SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1101—INFORMATION DISCLOSURE UNDER SECTION 6(b) OF THE CONSUMER PRODUCT SAFETY ACT

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AUTHORITY: Section 6(b) of Public Law 92–573, as amended by Section 211 of Public Law 110–314, 122 Stat. 3016, 15 U.S.C. 2055(b), 5 U.S.C. 553(b).

SOURCE: 48 FR 57430, Dec. 29, 1983, unless otherwise noted.

Subpart A—Background

§ 1101.1 General background.

(a) *Basic purpose.* This rule sets forth the Consumer Product Safety Commission's policy and procedure under sections 6(b)(1)–(5) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2055(b)(1)–(5)) which relate to public disclosure of information from which the identity of a manufacturer or private labeler of a product can be readily ascertained. In addition, these rules provide for retraction of inaccurate or misleading information the Commission has disclosed that reflects adversely on the safety of a consumer product or class of products or on the practices of any manufacturer, private labeler, distributor or retailer of consumer products as required by section 6(b)(7) of the CPSA (15 U.S.C. 2055(b)(7)).

(b) *Statutory requirements.* Section 6(b) establishes procedures that the

Commission must follow when it releases certain firm specific information to the public and when it retracts certain information it has released.

(1) Generally, section 6(b)(1) requires the Commission to provide manufacturers or private labelers with advance notice and opportunity to comment on information the Commission proposes to release, if the public can readily ascertain the identity of the firm from the information. Section 6(b)(1) also requires the Commission to take reasonable steps to assure that the information is accurate and that disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts administered by the Commission. Disclosure of information may not occur in fewer than 15 days after notice to the manufacturer or private labeler unless the Commission publishes a finding that the public health and safety requires a lesser period of notice. Exceptions to these requirements are established in section 6(b)(4). Additional limitations on the disclosure of information reported to the Commission under section 15(b) of the CPSA are established in section 6(b)(5).

(2) Section 6(b)(2) requires the Commission to provide further notice to manufacturers or private labelers where the Commission proposes to disclose product-specific information the firms have claimed to be inaccurate.

(3) Section 6(b)(3) authorizes manufacturers and private labelers to bring lawsuits against the Commission to prevent disclosure of product-specific information after the firms have received the notice specified.

(c) *Internal clearance procedures.* Section 6(b)(6) requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information that reflect on the safety of a consumer product or class of products, even if the information is not product specific. This rule does not address section 6(b)(6) because the Commission has internal clearance procedures in its directives system. (Directive 1450.2 ''Clearance Procedures for Commission Staff to Use in Providing Information to the Public.'' April 27, 1983.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72334, Nov. 28, 2008]

§ 1101.2. Scope.

Section 6(b) and these rules apply to information concerning products subject to the CPSA (15 U.S.C. 2051–2085), and to the four other acts the Commission administers (transferred acts). These transferred acts are the Flammable Fabrics Act, 15 U.S.C. 1191–1204 (FFA); the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471–1476 (PPPA); the Federal Hazardous Substances Act, 15 U.S.C. 1261–1276 (FHSA); and the Refrigerator Safety Act, 15 U.S.C. 1211–1214 (RSA). These provisions are now applicable to the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8003(a); and the Children's Gasoline Burn Prevention Act §2(a), Public Law 110–278, 122 Stat. 2602 (July 17, 2008).

[73 FR 72334, Nov. 28, 2008]

Subpart B—Information Subject to Notice and Analysis Provisions of Section 6(b)(1)

§ 1101.11 General application of provisions of section 6(b)(1).

(a) *Information subject to section 6(b)(1).* To be subject to the notice and analysis provisions of section 6(b)(1), information must meet all the following criteria:

(1) The information must pertain to a specific product which is either designated or described in a manner which permits its identity to be ascertained readily by the public.

(2) The information must be obtained, generated or received by the Commission as an entity or by individual members, employees, agents, contractors or representatives of the Commission acting in their official capacities.

(3) The Commission or its members, employees, agents or representatives must propose to disclose the information to the public (see §1101.12).

(4) The manner in which the product is designated or described in the information must permit the public to ascertain readily the identity of the manufacturer or private labeler. [See § 1101.13.]

(b) *Information not subject to section 6(b)(1).* The requirements of section 6(b)(1) do not apply to:

(1) Information described in the exclusions contained in section 6(b)(4) of the CPSA (see subpart E of this rule).

(2) Information the Commission is required by law to make publicly available. This information includes, for example, Commission notifications to foreign governments regarding certain products to be exported, as required by section 18(b) of the CPSA, 15 U.S.C. 2068(b); section 14(d) of the FHSA, 15 U.S.C. 1273(d); and section 15(c) of the FFA, 15 U.S.C. 1202(c). (See the Commission's Export Policy Statement, 16 CFR part 1017.)

(3) Information required to be disclosed to the President and Congress pursuant to section 27(j) of the CPSA, 15 U.S.C. 2076(j).

(4) Press releases issued by firms.

(5) Information filed or presented in administrative proceedings or litigation to which the Commission is a party and which is not expressly subject to the section 6(b)(4) exceptions.

§ 1101.12 Commission must disclose information to the public.

Public. For the purposes of section 6(b)(1), the public includes any person except:

(a) Members, employees, agents, representatives and contractors of the Commission, in their official capacity.

(b) State officials who are commissioned officers under section 29(a)(2) of the CPSA, 15 U.S.C. 2078(a)(2), to the extent that the Commission furnishes them information necessary for them to perform their duties under that section. Such officials may not release to the public copies of such information unless the Commission has complied with section 6(b) or the information falls within an exception to section 6(b).

(c) Members of a Commission Chronic Hazard Advisory Panel established under section 28 of the CPSA (15 U.S.C. 2077). However, disclosures of information by such a Panel are subject to section 6(b).

(d) The persons or firms to whom the information to be disclosed pertains, or their legal representatives.

(e) The persons or firms who provided the information to the Commission, or their legal representatives.

(f) Other Federal agencies or state or local governments to whom accident and investigation reports are provided pursuant to section 29(e) of the CPSA (15 U.S.C. 2078(e)). However, as required by that section, employees of Federal agencies or state or local governments may not release to the public copies of any accident or investigation report made under the CPSA by an officer, employee or agent of the Commission unless CPSC has complied with the applicable requirements of section 6(b).

(g) The Chairman or ranking minority member of a committee or subcommittee of Congress acting pursuant to committee business and having jurisdiction over the matter which is the subject of the information requested.

(h) Any federal, state, local, or foreign government agency pursuant to, and in accordance with, section 29(f) of the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008)).

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.13 Public ability to ascertain readily identity of manufacturer or private labeler.

The advance notice and analysis provisions of section 6(b)(1) apply only when a reasonable person receiving the information in the form in which it is to be disclosed and lacking specialized expertise can readily ascertain from the information itself the identity of the manufacturer or private labeler of a particular product. The Commission will provide the advance notice and opportunity to comment if there is a question whether the public could readily ascertain the identity of a manufacturer or private labeler.

Subpart C—Procedure for Providing Notice and Opportunity To Comment Under Section 6(b)(1)

§ 1101.21 Form of notice and opportunity to comment.

(a) *Notice may be oral or written.* The Commission will generally provide to manufacturers or private labelers written notice and opportunity to comment on information subject to section 6(b)(1). However, when the Commission publishes a finding that the public health and safety requires a lesser period of notice pursuant to section 6(b)(1) of the CPSA, the Commission may determine that it is necessary to provide the notice and opportunity to comment orally, either in person or by telephone.

(b) *Content of notice.* The Commission will provide the manufacturer or private labeler with:

(1) Either the actual text of the information to be disclosed or, if appropriate, a summary of the information.

(2) A general description of the manner in which the Commission will disclose the information, including any other relevant information the Commission intends to include with the disclosure. If the Commission advises that the form of disclosure will be by press release, for example, the Commission need not provide further notice to disclose a summary of the press release.

(3) A request for comment with respect to the information, including a request for explanatory data or other relevant information for the Commission's consideration.

(4) A statement that, in the absence of a specific request by a firm that its comments be withheld from disclosure, the Commission will release to the public the firm's comments (or a summary thereof prepared by the firm or, if the firm declines to do so, by the Commission).

(5) A statement that a request that comments be withheld from disclosure will be honored.

(6) Notice that the firm may request confidential treatment for the information, in accordance with section 6(a)(3) of the Consumer Product Safety Act, 15 U.S.C. 2055(a)(3) (*see* § 1101.24(b)).

(7) A statement that no further request for comment will be sought by the Commission if it intends to disclose the identical information in the same format, unless the firm specifically requests the opportunity to comment on subsequent information disclosures.

(8) The name, address, and telephone number of the person to whom comments should be sent and the time when any comments are due (*see* § 1101.22).

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.22 Timing: request for time extensions.

(a) *Time for comment.* (1) Generally firms will receive ten (10) calendar days from the date of the letter in which the Commission transmits the notice to furnish comments to the Commission. Firms that receive requests for comments by mail will receive an additional three (3) days to comment to account for time in the mail.

(2) Upon his or her own initiative or upon request, the Freedom of Information Officer may provide a different amount of time for comment, particularly for firms that receive voluminous or complex material. In addition, the Commission may publish a finding that the public health and safety requires a lesser period of notice and may require a response in a shorter period of time (*see* § 1101.24).

(b) *No response submitted.* (1) If the Commission has not received a response within the time specified and if it has received no request for extension of time, the Commission will analyze the information as provided in subpart D. If no comments are submitted the Commission will not give the further notice provided in section 6(b)(2).

(2) Unless the Commission publishes a finding that the public health and safety requires a lesser period of notice (see § 1101.23), the Commission will not disclose the information in fewer than 15 days after providing a manufacturer or private labeler notice and opportunity to comment.

(c) *Requests for time extension.* (1) Requests for extension of time to comment on information to be disclosed

must be made to the person who provided the Commission's notice and opportunity to comment. The request for time extension may be either oral or written. An oral request for a time extension must be promptly confirmed in writing.

(2) Requests for extension of time must explain with specificity why the extension is needed and how much additional time is required.

(3) The Commission will promptly respond to requests for extension of time.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.23 Providing less than 15 days notice before disclosing information.

There are two circumstances in which the Commission may disclose to the public information subject to section 6(b)(1) in a time less than 15 days after providing notice to the manufacturer or private labeler.

(a) *Firm agrees to lesser period or does not object to disclosure.* The Commission may disclose to the public information subject to section 6(b)(1) before the 15-day period expires when, after receiving the Commission's notice and opportunity to comment, the firm involved agrees to the earlier disclosure; notifies the Commission that it has no comment; or notifies the Commission that it does not object to disclosure.

(b) *Commission finding a lesser period is required.* Section 6(b)(1) provides that the Commission may publish a finding that the public health and safety requires a lesser period of notice than the 15 days advance notice that section 6(b)(1) generally requires. The Commission may find that the public health and safety requires less than 15 days advance notice, for example, to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterizes statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of finding.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 15 days advance notice either orally or in writing, depending on the immediacy of the need for quick action. Where applicable, before releasing information, the Commission will comply with the requirements of section 6(b) (1) and (2) by giving the firm the opportunity to comment on the information, either orally or in writing depending on the immediacy of the need for quick action, and by giving the firm advance notice before disclosing information claimed by a manufacturer or private labeler to be inaccurate (see § 1101.25).

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.24 Scope of comments Commission seeks.

(a) *Comment in regard to the information.* The section 6(b) opportunity to comment on information is intended to permit firms to furnish information and data to the Commission to assist the agency in its evaluation of the accuracy of the information. A firm's submission, therefore, must be specific and should be accompanied by documentation, where available, if the comments are to assist the Commission in its evaluation of the information. Comments of a general nature, such as general suggestions or allegations that a document is inaccurate or that the Commission has not taken reasonable steps to assure accuracy, are not sufficient to assist the Commission in its evaluation of the information or to justify a claim of inaccuracy. The weight accorded a firm's comments on the accuracy of information and the degree of scrutiny which the Commission will exercise in evaluating the information will depend on the specificity and completeness of the firm's comments and of the accompanying documentation. In general, specific comments which are accompanied by documentation will be given more weight than those which are undocumented and general in nature.

(b) *Claims of confidentiality.* If the manufacturer or private labeler believes the information involved cannot be disclosed because of section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)),

which pertains to trade secret or other confidential material, the firm may make claims of confidentiality at the time it submits its comments to the Commission under this section. Such claims must identify the specific information which the firm believes to be confidential or trade secret material and must state with specificity the grounds on which the firm bases it claims. (See Commission's Freedom of Information Act regulation, 16 CFR part 1015, particularly 16 CFR 1015.18.)

(c) *Requests for nondisclosure of comments.* If a firm objects to disclosure of its comments or a portion thereof, it must notify the Commission at the time it submits its comments. If the firm objects to the disclosure of a portion of its comments, it must identify those portions which should be withheld.

§ 1101.25 Notice of intent to disclose.

(a) *Notice to manufacturer or private labeler.* In accordance with section 6(b)(2) of the CPSA, if the Commission, after following the notice provisions of section 6(b)(1), determines that information claimed to be inaccurate by a manufacturer or private labeler in comments submitted under section 6(b)(1) should be disclosed because the Commission believes it has complied with section 6(b)(1), the Commission shall notify the manufacturer or private labeler that it intends to disclose the information not less than 5 days after the date of the receipt of notification by the firm. The notice of intent to disclose will include an explanation of the reason for the Commission's decision, copies of any additional materials, such as explanatory statements and letters to Freedom of Information Act requesters, which were not previously sent to the firm.

(b) *Commission finding a lesser period is required.* The Commission may determine that the public health and safety requires less than 5 days advance notice of its intent to disclose information claimed to be inaccurate. For example, the Commission may determine it is necessary to warn the public quickly because individuals may be in danger from a product hazard or a potential hazard, or to correct product safety information released by third persons, which mischaracterized statements made by the Commission about the product or which attributes to the Commission statements about the product which the Commission did not make.

(c) *Notice of findings.* The Commission will inform a manufacturer or private labeler of a product which is the subject of a public health and safety finding that the public health and safety requires less than 5 days advance notice either orally or in writing, depending on the immediacy of the need for quick action.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.26 Circumstances when the Commission does not provide notice and opportunity to comment.

(a) *Notice to the extent practicable.* Section 6(b)(1) requires that ''to the extent practicable'' the Commission must provide manufacturers and private labelers notice and opportunity to comment before disclosing information from which the public can ascertain readily their identity.

(b) *Circumstances when notice and opportunity to comment is not practicable.* The Commission has determined that there are various circumstances when notice and opportunity to comment is *not* practicable. Examples include the following:

(1) When the Commission has taken reasonable steps to assure that the company to which the information pertains is out of business and has no identifiable successor.

(2) When the information is disclosed in testimony in response to an order of the court during litigation to which the Commission is not a party.

Subpart D—Reasonable Steps Commission Will Take To Assure Information It Discloses Is Accurate, and That Disclosure Is Fair in the Circumstances and Reasonably Related to Effectuating the Purposes of the Acts It Administers

§ 1101.31 General requirements.

(a) *Timing of decisions.* The Commission will attempt to make its decision

on disclosure so that it can disclose information in accordance with section 6(b) as soon as is reasonably possible after expiration of the statutory fifteen day moratorium on disclosure.

(b) *Inclusion of comments.* In disclosing any information under this section, the Commission will include any comments or other information submitted by the manufacturer or private labeler unless the manufacturer or private labeler at the time it submits its section 6(b) comments specifically requests the Commission not to include the comments or to include only a designated portion of the comments and disclosure of the comments on such a designated portion is not necessary to assure that the disclosure of the information which is the subject of the comments is fair in the circumstances.

(c) *Explanatory statements.* Where appropriate, the Commission will accompany the disclosure of information subject to this subpart with an explanatory statement that makes the nature of the information disclosed clear to the public. Inclusion of an explanatory statement is in addition to, and not a substitute for, taking reasonable steps to assure the accuracy of information. To the extent it is practical the Commission will also accompany the disclosure with any other relevant information in its possession that places the released information in context.

(d) *Information previously disclosed.* If the Commission has previously disclosed, in accordance with section 6(b)(1), the identical information it intends to disclose again in the same format, it will not customarily take any additional steps to assure accuracy unless the Commission has some reason to question its accuracy or unless the firm, in its comments responding to the Commission's initial section 6(b) notice, specifically requests the opportunity to comment on subsequent disclosures, or unless the Commission determines that sufficient time has passed to warrant seeking section 6(b) comment again. Before disclosing the information the Commission will again review the information to see if accuracy is called into question and will further look to whether disclosure is fair in the circumstances and reasonably related to effectuating the purposes of the Acts the Commission administers.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.32 Reasonable steps to assure information is accurate.

(a) The Commission considers that the following types of actions are reasonable steps to assure the accuracy of information it proposes to release to the public:

(1) The Commission staff or a qualified person or entity outside the Commission (e.g., someone with requisite training or experience, such as a fire marshal, a fire investigator, an electrical engineer, or an attending physician) conducts an investigation or an inspection which yields or corroborates the product information to be disclosed; or

(2) The Commission staff conducts a technical, scientific, or other evaluation which yields or corroborates the product information to be disclosed or the staff obtains a copy of such an evaluation conducted by a qualified person or entity; or

(3) The Commission staff provides the information to be disclosed to the person who submitted it to the Commission for review and, if necessary, correction, and the submitter confirms the information as accurate to the best of the submitter's knowledge and belief, provided that:

(i) The confirmation is made by the person injured or nearly injured in an incident involving the product; or

(ii) The confirmation is made by a person who, on the basis of his or her own observation or experience, identifies an alleged safety-related defect in or problem with such a product even though no incident or injury associated with the defect or problem may have occurred; or

(iii) The confirmation is made by an eyewitness to an injury or safety-related incident involving such a product; or

(iv) The confirmation is made by an individual with requisite training or experience who has investigated and/or determined the cause of deaths, injuries or safety-related incidents involving such a product. Such persons would include, for example, a fire marshal, a

fire investigator, an electrical engineer, an ambulance attendant, or an attending physician; or

(v) The confirmation is made by a parent or guardian of a child involved in an incident involving such a product, or by a person to whom a child is entrusted on a temporary basis.

(b) The steps set forth below are the steps the Commission will take to analyze the accuracy of information which it proposes to release to the public.

(1) The Commission will review each proposed disclosure of information which is susceptible of factual verification to assure that reasonable steps have been taken to assure accuracy in accordance with §1101.32(a).

(2) As described in subpart C, the Commission will provide a manufacturer or private labeler with a summary or text of the information the Commission proposes to disclose and will invite comment with respect to that information.

(3) If the Commission receives no comments or only general, undocumented comments claiming inaccuracy, the Commission will review the information in accordance with §1101.32(a) and release it, generally without further investigating its accuracy if there is nothing on the face of the information that calls its accuracy into question.

(4) If a firm comments on the accuracy of the information the Commission proposes to disclose, the Commission will review the information in light of the comments. The degree of review by the Commission and the weight accorded a firm's comments will be directly related to the specificity and completeness of the firm's comments on accuracy and the accompanying documentation. Documented comments will be given more weight than undocumented comments. Specific comments will be given more weight than general comments. Further steps may be taken to determine the accuracy of the information if the Commission determines such action appropriate.

§1101.33 Reasonable steps to assure information release is fair in the circumstances.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure disclosure of information to the public is fair in the circumstances:

(1) The Commission will accompany information disclosed to the public with the manufacturer's or private labeler's comments unless the manufacturer or private labeler asks in its section 6(b) comments that its comments or a designated portion thereof not accompany the information.

(2) The Commission generally will accompany the disclosure of information with an explanatory statement that makes the nature of the information disclosed clear to the public. The Commission will also take reasonable steps to disclose any other relevant information it its possession that will assure disclosure is fair in the circumstances.

(3) The Commission will limit the form of disclosure to that which it considers appropriate in the circumstances. For example, the Commission may determine it is not appropriate to issue a nationwide press release in a particular situation and rather will issue a press release directed at certain localities, regions, or user populations.

(4) The Commission may delay disclosure of information in some circumstances. For example, the Commission may elect to postpone an information release until an investigation, analysis or test of a product is complete, rather than releasing information piecemeal.

