



Information Technology Industry Council
Leading Policy for the Innovation Economy

Association Connecting Electronics Industries



October 29, 2008

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

Subject: **Consumer Product Safety Improvement Act;
Section 102 Certificate Requirements**

Attached please find comments and questions from the Consumer Electronics Association (CEA), the Information Technology Industry Council (ITI), and IPC – Association Connecting Electronics Industries on Section 102 of the Consumer Product Safety Improvement Act (“CPSIA”). Collectively our associations promote growth in the U.S. consumer technology and information technology industries through technology policy, events, research, promotion, standards development and the fostering of business and strategic relationships. We represent thousands of corporate members. Among their numerous lines of business, our members design, develop, manufacture, and distribute products that will be subject to the new CPSIA requirements for certificates.

General Recommendations

Our members are committed to complying with the CPSIA. However, we are deeply concerned with the lack of clarity surrounding the requirements for certification, and fear that because of this lack of clarity many companies will struggle to achieve compliance with the new requirement, despite their best efforts. This is compounded by the fast-approaching November 12, 2008 deadline, which does not allow industry adequate time to educate its supply chain partners and to establish the new operating procedures required by the certification regime. We believe that absent urgent clarification from the Consumer Product Safety Commission (“CPSC” or “Commission”) there will be tremendous disruption for manufacturers which will not serve U.S. consumers or improve the safety of products.

We therefore ask that the Commission consider the following:

- Before November 12, 2008, the Commission should issue an interpretation of the requirements for certification such that it resolves the key areas of ambiguity (as described in this letter). This is an essential precondition to the significant investment which companies will need to make in order to design and implement the necessary

systems and processes throughout their supply chains. In issuing this interpretation, we urge the Commission to strive for simplification of the requirements for certificates to “accompany” products and “be furnished to” retailers and distributors, such that the requirements adequately fulfill the objectives of the CPSIA, and no more.

- The Commission should issue an advisory that it will monitor compliance with the requirements for certificates and will not rigorously enforce or levy fines and penalties for a reasonable, fixed period of time, except for cases of flagrant violations, falsifications, and other criminal behaviors. Doing so will allow companies to obtain clear guidance from the Commission about the scope of and the means for satisfying the certification requirement, and to then implement the necessary processes in their supply chains.
- Some of the information required on certificates (e.g., identification of the foreign manufacturer, identification of the U.S. importer, identification of the private labeler) is considered proprietary by the manufacturer, importer or private labeler. The Commission must have a process in place to protect this critical information.
- Long term, the Commission should implement a centralized database for electronic filing. Such a centralized database would eliminate the need for thousands of separate and redundant electronic databases and would result in a significant reduction in industry compliance costs. This would help moderate potential price increases to consumers while increasing the overall coordination and effectiveness of the program.

Specific recommendations for how the certificates for products distributed in commerce by domestic manufacturers or imported from foreign manufacturers can be made available.

CEA, ITI and IPC agree with the recent FAQ from the Commission staff, which reads, “The CPSC staff’s opinion is that so long as the Commission has reasonable access to the certificate electronically and it contains all of the information required by Section 102 of the CPSIA, electronic certificates can be used to satisfy the CPSIA.” We believe that an existing document that currently accompanies a product, such as an invoice or bill of lading, should be used to direct an interested party to a website address to obtain the electronic certificate. By following the Electronic Certificate Program set out below, we believe this will satisfy the requirement for a certificate to “accompany” a shipment and the requirement to “furnish” a certificate to a distributor/retailer. Further, a certificate can easily be accessed by the Commission for immediate inspection for compliance and enforcement and can be tied to specific shipments of products as required by the Commission.

Electronic Certificate Program

To reduce the variability of manufacturers’ and importers’ websites, and to set a standard for accessibility, the Commission should establish basic rules for an electronic certificate program. The Commission should consider the following aspects when setting such rules:

- Manufacturers should be encouraged to use similar language in identifying the World Wide Web location of their certificates.
- The World Wide Web location provided with the product is a link directly to the electronic file of the certificate for the specific product, or to a searchable website.

Specific recommendations regarding multiple certifications

There is widespread confusion over multiple certifications. During the October 2, 2008 public meeting on certification, the Commission staff indicated that the manufacturer, importer and private labeler each must certify that a product is in compliance with CPSC rules, bans, standards, etc. We encourage the CPSC to examine mechanisms to streamline and simplify the multiple certification rules.

It is unclear, at this time, at what point in the supply chain each party must certify. For instance, if a product is manufactured in a foreign country, it is clear that the manufacturer must certify the product before it is imported into the U.S. However, the importer is also required to certify the product, but may not have access to the product until after it has left customs. Is this the point at which the importer is to add its certificate to the product? Similarly, the private labeler may not have access to the product until after it has been through customs. At what point is the private labeler required to certify the product? Is the manufacturer's original certificate sufficient at the point of importation to have the product imported into the US? Accordingly we encourage the Commission to require that only one party certify the product.

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

In part, the Paperwork Reduction Act requires agencies to:

- Section 3506 (b)(1)(A): reduce information collection burdens on the public;
- Section 3506 (c)(1)(C): assess the information collection burden of proposed legislation affecting the agency
- Section 3506(c)(2)(A)(iv): minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology
- Section 3506(c)(3)(C): reduce to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5
- Section 3506(c)(3)(E): implement in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond
- Section 3506(c)(3)(J): to the maximum extent practicable, use information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public

In light of these and other provisions of the Paperwork Reduction Act, the CPSC should reconsider the 'furnish' and 'accompany' requirements because they seem unduly burdensome. At the very least, the CPSC should consider implementing an on demand program for a fixed amount of time to allow industry adequate time to develop and launch complex and costly databases to meet the certification requirements of the CPSIA.

Concluding Comments

We are pleased with the CPSC staff's FAQ regarding the interpretations of "furnished" and "accompany" such that certificates can be provided electronically. Early industry estimates indicate that some companies could spend tens of millions of dollars to establish a paper certificate process, and spend more money to respond to questions and inquiries related to out-of-date paper certificates in circulation. We believe an Electronic Certificate Program will better ensure reasonable access to the certificate electronically, and thereby preserve the staff's interpretation on this matter.

We appreciate the opportunity to raise our concerns and outstanding questions with regard to the implementation of the requirements for certificates specified in the CPSIA. We look forward to continued, close cooperation as this important legislation is interpreted and implemented. Please do not hesitate to contact Ms. Megan Hayes, CEA, at mhayes@CE.org or 703-907-7660 or Joshua Rosenberg, ITI, at jrosenberg@itic.org or 202-626-5738 or Ron Chamrin, IPC, at RonChamrin@ipc.org or 703-522-0225 if you have any questions.

Sincerely,

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