supportive of the Commission’s decision to bring testing and certification down the supply chain to the raw material and supplier level. As we have stated in previous comments, this is a crucial element to establishing both a reasonable and sustainable testing program. AAFA’s members design product safety into the product. As part of this process, manufacturers must ensure the raw materials used in their products are compliant with the standard. Ensuring safe and compliant products from the beginning stages of product development is not only a cost-effective and efficient quality control program, but also results in the greatest assurance of product compliance. Furthermore, the earlier a manufacturer can spot an issue, the more effectively the manufacturer can correct the problem. By bringing testing and certification down the supply chain, the CPSC is encouraging manufacturers to implement more effective quality control systems. However, AAFA does have concerns with some of the requirements laid out in the proposed rulemaking and offers the following comments.

Proposed 1109.4(b) Definition of Component Part

We believe the definition of component part should be revised to say, “Component part means any part of a consumer product or the raw materials from which the component part is made...” Raw material testing is **especially crucial** for component part manufacturers. While the discussion of the proposed rulemaking alludes to raw material testing,¹ the final rulemaking must explicitly state that suppliers or manufacturers may test raw materials of components. Permitting raw material testing and certification would enable component part manufacturers to be much more efficient and cost effective in their compliance testing. Component part manufacturers often manufacture thousands of variations or styles of a component. Only permitting finished component part testing in effect shifts to the component manufacturer the duplicative and onerous testing burden previously placed on the finished product manufacturer. Raw material testing would reduce this burden as, oftentimes, various styles are made from different mixtures of the same raw materials. For example, a button manufacturer may use various combinations of five different colored dyes and one type of plastic to manufacture a hundred different colored buttons. Testing the raw material for chemical content would require six initial tests while testing

¹ The discussion of Proposed 1109.5(a)(2) reads, “The children’s toy manufacturer may send samples of the plastic, either as pellets or in their finished state, to a third party conformity assessment body for testing.”

the finished component would result in a hundred different tests. As chemical content limits are set as “parts per million” or percentage of total mass, mixing compliant materials will **always** result in a compliant mixture.

Proposed 1109.5(a)(2) Conditions, Requirements, and Effect Generally

We are concerned that the language in proposed section 1109.5(a)(2) inadvertently restricts manufacturers from raw material testing.² The language states that a manufacturer may rely on testing of component parts provided that the sample tested, “has the same content as the component part of the finished product.” As we noted above, some components may be a mixture of various substances – substances that are combined in a variety of ways to create a large variety of finished components. For example, screen prints are often made of a handful of base colors that are mixed to create thousands of different colors. Thus, raw material testing is a crucial element to a sustainable testing program. However, the language above could be misconstrued to mean that raw material testing does not fulfill the children’s product third party testing and certification requirements. To provide clarity to industry and limit confusion, the CPSC must not only clarify this sentence, but also specifically spell out that raw material testing is acceptable.

Proposed 1109.5(h)(3) Finished Product General Conformity Certification Requirements

We recommend the Commission revise the final product certification content requirements to expressly state that *only* components (not subcomponents of components or raw materials of components) need to be listed on the final product certification. As we have stated in previous comments, a “component” may be made of several different subcomponents. For example, a basic zipper may be made with fabric, glue, teeth, a zipper pull, a slide and a zipper stop. Furthermore, some of those zipper components may be made of multiple types of raw materials. Therefore, the zipper’s component certification will list several subcomponents and have its own documentation. Requiring all these subcomponents and raw materials to be listed on the final product certification is burdensome and unnecessary. The proposed rulemaking states in section 1109.5(e) “finished product certifiers may not rely on component part testing conducted by another unless such component parts are traceable.” Therefore, even if the final product certifier only lists the components and not subcomponents or raw materials of components on the final product certification, the subcomponent test reports and other documentation would still be easily traced. The final product manufacturer should only have to list the zipper on the final product and reference the zipper’s certification.

Proposed 1109.10(i) Recordkeeping Requirements³

We are concerned that the CPSC’s requirement that all records required by proposed section 1109.10(f) be maintained in the English language could be both burdensome for manufacturers and could very likely lead to inaccurate certification due to inadvertent translation errors. Proposed 16 CFR 1109 and proposed 16 CFR 1107 include *several* extremely detailed and specific record keeping requirements. Many of these records will originate in non-English speaking countries and include extremely technical information – information that is not easily translated. Moreover, these records will likely be handled by quality control and/or testing lab personnel who have technical knowledge about the product content, the standards that apply to the product and the production processes, but very likely will not be fluent in English. As the CPSC will only inspect a few records when necessary, we believe the CPSC should revise the language to state, “All records must be *available on request* in the English language.”