(b) The Commission will not disclose information when it determines that disclosure would not be fair in the circumstances. The following are examples of disclosures which generally would not be fair in the circumstances.

(1) Disclosure of information furnished by a firm to facilitate prompt remedial action or settlement of a case when the firm has a reasonable expectation that the information will be maintained by the Commission in concidence.

(2) Disclosure of notes or minutes of meetings to discuss or negotiate settlement agreements and of drafts of documents prepared during settlement negotiations, where the firm has a reasonable expectation that such written materials will be maintained by the Commission in confidence.

(3) Disclosure of the work-product of attorneys employed by a firm and information subject to an attorney/client privilege, if the Commission has obtained the information from the client or the attorney, the attorney or client advises the Commission of the confidential nature of the information at the time it is submitted to the Commission, and the information has been maintained in confidence by the client and the attorney.

(4) Disclosure of a firm's comments (or a portion thereof) submitted under section 6(b)(1) over the firm's objection.

§ 1101.34 Reasonable steps to assure information release is "reasonably related to effectuating the purposes of the Acts" the Commission administers.

(a) The steps set forth below are the steps the Commission has determined are reasonable to take to assure that the disclosure of information to the public effectuates the purposes of the Acts it administers.

(1) *Purposes of the CPSA.* The Commission will review information to determine whether disclosure would be reasonably related to effectuating one or more of the specific purposes of the CPSA, as set forth in sections 2(b) and 5, 15 U.S.C. 2051(b) and 2054.

(2) *Purposes of the FHSA, FFA, PPPA and RSA.* The Commission will also review information concerning products subject to the transferred acts it administers and to the Commission's specific functions under those acts to determine whether disclosure of information would be reasonably related to effectuating the purposes of those acts.

(3) *Purposes of the FOIA.* FOIA requests will be reviewed to determine whether disclosure of the information is reasonably related to effectuating one or more of the purposes of the acts administered by the Commission. In the event of a close question on this issue, the Commission will defer to the purposes of the FOIA. The FOIA establishes a general right of the public to have access to information in the Commission's possession, particularly information that reveals whether the Commission is meeting its statutory responsibilities or information upon which the Commission bases a decision that affects the public health and safety.

(b) In reviewing proposed information disclosures, the Commission will consider disclosing the material on the basis of whether release of the information, when taken as a whole, was prepared or is maintained in the course of or to support an activity of the Commission designed to accomplish one or more of the statutory purposes.

Subpart E—Statutory Exceptions of Section 6(b)(4)

§ 1101.41 Generally.

(a) *Scope.* This subpart describes and interprets the exceptions to the requirements of section 6(b)(1)–(b)(3) that are set forth in section 6(b)(4). These exceptions apply to:

(1) Information about a product reasonably related to the subject matter of an imminent hazard action in federal court;

(2) Information about a product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*) or similar rule or provision of any other act enforced by the Commission;

(3) Information in the course of or concerning a rulemaking proceeding; or

(4) information in the course of or concerning an adjudicatory, administrative or judicial proceeding.

(b) *Application to transferred act.* The Commission will apply the exceptions contained in section 6(b)(4) to those provisions in the transferred acts, comparable to the specific provisions in the CPSA to which section 6(b)(4) applies.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.42 Imminent hazard exception.

(a) *Statutory provision.* Section 6(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of ''information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products).''

(b) *Scope of exception.* This exception applies once the Commission has filed an action under section 12 of the CPSA (15 U.S.C. 2061), in a United States district court. Once the exception applies, information may be disclosed to the public while the proceeding is pending without following the requirements of section 6(b)(1) if the information concerns or relates to the product alleged to be imminently hazardous. Upon termination of the proceeding, information filed with the court or otherwise made public is not subject to section 6(b). Information in the Commission's possession which has not been made public is subject to section 6(b).

§ 1101.43 Section 6(b)(4)(A) exception.

(a) *Statutory provision.* Section (6)(b)(4)(A) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information about any consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) or similar rule or provision of any other act enforced by the Commission.

(b) *Scope of exception.* This exception applies once the Commission has ''reasonable cause to believe'' there has occurred a violation of any consumer product safety rule or provision under the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) or similar rule or provision of any other act enforced by the Commission. Once the exception applies, the Commission may disclose information to the public without following the requirements of section 6(b)(1) if the information concerning the product is reasonably related to the violation.

[73 FR 72335, Nov. 28, 2008]

§ 1101.44 Rulemaking proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of information ''in the course of or concerning a rulemaking proceeding (which shall commence upon the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking) * * * under this Act.''

(b) *Scope of exception.* This exception applies upon publication in the FEDERAL REGISTER of an advance notice of proposed rulemaking or, if no advance notice of proposed rulemaking is issued, upon publication in the FEDERAL REGISTER of a notice of proposed rulemaking, under any of the acts the Commission administers. Once the exception applies, the Commission may publicly disclose information in the course of the rulemaking proceeding which is presented during the proceeding or which is contained or referenced in the public record of the proceeding and or which concerns the proceeding without following the requirements of section 6(b)(1). Documentation supporting the public record is also excepted from section 6(b). A rulemaking proceeding includes a proceeding either to issue, to amend, or to revoke a rule.

(c) The phrase ''in the course of'' refers to information disclosed as part of the proceeding and may, therefore, include information generated before the proceeding began and later presented as part of the proceeding. A rulemaking proceeding ends once the Commission has published the final rule or a notice of termination of the rulemaking in the FEDERAL REGISTER.

(d) The phrase ''concerning'' refers to information about the proceeding itself both after the proceeding has begun and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding. By issuing opinions and public statements, the Commissioners, and the presiding official, who act as decisionmakers, may also publicly explain their individual votes and any decision rendered.

§ 1101.45 Adjudicatory proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of ''information in the course of or concerning * * * [an] adjudicatory proceeding * * * under this Act.''

(b) *Scope of exception.* This exception applies once the Commission begins an administrative adjudication under the CPSA. The Commission will also apply the exception to any administrative adjudicatory proceeding under FHSA, FAA, or PPPA. An adjudicatory proceeding begins with the filing of a complaint under section 15(c) or (d), 17(a)(1) or (3), or 20 of the CPSA (15 U.S.C. 2064(c) or (d), 2066(a)(1), or (3), or 2069); section 15 of the FHSA (15 U.S.C. 1274); section 5(b) of the FFA, (15 U.S.C. 1194(b)); or section 4(c) of the PPPA (15 U.S.C. 1473(c)). An adjudicatory proceeding ends when the Commission issues a final order, 16 CFR 1025.51–1025.58.

(c) The phrase ''in the course of'' refers to information disclosed as part of the adjudication, whether in documents filed or exchanged during discovery, or in testimony given in such proceedings, and may therefore, include information generated before the adjudication began.

(d) The phrase ''concerning'' refers to information about the administrative adjudication itself, both once it begins and indefinitely thereafter. Therefore, the Commission may publicly disclose information that describes the substance, process and outcome of the proceeding including, for example, the effectiveness of any corrective action such as information on the number of products corrected as a result of a remedial action. By issuing opinions and public statements, the Commissioners and the presiding official, who act as decisionmakers, may publicly explain their individual votes and any decision rendered.

[48 FR 57430, Dec. 29, 1983, as amended at 49 FR 8428, Mar. 7, 1984]

§ 1101.46 Other administrative or judicial proceeding exception.

(a) *Statutory provision.* Section 6(b)(4)(B) provides that the requirements of section 6(b)(1) do not apply to public disclosure of ''information in the course of or concerning any * * * other administrative or judicial proceeding under this Act.''

(b) *Scope of exception.* This exception applies to an administrative or judicial proceeding, other than a rulemaking or administrative adjudicatory proceeding, under the CPSA, FHSA, FFA, or PPPA. Proceedings within this exception include:

(1) A proceeding to act on a petition to start a rulemaking proceeding. This proceeding begins with the filing of a petition and ends when the petition is denied or, if granted, when the rulemaking proceeding begins. Information subject to the exception for petition proceedings is the petition itself and the supporting documentation, and information subsequently compiled by the staff and incorporated or referenced in the staff briefing papers for and recommendation to the Commission.

(2) A proceeding to act on a request for exemption from a rule or regulation. This proceeding begins with the filing of a request for exemption and ends when the request is denied or, if granted, when the Commission takes the first step to implement the exemption, e.g., when an amendment to the rule or regulation is proposed.

(3) A proceeding to issue a subpoena or general or special order. This proceeding begins with a staff request to the Commission to issue a subpoena or general or special order and ends once the request is granted or denied.

(4) A proceeding to act on a motion to quash or to limit a subpoena or general or special order. This proceeding begins with the filing with the Commission of a motion to quash or to limit and ends when the motion is granted or denied.

(5) Any judicial proceeding to which the Commission is a party. This proceeding begins when a complaint is filed and ends when a final decision (including appeal) is rendered with respect to the Commission.

(6) Any administrative proceeding to which the Commission is a party, such as an administrative proceeding before the Merit Systems Protection Board or the Federal Labor Relations Authority.

This proceeding begins and ends in accordance with the applicable regulations or procedures of the administrative body before which the proceeding is heard.

(7) A proceeding to obtain a retraction from the Commission pursuant to subpart F of these rules. This proceeding begins with the filing with the Secretary of the Commission of a request for retraction and ends when the request is denied or, if granted, when the information is retracted.

(c) *In the course of or concerning.* The phrase ''in the course of or concerning'' shall have the same meaning as set forth in either §1101.44 (c) and (d) or §1101.45 (c) and (d), whichever is applicable.

Subpart F—Retraction

§1101.51 Commission interpretation.

(a) *Statutory provisions.* Section 6(b)(7) of the CPSA provides: If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product or class of consumer products, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner equivalent to that in which such disclosure was made, take reasonable steps to publish a retraction of such inaccurate or misleading information.

(b) *Scope.* Section 6(b)(7) applies to inaccurate or misleading information only if it is *adverse—i.e.,* if it reflects adversely either on the safety of a consumer product or on the practices of a manufacturer, private labeler, distributor or retailer. In addition, the Commission will apply section 6(b)(7) to information about products, and about manufacturers and private labelers of products, the Commission may regulate under any of the statutes it administers. Section 6(b)(7) applies to information already disclosed by the Commission, members of the Commission, or the Commission employees, agents, contractors or representatives in their official capacities.

§1101.52 Procedure for retraction.

(a) *Initiative.* The Commission may retract information under section 6(b)(7) on the initiative of the Commission, upon the request of a manufacturer, private labeler, distributor, or retailer of a consumer product, or upon the request of any other person in accordance with the procedures provided in this section.

(b) *Request for retraction.* Any manufacturer, private labeler, distributor or retailer of a consumer product or any other person may request a retraction if he/she believes the Commission or an individual member, employee, agent, contractor or representative of the Commission has made public disclosure of inaccurate or misleading information, which reflects adversely either on the safety of a product with which the firm deals or on the practices of the firm. The request must be in writing and addressed to the Secretary, CPSC. Washington, D.C. 20207.

(c) *Content of request.* A request for retraction must include the following information to the extent it is reasonably available:

(1) The information disclosed for which retraction is requested, the date on which the information was disclosed, the manner in which it was disclosed, who disclosed it, the type of document (e.g., letter, memorandum, news release) and any other relevant information the firm has to assist the Commission in identifying the information. A photocopy of the disclosure should accompany the request.

(2) A statement of the specific aspects of the information the firm believes are inaccurate or misleading and reflect adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(3) A statement of the reasons the firm believes the information is inaccurate or misleading and reflects adversely either on the safety of a consumer product with which the firm deals or on the firm's practices.

(4) A statement of the action the firm requests the Commission to take in publishing a retraction in a manner equivalent to that in which disclosure was made.

(5) Any additional data or information the firm believes is relevant.

(d) *Commission action on request.* The Commission will act expeditiously on any request for retraction within 30 working days unless the Commission determines, for good cause, that a longer time period is appropriate. If the Commission finds that the Commission or any individual member, employee, agent contractor or representative of the Commission has made public disclosure of inaccurate or misleading information that reflects adversely either on the safety of the firm's product or the practices of the firm, the Commission will publish a retraction of information in a manner equivalent to that in which the disclosure was made. If the Commission finds that fuller disclosure is necessary, it will publish a retraction in the manner it determines appropriate under the circumstances.

(e) *Notification to requester.* The Commission will promptly notify the requester in writing of its decision on request for retraction. Notification shall set forth the reasons for the Commission's decision.

Subpart G—Information Submitted Pursuant to Section 15(b) of the CPSA

§ 1101.61 Generally.

(a) *Generally.* In addition to the requirements of section 6(b)(1), section 6(b)(5) of the CPSA imposes further limitations on the disclosure of information submitted to the Commission pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

(b) *Criteria for disclosure.* Under section 6(b)(5) the Commission shall not disclose to the public information which is identified as being submitted pursuant to section 15(b) or which is treated by the Commission staff as being submitted pursuant to section 15(b). Section 6(b)(5) also applies to information voluntarily submitted after a firm's initial report to assist the Commission in its evaluation of the section 15 report. However, the Commission may disclose information submitted pursuant to section 15(b) in accordance with section 6(b)(1)–(3) if:

(1) The Commission has issued a complaint under section 15 (c) or (d) of the CPSA alleging that such product presents a substantial product hazard; or

(2) In lieu of proceeding against such product under section 15 (c) or (d), the Commission has accepted in writing a remedial settlement agreement dealing with such product; or

(3) The person who submitted the information under section 15(b) agrees to its public disclosure.

(4) The Commission publishes a finding that the public health and safety requires public disclosure with a lesser period of notice than is required by section 6(b)(1).

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.62 Statutory exceptions to section 6(b)(5) requirements.

(a) *Scope.* The limitations established by section 6(b)(5) do not apply to the public disclosure of:

(1) Information with respect to a consumer product which is the subject of an action brought under section 12 (*see* § 1101.42);

(2) Information with respect to a consumer product which the Commission has reasonable cause to believe is in violation of any consumer product safety rule or provision under the Consumer Product Safety Act (Pub. L. 92–573, 86 Stat. 1207, as amended (15 U.S.C. 2051, *et seq.*)) or similar rule or provision of any other act enforced by the Commission; or

(3) Information in the course of or concerning a judicial proceeding (*see* § 1101.45).

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

§ 1101.63 Information submitted pursuant to section 15(b) of the CPSA.

(a) Section 6(b)(5) applies only to information provided to the Commission by a manufacturer, distributor, or retailer which is identified by the manufacturer, distributor or retailer, or treated by the Commission staff as being submitted pursuant to section 15(b).

(b) Section 6(b)(5)'s limitation also applies to the portions of staff generated documents that contain, summarize or analyze such information submitted pursuant to section 15(b).

(c) Section 6(b)(5) does not apply to information independently obtained or prepared by the Commission staff.

Subpart H—Delegation of Authority to Information Group

§ 1101.71 Delegation of authority.

(a) *Delegation.* Pursuant to section 27(b)(9) of the CPSA 15 U.S.C. 2076(b)(9) the Commission delegates to the General Counsel or his or her senior staff designees, the authority to render all decisions under this part concerning the release of information subject to section 6(b) when firms have furnished section 6(b) comment except as provided in paragraph (b). The Commission also delegates to the Secretary of the Commission, or his or her senior staff designee, authority to make all decisions under this part concerning the release of information under section 6(b) when firms have failed to furnish section 6(b) comment or have consented to disclosure except as provided in paragraph (b) of this section. The General Counsel shall have authority to establish an Information Group composed of the General Counsel and the Secretary of the Commission or their designees who shall be senior staff members.

(b) *Findings not deleted.* The Commission does not delegate its authority—

(1) To find, pursuant to section 6(b)(1) and §1101.23(b) of this part, that the public health and safety requires less than 15 days advance notice of proposed disclosures of information.

(2) To find, pursuant to section 6(b)(2) and §1101.25(b) of this part, that the public health and safety requires less than five (5) days advance notice of its intent to disclose information claimed to be inaccurate;

(3) To decide whether it should take reasonable steps to publish a retraction of information in accordance with section 6(b)(7) and §1101.52 of this part.

(c) *Final agency action; Commission decision.* A decision of the General Counsel or the Secretary or their designees shall be a final agency decision and shall not be appealable as of right to the Commission. However, the General Counsel or the Secretary may in his or her discretion refer an issue to the Commission for decision.

[48 FR 57430, Dec. 29, 1983, as amended at 73 FR 72335, Nov. 28, 2008]

PART 1102—PUBLICLY AVAILABLE CONSUMER PRODUCT SAFETY INFORMATION DATABASE

Subpart A—Background and Definitions

Subpart B—Content Requirements

Subpart C—Procedural Requirements

Subpart D—Notice and Disclosure Requirements

AUTHORITY: 15 U.S.C. 2051, 2051 note, 2052, 2055, 2055a, 2065, 2068, 2070, 2071, 2072, 2076, 2078, 2080, 2087.

SOURCE: 75 FR 76867, Dec. 9, 2010, unless otherwise noted.

Subpart A—Background and Definitions

§ 1102.2 Purpose.

This part sets forth the Commission's interpretation, policy, and procedures with regard to the establishment and maintenance of a Publicly Available Consumer Product Safety Information Database (also referred to as the ''Database'') on the safety of consumer products and other products or substances regulated by the Commission.

§ 1102.4 Scope.

This part applies to the content, procedure, notice, and disclosure requirements of the Publicly Available Consumer Product Safety Information Database, including all information published therein.

§ 1102.6 Definitions.

(a) Except as specified in paragraph (b) of this section, the definitions in section 3 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2052) apply to this part.

(b) For purposes of this part, the following definitions apply:

(1) *Additional information* means any information that the Commission determines is in the public interest to include in the Publicly Available Consumer Product Safety Information Database.

(2) *Commission or CPSC* means the Consumer Product Safety Commission.

(3) *Consumer product* means a consumer product as defined in section 3(a)(5) of the CPSA, and also includes any other products or substances regulated by the Commission under any other act it administers.

(4) *Harm* means injury, illness, or death; or risk of injury, illness, or death, as determined by the Commission.

(5) *Mandatory recall notice* means any notice to the public required of a firm pursuant to an order issued by the Commission under section 15(c) of the CPSA.

(6) *Manufacturer comment* means a comment made by a manufacturer or private labeler of a consumer product in response to a report of harm transmitted to such manufacturer or private labeler.

(7) *Publicly Available Consumer Product Safety Information Database*, also referred to as the Database, means the database on the safety of consumer products established and maintained by the CPSC as described in section 6A of the CPSA.

(8) *Report of harm* means any information submitted to the Commission through the manner described in §1102.10(b), regarding any injury, illness, or death; or any risk of injury, illness, or death, as determined by the Commission, relating to the use of a consumer product.

(9) *Submitter of a report of harm* means any person or entity that submits a report of harm.

(10) *Voluntary recall notice* means any notice to the public by the Commission relating to a voluntary corrective action, including a voluntary recall of a consumer product, taken by a manufacturer in consultation with the Commission.

Subpart B—Content Requirements

§ 1102.10 Reports of harm.

(a) *Who may submit.* The following persons or entities may submit reports of harm:

(1) *Consumers* including, but not limited to, users of consumer products, family members, relatives, parents, guardians, friends, attorneys, investigators, professional engineers, agents of a user of a consumer product, and observers of the consumer products being used;

(2) *Local, state, or federal government agencies* including, but not limited to, local government agencies, school systems, social services, child protective services, state attorneys general, state agencies, and all executive and independent federal agencies as defined in Title 5 of the United States Code;

(3) *Health care professionals* including, but not limited to, medical examiners, coroners, physicians, nurses, physician's assistants, hospitals, chiropractors, and acupuncturists;

(4) *Child service providers* including, but not limited to, child care centers, child care providers, and prekindergarten schools; and

(5) *Public safety entities* including, but not limited to, police, fire, ambulance, emergency medical services, federal, state, and local law enforcement entities, and other public safety officials and professionals, including consumer advocates or individuals who work for nongovernmental organizations, consumer advocacy organizations, and trade associations, so long as they have a public safety purpose.

