

Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act: Notice of Commission Action Lifting  
Stay of

Enforcement of Certification Requirements for Certain Non-  
children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission,"  
"CPSC," or "we") is announcing its decision to lift its stay of  
enforcement of certain certification provisions of section 14 of  
the Consumer Product Safety Act ("CPSA"), as amended by section  
102(a) of the Consumer Product Safety Improvement Act of 2008  
("CPSIA"). The Commission is taking this action with respect to  
non-children's products subject to CPSC regulations pertaining  
to vinyl plastic film, carpets and rugs, and clothing textiles.

DATE: The stay of enforcement of the certification provisions of  
section 14 of the CPSA expires for non-children's products  
subject to CPSC regulations pertaining to vinyl plastic film,

carpets and rugs, and clothing textiles on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In the *Federal Register* of February 9, 2009 (74 FR 6396), the Commission announced that it would stay its enforcement with respect to certain testing and certification requirements in sections 14(a)(1), (a)(2), and (a)(3) of the CPSA, as amended by section 102 of the CPSIA.

In brief, sections 14(a)(1) and (a)(2) of the CPSA establish testing and certification requirements for most consumer products regulated by or under the statutes enforced by the Commission, including children's products. Section 14(a)(1) of the CPSA requires every manufacturer of a product (and the private labeler of such product if such product bears a private label) that is subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other law enforced by the Commission, and which is imported

for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product, or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other law enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation applicable to the product.

For children's products, section 14(a)(2) of the CPSA states that, before importing for consumption or warehousing or distributing in commerce any children's product that is subject to a children's product safety rule, the manufacturer (and the private labeler if the children's product bears a private label) must submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a third party conformity assessment body accredited by the Commission under section 14(a)(3) of the CPSA ("CPSC-accepted third party laboratory"). (Section 3(a)(2) of the CPSA defines "children's product," in relevant part, as "a consumer product designed or intended primarily for children 12 years of age or younger.") The CPSC-accepted third party laboratory must test the children's product for compliance with such children's product safety rule. Based on the testing, the manufacturer (or

private labeler) must certify that the children's product complies with the children's product safety rule.

Section 14(a)(3) of the CPSA establishes a schedule for implementing third party testing and includes a timeline for the accreditation of third party conformity assessment bodies. Section 14(a)(3)(A) of the CPSA states that the third party testing requirement applies to any children's product manufactured more than 90 days after the Commission has established and published a "notice of requirements" for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule.

In the *Federal Register* of December 28, 2009 (74 FR 68588), the Commission revised the terms of the stay of enforcement on the CPSIA's testing and certification requirements. We announced when the stay would lift for certain testing and certification requirements and detailed how the other testing and certification requirements would be implemented or otherwise become effective. Part II.D of the December 28, 2009 notice discussed, in part, consumer products for which the Commission was continuing the stay of enforcement until further notice. We stated that, "[d]ue to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements for the children's product, the Commission has

decided to continue the stay of enforcement for consumer products or children's products listed below."

74 FR at 68591. We noted that the stay on CPSIA testing and certification did not extend to compliance with the applicable mandatory safety requirements; thus, the stay did not extend to guarantees under the Flammable Fabrics Act. 74 FR at 68589, 68591. The products identified in part II.D of the December 28, 2009 notice included:

- Carpets and rugs (16 CFR parts 1630 and 1631);
- Vinyl plastic film (16 CFR part 1611); and
- Wearing apparel (16 CFR part 1610).

74 FR at 68591. The Commission also explained that:

The Commission intends to require testing and certification of these products once it completes the rulemakings associated with the products, issues notices of requirements, or otherwise resolves the issues that have warranted a continuation of the stay of enforcement for the products.

74 FR at 68591 through 68592.

In July and August 2010, the Commission issued notices of requirements for these products. The notice of requirements pertaining to vinyl plastic film and carpets and rugs appeared in the *Federal Register* of July 21, 2010. 75 FR 42311 (vinyl plastic film); 75 FR 42315 (carpets and rugs). The notice of

requirements pertaining to clothing textiles (referred to as "wearing apparel" in the December 28, 2009 notice) appeared in the *Federal Register* of August 18, 2010. 75 FR 51016. Each notice of requirements described the stay of enforcement and then declared that the publication of the notice of requirements had the effect of lifting the stay of enforcement. For example, in the notice of requirements pertaining to clothing textiles, the Commission stated:

As the factor preventing the stay from being lifted in the December 28, 2009, notice with regard to testing and certifications of clothing textiles was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to 16 CFR part 1610. 75 FR at 51018. In relation to lifting the stay, each notice of requirements also described when manufacturers of children's products subject to the respective regulations would be required to certify their products based on third party testing.

Recently, various parties have contacted CPSC staff to ask whether the stay of enforcement had been lifted with respect to non-children's products subject to the cited CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles. Although some manufacturers interpreted the notices of requirements as lifting the stay of enforcement with respect to both non-children's and children's products, others

interpreted the text as applying only to children's products. Other parties informed CPSC staff that they did not consider reading the notices of requirements for information relevant to manufacturers because the notices of requirements provide the criteria and process for Commission acceptance of accreditation of third party laboratories for testing pursuant to CPSC regulations.

Given the apparent confusion about whether the stay of enforcement for non-children's products subject to the cited CPSC regulations pertaining to vinyl plastic film, carpets and rugs, and clothing textiles has been lifted, the Commission, through this notice, is announcing that the stay of enforcement pertaining to the certification under section 14(a)(1) of the CPSA for non-children's products will be lifted as of [insert date 30 days after date of publication in the FEDERAL REGISTER]. Thus, after [insert date 30 days after date of publication in the FEDERAL REGISTER], every manufacturer of a non-children's product (and the private labeler of such product if such product bears a private label) subject to CPSC regulations pertaining to:

- Carpets and rugs (16 CFR parts 1630 and 1631),
- Vinyl plastic film (16 CFR part 1611) or
- Wearing apparel (16 CFR part 1610),

whose product is imported for consumption or warehousing or distributed in commerce, must issue a certificate for that product. (The term "manufacturer" includes importers (see 16 CFR part 1110).)

Dated: December 7, 2010



Todd A. Stevenson,

Secretary, Consumer Product Safety

Commission