² Similar language is found in proposed 1109.11(a)(2) with regards to component testing and lead paint.

³ The following comments also apply to proposed 1107.10(b)(5)(iv) and 1107.26(c).

Testing and Labeling Pertaining to Product Certification

We are extremely disappointed that the Commission felt it necessary to take the discretion to regulate a manufacturer's "reasonable testing program." While proposed section 1107.10 has little application to the apparel and footwear industry as the reasonable testing requirements do not supersede the test requirements under the Flammable Fabrics Act (as they apply to adult products), we are fundamentally against the principle of the CPSC regulating a manufacturer's determination of "reasonable." As the CPSC continues to issue specific compliance requirements, manufacturers become increasingly wrapped up in ensuring compliance over ensuring product safety. All AAFA members have had long-standing quality control programs in place that have developed based on the product's, production of the product's and the manufacturer's unique circumstances. These programs **are effective and do not need to be changed**. To demonstrate, only .0084% of all apparel and footwear sold in the U.S. in 2008 were involved in a recall. Moreover, most apparel and footwear recalls have been drawstring violations – a compliance issue that results from lack of information *not* lack of testing.

The requirements laid out in proposed 1107.10 further sends the message that the CPSC does not trust the manufacturer's determination of "what is reasonable" which is extremely disheartening. Particularly since the passage of the CPSIA, industry has shown a tremendous movement to work with the Commission, comply with a labyrinth of new regulations and scramble at *all* costs to ensure both product safety and regulatory compliance. Now manufacturers have to go through the checklist of requirements to make sure their determination of "reasonable" precisely matches the CPSC's determination. For example, proposed 1107.10(b)(2)(i)(B) states that a manufacturer may use component testing but "the manufacturer must *demonstrate* how the combination of testing of component part(s), portions of the finished product, and finished product samples demonstrate, with a high degree of assurance, compliance with all applicable rules, bans, standards, or regulations" (emphasis added).⁴ Testing a product is done to demonstrate compliance. The proposed rulemaking is now requesting manufacturers to demonstrate that they are demonstrating compliance. The result is more paperwork, more questions (like how does a manufacturer prove that their testing program is "reasonable" enough?), and another requirement that requires manufacturers to prove that they are in compliance but does **nothing** to actually improve the underlying product's safety and overall quality control procedures.

Proposed 1107.10 Reasonable Testing Program for Nonchildren's Products

Section C of the proposed Product Certification rulemaking, Description of the Proposed Rule, includes a table of Existing Testing Programs That Would Not be Superseded by Proposed Section 1107.10 Regarding a Reasonable Testing Program. However, this table is not included in the actual proposed rulemaking. Some may not read the description of the proposed rule and some may think that because the table is not included in the actual rulemaking, the reasonable testing program requirements under proposed 1107.10 may still apply. In order to prevent this confusion, we encourage the CPSC to include this table in the actual rulemaking.

Proposed 1107.24 Undue Influence

The proposed rulemaking's approach to preventing undue influence imposes an unnecessary requirement on manufacturers. Third party testing facilities already have in place training requirements to prevent against undue influence from manufacturers. While we agree that manufacturers should take steps to ensure against undue influence on third party testing facilities, requiring statements of policy and annual training is excessive and would not amount to greater assurance of protection against undue influence. Furthermore, ensuring compliance with this section is impractical. The CPSC will not likely be able to enforce this requirement as it applies to foreign manufacturers and importers will also not likely be able to ensure that foreign manufacturers are in compliance with this undue influence provision therefore

⁴ The proposed rulemaking has other examples of where manufacturers must similarly demonstrate compliance with the testing and certification requirements like proposed 1107.10(b)(3)(i) The Production Testing Plan that states manufacturers must include, "...the basis for determining that such tests provide a high degree of assurance of compliance if they are not the tests prescribed in the applicable rule, ban, standard, or regulation."

opening themselves up to liability issues. The easiest and most effective way to prevent undue influence is through the testing labs and third party accreditation procedures.