(b) *Manner of submission.* To be entered into the Database, reports of harm must be submitted to the CPSC using one of the following methods:

(1) Internet submissions through the CPSC's Internet Web site on an electronic incident report form specifically developed to collect such information.

(2) Telephonic submissions through a CPSC call center, where the information is entered on the electronic incident form.

(3) Electronic mail directed to the Office of the Secretary at *info@cpsc.gov*, or by facsimile at 301–504–0127, provided that the submitter completes the incident report form available for download on the CPSC's Internet Web site specifically developed to collect such information.

(4) Written submissions to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408. The Commission will accept only those written reports of harm that use the incident report form developed for the CPSC's Internet Web site; or

(5) Other means the Commission subsequently makes available.

(c) *Size limit of reports of harm.* The Commission may, in its discretion, limit the data size of reports of harm, which may include attachments submitted, where such reports of harm and attachments may negatively impact the technological or operational performance of the system.

(d) *Minimum requirements for publication.* Subject to §§1102.24 and 1102.26, the Commission will publish in the Publicly Available Consumer Product Safety Information Database reports of harm containing all of the following information:

(1) *Description of the consumer product.* The description of the consumer product must, at a minimum, include a word or phrase sufficient to distinguish the product as a consumer product, a component part of a consumer product, or a product or substance regulated by the Commission. In addition to a word or phrase sufficient to distinguish the product as a consumer product, a description of a consumer product may include, but is not limited to, the name, including the brand name of the consumer product, model, serial number, date of manufacture (if known) or date code, date of purchase, price paid, retailer, or any other descriptive information about the product.

(2) *Identity of the manufacturer or private labeler.* The name of one or more manufacturers or private labelers of the consumer product. In addition to a firm name, identification of a manufacturer or private labeler may include, but is not limited to, a mailing address, phone number, or electronic mail address.

(3) *Description of the harm.* A brief narrative description of illness, injury, or death; or risk of illness, injury, or death related to use of the consumer product. Examples of a description of harm or risk of harm include, but are not limited to: Death, asphyxiation, lacerations, burns, abrasions, contusions, fractures, choking, poisoning, suffocation, amputation, or any other narrative description relating to a bodily harm or risk of bodily harm. Incident reports that relate solely to the cost or quality of a consumer product, with no discernable bodily harm or risk of bodily harm, do not constitute ''harm'' for purposes of this part. A description of harm may, but need not, include the severity of any injury and whether any medical treatment was received.

(4) *Incident date.* The date, or an approximate date, on which the incident occurred.

(5) *Category of submitter.* Indication of which category the submitter is in (*i.e.*, consumers, government agencies, *etc.*) from §1102.10(a).

(6) *Contact information.* The submitter's first name, last name, and complete mailing address. Although this information will not be published in the Database, it is required information for the report of harm. Submitters also may, but are not required to, provide an electronic mail address and a phone number to allow for efficient and timely contact regarding a report of harm, when necessary.

(7) *Verification.* A submitter of a report of harm must affirmatively verify that he or she has reviewed the report of harm, and that the information contained therein is true and accurate to the best of the submitter's knowledge, information, and belief. Verification procedures for each method of submission will be specified.

(8) *Consent.* A submitter of a report of harm must consent to publication of

the report of harm in the Database if he or she wants the information to be included in the Database.

(e) *Additional information requested on report of harm.* The minimum requirements (at §1102.10(d)) for publication of a report of harm in the Database do not restrict the Commission from choosing to seek other categories of voluntary information in the future.

(f) *Information not published.* The Commission will exclude the following information provided on a report of harm from publication in the Database:

(1) Name and contact information of the submitter of a report of harm;

(2) Victim's name and contact information, if the victim or the victim's parent, guardian, or appropriate legally authorized representative, has not provided appropriate legal consent;

(3) Photographs that in the determination of the Commission are not in the public interest, including photographs that could be used to identify a person or photographs that would constitute an invasion of personal privacy based on the Privacy Act of 1974, Public Law 93–579 as amended;

(4) Medical records without the consent of the person about whom such records pertain or without the consent of his or her parent, guardian, or appropriate legally authorized representative;

(5) Confidential information as set forth in §1102.24;

(6) Information determined to be materially inaccurate as set forth in §1102.26;

(7) Reports of harm retracted at any time by the submitters of those reports, if they indicate in writing to the Commission that they supplied materially inaccurate information;

(8) Consents and verifications associated with a report of harm; and

(9) Any other information submitted on or with a report of harm, the inclusion of which in the Database, the Commission determines is not in the public interest. The Commission shall consider whether the information is related to a product safety purpose served by the Database, including whether or not the information helps Database users to:

(i) Identify a consumer product;

(ii) Identify a manufacturer or private labeler of a consumer product;

(iii) Understand a harm or risk of harm related to the use of a consumer product; or

(iv) Understand the relationship between a submitter of a report of harm and the victim.

(g) *Reports of harm from persons under the age of 18.* The Commission will not accept any report of harm when the report of harm is or was submitted by anyone under the age of 18 without consent of the parent or guardian of that person.

(h) *Incomplete reports of harm.* Any information received by the Commission related to a report of harm that does not meet the requirements for submission or publication will not be published, but will be maintained for internal use.

(i) *Official records of the Commission.* All reports of harm that are submitted to the Commission become official records of the Commission in accordance with 16 CFR 1015.1. Alteration (or disposition) of any such records will only be in accordance with the procedures specified in this part.

§1102.12 Manufacturer comments.

(a) *Who may submit.* A manufacturer or private labeler may submit a comment related to a report of harm if the report of harm identifies such manufacturer or private labeler.

(b) *How to submit.* A manufacturer or private labeler may submit comments to the CPSC using one of the following methods:

(1) A manufacturer or private labeler who registers with the Commission as described in §1102.20(f) may submit comments through a manufacturer portal maintained on the CPSC's Internet Web site;

(2) A manufacturer or private labeler may submit comments by electronic mail, directed to the Office of the Secretary at *info@cpsc.gov;* or

(3) A manufacturer or private labeler may submit written comments directed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408.

(c) *What must be submitted.* Subject to §§1102.24 and 1102.26, the Commission

will publish manufacturer comments related to a report of harm transmitted to a manufacturer or private labeler in the Database if such manufacturer comment meets the following requirements:

(1) *Manufacturer comment relates to report of harm.* The manufacturer or private labeler's comment must relate to information contained in a specific report of harm that identifies such manufacturer or private labeler and that is submitted for publication in the Database.

(2) *Unique identifier.* A manufacturer comment must state the unique identifier provided by the CPSC.

(3) *Verification.* A manufacturer or private labeler must verify that it has reviewed the report of harm and the comment related to the report of harm and that the information contained in the comment is true and accurate to the best of the firm's knowledge, information, and belief.

(4) *Request for publication.* When a manufacturer or private labeler submits a comment regarding a report of harm, it may request that the Commission publish such comment in the Database. A manufacturer or private labeler must affirmatively request publication of the comment, and consent to such publication in the Database, for each comment submitted to the CPSC.

(d) *Information published.* Subject to §§ 1102.24 and 1102.26, the Commission will publish a manufacturer comment and the date of its submission to the CPSC in the Database if the comment meets the minimum requirements for publication as described in paragraph (c) of this section.

(e) *Information not published.* The Commission will not publish in the Database consents and verifications associated with a manufacturer comment.

§ 1102.14 Recall notices.

All information presented in a voluntary or mandatory recall notice that has been made available to the public shall be accessible and searchable in the Database.

§ 1102.16 Additional information.

In addition to reports of harm, manufacturer comments, and recall notices, the CPSC shall include in the Database any additional information it determines to be in the public interest, consistent with the requirements of section 6(a) and (b) of the CPSA.

Subpart C—Procedural Requirements

§ 1102.20 Transmission of reports of harm to the identified manufacturer or private labeler.

(a) *Information transmitted.* Except as provided in paragraphs (a)(1) through (a)(3) of this section, the Commission will transmit all information provided in a report of harm, provided such report meets the minimum requirements for publication in the Database, to the manufacturer or private labeler identified in a report of harm. The following information will not be transmitted to a manufacturer or private labeler:

(1) Name and contact information for the submitter of the report of harm, unless such submitter provides express written consent (for example, by checking a box on the report of harm) to provide such information to the manufacturer or private labeler;

(2) Photographs that could be used to identify a person; and

(3) Medical records, unless the person about whom such records pertain, or his or her parent, guardian, or appropriate legally authorized representative, consents to providing such records to the manufacturer or private labeler.

(b) *Limitation on use of contact information.* A manufacturer or private labeler who receives name and contact information for the submitter of a report of harm and/or a victim must not use or disseminate such information to any other party for any other purpose other than verification of information contained in a report of harm. Verification of information contained in a report of harm must not include activities such as sales, promotion, marketing, warranty, or any other commercial purpose. Verification of information contained in a report of harm may include verification of the:

(1) Identity of the submitter and/or the victim, including name, location, age, and gender;

(2) Consumer product, including serial or model number, date code, color, or size;

(3) Harm or risk of harm related to the use of the consumer product;

(4) Description of the incident related to use of the consumer product;

(5) Date or approximate date of the incident; and/or

(6) Category of submitter.

(c) *Timing.* To the extent practicable, the Commission will transmit a report of harm to the manufacturer or private labeler within five business days of submission of the completed report of harm. If the Commission cannot determine whom the manufacturer or private labeler is from the report of harm, or otherwise, then it will not post the report of harm on the Database but will maintain the report for internal agency use. Examples of circumstances that may arise that may make transmission of the report of harm impracticable within five business days include, but are not limited to:

(1) The manufacturer or private labeler is out of business with no identifiable successor;

(2) The submitter misidentified a manufacturer or private labeler;

(3) The report of harm contained inaccurate or insufficient contact information for a manufacturer or private labeler; or

(4) The Commission cannot locate valid contact information for a manufacturer or private labeler.

(d) *Method of transmission.* The Commission will use the method of transmission and contact information provided by the manufacturer or private labeler. The Commission will transmit reports of harm to a manufacturer or private labeler who has registered with the Commission as described in paragraph (f) of this section. If a manufacturer or private labeler has not registered with the Commission, the Commission will send reports of harm through the United States mail to the firm's principal place of business, unless the Commission selects another equally effective method of transmission.

(e) *Size limits of manufacturer comments.* The Commission may, in its discretion, limit the data size of comments, which may include attachments submitted, where such comments and attachments may negatively impact the technological or operational performance of the system.

(f) *Manufacturer registration.* Manufacturers and private labelers may register with the Commission to select a preferred method for receiving reports of harm that identify such firm as the manufacturer or private labeler. Manufacturers and private labelers that choose to register with the Commission must:

(1) Register with the Commission through a process identified for such registration;

(2) Provide and maintain updated contact information for the firm, including the name of the firm, title of a person to whom reports of harm should be directed, complete mailing address, telephone number, electronic mail address, and Web site address (if any); and

(3) Select a specified method to receive reports of harm that identify the firm as the manufacturer or private labeler of a consumer product.

(g) *Manufacturer comments.* A manufacturer or private labeler who receives a report of harm from the CPSC may comment on the information contained in such report of harm. The Commission, in its discretion, where it determines it is in the public interest, may choose not to publish a manufacturer comment in the Database. For example, it may not be in the public interest for the Commission to publish comments that, in the unlikely event, contain language reasonably described as lewd, lascivious, or obscene.

§ 1102.24 Designation of confidential information.

(a) For purposes of this section, ''confidential information'' is considered to be information that contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905 or that is subject to 5 U.S.C. 552(b)(4).

(b) A manufacturer or private labeler identified in a report of harm and who receives a report of harm from the CPSC may review such report of harm

for confidential information and request that portions of the report of harm be designated as confidential information. Each requester seeking such a designation of confidential information bears the burden of proof and must:

(1) Specifically identify the exact portion(s) of the report of harm claimed to be confidential;

(2) State whether the information claimed to be confidential has ever been released in any manner to a person who was not an employee or in a confidential relationship with the company;

(3) State whether the information so specified is commonly known within the industry or is readily ascertainable by outside persons with a minimum of time and effort;

(4) If known, state the company's relationship with the victim and/or submitter of the report of harm and how the victim and/or submitter of the report of harm came to be in possession of such allegedly confidential information;

(5) State how the release of the information would be likely to cause substantial harm to the company's competitive position; and

(6) State whether the person submitting the request for treatment as confidential information is authorized to make claims of confidentiality on behalf of the person or organization concerned.

(c) *Manner of submission*. Requests for designation of confidential information may be submitted in the same manner as manufacturer comments as described in §1102.12(b). A request for designation of confidential treatment must be conspicuously marked.

(d) *Timing of submission*. In order to ensure that the allegedly confidential information is not placed in the database, a request for designation of confidential information must be received by the Commission in a timely manner prior to the 10th business day after the date on which the Commission transmits the report to the manufacturer or private labeler. If a request for confidential treatment is submitted in a timely fashion, the Commission will either make a determination on the claim prior to posting on the 10th business day after transmittal to the manufacturer or, as a matter of policy, redact the allegedly confidential information from a report of harm before publication in the Database until it makes a determination regarding confidential treatment.

(e) *Assistance with defense*. No request to redact confidential information from a report of harm pursuant to 5 U.S.C. 552(b)(4) should be made by any person who does not intend in good faith, and so certifies in writing, to assist the Commission in the defense of any judicial proceeding that thereafter might be brought to compel the disclosure of information that the Commission has determined to be a trade secret or privileged or confidential commercial or financial information.

(f) *Commission determination of confidentiality*. If the Commission determines that information in a report of harm is confidential, the Commission shall:

(1) Notify the manufacturer or private labeler;

(2) Redact such confidential information in the report of harm; and

(3) Publish the report of harm in the Database without such confidential information.

(g) *Commission determination of no confidentiality*. If the Commission determines that a report of harm does not contain confidential information, the Commission shall:

(1) Notify the manufacturer or private labeler; and

(2) Publish the report of harm, if not already published, in the Database.

(h) *Removal of confidential information*. As stated at 6A(c)(1)(C)(iii) of the CPSA, to seek removal of alleged confidential information that has been published in the Database, a manufacturer or private labeler may bring an action in the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in the U.S. District Court for the District of Columbia.

§ 1102.26 Determination of materially inaccurate information.

(a) For purposes of this section, the following definitions apply:

(1) *Materially inaccurate information in a report of harm* means information that is false or misleading, and which is so substantial and important as to affect a reasonable consumer's decision making about the product, including:

(i) The identification of a consumer product;

(ii) The identification of a manufacturer or private labeler;

(iii) The harm or risk of harm related to use of the consumer product; or

(iv) The date, or approximate date on which the incident occurred.

(2) *Materially inaccurate information in a manufacturer comment* means information that is false or misleading, and which is so substantial and important as to affect a reasonable consumer's decision making about the product, including:

(i) The description of the consumer product;

(ii) The identity of the firm or firms responsible for the importation, manufacture, distribution, sale, or holding for sale of a consumer product;

(iii) The harm or risk of harm related to the use of a consumer product;

(iv) The status of a Commission, manufacturer, or private labeler investigation;

(v) Whether the manufacturer or private labeler is engaging in a corrective action and whether such action has not been approved by the Commission; or

(vi) Whether the manufacturer has taken, or promised to take, any other action with regard to the product.

(b) *Request for determination of materially inaccurate information.* Any person or entity reviewing a report of harm or manufacturer comment, either before or after publication in the Database, may request that the report of harm or manufacturer comment, or portions of such report of harm or manufacturer comment, be excluded from the Database or corrected by the Commission because it contains materially inaccurate information. Each requester seeking an exclusion or correction bears the burden of proof and must:

(1) State the unique identifier of the report of harm or manufacturer comment to which the request for a determination of materially inaccurate information pertains;

(2) Specifically identify the exact portion(s) of the report of harm or the manufacturer comment claimed to be materially inaccurate;

(3) State the basis for the allegation that such information is materially inaccurate;

(4) Provide evidence, which may include documents, statements, electronic mail, Internet links, photographs, or any other evidence, sufficient for the Commission to make a determination that the designated information is materially inaccurate;

(5) State what relief the requester is seeking: Exclusion of the entire report of harm or manufacturer comment; redaction of specific information; correction of specific information; or the addition of information to correct the material inaccuracy;

(6) State whether and how an alleged material inaccuracy may be corrected without removing or excluding an entire report of harm or manufacturer comment; and

(7) State whether the person submitting the allegation of material inaccuracy is authorized to make claims of material inaccuracy on behalf of the person or organization concerned.

(c) *Manner of submission—*

(1) *Length of request and expedited review.* The Commission strongly recommends requesters seeking an expedited review of claims of materially inaccurate information to limit the length of the request described in §1102.26(b) to no more than five pages, including attachments, to allow for the expedited review of the request. Regardless of length, all submissions will be reviewed.

(2) *Manufacturers and private labelers.* A manufacturer or private labeler may request a Commission determination of materially inaccurate information related to a report of harm in the same manner as described in §1102.12(b). Such requests should be conspicuously marked.

(3) *All other requests.* All other requests for a Commission determination of materially inaccurate information contained in a report of harm or manufacturer comment made by any other person or firm must be submitted to the CPSC using one of the methods listed below. The request seeking a

Commission determination of materially inaccurate information may be made through:

(i) *Electronic mail.* By electronic mail directed to the Office of the Secretary at *info@cpsc.gov;* or

(ii) *Paper-based.* Written submission directed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814–4408.

(d) *Timing of submission.* A request for a Commission determination regarding materially inaccurate information may be submitted at any time. If a request for determination of materially inaccurate information is submitted prior to publication of a report of harm in the Database, the Commission cannot withhold the report of harm from publication in the Database until it makes a determination. Absent a determination, the Commission will publish reports of harm on the tenth business day after transmitting a report of harm to the manufacturer or private labeler.

(e) *Assistance with defense.* No request for a determination of materially inaccurate information should be made by any person who does not intend in good faith, and so certifies in writing, to assist the Commission in the defense of any judicial proceeding that thereafter might be brought to compel the disclosure of information that the Commission has determined to be materially inaccurate information.

(f) *Notice.* The Commission shall notify the person or firm requesting a determination regarding materially inaccurate information of its determination and method of resolution after resolving such request.

(g) *Commission determination of material inaccuracy before publication.* If the Commission determines that information in a report of harm or manufacturer comment is materially inaccurate information before it is published in the Database, the Commission shall:

(1) Decline to add the materially inaccurate information to the Database;

(2) Correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, publish the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, publish the report of harm or manufacturer comment in the Database.

(h) *Commission determination of material inaccuracy after publication.* If the Commission determines, after an investigation, that the requested designated information in a report of harm or manufacturer comment contains materially inaccurate information after the report of harm or manufacturer comment has been published in the Database, the Commission shall, no later than seven business days after such determination:

(1) Remove the information determined to be materially inaccurate from the Database, including any associated documents, photographs, or comments;

(2) Correct the information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, maintain the report of harm or manufacturer comment in the Database; or

(3) Add information to the report of harm or the manufacturer comment to correct the materially inaccurate information, and, if the minimum requirements for publication as set forth in §§1102.10(d) and 1102.12(c) are met, maintain the report of harm or manufacturer comment in the Database.

(i) *Commission discretion.* (1) In exercising its discretion to remove, correct, or add information to correct materially inaccurate information contained in a report of harm or manufacturer comment, the Commission shall preserve the integrity of information received for publication in the Database whenever possible. Subject to §§1102.10(d) and 1102.12(c), the Commission shall favor correction, and the addition of information to correct, over exclusion of entire reports of harm and manufacturer comments, where possible.

(2) *Expedited determinations.* Where a manufacturer has filed a request for a

correction or exclusion within the recommended page limit in §1102.26(c)(1), the Commission shall attempt, where practicable, to make an expedited determination of a claim of material inaccuracy. Given the requirement of section 6A of the CPSA that reports of harm be published, the Commission will publish reports of harm on the tenth business day after transmitting a report of harm, where the Commission has been unable to make a determination regarding a claim of material inaccuracy prior to the statutorily mandated publication date. In such instances, the Commission will make any necessary correction, exclusion, or addition not later than seven business days after making a determination that there is materially inaccurate information in the report of harm. Manufacturer comments will be published at the same time as the report of harm is published, or as soon thereafter as practicable.

