

Consumer Electronics Retailers Coalition



October 29, 2008

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

RE: Section 102: Comments on Requirements for Certificates for General Conformity Testing and Third Party Testing.

Dear Mr. Stevenson:

The Consumer Electronics Retailers Coalition (CERC) appreciates the opportunity to respond to The Consumer Product Safety Commission's (CPSC) Request for Comments and Information regarding Section 102's of the Consumer Product Safety Improvement Act (CPSIA) regarding the requirements for certificates for general conformity testing and third party testing. CERC is a public policy issue organization consisting of the major specialty retailers of consumer electronics products and retail associations. CERC members include Amazon.com, Best Buy, Circuit City, K-Mart, RadioShack, Sears, Target, Wal-Mart, and the leading retail industry trade associations – NRF, NARDA, and RILA.

The CPSC requests comments in particular regarding the use of electronic certificates as well as the issue of multiple certifications for the same products. CERC agrees that these are two issues needing clarification by the CPSC very soon, in light of this provision's effective date - November 12, 2008. With both issues, CERC encourages the CPSC to consider that flexibility and efficiency is needed in order for every responsible party in the supply chain – manufacturers, importers, distributors and retailers – to comply.

I. The CPSIA's Use of the Terms "Accompany" and "Furnish" Do Not Preclude the Use of Electronic Certificates

Section 102(a)(1) amends the Consumer Product Safety Act (CPSA) by requiring manufacturers of any consumer product required to comply with CPSA or other Acts enforced by the CPSC to issue a certificate of compliance for that consumer product. Section 102(b) further amends the CPSA to require that the certificates "accompany" the applicable products or

shipment of products subject to the certificate and that a copy of the certificate be “furnished” to each distributor or retailer of the products.

The CPSC’s Request for Comments highlights the need to clarify the meaning of these terms and CERC supports the interpretations included in the issuance of the CPSC’s recent Sample General Certification of Conformity, its Instructions, and the Answers included with its related Frequently Asked Questions (FAQs). In the FAQs, the CPSC indicates that an electronic certificate is “accompanying” a shipment if it is identified by a unique identifier and can be accessed via the World Wide Web URL or other electric means. The FAQs further states that a certificate is considered “furnished” if a manufacturer provides its distributors and retailers a reasonable means to access the certificate. CERC interprets this FAQ to allow for flexible means of distribution or availability, including electronically or having them otherwise accessible on the demand of a retailer or distributor.

CERC is pleased that the FAQs are consistent with and indicate support for concepts proposed by other retailer and manufacturer trade associations, such as RILA, NAM and CEA. Those industry proposals consistently include permitting the certificate to be electronic in nature. At least one industry group has supported the transmission and maintenance with other records required by 19 U.S.C. 1509(a)(1)(a) for entry of merchandise. Under any such electronic system, the certificates would be readily available upon request to the CPSC for enforcement purposes.

Furthermore, industry groups recommend that in permitting electronic devices, there are a number of methods by which a manufacturer might indicate certification of products: through labeling or marking of products, with indications of and the location of certifications clearly indicated on shipping crates, and/or in shipping documentation already maintained in the ordinary course of business, such as invoices, bills of lading, custom entry documents or other shipping documents.

Finally, CERC agrees with the comments of other industry groups recognizing that the CPSC’s rules regarding certification processes and procedures must comply with the Paperwork Reduction Act when interpreting Section 102. Specifically, the Paperwork Reduction Act requires agencies to reduce information collection burdens, to implement new regulations in ways consistent with existing reporting requirements and to use information technology to reduce such burdens and agency efficiencies. CERC believes that the reliance on electronic certifications and access to electronic databases as proposed above helps the CPSC satisfy these requirements.

II. CERC Seeks Clarification regarding Parties Responsible for Certification

The CPSIA requires each manufacturer or private labeler to issue a certificate of conformity for all consumer products subject to any of the rules, bans or standards regulations

under the CPSA or other Act enforced by the CPSC.¹ There has been significant confusion as to whether CPSIA intended to require multiple certifications by the manufacturer, importer and private labeler, where one exists. As Gib Mullen of the CPSC indicated on October 2, 2008, the CPSC by rule may exempt one party (presumably the importer or the private labeler) from certification responsibility.

In its Sample General Certification of Conformity and accompanying Instructions, the CPSC appears to indicate that the manufacturer and importer or manufacturer and private labeler are not both required to issue certifications. In the Instructions, under Item 4, the CPSC states that the manufacturer is not required to include the U.S. importer's address information "if the importer chooses to certify separately." Likewise, under Item 5, the CPSC states that the manufacturer is not required to include the private labeler's address information "if the private labeler chooses to certify separately."

CERC supports the implications of the Instructions the CPSC has provided and proposes that the CPSC indicate the same premise in its rules. Specifically, CERC recommends that the CPSC clarify in its rules that when the manufacturer issues a certification in compliance with the CPSIA, the importer or private labeler is not required to do the same. Indeed, to require each of these parties to separately certify a product would not make sense. An importer or private labeler does not have access to a product until after it has reached or been through U.S. Customs. CERC seeks clarification regarding the point at which in the process the importer or private labeler would be required to certify the product.

If required to separately certify, such certification by importers and private labelers would be based on the testing performed and certification of the manufacturer. CERC recommends that the CPSC state in its rules that an importer or private labeler is not required to separately certify when the manufacturer has provided certification. That certificate, including the information of a manufacturer, importer and/or private labeler, would be sufficient for issuance to the CPSC upon request.

For the purposes of furnishing the certificates to distributors and retailers, however, there may be circumstances under which information included in the underlying manufacturer's certificate is proprietary in nature and not appropriate for furnishing to a distributor or retailer. Under such circumstances, an importer or private labeler should be considered in compliance with the Act if they provide to distributors or retailers their own certificate relying on the information provided by the manufacturer's certificate.

CERC also requests that the CPSC include in its rules the statement made by Gib Mullen on October 2, 2008 clarifying that a retailer or distributor (without specific knowledge on conformity) who sells or offers for sale a nonconforming product may have a defense if it holds a certificate issued in accordance with section 14 of CPSA. This provision would clarify that

¹ Under the Consumer Product Safety Act, the term manufacturer is defined to include a person who imports a consumer product. 15 U.S.C. 2052(a) (4).

while the CPSIA requires manufacturers (importers and/or private labelers) to furnish retailers and distributors with certificates, it is not the intent of the Act to have the retailers or distributors bear any of the liabilities associated with non-conformity of products, if they have no such specific knowledge of non-conformity.

In addition, the Act does not require a retailer or distributor, who is not an importer or private labeler, to maintain records of product certifications and due to the burdens imposed; CERC does not believe such recordkeeping should be required.

Conclusion:

CERC appreciates the opportunity to respond to the CPSC's Request for Comment and looks forward to the opportunity to continue working with the CPSC on the implementation of the certification provisions and of the CPSIA more generally.

Respectfully,

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