Proposed 1107.25 Remedial Actions

We first believe that the rulemaking's requirement that a manufacturer have an actual "remedial action *plan* that contains procedures the manufacturer must follow to investigate and address failing test results" (emphasis added) is unnecessary as remedial action will likely be different based on the situation that comes up. Furthermore, we strongly encourage the CPSC reorient the language in the remedial action section away from "failing tests" towards "a product that does not pass the applicable product safety standard." Some product safety standards (like the Flammable Fabrics Act and the standard for carpets) have provisions that make allowances for products that fail tests. As worded, the proposed rulemaking may conflict with these provisions. Furthermore, sometimes a "failure" may be a result of a faulty test and not a noncompliant product. In these cases, provided the manufacturer carefully documents and backs up any assertions relating to the faulty test and product's compliance, remedial action would not be necessary.

Conclusion

Thank you for your consideration of and the opportunity to submit these comments. If you have any additional questions, please contact Rebecca Mond at rmond@apparelandfootwear.org.

Sincerely,



Kevin M. Burke
President and CEO

⁵ Comments on this section can also be applied to 1107.10(b)(4)

PUBLIC SUBMISSION

| |
|--------------------------------------|
| As of: September 14, 2010 |
| Received: September 02, 2010 |
| Status: Posted |
| Posted: September 02, 2010 |
| Category: Trade Association |
| Tracking No. 80b43bab |
| Comments Due: August 03, 2010 |
| Submission Type: Paper |

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

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

Document: CPSC-2010-0038-0061
Comment from the Safety Glazing Certification Council (SGCC)

Submitter Information

Name: William Hannay
Address: United States,
Submitter's Representative: William M. Hannay, Schiff Hardin, LLP
Organization: Safety Glazing Certification Council (SGCC)

General Comment

See Attached.

Attachments

CPSC-2010-0038-0061.1: Comment from the Safety Glazing Certification Council (SGCC)



William M. Hannay
312-258-5617
whannay@schiffhardin.com

Received CPSC
2010 SEP -2 A 11: 27
Office of the Secretary
F01

6600 SEARS TOWER
CHICAGO, ILLINOIS 60606
t 312.258.5500
f 312.258.5600
www.schiffhardin.com

August 24, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Re: Comments of Safety Glazing Certification Council on Proposed Rule on Testing and Labeling Pertaining to Product Certification, Docket No. CPSC-2010-0038

Dear Sir or Madam:

I am legal counsel for the Safety Glazing Certification Council (SGCC®) which is a non-profit corporation that provides for the certification of safety glazing materials to various safety standards, including 16 CFR 1201 et seq. Established in 1971, SGCC® is managed by a board of directors comprised equally of representatives from the public interest sector and the safety glazing industry. For more than a quarter of a century, SGCC® has maintained a certification program under which manufacturers of safety glazing products voluntarily submit their products for testing to an SGCC-approved independent testing laboratory. The testing procedures used in SGCC®'s program are consistent with those established in ANSI Z97.1 and/or CPSC 16 CFR 1201. Participants in the SGCC® program undergo facility auditing and independent test sample selection and testing every 6 months. SGCC® currently has over 140 licensed manufacturers with approximately 240 participating locations in over 15 countries. For further information, see <http://sgcc.org>.

I.

The proposed rule published in the Federal Register on May 20, 2010, specifically lists 16 CFR 1201 (Safety Standard for Architectural Glazing Materials) as one of the "Existing Testing Programs That Would Not Be Superseded by Proposed §1107.10 regarding a Reasonable Testing Program." (See Table 1, 75 F.R. 28344.) SGCC® understands this statement to mean that §1107.10 does not apply at all to manufacturers of those types of architectural glazing materials described in §1201.1 as being subject to the CPSC safety standard. We think that it makes sense that the Commission would exempt architectural glazing materials from §1107.10 because the glass industry has been successfully operating reasonable testing programs for safety glazing materials for more than 30 years, combining in-plant production testing with certification principally through the third-party certification program offered by the Safety Glazing Certification Council. Under these circumstances, we assume that the Commission recognizes

that there is no need to impose any different or additional testing program requirements on manufacturers of architectural glazing materials.

SGCC® Request: SGCC® requests confirmation from the Commission that SGCC® is correct in its understanding that §1107.10 is not intended to apply at all to manufacturers of those types of architectural glazing materials already subject to 16 CFR 1201.