(j) *Commission determination of no material inaccuracy*. If the Commission determines that the requested information in a report of harm or manufacturer comment does not contain materially inaccurate information, the Commission will:

(1) Notify the requester of its determination; and

(2) Publish the report of harm or manufacturer comment, if not already published, in the Database if it meets the minimum requirements set forth in §§1102.10(d) and 1102.12(c).

(k) *Commission action in absence of request*. The Commission may review a report of harm or manufacturer comment for materially inaccurate information on its own initiative, following the same notice and procedural requirements set forth in paragraphs (g) through (j) of this section.

§1102.28 Publication of reports of harm.

(a) *Timing*. Subject to §§1102.10, 1102.24, and 1102.26, the Commission will publish reports of harm that meet the requirements for publication in the Database. The Commission will publish reports of harm as soon as practicable, but not later than the tenth business day after such report of harm is transmitted to the manufacturer or private labeler by the CPSC.

(b) *Exceptions*. The Commission may publish a report of harm that meets the requirements of §1102.10(d) in the Database beyond the 10-business-day time frame set forth in paragraph (a) of this section if the Commission determines that a report of harm misidentifies or fails to identify all manufacturers or private labelers. Such information must be corrected through the procedures set forth in §1102.26 for materially inaccurate information in a report of harm. Once a manufacturer or a private labeler has been identified correctly, the time frame set forth in paragraph (a) of this section shall apply.

§1102.30 Publication of manufacturer comments.

Timing. Subject to §§1102.12, 1102.24, and 1102.26, the Commission will publish in the Database manufacturer comments submitted in response to a report of harm that meet the minimum requirements set forth in §1102.12(c). This publication will occur at the same time as the report of harm is published or as soon thereafter as practicable. An example of a circumstance that may make it impracticable to publish a manufacturer comment at the same time as a report of harm includes when the Commission did not receive the comment until on or after the publication date of the report of harm.

Subpart D—Notice and Disclosure Requirements

§1102.42 Disclaimers.

The Commission does not guarantee the accuracy, completeness, or adequacy of the contents of the Consumer Product Safety Information Database, particularly with respect to the accuracy, completeness, or adequacy of information submitted by persons outside of the CPSC. The Database will contain a notice to this effect that will be prominently and conspicuously displayed on the Database and on any documents that are printed from the Database.

§ 1102.44 Applicability of sections 6(a) and (b) of the CPSA.

(a) *Generally.* Sections 6(a) and 6(b) of the CPSA shall not apply to the submission, disclosure, and publication of information provided in a report of harm that meets the minimum requirements for publication in §1102.10(d) in the Database.

(b) *Limitation on construction.* Section 1102.44(a) shall not be construed to exempt from the requirements of sections 6(a) and 6(b) of the CPSA information received by the Commission pursuant to:

(1) Section 15(b) of the CPSA; or

(2) Any other mandatory or voluntary reporting program established between a retailer, manufacturer, or private labeler and the Commission.

PART 1105—CONTRIBUTIONS TO COSTS OF PARTICIPANTS IN DEVELOPMENT OF CONSUMER PRODUCT SAFETY STANDARDS

Sec.

AUTHORITY: Sec. 7(c), Pub. L. 97–35, 95 Stat. 704 (15 U.S.C. 2056(c)).

SOURCE: 48 FR 57121, Dec. 28, 1983, unless otherwise noted.

§ 1105.1 Purpose.

The purpose of this part is to describe the factors the Commission considers when determining whether or not to contribute to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter ''participant'') who participates with the Commission in developing standards. The provisions of this part do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the Commission in developing proposed standards.

§ 1105.2 Factors.

The Commission may agree to contribute to the cost of a participant who participates with the Commission in developing a standard in any case in which the Commission determines:

(a) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(b) That the participant to whom a contribution is made is financially responsible.

§ 1105.3 A more satisfactory standard.

In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider:

(a) The need for representation of one or more particular interests, expertise, or points of view in the development proceeding; and

(b) The extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

§ 1105.4 Eligibility.

In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(a) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(b) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(c) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any

Commission determination related to the proceeding;

(d) A discussion, with supporting documentation, of the reason(s) a participant is unable to participate effectively in the proceeding without a financial contribution;

(e) A description of the participant's employment or organization, as appropriate; and

(f) A specific and itemized estimate of the costs for which the contribution is sought.

§ 1105.5 Applications.

Applications must be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, within the time specified by the Commission in its FEDERAL REGISTER notice beginning the development proceeding.

§ 1105.6 Criteria.

The Commission may authorize a financial contribution only for participants who meet all of the following criteria:

(a) The participant represents particular interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(b) The economic interest of the participant in any Commission determination related to the proceeding is small in comparison to the participant's costs of effective participation in the proceeding. If the participant consists of more than one individual or group, the economic interest of each of the individuals or groups comprising the participant shall also be considered, if practicable and appropriate; and

(c) The participant does not have sufficient financial resources available for effective participation in the proceeding, in the absence of a financial contribution.

§ 1105.7 Limits on compensation.

The Commission may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

§ 1105.8 Costs must be authorized and incurred.

The Commission shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

§ 1105.9 Itemized vouchers.

The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding $15 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

§ 1105.10 Reasonable costs.

The Commission shall compensate participants only for costs that it determines are reasonable. As guidelines in these determinations, the Commission shall consider market rates and rates normally paid by the Commission for comparable goods and services, as appropriate.

§ 1105.11 Compensable costs.

The Commission may compensate participants for any or all of the following costs:

(a) Salaries for participants or employees of participants;

(b) Fees for consultants, experts, contractural services, and attorneys that are incurred by participants;

(c) Transportation costs;

(d) Travel-related costs such as lodging, meals, tipping, telephone calls; and

(e) All other reasonable costs incurred, such as document reproduction, postage, baby-sitting, and the like.

§ 1105.12 Advance contributions.

The Commission may make its contribution in advance upon specific request, and the contribution may be made without regard to section 3648 of the Revised States of the United States (31 U.S.C. 529).

§ 1105.13 Noncompensable costs.

The items of cost toward which the Commission will not contribute include:

(a) Costs for the acquisition of any interest in land or buildings;

(b) Costs for the payment of items in excess of the participant's actual cost; and

(c) Costs determined not to be allowable under generally accepted accounting principles and practices or part 1–15, Federal Procurement Regulations (41 CFR part 1–15).

§ 1105.14 Audit and examination.

The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Commission may establish additional guidelines for accounting, recordkeeping, and other administrative procedures with which participants must comply as a condition of receiving a contribution.

PART 1107—TESTING AND LABELING PERTAINING TO PRODUCT CERTIFICATION

Subpart A—General Provisions

Subpart B [Reserved]

Subpart C—Certification of Children's Products

Subpart D—Consumer Product Labeling Program

AUTHORITY: 15 U.S.C. 2063, Sec. 3, 102 Pub. L. 110–314, 122 Stat. 3016, 3017, 3022.

SOURCE: 76 FR 69541, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Provisions

§ 1107.1 Purpose.

This part establishes the protocols and standards for ensuring continued testing of children's products periodically and when there has been a material change in the product's design or manufacturing process and safeguarding against the exercise of undue influence by a manufacturer on a third party conformity assessment body. It also establishes a program for labeling of consumer products to indicate that the certification requirements have been met pursuant to sections 14(a)(2) and (i)(2)(B) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(2) and (i)(2)(B)).

§ 1107.2 Definitions.

Unless otherwise stated, the definitions of the Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008 apply to this part. The following definitions apply for purposes of this part:

CPSA means the Consumer Product Safety Act.

CPSC means the Consumer Product Safety Commission.

Due care means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Due care does not permit willful ignorance.

High degree of assurance means an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture.

Identical in all material respects means there is no difference with respect to compliance to the applicable rules, bans, standards, or regulations between the samples to be tested for compliance and the finished product distributed in commerce.

Manufacturer means the parties responsible for certification of a consumer product pursuant to 16 CFR part 1110.

Manufacturing process means the techniques, fixtures, tools, materials, and personnel used to create the component parts and assemble a finished product.

Material change means 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 applicable rules, bans, standards, or regulations.

Third party conformity assessment body means a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children's products. Only third party conformity assessment bodies whose scope of accreditation includes the applicable required tests can be used for children's product certification or periodic testing purposes.

Subpart B [Reserved]

Subpart C—Certification of Children's Products

§ 1107.20 General requirements.

(a) 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 number of samples selected must be sufficient to provide a high degree of assurance that the tests conducted for certification purposes accurately demonstrate the ability of the children's product to meet all applicable children's product safety rules.

(b) If the manufacturing process for a children's product consistently creates finished products that are uniform in composition and quality, a manufacturer may submit fewer samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules. If the manufacturing process for a children's product results in variability in the composition or quality of children's products, a manufacturer may need to submit more samples to provide a high degree of assurance that the finished product complies with the applicable children's product safety rules.

(c) Except where otherwise specified by a children's product safety rule, component part testing pursuant to 16 CFR part 1109 may be used to support the certification testing requirements of this section.

(d) If a product sample fails certification testing to the applicable children's product safety rule(s), even if other samples have passed the same certification test, the manufacturer must investigate the reasons for the failure and take the necessary steps to address the reasons for the failure. A manufacturer cannot certify the children's product until the manufacturer establishes, with a high degree of assurance that the finished product does comply with all applicable children's product safety rules.

§ 1107.21 Periodic testing.

(a) *General requirements for all manufacturers.* All manufacturers of children's products must conduct periodic testing. All periodic testing must be conducted by a third party conformity assessment body. Periodic testing must be conducted pursuant to either paragraph (b), (c), or (d) of this section or as provided in regulations under this title. The testing interval selected for periodic testing may be based on a fixed production interval, a set number of units produced, or another method chosen by the manufacturer based on the product produced and its manufacturing process, so long as the applicable maximum testing interval specified in paragraph (b), (c), or (d) of this section is not exceeded. Component part testing pursuant to 16 CFR part 1109 may be used to support the periodic testing requirements of this section.

(b) A manufacturer must conduct periodic testing to ensure compliance with the applicable children's product safety rules at least once a year, except as otherwise provided in paragraphs (c), and (d) of this section or as provided in regulations under this title. If a manufacturer does not conduct production testing under paragraph (c) of this section, or testing by a testing laboratory under paragraph (d) of this section, the manufacturer must conduct periodic testing as follows:

(1) *Periodic Testing Plan.* Manufacturers must develop a periodic testing

plan to ensure with a high degree of assurance that children's products manufactured after the issuance of a Children's Product Certificate, or since the previous periodic testing was conducted, continue to comply with all applicable children's product safety rules. The periodic testing plan must include the tests to be conducted, the intervals at which the tests will be conducted, and the number of samples tested. At each manufacturing site, the manufacturer must have a periodic testing plan specific to each children's product manufactured at that site.

(2) *Testing Interval.* The testing interval selected must be short enough to ensure that, if the samples selected for testing pass the test, there is a high degree of assurance that the other untested children's products manufactured during the testing interval comply with the applicable children's product safety rules. The testing interval may vary depending upon the specific children's product safety rules that apply to the children's product, but may not exceed one year. Factors to be considered when determining the testing interval include, but are not limited to, the following:

(i) High variability in test results, as indicated by a relatively large sample standard deviation in quantitative tests;

(ii) Measurements that are close to the allowable numerical limit for quantitative tests;

(iii) Known manufacturing process factors which could affect compliance with a rule. For example, if the manufacturer knows that a casting die wears down as the die nears the end of its useful life, the manufacturer may wish to test more often as the casting die wears down;

(iv) Consumer complaints or warranty claims;

(v) Introduction of a new set of component parts into the assembly process;

(vi) The manufacture of a fixed number of products;

(vii) Potential for serious injury or death resulting from a noncompliant children's product;

(viii) The number of children's products produced annually, such that a manufacturer should consider testing a children's product more frequently if the product is produced in very large numbers or distributed widely throughout the United States;

(ix) The children's product's similarity to other children's products with which the manufacturer is familiar and/or whether the children's product has many different component parts compared to other children's products of a similar type; or

(x) Inability to determine the children's product's noncompliance easily through means such as visual inspection.

(c)(1) If a manufacturer implements a production testing plan as described in paragraph (c)(2) of this section to ensure continued compliance of the children's product with a high degree of assurance to the applicable children's product safety rules, the manufacturer must submit samples of its children's product to a third party conformity assessment body for periodic testing to the applicable children's product safety rules at least once every two years. A manufacturer may consider the information obtained from production testing when determining the appropriate testing interval and the number of samples needed for periodic testing to ensure that there is a high degree of assurance that the other untested children's products manufactured during the testing interval comply with the applicable children's product safety rules.

(2) *Production Testing Plan.* A production testing plan describes the production management techniques and tests that must be performed to provide a high degree of assurance that the products manufactured after certification continue to meet all the applicable children's product safety rules. 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 analyses (FMEAs) designed to control potential variations in product manufacturing that could affect the product's ability to comply with the applicable children's product safety rules. A manufacturer may use measurement techniques that are nondestructive and tailored to the needs of an individual

product to ensure that a product complies with all applicable children's product safety rules. Any production test method used to conduct production testing must be effective in determining compliance. Production testing cannot consist solely of mathematical methods (such as an FMEA, with no additional components, or computer simulations). Production testing must include some testing, although it is not required that the test methods employed be the test methods used for certification. A manufacturer must document the production testing methods used to ensure continuing compliance and the basis for determining that the production testing plan provides a high degree of assurance that the product being manufactured continues to comply with all applicable children's product safety rules. A production testing plan must contain the following elements:

(i) A description of the production testing plan, including, but not limited to, a description of the process management techniques used, the tests to be conducted, or the measurements to be taken; the intervals at which the tests or measurements will be made; the number of samples tested; and the basis for determining that the combination of process management techniques and tests provide a high degree of assurance of compliance if they are not the tests prescribed for the applicable children's product safety rule;

(ii) At each manufacturing site, the manufacturer must have a production testing plan specific to each children's product manufactured at that site;

(iii) The production testing interval selected for tests must ensure that, if the samples selected for production testing comply with an applicable children's product safety rule, there is a high degree of assurance that the untested products manufactured during that testing interval also will comply with the applicable children's product safety rule. Production testing intervals should be appropriate for the specific testing or alternative measurements being conducted.

(3) If a production testing plan as described in this paragraph (c) fails to provide a high degree of assurance of compliance with all applicable children's product safety rules, the CPSC may require the manufacturer to meet the requirements of paragraph (b) of this section or modify its production testing plan to ensure a high degree of assurance of compliance.

(d)(1) For manufacturers conducting testing to ensure continued compliance with the applicable children's product safety rules using a testing laboratory accredited to ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' periodic tests by a third party conformity assessment body must be conducted at least once every three years. Any ISO/IEC 17025:2005(E)-accredited testing laboratory used for ensuring continued compliance must be accredited by an accreditation body that is accredited to ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies.'' The test method(s) used by an ISO/IEC 17025:2005(E)-accredited testing laboratory when conducting testing to ensure continued compliance must be the same test method(s) used for certification to the applicable children's product safety rules. Manufacturers must conduct testing using the ISO/IEC 17025:2005(E)-accredited testing laboratory frequently enough to provide a high degree of assurance that the children's product continues to comply with the applicable children's product safety rules. A manufacturer may consider the information obtained from testing conducted by an ISO/IEC 17025:2005(E)-accredited testing laboratory when determining the appropriate testing interval and the number of samples for periodic testing that are needed to ensure that there is a high degree of assurance that the other untested children's products manufactured during the testing interval comply with the applicable children's product safety rules.

(2) If the continued testing described in paragraph (d)(1) of this section fails to provide a high degree of assurance of compliance with all applicable children's product safety rules, the CPSC may require the manufacturer to meet the requirements of paragraph (b) of

this section or modify the testing frequency or number of samples required to ensure a high degree of assurance of continued compliance.

(e) [Reserved]

(f) A manufacturer must select representative product samples to be submitted to the third party conformity assessment body for periodic testing. The procedure used to select representative product samples for periodic testing must provide a basis for inferring compliance about the population of untested products produced during the applicable periodic testing interval. The number of samples selected for the sampling procedure must be sufficient to ensure continuing compliance with all applicable children's product safety rules. The manufacturer must document the procedure used to select the product samples for periodic testing and the basis for inferring the compliance of the product manufactured during the periodic testing interval from the results of the tested samples.

(g) The Director of the Federal Register approves the incorporations by reference of the standards in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the standards at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(1) International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; Telephone +41 22 749 01 11, Fax +41 22 733 34 30; *http://www.iso.org/iso/home.html*.

(i) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' First Edition, September 1, 2004 (Corrected version February 15, 2005);

(ii) ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' Second Edition, May 15, 2005.

(2) [Reserved]

[76 FR 69541, Nov. 8, 2011, as amended at 77 FR 72219, Dec. 5, 2012]

§ 1107.23 Material change.

(a) *General Requirements.* If a children's product undergoes a material change in product design or manufacturing process, including the sourcing of component parts, which a manufacturer exercising due care knows, or should know, could affect the product's ability to comply with the applicable children's product safety rules, the manufacturer must submit a sufficient number of samples of the materially changed children's product for testing by a third party conformity assessment body and issue a new Children's Product Certificate. The number of samples submitted must be sufficient to provide a high degree of assurance that the materially changed component part or finished product complies with the applicable children's product safety rules. A manufacturer of a children's product that undergoes a material change cannot issue a new Children's Product Certificate for the product until the product meets the requirements of the applicable children's product safety rules. The extent of such testing may depend on the nature of the material change. When a material change is limited to a component part of the finished children's product and does not affect the ability of other component parts of the children's product or the finished children's product to comply with other applicable children's product safety rules, a manufacturer may issue a new Children's Product Certificate based on the earlier third party certification tests and on test results of the changed component part conducted by a third party conformity assessment body. A manufacturer must exercise due care to ensure that any component part undergoing component part-level testing is identical in all material respects to the component part on the finished children's product. Changes that cause a children's product safety rule to no longer apply to a children's product are not considered to be material changes.

(b) *Product Design.* For purposes of this subpart, the term ''product design'' includes all component parts,

their composition, and their interaction and functionality when assembled. To determine which children's product safety rules apply to a children's product, a manufacturer should examine the product design for the children's product as received or assembled by the consumer.

(c) *Manufacturing Process.* A material change in the manufacturing process is a change in how the children's product is made that could affect the finished children's product's ability to comply with the applicable children's product safety rules. For each change in the manufacturing process, a manufacturer should exercise due care to determine if compliance to an existing applicable children's product safety rule could be affected, or if the change results in a newly applicable children's product safety rule.

(d) *Sourcing of Component Parts.* A material change in the sourcing of component parts results when the replacement of one component part of a children's product with another component part could affect compliance with the applicable children's product safety rule. This includes, but is not limited to, changes in component part composition, component part supplier, or the use of a different component part from the same supplier who provided the initial component part.

§ 1107.24 Undue influence.

(a) Each manufacturer must establish procedures to safeguard against the exercise of undue influence by a manufacturer on a third party conformity assessment body.

(b) The procedures required in paragraph (a) of this section, at a minimum, must include:

(1) Safeguards to prevent attempts by the manufacturer to exercise undue influence on a third party conformity assessment body, including a written policy statement from company officials that the exercise of undue influence is not acceptable, and directing that every appropriate staff member receive training on avoiding undue influence, and sign a statement attesting to participation in such training;

(2) A requirement that upon substantive changes to the requirements in this section regarding avoiding undue influence, the appropriate staff must be retrained regarding those changed requirements.

(3) A requirement to notify the CPSC immediately of any attempt by the manufacturer to hide or exert undue influence over test results; and

(4) A requirement to inform employees that allegations of undue influence may be reported confidentially to the CPSC and a description of the manner in which such a report can be made.

§ 1107.26 Recordkeeping.

(a) A manufacturer of a children's product subject to an applicable children's product safety rule must maintain the following records:

(1) A copy of the Children's Product Certificate for each product. The children's product covered by the certificate must be clearly identifiable and distinguishable from other products;

(2) Records of each third party certification test. The manufacturer must have separate certification tests records for each manufacturing site;

(3) Records of one of the following for periodic tests of a children's product:

(i) A periodic test plan and periodic test results;

(ii) A production testing plan, production test results, and periodic test results; or

(iii) Testing results of tests conducted by a testing laboratory accredited to ISO/IEC 17025:2005(E) and periodic test results.

(4) Records documenting the testing of representative samples, as set forth in § 1107.21(f), including the number of representative samples selected and the procedure used to select representative samples. Records also must include the basis for inferring compliance of the product manufactured during the periodic testing interval from the results of the tested samples;

(5) Records of descriptions of all material changes in product design, manufacturing process, and sourcing of component parts, and the certification tests run and the test values; and

(6) Records of the undue influence procedures, including training materials and training records of all employees trained on these procedures, including attestations described at § 1107.24(b)(1).

(b) A manufacturer must maintain the records specified in paragraph (a) of this section for five years. The manufacturer must make these records available, either in hard copy or electronically, such as through an Internet Web site, for inspection by the CPSC upon request. Records may be maintained in languages other than English if they can be:

(1) Provided immediately by the manufacturer to the CPSC; and

(2) Translated accurately into English by the manufacturer within 48 hours of a request by the CPSC, or any longer period negotiated with CPSC staff.

[76 FR 69541, Nov. 8, 2011, as amended at 77 FR 72219, Dec. 5, 2012]

Subpart D—Consumer Product Labeling Program

§ 1107.30 Labeling consumer products to indicate that the certification requirements of section 14 of the CPSA have been met.

(a) Manufacturers and private labelers of a consumer product may indicate, by a uniform label on, or provided with the product, that the product complies with any consumer product safety rule under the CPSA, or with any similar rule, ban, standard or regulation under any other act enforced by the CPSC.

(b) The label must be visible and legible, and consist of the following statement:

MEETS CPSC SAFETY REQUIREMENTS

(c) A consumer product may bear the label if the manufacturer or private labeler has certified, pursuant to section 14 of the CPSA, that the consumer product complies with all applicable consumer product safety rules under the CPSA and with all rules, bans, standards, or regulations applicable to the product under any other act enforced by the Consumer Product Safety Commission.

(d) A manufacturer or private labeler may use a label in addition to the label described in paragraph (b) on the consumer product, as long as such label does not alter or mislead consumers as to the meaning of the label described in paragraph (b) of this section. A manufacturer or private labeler must not imply that the CPSC has tested, approved, or endorsed the product.

PART 1109—CONDITIONS AND REQUIREMENTS FOR RELYING ON COMPONENT PART TESTING OR CERTIFICATION, OR ANOTHER PARTY'S FINISHED PRODUCT TESTING OR CERTIFICATION, TO MEET TESTING AND CERTIFICATION REQUIREMENTS

Subpart A—General Conditions and Requirements

Sec.

Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

Subpart C—Conditions and Requirements for Composite Testing

AUTHORITY: Secs. 3 and 102, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063.

SOURCE: 76 FR 69580, Nov. 8, 2011, unless otherwise noted.

Subpart A—General Conditions and Requirements

§ 1109.1 Scope.

(a) This part applies to tests or certifications of the following when such testing or certification is used to support a certificate of compliance pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA:

(1) Component parts of consumer products; and

(2) Finished products when conducted by a party that is not required to test or certify products pursuant to part 1110 of this chapter.

(b) Component part manufacturers and suppliers may certify or test their component parts, but are not required to do so. Also, parties that are not required to test finished products, or to issue finished product certificates pursuant to part 1110 of this chapter, may do so voluntarily.

(c) Subpart A establishes general requirements for component part testing and certification, and relying on component part testing or certification, or another party's finished product certification or testing, to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA. Subpart B sets forth additional requirements for component part testing of chemical content. Subpart C describes the conditions and requirements for composite testing.

§ 1109.2 Purpose.

The purpose of this part is to set forth the conditions and requirements under which passing component part test reports, certification of component parts of consumer products, or finished product testing or certification procured or issued by another party, can be used to meet, in whole or in part, the testing and certification requirements of sections 14(a) and 14(i) of the CPSA.

§ 1109.3 Applicability.

The provisions of this part apply to all manufacturers and importers who are required to issue finished product certifications pursuant to section 14(a) of the CPSA and part 1110 of this chapter and to procure tests to ensure continued compliance pursuant to section 14(i) of the CPSA. This part also applies to manufacturers and suppliers of component parts or finished products who are not required to test or certify consumer products pursuant to part 1110 of this chapter, but who voluntarily choose to undertake testing or certification.

§ 1109.4 Definitions.

The following definitions apply to this part:

(a) *Certifier* means a party that is either a finished product certifier or a component part certifier as defined in this section.

(b) *Component part* means any part of a consumer product, including a children's product that either must or may be tested separately from a finished consumer product to assess the consumer product's ability to comply with a specific rule, ban, standard, or regulation enforced by the CPSC. Within the same consumer product, the component parts to be tested and the tests to be conducted may vary, depending on the applicable regulations and required test methods, if any.

(c) *Component part certifier* means a party who, although not required to do so pursuant to part 1110 of this chapter, voluntarily certifies the following as complying with one or more rules, bans, standards, or regulations enforced by the CPSC, consistent with the content requirements for certifications in part 1110 of this chapter:

(1) Component parts to be used in consumer products; or

(2) Finished products.

(d) *CPSA* means the Consumer Product Safety Act.

(e) *CPSC* means the Consumer Product Safety Commission.

(f) *CPSIA* means the Consumer Product Safety Improvement Act of 2008.

(g) *Due care* means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Due care does not permit willful ignorance.

(h) *Finished product certifier* means a party responsible for certifying compliance of a finished consumer product pursuant to part 1110 of this chapter with all applicable rules, bans, standards, and regulations enforced by the CPSC.

(i) *Identical in all material respects* means there is no difference with respect to compliance to the applicable rules, bans, standards, or regulations, between the samples to be tested for compliance and the component part or finished product distributed in commerce.

(j) *Paint* means any type of surface coating that is subject to part 1303 of this chapter or section 4.3.5.2 of ASTM F 963–08 (or any successor standard of section 4.3.5.2 of ASTM F 963–08 accepted by the Commission).

(k) *Testing party* means a party (including, but not limited to, domestic manufacturers, foreign manufacturers, importers, private labelers, or component part suppliers) who procures tests (either by conducting the tests themselves, when this is allowed, or by arranging for another party to conduct the tests), of a consumer product, or any component part thereof, for compliance, in whole or in part, with any applicable rule, ban, standard, or regulation enforced by the CPSC. Testing laboratories and third party conformity assessment bodies are not testing parties under this definition.

(*l*) *Third party conformity assessment body* means a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children's products. Only third party conformity assessment bodies whose scope of accreditation includes the applicable required tests can be used to test children's products for purposes of supporting certification pursuant to section 14(a) of the CPSA and testing to ensure continued compliance pursuant to section 14(i) of the CPSA.

(m) *Traceable* means the ability of a certifier to identify all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product. Parties that conduct testing may include a manufacturer, a supplier, a testing laboratory, or a third party conformity assessment body. Traceability extends to the component part of the product that was tested for compliance, such that if a subassembly is tested, that subassembly must be traceable, not each component part of the subassembly, if those parts were not individually tested for other rules, bans, standards, or regulations.

§ 1109.5 Conditions, requirements, and effects generally.

(a) *Component part testing allowed.* Any party, including a component part manufacturer, a component part supplier, a component part certifier, or a finished product certifier, may procure component part testing as long as it complies with the requirements in this section and subparts B and C of this part. A finished product certifier may certify compliance of a consumer product with all applicable rules, bans, standards, and regulations as required by section 14(a) of the CPSA, and may ensure continued compliance of children's products pursuant to section 14(i) of the CPSA, based, in whole or in part, on passing component part test reports or certification of one or more component parts of a consumer product if the following requirements are met:

(1) Testing of the component part is required or sufficient to assess compliance, in whole or in part, of the consumer product with the applicable rule, ban, standard, or regulation. Any doubts about whether testing one or more component parts of a consumer product is sufficient to assess whether the finished product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the finished product; and

(2) The component part tested is identical in all material respects to the component parts used in the finished consumer product. To be identical in all material respects to a component part for purposes of supporting a certification of a children's product, a sample need not necessarily be of the same size, shape, or finish condition as the component part of the finished product; rather, it may consist of any quantity that is sufficient for testing purposes and be in any form that has the same content as the component part of the finished product.

(b) *Test Result Integrity.* A certifier or testing party must exercise due care to ensure that while a component part or finished product is in its custody:

(1) Proper management and control of all raw materials, component parts, subassemblies, and finished products is

established and maintained for any factor that could affect the finished product's compliance with all applicable rules;

(2) The manufacturing process does not add or result in a prohibited level of a chemical from any source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product; and

(3) No action or inaction subsequent to testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation.

(c) *Limitation.* A certifier must not use tests of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the finished product to assess compliance with that rule, ban, standard, or regulation.

(d) *Test method and sampling protocol.* Each certifier and testing party must exercise due care to ensure that when it procures a test for use in meeting the requirements of sections 14(a) or 14(i) of the CPSA:

(1) All testing is done using required test methods, if any;

(2) Required sampling protocols are followed, if any; and

(3) Testing and certification follows the applicable requirements in sections 14(a) and 14(i) of the CPSA, and part 1107 of this chapter or any more specific rules, bans, standards, or regulations, used to assess compliance of the component part or finished product.

(e) *Timing.* Subject to any more specific rule, ban, standard, or regulation, component part testing may occur before final assembly of a consumer product, provided that nothing in the final assembly of the consumer product can cause the component part or the final consumer product to become noncompliant.

(f) *Traceability.* A certifier must not rely on component part or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable.

(g) *Documentation by certifiers and testing parties.* Each certifier and testing party must provide the following documentation, either in hard copy or electronically, to a certifier relying on such documentation as a basis for issuing a certificate:

(1) Identification of the component part or the finished product tested;

(2) Identification of a lot or batch number, or other information sufficient to identify the component parts or finished products to which the testing applies;

(3) Identification of the applicable rules, bans, standards, and regulations for which each component part or finished product was tested;

(4) Identification of the testing method(s) and sampling protocol(s) used;

(5) The date or date range when the component part or finished product was tested;

(6) Test reports that provide the results of each test on a component part or finished product, and the test values, if any;

(7) Identification of the party that conducted each test (including testing conducted by a manufacturer, testing laboratory, or third party conformity assessment body), and an attestation by the party conducting the testing that all testing of a component part or finished product by that party was performed in compliance with applicable provisions of section 14 of the CPSA, part 1107 of this chapter, or any more specific rules, bans, standards, or regulations;

(8) Component part certificate(s) or finished product certificate(s), if any;

(9) Records to support traceability as defined in § 1109.4(m); and

(10) An attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure compliance with the requirements set forth in subparagraph (b) of this section.

(h) *Effect of voluntary certification.* (1) The Commission will consider any certificate issued by a component part certifier in accordance with this part to be a certificate issued in accordance with section 14(a) of the CPSA. All certificates must contain all of the information required by part 1110 of this chapter.

(2) Any party who elects to certify compliance of a component part or a finished product with applicable rules, standards, bans, or regulations, must

assume all responsibilities of a manufacturer under sections 14(a) and 14(i) of the CPSA and part 1107 of this chapter with respect to that component part or finished product's compliance to the applicable rules, standards, bans, or regulations.

(i) *Certification by finished product certifiers.* (1) A finished product certifier must exercise due care in order to rely, in whole or in part, on one or more of the following as a basis for issuing a finished product certificate:

(i) Finished product certificate(s) issued by another party;

(ii) Finished product test report(s) provided by another party;

(iii) Component part certificate(s); or

(iv) Component part test report(s).

(2) If a finished product certifier fails to exercise due care in its reliance on another party's certifications or test reports, then the Commission will not consider the finished product certifier to hold a certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps that a prudent and competent person in the same line of business would take to conduct a reasonable review of another party's certification or test reports, and to address any concern over their validity, before relying on such documents to issue a finished product certificate. Due care does not permit willful ignorance. Such steps may vary according to the circumstances.

(3) A finished product certifier must not rely on another party's certifications or test reports unless the finished product certifier receives the documentation under paragraph (g) of this section from the certifier or testing party. The finished product certifier may receive such documentation either in hard copy or electronically, or access the documentation through an Internet Web site. The Commission may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

(j) *Recordkeeping requirements.* Each certifier or testing party must maintain the documentation required in paragraph (g) of this section for five years, and must make such documentation available for inspection by the CPSC upon request, either in hard copy or electronically, such as through an Internet Web site. Records may be maintained in languages other than English if they can be:

(1) Provided immediately by the certifier or testing party to the CPSC; and

(2) Translated accurately into English by the certifier or testing party within 48 hours of a request by the CPSC or any longer period negotiated with CPSC staff.

Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

§ 1109.11 Component part testing for paint.

(a) *Generally.* The Commission will permit certification of a consumer product, or a component part of a consumer product, as being in compliance with the lead paint limit of part 1303 of this chapter or the content limits for paint on toys of section 4.3.5.2 of ASTM F 963–08 or any successor standard of section 4.3.5.2 of ASTM F 963–08 accepted by the Commission if, for each paint used on the product, the requirements in § 1109.5 and paragraph (b) of this section are met.

(b) *Requirement.* For each paint used on the product:

(1) Unless using the test method ASTM F 2853–10 to test for lead in paint, all testing must be performed on dry paint that is scraped off of a substrate for testing. The substrate used need not be of the same material as the material used in the finished product or have the same shape or other characteristics as the part of the finished product to which the paint will be applied; and

(2) The tested paint is identical in all material respects to that used in production of the consumer product. The paint samples to be tested must have the same composition as the paint used on the finished product. However, a larger quantity of the paint may be tested than is used on the consumer product in order to generate a sufficient sample size. The paint may be supplied to the testing laboratory for testing either in liquid form or in the

form of a dried film of the paint on any suitable substrate.

§ 1109.12 Component part testing for lead content of children's products.

A certifier may rely on component part testing of each accessible component part of a children's product for lead content, where such component part testing is performed by a third party conformity assessment body, provided that the requirements in § 1109.5 are met, and the determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and part 1500.87 of this chapter is based on an evaluation of the finished product.

§ 1109.13 Component part testing for phthalates in children's toys and child care articles.

A certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content provided that the requirements in § 1109.5 are met.

Subpart C—Conditions and Requirements for Composite Testing

§ 1109.21 Composite testing.

(a) *Paint.* In testing paint for compliance with chemical content limits, certifiers and testing parties may procure tests conducted on a combination of different paint samples so long as test procedures are followed to ensure that no failure to comply with the lead limits will go undetected (see paragraph (c) of this section). A certificate may be based on testing each component part of the paint according to the requirements of § 1109.11 and certifying that each component part in the mixture individually complies with the lead in paint limit or other paint limit. Testing and certification of composite paints must also comply with §§ 1109.5 and 1109.11.

(b) *Component parts.* A certifier or testing party may procure tests conducted on a combination of component parts for compliance with chemical content limits so long as test procedures are followed to ensure that no failure to comply with the content limits will go undetected (see paragraph (c) of this section). Testing and certification of composite component parts for lead content must also comply with §§ 1109.5 and 1109.12. Testing and certification of composite component parts for phthalate content must also comply with §§ 1109.5 and 1109.13.

(c) *How to evaluate composite testing.* When using composite testing, only the total amount or percentage of the target chemical is determined, not how much was in each individual paint or component part. Therefore, to determine that each paint or component part is within the applicable limit, the entire amount of the target chemical in the composite is attributed to each paint or component part. If this method yields an amount of the target chemical that exceeds the limit applicable to any paint or component part in the composite sample, additional testing would be required to determine which of the paints or component parts, if any, fail to meet the applicable limit.

PART 1110—CERTIFICATES OF COMPLIANCE

Sec.

AUTHORITY: Pub. L. No. 110–314, § 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 14.

SOURCE: 73 FR 68331, Nov. 18, 2008, unless otherwise noted.

§ 1110.1 Purpose and scope.

(a) This part 1110:

(1) Limits the entities required to provide certificates in accordance with section 14(a) of the Consumer Product Safety Act, as amended (CPSA), 15 U.S.C. 2063(a), to importers and U.S. domestic manufacturers;

(2) Specifies the content, form, and availability requirements of the CPSA that must be met for a certificate to

satisfy the certificate requirements of section 14(a); and

(3) Specifies means by which an electronic certificate shall meet those requirements.

(b) This part 1110 does not address issues related to type or frequency of testing necessary to satisfy the certification requirements of CPSA section 14(a). It does not address issues related to CPSA section 14(g)(4) concerning advance filing of electronic certificates of compliance with the Commission and/or the Commissioner of Customs.

§ 1110.3 Definitions.

The following definitions apply for purposes of this part 1110.

(a) *Electronic certificate* means, for purposes of this part 1110, a set of information available in, and accessible by, electronic means that sets forth the information required by CPSA section 14(a) and section 14(g) and that meets the availability requirements of CPSA section 14(g)(3).

(b) Unless otherwise stated, the definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008 (CPSIA), Pub. L. 110–314, apply for purposes of this part 1110.

§ 1110.5 Acceptable certificates.

A certificate that is in hard copy or electronic form and complies with all applicable requirements of this part 1110 meets the certificate requirements of section 14 of the CPSA. This does not relieve the importer or domestic manufacturer from the underlying statutory requirements concerning the supporting testing and/or other bases to support certification and issuance of certificates.

§ 1110.7 Who must certify and provide a certificate.

(a) *Imports.* Except as otherwise provided in a specific standard, in the case of a product manufactured outside the United States, only the importer must certify in accordance with, and provide the certificate required by, CPSA section 14(a) as applicable, that the product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.

(b) *Domestic products.* Except as otherwise provided in a specific standard, in the case of a product manufactured in the United States, only the manufacturer must certify in accordance with, and provide the certificate required by, CPSA section 14(a) as applicable, that the product or shipment in question complies with all applicable CPSA rules and all similar rules, bans, standards, and regulations applicable to the product or shipment under any other Act enforced by the Commission.

(c) *Availability of certificates*—(1) *Imports.* In the case of imports, the certificate required by CPSA section 14(a) must be available to the Commission from the importer as soon as the product or shipment itself is available for inspection in the United States.

(2) *Domestic products.* In the case of domestic products, the certificate required by CPSA section 14(a) must be available to the Commission from the manufacturer prior to introduction of the product or shipment in question into domestic commerce.

§ 1110.9 Form of certificate.

As required by CPSA section 14(g)(2), the information on a hard copy or electronic certificate must be provided in English and may be provided in any other language.

§ 1110.11 Content of certificate.

As required by CPSA sections 14(a) and 14(g), a certificate must contain the following information:

(a) Identification of the product covered by the certificate.

(b) Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified. Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that is applicable to the product.

(c) Identification of the importer or domestic manufacturer certifying compliance of the product, including the importer or domestic manufacturer's

name, full mailing address, and telephone number.

(d) Contact information for the individual maintaining records of test results, including the custodian's name, e-mail address, full mailing address, and telephone number. (CPSC suggests that each issuer maintain test records supporting the certification for at least three years as is currently required by certain consumer product specific CPSC standards, for example at 16 CFR 1508.10 for full-size baby cribs.)

(e) Date (month and year at a minimum) and place (including city and state, country, or administrative region) where the product was manufactured. If the same manufacturer operates more than one location in the same city, the street address of the factory in question should be provided.

(f) Date and place (including city and state, country or administrative region) where the product was tested for compliance with the regulation(s) cited above in subsection (b).

(g) Identification of any third-party laboratory on whose testing the certificate depends, including name, full mailing address and telephone number of the laboratory.

§ 1110.13 Availability of electronic certificate.

(a) CPSA section 14(g)(3) requires that the certificates required by section 14(a) ''accompany'' each product or product shipment and be ''furnished'' to each distributor and retailer of the product in question.

(1) An electronic certificate satisfies the ''accompany'' requirement if the certificate is identified by a unique identifier and can be accessed via a World Wide Web URL or other electronic means, provided the URL or other electronic means and the unique identifier are created in advance and are available, along with access to the electronic certificate itself, to the Commission or to the Customs authorities as soon as the product or shipment itself is available for inspection.