II.

The Commission has invited comments on the five elements of a reasonable testing program set forth in proposed §1107.10(b). (75 FR 28345.) While, as noted above, SGCC® understands that the proposed rules would not apply to architectural glazing materials, we do want to register our concerns about three general areas that could create unnecessary problems and burdens and make the SGCC®'s mission more difficult, if the rule were applied to the safety glazing industry. The Commission may find these comments helpful in assessing the potential impact of the propose rule in other industries. The SGCC®'s three concerns relate to:

1. Definition of a "material change"
2. Production testing vs. certification testing
3. Burden of maintenance of records within the United States per § 1107.10(b)(5)(iii).

1. Definition of a "material change"

Making a "material change" to a product's design, parts, suppliers of parts, or manufacturing process is a key trigger in the proposed rule for either or both a new product specification or certification testing. The proposed rule defines a "material change" as one that "could affect the product's ability to comply with the applicable rules, bans, standards, or regulations." (75 F.R. 28363.) It is SGCC's understanding of the proposed rule that a change made in order to maintain, achieve or assure compliance is not a material change. This interpretation makes sense.

In an industrial process such as tempering glass, there can be numerous minor and on-going adjustments, both manual and/or automated, to respond to atmospheric and other situations in order to make sure that the tempering process continues properly. There can also be numerous minor variations in format, size and thickness of glass, and other product characteristics which are a normal part of shifting from one product to another to meet customers' orders. It would be unreasonable and impractical to require certification testing each time such an adjustment is made. The safety glazing industry (and most likely other industries and companies) maintains internal quality assurance procedures for such adjustments.

August 24, 2010

Page 3

SGCC® requires licensees to have a working quality assurance program for the fabrication of safety glazing. Compliance to quality assurance requirements is validated at the first plant inspection after products are certified. Adherence is verified during twice per year plant visits. (These requirements are in addition to the ANSI and CPSC compliance testing required by the SGCC® certification program.) The intent is to enhance the quality of products produced in the interim production periods between test cycles. (The elements for the SGCC® quality assurance program are set forth in Appendix A to this letter.)

In addition to a working QA program, SGCC® certification requires independent certification testing every 6 months as a reaffirmation of the products ability to comply. That process takes several days to complete for break-testing (including selection and shipment of the pieces of glass to an SGCC®-approved independent testing laboratory, conducting the certification test, and recording and reporting the results) and considerably more time for laminated testing. (See below.) An unrealistic interpretation of a “material change” under § 1107.10 would shut plants down across the country by subjecting manufacturers to a never-ending process of certification testing and waiting for results before manufacturing could proceed. Alternatively, customers would be severely and unnecessarily restricted in the variety of products that manufacturers could quickly and flexibly produce.

SGCC® Request: SGCC® requests that the Commission clarify in the comments to the final rules that: “An adjustment to equipment or machinery made in order to maintain, achieve or assure compliance with the applicable rules, bans, standards, or regulations is not a material change within the meaning of § 1107.10.” It would be expected that, following those adjustments, the manufacturer would subject the product to normal production testing and to achieve passing production test results before the manufacturer resumes production of that product.

(2) Production testing vs. Certification Testing

The proposed rule draws a distinction between “certification testing” and “production testing.” Under the SGCC® certification program, a “certification test” is a full product test to 16 CFR 1201 (or ANSI Z-97.1) performed by an SGCC®-approved independent testing laboratory. A certification test, depending on the product, can take from weeks for break-testing of tempered glass to months for laminated glass (e.g., the weathering requirements of 16 CFR 1201 are 1,200 hours). “Production testing,” by contrast, is an abbreviated test or evaluation of the product or a component that is known to be a reasonable predictor of product performance.

The safety glazing industry and SGCC program participants have recognized the value of independent third party testing for the nearly 40 years SGCC has existed. Independent testing is impartial with test equipment that is subject to independent auditing and review. It is generally impractical for an individual manufacturer to purchase and maintain equipment for certification testing which can cost as much as \$35,000. A certification test performed by SGCC®-approved independent laboratory costs only a few hundred dollars.