(2) An electronic certificate satisfies the ''furnish'' requirement if the distributor(s) and retailer(s) of the product are provided a reasonable means to access the certificate.

(b) An electronic certificate shall have a means to verify the date of its creation or last modification.

§ 1110.15 Legal responsibility for certificate information.

Any entity or entities may maintain an electronic certificate platform and may enter the requisite data. However, the entity or entities required by CPSA section 14(a) to issue the certificate remain legally responsible for the accuracy and completeness of the certificate information required by statute and its availability in timely fashion.

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

Subpart A—Purpose and Definitions

Sec.

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

AUTHORITY: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

SOURCE: 77 FR 31084, May 24, 2012, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 1112.1 Purpose.

This part defines the term ''third party conformity assessment body'' and describes the types of third party conformity assessment bodies whose accreditations are accepted by the CPSC to test children's products under section 14 of the CPSA. It describes the requirements and procedures for becoming a CPSC-accepted third party conformity assessment body; the audit requirement applicable to CPSC-accepted third party conformity assessment bodies; how a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body; the grounds and procedures for withdrawal or suspension of CPSC acceptance of the accreditation of a third party conformity assessment body; and how an individual may submit information alleging grounds for adverse action.

[78 FR 15858, Mar. 12, 2013]

§ 1112.3 Definitions.

Unless otherwise stated, the definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008, Public Law 110–314, apply for purposes of this part. The following definitions apply for purposes of this subpart:

Accreditation means a procedure by which an authoritative body gives formal recognition that a third party conformity assessment body meets competence requirements to perform specific tasks. Accreditation recognizes a third party conformity assessment body's technical capability and is usually specific for tests of the systems, products, components, or materials for which the third party conformity assessment body claims proficiency.

Accept accreditation means that the CPSC has positively disposed of an application by a third party conformity assessment body to test children's products pursuant to a particular children's product safety rule, for purposes of the testing required in section 14 of the CPSA.

Accreditation body means an entity that:

(1) Accredits or has accredited a third party conformity assessment body as meeting, at a minimum, the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and any test methods or consumer product safety requirements specified in the relevant notice of requirements issued by the Commission; and

(2) Is a signatory to the International Laboratory Accreditation Cooperation–Mutual Recognition Arrangement.

Audit means a systematic, independent, documented process for obtaining records, statements of fact, or other relevant information, and assessing them objectively to determine the extent to which specified requirements are fulfilled. An audit, for purposes of this part, consists of two parts:

(1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (a process known more commonly as a ''reassessment''); and

(2) The resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) and accompanying documentation by the third party conformity assessment body and the Consumer Product Safety Commission's (CPSC's) examination of the resubmitted CPSC Form 223 and accompanying documentation. Accompanying documentation includes the baseline documents required of all applicants in §1112.13(a), the documents required of firewalled applicants in §1112.13(b)(2), and/or the documents required of governmental applicants in §1112.13(c)(2).

Commission means the body of Commissioners appointed to the Consumer Product Safety Commission.

CPSA means the Consumer Product Safety Act, 15 U.S.C. 2051–2089.

CPSC means the Consumer Product Safety Commission as an agency.

Notice of requirements means a publication that provides the minimum qualifications necessary for a third party conformity assessment body to have its accreditation accepted to test children's products for conformity with a particular children's product safety rule.

Quality manager means an individual (however named) who, irrespective of other duties and responsibilities, has defined responsibility and authority for ensuring that the management system related to quality is implemented and followed at all times and has direct access to the highest level of management at which decisions are made on the conformity assessment body's policy or resources.

Scope means the range of particular CPSC safety rules and/or test methods to which a third party conformity assessment body has been accredited and for which it may apply for CPSC acceptance.

Suspend means the CPSC has removed its acceptance, for purposes of the testing of children's products required in section 14 of the CPSA, of a third party conformity assessment body's accreditation for failure to cooperate in an investigation under this part.

Third party conformity assessment body means a laboratory.

Undue influence means that a manufacturer, private labeler, governmental entity, or other interested party affects a third party conformity assessment body, such that commercial, financial, or other pressures compromise the integrity of its testing processes or results.

Withdraw means the CPSC removes its prior acceptance of a third party conformity assessment body's accreditation pursuant to a particular children's product safety rule for purposes of the testing of children's products required in section 14 of the CPSA.

[77 FR 31084, May 24, 2012, as amended at 78 FR 15858, Mar. 12, 2013]

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

SOURCE: 78 FR 15859, Mar. 12, 2013, unless otherwise noted.

§1112.11 What are the types of third party conformity assessment bodies?

(a) *Independent.* Independent third party conformity assessment bodies are third party conformity assessment bodies that are neither owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body, nor owned or controlled, in whole or in part, by a government;

(b) *Firewalled.* A third party conformity assessment body must apply for firewalled status if:

(1) It is owned, managed, or controlled by a manufacturer or private labeler of a children's product;

(i) For purposes of determining whether a third party conformity assessment body is firewalled, ''manufacturer'' includes a trade association.

(ii) A manufacturer or private labeler is considered to own, manage, or control a third party conformity assessment body if any one of the following characteristics applies:

(A) The manufacturer or private labeler of the children's product holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(B) The third party conformity assessment body and a manufacturer or private labeler of the children's product are owned by a common ''parent'' entity; or

(C) A manufacturer or private labeler of the children's product has the ability to appoint any of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party conformity assessment body's senior internal governing body, the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel, regardless of whether this ability is ever exercised;

(2) The children's product is subject to a CPSC children's product safety rule that the third party conformity assessment body requests CPSC acceptance to test; and

(3) The third party conformity assessment body intends to test such children's product made by the owning, managing, or controlling entity for the purpose of supporting a Children's Product Certificate.

(c) *Governmental.* Governmental third party conformity assessment bodies are owned or controlled, in whole or in part, by a government. For purposes of this part, ''government'' includes any unit of a national, territorial, provincial, regional, state, tribal, or local government, and a union or association of sovereign states. ''Government'' also includes domestic, as well as foreign entities. A third party conformity assessment body is ''owned or controlled, in whole or in part, by a government'' if any one of the following characteristics applies:

(1) A governmental entity holds a 1 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(2) A governmental entity provides any direct financial investment or funding (other than fee for work);

(3) A governmental entity has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors); the ability to appoint the presiding official of the third party conformity assessment body's senior internal governing body (such as, but not limited to, chair or president); and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel;

(4) Third party conformity assessment body management or technical personnel include any government employees;

(5) The third party conformity assessment body has a subordinate position to a governmental entity in its external organizational structure (not including its relationship as a regulated entity to a government regulator); or

(6) Apart from its role as regulator, the government can determine, establish, alter, or otherwise affect:

(i) The third party conformity assessment body's testing outcomes;

(ii) The third party conformity assessment body's budget or financial decisions;

(iii) Whether the third party conformity assessment body may accept particular offers of work; or

(iv) The third party conformity assessment body's organizational structure or continued existence.

§ 1112.13 How does a third party conformity assessment body apply for CPSC acceptance?

(a) *Baseline Requirements.* Each third party conformity assessment body seeking CPSC acceptance must:

(1) Submit a completed Consumer Product Conformity Assessment Body Registration Form (CPSC Form 223 or Application). In submitting a CPSC Form 223, the third party conformity assessment body must attest to facts and characteristics about its business that will determine whether the third party conformity assessment body is independent, firewalled, or governmental. The third party conformity assessment body also must attest that it has read, understood, and agrees to the regulations in this part. The third party conformity assessment body must update its CPSC Form 223 whenever any information previously supplied on the form changes.

(2) Submit the following documentation.

(i) *Accreditation certificate.* (A) The third party conformity assessment body must be accredited to the ISO/IEC Standard 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories.''

(B) The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA).

(ii) *Statement of scope.* The third party conformity assessment body's accreditation must include a statement of scope that clearly identifies each CPSC rule and/or test method for which CPSC acceptance is sought. Although a third party conformity assessment body may include more than one CPSC rule and/or test method in its scope in one application, it must submit a new application if the CPSC has already accepted the third party conformity assessment body for a particular scope, and the third party conformity assessment body wishes to expand its acceptance to include additional CPSC rules and/or test methods.

(b) *Additional Requirements for Firewalled Third Party Conformity Assessment Bodies.* (1) A third party conformity assessment body may be accepted as a firewalled third party conformity assessment body if the Commission, by order, makes the findings described in § 1112.17(b).

(2) For the Commission to evaluate whether an applicant firewalled third party conformity assessment body satisfies the criteria listed in § 1112.17(b), and in addition to the baseline accreditation requirements in paragraph (a) of this section, a firewalled third party conformity assessment body applying for acceptance of its accreditation must submit copies of:

(i) The third party conformity assessment body's established policies and procedures that explain:

(A) How the third party conformity assessment body will protect its test results from undue influence by the manufacturer, private labeler, or other interested party;

(B) That the CPSC will be notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results; and

(C) That allegations of undue influence may be reported confidentially to the CPSC;

(ii) Training documents, including a description of the training program content, showing how employees are trained annually on the policies and procedures described in paragraph (b)(2)(i) of this section;

(iii) Training records, including a list and corresponding signatures, of the staff members who received the training identified in paragraph (b)(2)(ii) of this section. The records must include training dates, location, and the name and title of the individual providing the training;

(iv) An organizational chart(s) of the third party conformity assessment body that includes the names of all third party conformity assessment body personnel, both temporary and permanent, and their reporting relationship within the third party conformity assessment body;

(v) An organizational chart(s) of the broader organization that identifies the reporting relationships of the third party conformity assessment body within the broader organization (using

both position titles and staff names); and

(vi) A list of all third party conformity assessment body personnel with reporting relationships outside of the third party conformity assessment body. The list must identify the name and title of the relevant third party conformity assessment body employee(s) and the names, titles, and employer(s) of all individuals outside of the third party conformity assessment body to whom they report;

(c) *Additional Requirements for Governmental Third Party Conformity Assessment Bodies.* (1) The CPSC may accept a governmental third party conformity assessment body if the CPSC determines that:

(i) To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose third party conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;

(iv) The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and

(v) The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

(2) For the CPSC to evaluate whether a governmental third party conformity assessment body satisfies the criteria listed in paragraph (c)(1) of this section, and in addition to the baseline accreditation requirements in paragraph (a) of this section, a governmental third party conformity assessment body seeking CPSC-accepted status must submit:

(i) *Description.* A description illustrating the relationships with other entities, such as government agencies and joint ventures partners. The description may be in the form of a diagram;

(ii) *Responses to questionnaires.* The CPSC will provide a governmental third party conformity assessment body applicant with a questionnaire and will provide a separate questionnaire to the affiliated governmental entity;

(iii) *Executed memorandum.* A copy of an executed memorandum addressing undue influence;

(A) The memorandum must be:

(*1*) Addressed to all staff of the third party conformity assessment body;

(*2*) On company letterhead;

(*3*) From senior management of the third party conformity assessment body;

(*4*) In the primary written language used for business communication in the area where the third party conformity assessment body is located; if that language is different than English, an English translation of the executed memorandum must also be provided to the CPSC;

(*5*) Displayed prominently for staff reference for as long as the accreditation of the third party conformity assessment body whose accreditation is accepted by the CPSC; and

(B) The memorandum must state that:

(*1*) The policy of the laboratory is to reject undue influence by any manufacturer, private labeler, governmental entity, or other interested party, regardless of that person or entity's affiliation with any organization;

(*2*) Employees are required to report immediately to their supervisor or any other official designated by the third party conformity assessment body about any attempts to gain undue influence; and

(*3*) The third party conformity assessment body will not tolerate violations of the undue influence policy.

(iv) *Attestation.* A senior officer of the governmental third party conformity

assessment body, who has the authority to make binding statements of policy on behalf of the third party conformity assessment body, must attest to the following:

(A) The third party conformity assessment body seeks acceptance as a governmental third party conformity assessment body under the CPSC's program of requirements for the testing of children's products;

(B) The official intends the attestation to be considered in support of any and all applications made by this third party conformity assessment body for acceptance of its accreditation by the CPSC, including future applications related to additional CPSC rules and/or test methods;

(C) The attestation, and any other document submitted in support of the application, is accurate in its representation of current conditions or policies at the third party conformity assessment body, to the best of the official's knowledge, information, and/or belief. The information in the attestation, and any other document submitted in support of the application, will be understood by the CPSC as continuing in its accuracy in every respect, until and unless notice of its revocation by an authorized officer of the third party conformity assessment body is received by the CPSC. The official understands that acceptance by the CPSC carries with it the obligation to comply with this part, in order to remain on the CPSC's list of accepted third party conformity assessment bodies. The attestation is submitted as a condition of acceptance of this laboratory as a governmental third party conformity assessment body by the CPSC.

(D) The word ''government'' in the attestation refers to any government (central, provincial, municipal, or other) in this third party conformity assessment body's country or administrative area and includes state-owned entities, even if those entities do not carry out governmental functions.

(E) With regard to consumer products to be distributed in commerce in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body does not receive, and will not accept from any governmental entity, treatment that is more favorable than that received by other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC. More favorable treatment for a governmental third party conformity assessment body includes, but is not limited to, authorization to perform essential export-related functions, while competing CPSC-accepted laboratories in the same country or administrative area are not permitted to perform those same functions.

(F) With regard to consumer products to be sold in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body's testing results are not accorded greater weight by any governmental entity that may be evaluating such results for export control purposes, compared to other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC.

(G) The third party conformity assessment body has an expressed policy, known to its employees, that forbids attempts at undue influence over any government authorities on matters affecting its operations.

(H) When a governmental third party conformity assessment body is owned or controlled by a governmental entity that also has any ownership or control over consumer product production, the senior officer of the applicant third party conformity assessment body must attest that the third party conformity assessment body will not conduct CPSC tests in support of a Children's Product Certificate for products for export to the United States that have been produced by an entity in which that governmental entity holds such ownership or control until it has applied for and been accepted by the Commission as, a dual governmental-firewalled third party conformity assessment body.

(v) *Governmental entity attestation.* In the event that the CPSC determines that its ability to accept a governmental third party conformity assessment body's application is dependent

upon a recently changed circumstance in the relationship between the third party conformity assessment body and a governmental entity, and/or a recently changed policy of the related governmental entity, the CPSC may require the relevant governmental entity to attest to the details of the new relationship or policy.

(d) *Dual firewalled and governmental status.* A third party conformity assessment body that meets both the firewalled and the governmental criteria must submit applications under both firewalled and governmental categories.

(e) *English language.* All application materials must be in English.

(f) *Electronic submission.* The CPSC Form 223 and all accompanying documentation must be submitted electronically via the CPSC Web site.

(g) *Clarification and verification.* The CPSC may require additional information to determine whether the third party conformity assessment body meets the relevant criteria. In addition, the CPSC may verify accreditation certificate and scope information directly from the accreditation body before approving an application.

(h) *Retraction of application.* A third party conformity assessment body may retract a submitted CPSC Form 223 any time before the CPSC has acted on the submission. A retraction will not end or nullify any enforcement action that the CPSC is otherwise authorized by law to pursue.

(i) The Director of the Federal Register approves this incorporation by reference in paragraph (a)(2)(i) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' Second Edition, May 15, 2005 from the International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; Telephone +41 22 749 01 11, Fax +41 22 733 34 30; *http://www.iso.org/iso/home.htm.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

(a) Once the CPSC publishes the requirements for accreditation to a particular CPSC rule or test method, a third party conformity assessment body may apply to the CPSC for acceptance to that scope of accreditation. An application may be made for acceptance of accreditation to more than one CPSC rule or test method. Once accepted by the CPSC, a third party conformity assessment body may apply at any time to expand the scope of its acceptance to include additional CPSC rules or test methods. A third party conformity assessment body may only issue test results for purposes of section 14 of the CPSA that fall within a scope for which the CPSC has accepted the third party conformity assessment body's accreditation.

(b) The CPSC has published the requirements for accreditation for third party conformity assessment bodies to assess conformity for the following CPSC rules or test methods:

(1) 16 CFR part 1203, Safety Standard for Bicycle Helmets;

(2) 16 CFR part 1215, Safety Standard for Infant Bath Seats;

(3) 16 CFR part 1216, Safety Standard for Infant Walkers;

(4) 16 CFR part 1217, Safety Standard for Toddler Beds;

(5) 16 CFR part 1219, Safety Standard for Full-Size Baby Cribs;

(6) 16 CFR part 1220, Safety Standard for Non-Full-Size Baby Cribs;

(7) 16 CFR part 1221, Safety Standard for Play Yards;

(8) 16 CFR part 1223, Safety Standard for Infant Swings;

(9) 16 CFR part 1224, Safety Standard for Portable Bed Rails;

(10) 16 CFR part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint. For its accreditation to be accepted by the Commission to test

to 16 CFR part 1303, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09;

(ii) CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09.1;

(iii) ASTM F2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams.''

(11) 16 CFR part 1420, Safety Standard for All-Terrain Vehicles;

(12) 16 CFR 1500.86(a)(5), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Clacker Balls);

(13) 16 CFR 1500.86(a)(7) and (8), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Dive Sticks and Similar Articles);

(14) 16 CFR part 1501, Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts;

(15) 16 CFR part 1505, Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children;

(16) 16 CFR part 1510, Requirements for Rattles;

(17) 16 CFR part 1511, Requirements for Pacifiers;

(18) 16 CFR part 1512, Requirements for Bicycles;

(19) 16 CFR part 1513, Requirements for Bunk Beds;

(20) 16 CFR part 1610, Standard for the Flammability of Clothing Textiles;

(21) 16 CFR part 1611, Standard for the Flammability of Vinyl Plastic Film;

(22) 16 CFR part 1615, Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3–71);

(23) 16 CFR part 1616, Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF 5–74);

(24) 16 CFR part 1630, Standard for the Surface Flammability of Carpets and Rugs (FF 1–70);

(25) 16 CFR part 1631, Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70);

(26) 16 CFR part 1632, Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended);

(27) 16 CFR part 1633, Standard for the Flammability (Open Flame) of Mattress Sets;

(28) Lead Content in Children's Metal Jewelry. For its accreditation to be accepted by the Commission to test for lead content in children's metal jewelry, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(ii) CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iii) CPSC Test Method CPSC–CH–E1001–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iv) CPSC Test Method CPSC–CH–E1001–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(v) Section I, ''Screening Test for Total Pb Analysis,'' from CPSC ''Standard Operating Procedure for Determining Lead (Pb) and its Availability in Children's Metal Jewelry,'' February 3, 2005;

(29) Limits on Total Lead in Children's Products: Children's Metal Products. For its accreditation to be accepted by the Commission to test for total lead content in children's metal products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(ii) CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iii) CPSC Test Method CPSC–CH–E1001–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(iv) CPSC Test Method CPSC–CH–E1001–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'';

(30) Limits on Total Lead in Children's Products: Nonmetal Children's Products. For its accreditation to be accepted by the Commission to test for lead content in nonmetal children's products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1002–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(ii) CPSC Test Method CPSC–CH–E1002–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(iii) CPSC Test Method CPSC–CH–E1002–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(iv) CPSC Test Method CPSC–CH–E1002–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products'';

(31) Limits on Phthalates in Children's Toys and Child Care Articles. For its accreditation to be accepted by the Commission to test for phthalates in children's toys and child care articles, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–1001–09.3, ''Standard Operating Procedure for Determination of Phthalates'';

(ii) GB/T 22048–2008, ''Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic'';

(32) ASTM F963–11 ''Standard Consumer Safety Specification for Toy Safety,'' and section 4.27 (toy chests) from ASTM F963–07ε1 ''Standard Consumer Safety Specification for Toy Safety.'' The CPSC only requires certain provisions of ASTM F963–11 and Section 4.27 of ASTM F963–07ε1 to be subject to third party testing; and therefore, the CPSC only accepts the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

(i) ASTM F963–07ε1; Section 4.27—Toy Chests (except labeling and/or instructional literature requirements);

(ii) ASTM F963–11:

(A) Section 4.3.5.1(2), Surface Coating Materials—Soluble Test for Metals

(B) Section 4.3.5.2, Toy Substrate Materials

(C) Section 4.3.6.3, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders (except for cosmetics and tests on formulations used to prevent microbial degradation)

(D) Section 4.3.7, Stuffing Materials

(E) Section 4.5, Sound Producing Toys

(F) Section 4.6, Small Objects (except labeling and/or instructional literature requirements)

(G) Section 4.7, Accessible Edges (except labeling and/or instructional literature equirements)

(H) Section 4.8, Projections (except bath toy projections)

(I) Section 4.9, Accessible Points (except labeling and/or instructional literature requirements)

(J) Section 4.10, Wires or Rods

(K) Section 4.11, Nails and Fasteners

(L) Section 4.12, Plastic Film

(M) Section 4.13, Folding Mechanisms and Hinges

(N) Section 4.14, Cords, Straps, and Elastics

(O) Section 4.15, Stability and Overload Requirements

(P) Section 4.16, Confined Spaces

(Q) Section 4.17, Wheels, Tires, and Axles

(R) Section 4.18, Holes, Clearances, and Accessibility of Mechanisms

(S) Section 4.19, Simulated Protective Devices (except labeling and/or instructional literature requirements)

(T) Section 4.20.1, Pacifiers with Rubber Nipples/Nitrosamine Test
(U) Section 4.20.2, Toy Pacifiers
(V) Section 4.21, Projectile Toys
(W) Section 4.22, Teethers and Teething Toys
(X) Section 4.23.1, Rattles with Nearly Spherical, Hemispherical, or Circular Flared Ends
(Y) Section 4.24, Squeeze Toys
(Z) Section 4.25, Battery-Operated Toys (except labeling and/or instructional literature requirements)
(AA) Section 4.26, Toys Intended to Be Attached to a Crib or Playpen (except labeling and/or instructional literature requirements)
(BB) Section 4.27, Stuffed and Beanbag-Type Toys
(CC) Section 4.30, Toy Gun Marking
(DD) Section 4.32, Certain Toys with Nearly Spherical Ends
(EE) Section 4.35, Pompoms
(FF) Section 4.36, Hemispheric-Shaped Objects
(GG) Section 4.37, Yo-Yo Elastic Tether Toys
(HH) Section 4.38, Magnets (except labeling and/or instructional literature requirements)
(II) Section 4.39, Jaw Entrapment in Handles and Steering Wheels
(33) 16 CFR part 1218, Safety Standard for Bassinets and Cradles.
(34) 16 CFR part 1225, Safety Standard for Hand-Held Infant Carriers.
(35) 16 CFR part 1222, Safety Standard for Bedside Sleepers.
(36) [Reserved]
(37) 16 CFR part 1226, Safety Standard for Soft Infant and Toddler Carriers.

(c) The Director of the Federal Register approves the incorporations by reference in paragraph (b) of this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the standards incorporated in this section at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html*.

(1) ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428: *http://www.astm.org*.
(i) ASTM F2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams,'' July 1, 2010;
(ii) ASTM F963–07ε1, ''Standard Consumer Safety Specification for Toy Safety,'' March 15, 2007;
(iii) ASTM F963–11, ''Standard Consumer Safety Specification for Toy Safety,'' December 1, 2011.
(2) Code of China, Room 2118, New Fortune International Plaza, No.71 Chaoyang Road, Chaoyang District, Beijing, 100123, China: *http://www.codeofchina.com/*.
(i) GB/T 22048–2008, National Standard of the People's Republic of China, ''Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic,'' June 18, 2008;
(ii) [Reserved]
(3) CPSC National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; *www.cpsc.gov*.
(i) CPSC–CH–C1001–09.3, ''Standard Operating Procedure for Determination of Phthalates'', April 1, 2010;
(ii) CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)'', December 4, 2008;
(iii) CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry), Revision'', June 21, 2010;
(iv) CPSC–CH–E1001–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry), Revision'', April 10, 2012;
(v) CPSC–CH–E1001–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry) Revision'', November 15, 2012;
(vi) CPSC–CH–E1002–08, ''Standard Operating Procedure for Determining

Total Lead (Pb) in Non-metal Children's Products'', February 1, 2009;

(vii) CPSC–CH–E1002–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Non-metal Children's Products, Revised'', June 21, 2010;

(viii) CPSC–CH–E1002–08.2, ''Standard Operating Procedure for Determining Total Lead (Pb) in Nonmetal Children's Products, Revision'', April 10, 2012;

(ix) CPSC–CH–E1002–08.3, ''Standard Operating Procedure for Determining Total Lead (Pb) in Non-metal Children's Products, Revision'', November 15, 2012;

(x) CPSC–CH–E1003–09, ''Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings'', April 26, 2009;

(xi) CPSC–CH–E1003–09.1, ''Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings'', February 25, 2011;

(xii) CPSC ''Standard Operating Procedure for Determining Lead (Pb) and its Availability in Children's Metal Jewelry'', February 3, 2005.

[78 FR 15859, Mar. 12, 2013, as amended at 78 FR 63034, Oct. 23, 2013; 78 FR 73424, Dec. 6, 2013; 79 FR 2589, Jan. 15, 2014; 79 FR 17433, Mar. 28, 2014]

EFFECTIVE DATE NOTE: At 79 FR 13216, Mar. 10, 2014, §1112.15 was amended by adding paragraph (b)(36), effective Sept. 10, 2015. For the convenience of the user, the added text is set forth as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(36) 16 CFR part 1227, Safety Standard for Carriages and Strollers.

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§ 1112.17 How will the CPSC respond to each application?

(a) The CPSC staff will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information.

(b) The application of a firewalled third party conformity assessment body will be accepted by order of the Commission, if the Commission finds that:

(1) Acceptance of the accreditation of the third party conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party third party conformity assessment body; and

(2) The third party conformity assessment body has established procedures to ensure that:

(i) Its test results are protected from undue influence by the manufacturer, private labeler, or other interested party;

(ii) The CPSC is notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over test results; and

(iii) Allegations of undue influence may be reported confidentially to the CPSC.

(c) The CPSC will communicate its decision on each application in writing to the applicant, which may be by electronic mail.

§ 1112.19 How does the CPSC publish information identifying third party conformity assessment bodies that have been accepted?

The CPSC will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each acceptance. The CPSC will update the listing regularly to account for changes, such as the addition of new CPSC rules and/or test methods to its scope of accreditation, changes to accreditation certificates, new addresses, as well as changes to the status of a third party conformity assessment body due to voluntary discontinuance, suspension, and/or withdrawal. The CPSC will also list the firewalled or governmental status of accepted laboratories on the CPSC Web site.

§ 1112.21 May a third party conformity assessment body use testing methods other than those specified in the relevant CPSC rule or test method?

If the CPSC has specified a test method, a third party conformity assessment body must use that test

method for any tests conducted for purposes of section 14 of the CPSA.

§ 1112.23 May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA?

(a) A CPSC-accepted third party conformity assessment body (which, for purposes of this section, also will be referred to as the prime contractor) may only subcontract work conducted for purposes of section 14 of the CPSA to other third party conformity assessment bodies whose accreditation has been accepted by the CPSC for the scope necessary for the subcontracted work. Violation of this provision constitutes compromising the integrity of the testing process and may be grounds for withdrawal of the CPSC's acceptance of the accreditation of the prime and/or subcontracting third party conformity assessment body.

(b) The provisions of this part apply to all CPSC-accepted third party conformity assessment bodies, even if they are a prime contractor and/or a subcontractor.

§ 1112.25 What are a third party conformity assessment body's recordkeeping responsibilities?

(a) The third party conformity assessment body must maintain the following records, which must be legible:

(1) All test reports and technical records related to tests conducted for purposes of section 14 of the CPSA must be maintained for a period of at least five years from the date the test was conducted;

(2) In the case of a test report for a test conducted by a CPSC-accepted third party conformity assessment body acting as a subcontractor, the prime contractor's test report must clearly identify which test(s) was performed by a CPSC-accepted third party conformity assessment body acting as a subcontractor(s), and the test report from the CPSC-accepted third party conformity assessment body acting as a subcontractor must be available upon request by CPSC.

(3) Where a report, for purposes of section 14 of the CPSA, provided by the third party conformity assessment body to a customer is different from the test record, the third party conformity assessment body also must retain the report provided to the customer for a period of at least five years from the date the test was conducted.

(4) Any and all third party conformity assessment body internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have applied to a test conducted for purposes of section 14 of the CPSA must be retained for a period of at least five years from the date such test was conducted.

(b) Upon request by the CPSC, the third party conformity assessment body must make any and all of the records required by this section available for inspection, either in hard copy or electronically, such as through an Internet Web site. If the records are not in the English language, the third party conformity assessment body must make copies of the original (non-English language) available to the CPSC within 48 hours, and they must make an English translation of the records available to the CPSC within 30 calendar days of the date the CPSC requested an English translation.

§ 1112.27 Must a third party conformity assessment body allow CPSC inspections related to investigations?

A third party conformity assessment body, as a condition of the continued CPSC-acceptance of its accreditation, must allow an officer or employee duly designated by the CPSC to enter and inspect the third party conformity assessment body for purposes of an investigation under this part. The CPSC will conduct such inspections in accordance with 16 CFR 1118.2. Failure to cooperate with such an inspection constitutes failure to cooperate with an investigation and is grounds for suspension under § 1112.45.

§ 1112.29 How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC?

(a) A third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body at any time and for any portion of its scope that is accepted by the

CPSC. The third party conformity assessment body must notify the CPSC, in writing, which may be electronic. The notice must include:

(1) Name, address, phone number, electronic mail address for the third party conformity assessment body and the person responsible for submitting the request;

(2) Scope of the discontinuance;

(3) Beginning date for the discontinuance;

(4) Statement that the third party conformity assessment body understands that it must reapply for acceptance of the accreditation scope for which it is requesting discontinuance; and

(5) Verification that the person requesting the discontinuance has the authority to make such a request on behalf of the third party conformity assessment body.

(b) The CPSC may verify the information submitted in a notice of voluntary discontinuance.

(c) Upon receipt of a notice from a third party conformity assessment body that it wishes to discontinue voluntarily as a CPSC-accepted third party conformity assessment body, or after verifying the information in a notice, the CPSC will update its Web site to indicate that the CPSC no longer accepts the accreditation of the third party conformity assessment body for the scope indicated, as of the date provided in the notice.

(d) Notwithstanding a third party conformity assessment body's voluntary discontinuance as a CPSC-accepted third party conformity assessment body, the CPSC may begin or continue an investigation related to an adverse action under this part, or other legal action.

Subpart C—Audit Requirements for Third Party Conformity Assessment Bodies

§ 1112.30 What is the purpose of this subpart?

This subpart establishes the audit requirements for third party conformity assessment bodies pursuant to section 14(i)(1) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(i)(1)). Compliance with these requirements is a condition of the continuing accreditation of such third party conformity assessment bodies pursuant to section 14(a)(3)(C) of the CPSA. However, this subpart does not apply to certifying organizations under the Labeling of Hazardous Art Materials Act, even if such organizations are third party conformity assessment bodies.

§ 1112.31 Who is subject to these audit requirements?

Except for certifying organizations described in 16 CFR 1500.14(b)(8), these audit requirements apply to third party conformity assessment bodies operating pursuant to section 14(a)(2) of the CPSA. Third party conformity assessment bodies must comply with the audit requirements as a continuing condition of the CPSC's acceptance of their accreditation.

§ 1112.33 What must an audit address or cover and who conducts the audit?

(a) The reassessment portion of an audit must cover management requirements and technical requirements. Each reassessment portion of an audit also must examine the third party conformity assessment body's management systems to ensure that the third party conformity assessment body is free from any undue influence regarding its technical judgment.

(b) The third party conformity assessment body must have the reassessment portion of the audit conducted by the same accreditation body that accredited the third party conformity assessment body. For example, if a third party conformity assessment body was accredited by an accreditation body named AB–1, then AB–1 would conduct the reassessment. If, however, the same third party conformity assessment body changes its accreditation so that it becomes accredited by a different accreditation body named AB–2, then AB–2 would conduct the reassessment.

(c) The third party conformity assessment body must have the examination portion of the audit conducted by the CPSC. The examination portion of the audit will consist of resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the

third party conformity assessment body and the CPSC's examination of the resubmitted CPSC Form 223.

(1) For ''firewalled'' conformity assessment bodies, the CPSC's examination may include verification to ensure that the ''firewalled'' conformity assessment body continues to meet the criteria set forth in section 14(f)(2)(D) of the CPSA.

(2) For government-owned or government-controlled conformity assessment bodies, the CPSC's examination may include verification to ensure that the government-owned or government-controlled conformity assessment body continues to meet the criteria set forth in section 14(f)(2)(B) of the CPSA.

§ 1112.35 When must an audit be conducted?

(a) At a minimum, each third party conformity assessment body must be reassessed at the frequency established by its accreditation body.

(b) For the examination portion of the audit, which is conducted by the CPSC:

(1) Each third party conformity assessment body must submit a CPSC Form 223 for audit purposes no less than every two years. When a CPSC Form 223 is submitted for audit purposes, the third party conformity assessment body must submit any accompanying documentation that would be required if it were a new application.

(2) Under § 1112.13(a)(1), a third party conformity assessment body must submit a new CPSC Form 223 whenever the information supplied on the form changes. In the event that the third party conformity assessment body submits a new CPSC Form 223 to provide updated information, the third party conformity assessment body may elect to have the new CPSC Form 223 satisfy the requirement of paragraph (b)(1) of this section. If the third party conformity assessment body intends to have the new CPSC Form 223 treated as its submission for audit purposes, the third party conformity assessment body must make that intention clear upon submission, and it must submit any accompanying documentation that would be required if it were a new application.

(3) At least 30 days prior to the date by which a third party conformity assessment body must submit a CPSC Form 223 for audit purposes, the CPSC will notify the body in writing, which may be electronic, of the impending audit deadline. A third party conformity assessment body may request an extension of the deadline for the examination portion of the audit, but it must indicate how much additional time is requested and explain why such an extension is warranted. The CPSC will notify the third party conformity assessment body whether its request for an extension has been granted.

[77 FR 31084, May 24, 2012, as amended at 78 FR 15865, Mar. 12, 2013]

§ 1112.37 What must a third party conformity assessment body do after an audit?

(a) When the accreditation body presents its findings to the third party conformity assessment body, the third party conformity assessment body's quality manager must receive the findings and, if necessary, initiate corrective action in response to the findings.

(b) The quality manager must prepare a resolution report identifying the corrective actions taken and any follow-up activities. If findings indicate that immediate corrective action is necessary, the quality manager must document that they notified the relevant parties within the third party conformity assessment body to take immediate corrective action and also document the action(s) taken.

(c) If the accreditation body decides to reduce, suspend, or withdraw the third party conformity assessment body's accreditation, and the reduction, suspension, or withdrawal of accreditation is relevant to the third party conformity assessment body's activities pertaining to a CPSC regulation or test method, the quality manager must notify the CPSC. Such notification must be sent to the Assistant Executive Director, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, within five business days of the accreditation body's notification to the third party conformity assessment body.

(d) If the CPSC finds that the third party conformity assessment body no longer meets the conditions specified in CPSC Form 223, or in the relevant statutory provisions applicable to that third party conformity assessment body, the CPSC will notify the third party conformity assessment body, identify the condition or statutory provision that is no longer met, and specify a time by which the third party conformity assessment body shall notify the CPSC of the steps it intends to take to correct the deficiency, and indicate when it will complete such steps. The quality manager must document that they notified the relevant parties within the third party conformity assessment body to take corrective action and also document the action(s) taken.

(e) If the third party conformity assessment body fails to remedy the deficiency in a timely fashion, the CPSC shall take whatever action it deems appropriate under the circumstances, up to and including withdrawing the CPSC's accreditation of the third party conformity assessment body or the CPSC's acceptance of the third party conformity assessment body's accreditation.

§ 1112.39 What records should a third party conformity assessment body retain regarding an audit?

A third party conformity assessment body must retain all records related to an audit that it receives from an accreditation body regarding a reassessment and all records pertaining to the third party conformity assessment body's resolution of, or plans for, resolving nonconformities identified through a reassessment by an accreditation body or through an examination by the CPSC. A third party conformity assessment body also must retain such records related to the last three reassessments (or however many reassessments have been conducted, if the third party conformity assessment body has been reassessed less than three times) and make such records available to the CPSC, upon request.

Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

SOURCE: 78 FR 15865, Mar. 12, 2013, unless otherwise noted.

§ 1112.41 What are the possible adverse actions the CPSC may take against a third party conformity assessment body?

(a) Potential adverse actions against a third party conformity assessment body include:

(1) Denial of Acceptance of Accreditation;

(2) Suspension of Acceptance of Accreditation; or

(3) Withdrawal of Acceptance of Accreditation.

(b) Withdrawal of acceptance of accreditation can be on a temporary or permanent basis, and the CPSC may immediately withdraw its acceptance in accordance with § 1112.53.

§ 1112.43 What are the grounds for denial of an application?

(a) The CPSC may deny an application for any of the following reasons:

(1) Failure to complete all information, and/or attestations, and/or failure to provide accompanying documentation, required in connection with an application within 30 days after notice of a deficiency by the CPSC;

(2) Submission of false or misleading information concerning a material fact(s) on an application, any materials accompanying an application, or on any other information provided to the CPSC related to a third party conformity assessment body's ability to become or to remain a CPSC-accepted third party conformity assessment body; or

(3) Failure to satisfy necessary requirements described in § 1112.13, such as ISO/IEC 17025:2005(E) accreditation by a ILAC–MRA signatory accreditation body for the CPSC scope for which acceptance of accreditation is being sought.

(b) The CPSC's denial of an application will follow the process described in § 1112.51.

§ 1112.45 What are the grounds for suspension of CPSC acceptance?

(a) The CPSC may suspend its acceptance of a third party conformity assessment body's accreditation for any portion of its scope when the third party conformity assessment body fails to cooperate with an investigation under section 14 of the CPSA. A third party conformity assessment body ''fails to cooperate'' when it does not respond to CPSC inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when it fails to cooperate with an investigatory inspection under § 1112.27.

(b) Suspension lasts until the third party conformity assessment body complies, to the satisfaction of the CPSC, with required actions, as outlined in the notice described in § 1112.51(b), or until the CPSC withdraws its acceptance of the third party conformity assessment body.

(c) If the CPSC determines that the third party conformity assessment body is cooperating sufficiently with the CPSC's investigation, the CPSC will lift the suspension. The suspension will lift as of the date of the CPSC's written notification to the third party conformity assessment body that the CPSC is lifting the suspension. The written notification may be by electronic mail.

§ 1112.47 What are the grounds for withdrawal of CPSC acceptance?

(a) A manufacturer, private labeler, governmental entity, or other interested party has exerted undue influence on such third party conformity assessment body or otherwise interfered with or compromised the integrity of the testing process.

(b) The third party conformity assessment body failed to comply with an applicable protocol, standard, or requirement under subpart C of this part.

(c) The third party conformity assessment body failed to comply with any provision in subpart B of this part.

§ 1112.49 How may a person submit information alleging grounds for adverse action, and what information should be submitted?

(a) *Initiating information.* Any person may submit information to the Commission, such as by writing to the U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by sending electronic mail to: *labaccred@cpsc.gov*. The submission must allege that one or more of the grounds for adverse action set forth in this part exists. Any request for confidentiality must be indicated clearly in the submission. The submission should include:

(1) Contact information, including a name and/or a method by which the CPSC may contact the person providing the information;

(2) Identification of the third party conformity assessment body against whom the allegation is being made, identification of any officials or employees of the third party conformity assessment body relevant to the allegation, and contact information for such individuals.

(3) Identification of any manufacturers, distributors, importers, private labelers, and/or governmental entities relevant to the allegation. The submission also should identify any officials or employees of the manufacturers, distributors, importers, private labelers, or governmental entities relevant to the allegation, and contact information for such individuals.

(4) Description of acts and/or omissions to support each asserted ground for adverse action. Generally, the submission should describe, in detail, the basis for the allegation that grounds for adverse action against a third party conformity assessment body exists. In addition to a description of the acts and omissions and their significance, a description may include: dates, times, persons, companies, governmental entities, locations, products, tests, test results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations;

(5) Description of the impact of the acts and/or omissions, where known.