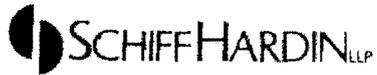
The norm for the safety glazing industry is to outsource certification testing to SGCC, because it is perceived as a more effective and credible procedure than manufacturer self-certification. It has proven to be a cost-effective, efficient manner of evaluating product compliance. In addition to the periodic certification testing by SGCC, manufacturers rely on production testing for monitoring and evaluation of ongoing production runs. Typically a simple “center punch” test is used. If and when a piece of glazing material fails this routine production testing, the manufacturer adjusts the process, reruns the production test, and, upon a successful outcome, continues production. It would be totally impractical for a manufacturer to undergo the delays and expense of shutting down its production line and sending samples for a full certification test by an SGCC®-approved independent laboratory every time there is a production test failure. Making adjustments to the equipment to correct minor flaws revealed by production testing are simply not “material changes” that require the sort of detailed analysis that characterizes SGCC® certification.¹

SGCC® Request: SGCC® recommends that the comments to the final rule clarify that the mere failure of a production test does not require a certification test where: (1) the cause of the failure can promptly be corrected by minor equipment adjustment that is not itself a “material change” (see Point 1 above) and (2) the product passes a subsequent production test after adjustment is made. (This would not apply to § 1107.10(b)(2) certification testing on a product before issuing a general conformity certificate.)

(3) Maintenance of records within the United States

Under § 1107.10(b)(5)(iii) of the proposed rule, a manufacturer must maintain the records specified in that subpart at a location within the United States. At present, SGCC® has over 60 participating plant locations that are not located within the United States. From the current direction, it is unclear what these plants would need to do. Records of production testing by their nature are generated at the manufacturing plant. Is the rule intended to apply to production tests or only to certification testing? If production test records must be kept in the United States, where would they be kept (if the foreign manufacturer has no U.S. facilities)? How quickly must they be sent to a U.S. location? What must be sent? Every record or a summary? Often there is a quality assurance department at a manufacturing location that maintain production test records. Must this all be duplicated at a U.S. location? This could include a significant amount of data that is highly specific to particular manufacturing plants.

¹ Nor would it be practical or efficient to expect glazing manufacturers to purchase, install, and maintain full certification testing equipment required by 16 CFR 1201. Not only would it cost in excess of \$35,000 to acquire and set up, but each manufacturer would have to employ and train one or more qualified test operators. This would undermine and negate the efficiencies and reliability advantages of independent testing.



August 24, 2010
Page 5

The requirement for keeping all “records specified in the subpart” is an unnecessarily onerous burden if the Commission intends to require foreign manufacturers to maintain production test records in the United States. SGCC® believes that, for foreign manufacturers, it should be sufficient that certification test records be kept at the U.S. offices of the manufacturer’s third-party certifier (such as SGCC® for glazing manufacturers) but that production test records may be maintained at the production plant where the product was manufactured, subject to their being made available for inspection by the CPSC upon request and with reasonable notice.

SGCC® Request: The proposed rule should be clarified either to exclude the maintenance of routine production test results or to revise the rule to provide that, for foreign manufacturers, production test records may be maintained at the production plant where the product was manufactured, subject to their being made available for inspection by the CPSC in the United States upon request and with reasonable notice.

* * *

Please let me know if you have any questions or would like to discuss any of these comments with representatives of SGCC®.

Very truly yours,

A handwritten signature in cursive script that reads 'William M. Hannay'.

William M. Hannay

APPENDIX A

[Excerpt from page 10, SGCC® *Certified Products Directory*, January 1, 2010]

A licensee's quality assurance program, as a minimum, must have the following elements:

1. A Quality Manual – a document that identifies, describes and contains the workings of the quality system.
2. A quality system representative – the designated point of contact for the quality system.
3. Production testing:
 - a. Test procedures
 - i. Tempered
 1. Center punch test (For example GANA TD 101-04) and/or impactor test (For example ANSI Z97.1, CPSC 16 CFR 1201)
 - ii. Laminated (the following are examples)
 1. Pummel test (Recommend contacting interlayer supplier for guidance)
 2. Boil test (For example ANSI Z97.1 and/or CPSC 16CFR1201)
 3. Ball drop test (For example GANA LD 100-06)
 - b. Frequency (as a minimum)
 - i. Tempered
 1. First of each product thickness per shift
 2. Additional testing based upon square footage produced
 - ii. Laminated
 1. Based upon process, products produced and square footage, consult your interlayer supplier for guidance
 - c. Documentation and retention of product testing records as a minimum:
 - i. 10 years