(b) *Review of initiating information.* Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section.

§ 1112.51 What are the procedures relevant to adverse actions?

(a) *Investigation.* (1) Investigations under this part are investigations into grounds for an adverse action against a third party conformity assessment body.

(2) The Commission will use its *Procedures for Investigations, Inspections, and Inquiries,* 16 CFR part 1118, subpart A, to investigate under this part.

(3) An investigation under this part may include any act the CPSC takes to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation, a submission alleging grounds for an adverse action, or any other information received by the CPSC that relates to a third party conformity assessment body's ability to become or remain a CPSC-accepted third party conformity assessment body.

(4) The CPSC will begin an investigation under this part by providing written notice, which may be electronic, to the third party conformity assessment body. The notice will inform the third party conformity assessment body that the CPSC has received information sufficient to warrant an investigation, and it will describe the information received by the CPSC and the CPSC's investigative process. The notice also will inform the third party conformity assessment body that failure to cooperate with a CPSC investigation is grounds for suspension under § 1112.45.

(5) The notice sent by the CPSC under § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, which may be electronic, constitutes notice of investigation for purposes of this section. The examination portion of an audit under § 1112.33(c) constitutes an investigation for purposes of this section.

(b) *Initial notice.* If, after investigation, the CPSC determines that grounds for adverse action exist and proposes to take an adverse action against a third party conformity assessment body, the CPSC will notify the third party conformity assessment body, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the notice formally begins a proceeding to suspend or withdraw, as described in section 14(e) of the CPSA. The notice will contain:

(1) The proposed adverse action;

(2) Specific grounds on which the proposed adverse action is based;

(3) Findings of fact to support the proposed adverse action;

(4) When appropriate, specific actions a third party conformity assessment body must take to avoid an adverse action;

(5) When the proposed adverse action is withdrawal, consideration of the criteria set forth in paragraph (d)(1) of this section;

(6) The time period by which a third party conformity assessment body has to respond to the notice. In general, the notice will inform the third party conformity assessment body that it has 30 calendar days to respond. A third party conformity assessment body may request an extension of the response time, but they must explain why such an extension is warranted and the amount of additional time needed for a response; and

(7) Except under § 1112.53, a CPSC-accepted third party conformity assessment body may continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

(c) *Third party conformity assessment body response to initial notice.* A third party conformity assessment body's response must be submitted in writing, in English, and may be in the form of electronic mail. The response may include, but is not limited to, an explanation or refutation of material facts upon which the Commission's proposed

action is based, supported by documents or sworn affidavit; results of any internal review of the matter and action(s) taken as a result; or a detailed plan and schedule for an internal review. The written response must state the third party conformity assessment body's reasons why the ground(s) for adverse action does not exist, or why the CPSC should not pursue the proposed adverse action, or any portion of the proposed adverse action. If a third party conformity assessment body responds to the notice in a timely manner, the CPSC will review the response, and, if necessary, investigate further to explore or resolve issues bearing on whether grounds exist for adverse action and the nature of the proposed adverse action. If a third party conformity assessment body does not respond to the notice in a timely manner, the CPSC may proceed without further delay to a Final Notice, as described in paragraph (e) of this section.

(d) *Proceeding.* (1) In any proceeding to withdraw the CPSC's acceptance of a third party conformity assessment body's accreditation, the CPSC will consider the gravity of the third party conformity assessment body's action or failure to act, including:

(i) Whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) Whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) Whether and when the third party conformity assessment body initiated remedial action.

(2) In all cases, the CPSC will review and take under advisement the response provided by the third party conformity assessment body. Except for cases under paragraph (d)(3) of this section, the CPSC will determine what action is appropriate under the circumstances.

(3) If, after reviewing and taking under advisement the response provided by a CPSC-accepted firewalled third party conformity assessment body, the CPSC staff concludes that suspension or withdrawal of CPSC acceptance of accreditation is appropriate, staff will transmit its recommendation to the Commission for consideration. Any suspension or withdrawal of CPSC acceptance of accreditation of a firewalled third party conformity assessment body (including immediate and temporary withdrawal under §1112.53) will be by order of the Commission.

(4) The CPSC may withdraw its acceptance of the accreditation of a third party conformity assessment body on a permanent or temporary basis.

(5) If the CPSC withdraws its acceptance of the accreditation of a third party conformity assessment body, the CPSC may establish conditions for the reacceptance of the accreditation of the third party conformity assessment body, under section 14(e)(2)(B)(ii) of the CPSA. Any such conditions would be related to the reason(s) for the withdrawal.

(e) *Final notice.* If, after reviewing a third party conformity assessment body's response to a notice and conducting additional investigation, where necessary, the CPSC determines that grounds for adverse action exist, it will send a Final Notice to the third party conformity assessment body, in writing, which may be electronic. The Final Notice will state:

(1) The adverse action that the CPSC is taking;

(2) Specific grounds on which the adverse action is based;

(3) Findings of fact that support the adverse action;

(4) When the adverse action is withdrawal, consideration of the criteria as set forth in paragraph (d)(1) of this section;

(5) When the adverse action is withdrawal, whether the withdrawal is temporary or permanent, and if temporary, the duration of the withdrawal;

(6) The third party conformity assessment body's accreditation is not accepted by the Commission as of the date of the Final Notice of denial, suspension, or withdrawal, for specified portion(s) of its CPSC scope. The CPSC Web site will be updated to reflect adverse actions to any previously CPSC-accepted third party conformity assessment bodies; and

(7) Whether the third party conformity assessment body may submit a new application.

(f) *Possible actions after final notice.* Upon receipt of a Final Notice, a third

party conformity assessment body, as applicable, may:

(1) If the Final Notice indicates such, the third party conformity assessment body may submit a new application; or

(2) File an Administrative Appeal.

(g) *Administrative appeal.* (1) Except for paragraph (g)(2) of this section, the third party conformity assessment body may file an Administrative Appeal with the Office of the Executive Director.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Executive Director, Room 812, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov*.

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature and scope of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

(iv) If an Administrative Appeal is timely filed, the Executive Director will issue a Final Decision within 60 calendar days of receipt. If the Executive Director's Final Decision requires more than 60 calendar days, he or she will notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and, if feasible, include an estimated date for a Final Decision to be issued.

(2) In the case that the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled third party conformity assessment body, the firewalled third party conformity assessment body may file an Administrative Appeal with the Commission.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: the Office of the Secretary, Room 820, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov*.

(ii) All appeals must be in writing, and must be in English.

(iii) All appeals must explain the nature of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

§ 1112.53 Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?

(a) When it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, the CPSC may withdraw immediately and temporarily its acceptance of a third party conformity assessment body's accreditation for any portion of its CPSC scope while the CPSC pursues an investigation and potential adverse action under § 1112.51.

(1) For purposes of this part, ''in the public interest to protect health and safety'' means that the CPSC has credible evidence that:

(i) The integrity of test(s) being conducted under a scope for which the CPSC has accepted the third party conformity assessment body's accreditation, have been affected by undue influence or otherwise interfered with or compromised; and

(ii) The scope for which the CPSC has accepted the third party conformity assessment body's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

(2) When presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51 apply, except that instead of the timeframes described in § 1112.51, the following timeframes will apply when the CPSC pursues immediate and temporary withdrawal:

(i) The Initial Notice will generally inform the third party conformity assessment body that it has 7 calendar days to respond.

(ii) An administrative appeal of a Final Notice of immediate and temporary withdrawal will be timely if filed within 7 calendar days of the date of the Final Notice.

(b) If the third party conformity assessment body is already the subject of an investigation or adverse action process under §1112.51, the immediate and temporary withdrawal will remain in effect until: the agency communicates in writing that the immediate and temporary withdrawal has been lifted; the investigation concludes and the agency does not propose an adverse action; or the adverse action process concludes with denial, suspension, or withdrawal.

(c) If the third party conformity assessment body is not already the subject of an investigation or adverse action process under §1112.51, an investigation under §1112.51(a) will be launched based on the same information that justified the immediate and temporary withdrawal.

§ 1112.55 Will the CPSC publish adverse actions?

Immediately following a final adverse action, the CPSC may publish the fact of a final adverse action, the text of a final adverse action, or a summary of the substance of a final adverse action. After issuance of a final adverse action, the CPSC will amend its Web site listing of CPSC-accepted third party conformity assessment bodies to reflect the nature and scope of such adverse action.

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

Subpart A—General Interpretation

Sec.

Subpart B—Remedial Actions and Sanctions

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

AUTHORITY: 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079 and 2084.

SOURCE: 43 FR 34998, Aug. 7, 1978, unless otherwise noted.

Subpart A—General Interpretation

§ 1115.1 Purpose.

The purpose of this part 1115 is to set forth the Consumer Product Safety Commission's (Commission's) interpretation of the reporting requirements imposed on manufacturers (including importers), distributors, and retailers by section 15(b) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(b)) and to indicate the actions and sanctions which the Commission may require or impose to protect the public from substantial product hazards, as that term is defined in section 15(a) of the CPSA.

§ 1115.2 Scope and finding.

(a) Section 15(a) of the CPSA (15 U.S.C. 2064(a)) defines *substantial product hazard* as either:

(1) A failure to comply with an applicable consumer product safety rule, which failure creates a substantial risk of injury to the public, or

(2) A product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product fails to comply with an applicable consumer product safety rule, fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contains a defect which could create a substantial product hazard described in subsection 15(a)(2) of the CPSA, or creates an unreasonable risk of serious injury or death, immediately to inform the Commission, unless the manufacturer (including an importer), distributor or retailer has actual knowledge that the Commission has been adequately informed of such failure to comply, defect, or risk. This provision indicates that a broad spectrum of safety related information should be reported under section 15(b) of the CPSA.

(c) Sections 15 (c) and (d) of the CPSA, (15 U.S.C. 2064(c) and (d)), empower the Commission to order a manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce that presents a substantial product hazard to give various forms of notice to the public of the defect or the failure to comply and/or to order the subject firm to elect either to repair, to replace, or to refund the purchase price of such product. However, information which should be reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard, because what must be reported under section 15(b) are failures to comply with consumer product safety rules or voluntary standards upon which the Commission has relied under section 9, defects that could create a substantial product hazard, and products which create an unreasonable risk of serious injury or death. (See §1115.12.)

(d) The provisions of this part 1115 deal with all consumer products (including imports) subject to regulation under the Consumer Product Safety Act, as amended (15 U.S.C. 2051–2081) (CPSA), and the Refrigerator Safety Act (15 U.S.C. 1211–1214) (RSA). In addition, the Commission has found that risks of injury to the public from consumer products subject to regulation under the Flammable Fabrics Act (15 U.S.C. 1191–1204) (FFA), the Federal Hazardous Substances Act (15 U.S.C. 1261–1274) (FHSA), and the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–1476) (PPPA) cannot be eliminated or reduced to a sufficient extent in a timely fashion under those acts. Therefore, pursuant to section 30(d) of the CPSA (15 U.S.C. 2079(d)), manufacturers (including importers), distributors, and retailers of consumer products which are subject to regulation under provisions of the FFA, FHSA, and PPPA must comply with the reporting requirements of section 15(b).

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34227, Aug. 4, 1992]

§ 1115.3 Definitions.

In addition to the definitions given in section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) *Adequately informed* under section 15(b) of the CPSA means that the Commission staff has received the information requested under §§1115.12 and/or 1115.13 of this part insofar as it is reasonably available and applicable or that the staff has informed the subject firm that the staff is adequately informed.

(b) *Commission meeting* means the joint deliberations of at least a majority of the Commission where such deliberations determine or result in the conduct or disposition of official Commission business. This term is synonymous with ''Commission meeting'' as defined in the Commission's regulation issued under the Government in the Sunshine Act, 16 CFR part 1012.

(c) *Noncompliance* means the failure of a consumer product to comply with an applicable consumer product safety

rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA.

(d) A *person* means a corporation, company, association, firm, partnership, society, joint stock company, or individual.

(e) *Staff* means the staff of the Consumer Product Safety Commission unless otherwise stated.

(f) *Subject firm* means any manufacturer (including an importer), distributor, or retailer of a consumer product.

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34227, Aug. 4, 1992]

§ 1115.4 Defect.

Section 15(b)(2) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard to inform the Commission of such defect. Thus, whether the information available reasonably suggests a defect is the first determination which a subject firm must make in deciding whether it has obtained information which must be reported to the Commission. In determining whether it has obtained information which reasonably supports the conclusion that its consumer product contains a defect, a subject firm may be guided by the criteria the Commission and staff use in determining whether a defect exists. At a minimum, defect includes the dictionary or commonly accepted meaning of the word. Thus, a defect is a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function. A defect, for example, may be the result of a manufacturing or production error; that is, the consumer product as manufactured is not in the form intended by, or fails to perform in accordance with, its design. In addition, the design of and the materials used in a consumer product may also result in a defect. Thus, a product may contain a defect even if the product is manufactured exactly in accordance with its design and specifications, if the design presents a risk of injury to the public. A design defect may also be present if the risk of injury occurs as a result of the operation or use of the product or the failure of the product to operate as intended. A defect can also occur in a product's contents, construction, finish, packaging, warnings, and/or instructions. With respect to instructions, a consumer product may contain a defect if the instructions for assembly or use could allow the product, otherwise safely designed and manufactured, to present a risk of injury. To assist subject firms in understanding the concept of defect as used in the CPSA, the following examples are offered:

(a) An electric appliance presents a shock hazard because, through a manufacturing error, its casing can be electrically charged by full-line voltage. This product contains a defect as a result of manufacturing or production error.

(b) Shoes labeled and marketed for long-distance running are so designed that they might cause or contribute to the causing of muscle or tendon injury if used for long-distance running. The shoes are defective due to the labeling and marketing.

(c) A kite made of electrically conductive material presents a risk of electrocution if it is long enough to become entangled in power lines and be within reach from the ground. The electrically conductive material contributes both to the beauty of the kite and the hazard it presents. The kite contains a design defect.

(d) A power tool is not accompanied by adequate instructions and safety warnings. Reasonably foreseeable consumer use or misuse, based in part on the lack of adequate instructions and safety warnings, could result in injury. Although there are no reports of injury, the product contains a defect because of the inadequate warnings and instructions.

(e) An exhaust fan for home garages is advertised as activating when carbon monoxide fumes reach a dangerous level but does not exhaust when fumes have reached the dangerous level. Although the cause of the failure to exhaust is not known, the exhaust fan is defective because users rely on the fan to remove the fumes and the fan does not do so.

However, not all products which present a risk of injury are defective. For example, a knife has a sharp blade and is capable of seriously injuring someone. This very sharpness, however, is necessary if the knife is to function adequately. The knife does not contain a defect insofar as the sharpness of its blade is concerned, despite its potential for causing injury, because the risk of injury is outweighed by the usefulness of the product which is made possible by the same aspect which presents the risk of injury. In determining whether the risk of injury associated with a product is the type of risk which will render the product defective, the Commission and staff will consider, as appropriate: The utility of the product involved; the nature of the risk of injury which the product presents; the necessity for the product; the population exposed to the product and its risk of injury; the obviousness of such risk; the adequacy of warnings and instructions to mitigate such risk; the role of consumer misuse of the product and the foreseeability of such misuse; the Commission's own experience and expertise; the case law interpreting Federal and State public health and safety statutes; the case law in the area of products liability; and other factors relevant to the determination. If the information available to a subject firm does not reasonably support the conclusion that a defect exists, the subject firm need not report. However, if the information does reasonably support the conclusion that a defect exists, the subject firm must then consider whether that defect could create a substantial product hazard. (See §1115.12(f) for factors to be assessed in determining whether a substantial product hazard could exist.) If the subject firm determines that the defect could create a substantial product hazard, the subject firm must report to the Commission. Most defects could present a substantial product hazard if the public is exposed to significant numbers of defective products or if the possible injury is serious or is likely to occur. Since the extent of public exposure and/or the likelihood or seriousness of injury are ordinarily not known at the time a defect first manifests itself, subject firms are urged to report if in doubt as to whether a defect could present a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect within the meaning of section 15 of the CPSA does, in fact, exist and whether that defect presents a substantial product hazard. Since a consumer product may be defective even if it is designed, manufactured, and marketed exactly as intended by a subject firm, subject firms should report if in doubt as to whether a defect exists. Defect, as discussed in this section and as used by the Commission and staff, pertains only to interpreting and enforcing the Consumer Product Safety Act. The criteria and discussion in this section are not intended to apply to any other area of the law.

[43 FR 34998, Aug. 7, 1978, as amended at 71 FR 42030, July 25, 2006]

§1115.5 Reporting of failures to comply with a voluntary consumer product safety standard relied upon by the Commission under section 9 of the CPSA.

(a) *General provision.* Under the CPSA, the Commission may rely on voluntary standards in lieu of developing mandatory ones. In recognition of the role of voluntary standards under the CPSA, section 15(b)(1) requires reports if a product fails to comply with a voluntary standard ''upon which the Commission has relied under section 9'' of the CPSA. The Commission has relied upon a voluntary consumer product safety standard under section 9 of the CPSA if, since August 13, 1981 it has terminated a rulemaking proceeding or withdrawn an existing consumer product safety rule because it explicitly determined that an existing voluntary standard, or portion(s) thereof, is likely to result in an adequate reduction of the risk of injury and it is likely there will be substantial compliance with that voluntary standard. (See appendix to this part 1115 for a list of such voluntary standards.) This provision applies only when the Commission relies upon a voluntary standard in a rulemaking proceeding under section 9 of the CPSA. In evaluating whether or not to rely upon an existing voluntary standard, the

Commission shall adhere to all the procedural safeguards currently required under the provisions of the CPSA, including publication in the FEDERAL REGISTER of the Commission's intent to rely upon a voluntary standard in order to provide the public with a fair opportunity to comment upon such proposed action.

(b) *Reporting requirement.* A firm must report under this section if it has distributed in commerce, subsequent to the effective date of the Consumer Product Safety Improvement Act of 1990 (November 16, 1990), a product that does not conform to a voluntary standard or portion(s) of a voluntary standard relied upon by the Commission since August 13, 1981. If the Commission relied upon only a portion(s) of a voluntary standard, a firm must report under this section only nonconformance with the portion(s) of the voluntary standard relied upon by the Commission. Pursuant to section 7(b)(2) of the CPSA, the Commission shall monitor any modifications of a voluntary standard upon which it has relied and determine, as a matter of policy, at the time any substantive safety related modification is adopted, whether it shall continue to rely upon the former standard or whether it shall rely, subsequently, upon the modified standard. The Commission shall publish such decisions in the FEDERAL REGISTER. Until the Commission makes such a decision, subject firms need not report under this provision a product which complies with either the original version of the voluntary standard relied upon by the Commission or the new version of the standard. A firm must continue to evaluate whether deviations from other portions of a voluntary standard, or other voluntary standards not relied upon by the Commission, either constitute a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

[57 FR 34228, Aug. 4, 1992; 57 FR 39597, Sept. 1, 1992]

§ 1115.6 Reporting of unreasonable risk of serious injury or death.

(a) *General provision.* Every manufacturer, distributor, and retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that its product creates an unreasonable risk of serious injury or death is required to notify the Commission immediately. 15 U.S.C. 2064(b)(3). The requirement that notification occur when a responsible party ''obtains information which reasonably supports the conclusion that'' its product creates an unreasonable risk of serious injury or death is intended to require firms to report even when no final determination of the risk is possible. Firms must carefully analyze the information they obtain to determine whether such information ''reasonably supports'' a determination that the product creates an unreasonable risk of serious injury or death. (See § 1115.12(f) for a discussion of the kinds of information that firms must study and evaluate to determine whether they have an obligation to report.) Firms that obtain information indicating that their products present an unreasonable risk of serious injury or death should not wait for such serious injury or death to actually occur before reporting. Such information can include reports from experts, test reports, product liability lawsuits or claims, consumer or customer complaints, quality control data, scientific or epidemiological studies, reports of injury, information from other firms or governmental entities, and other relevant information. While such information shall not trigger a *per se* reporting requirement, in its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA, the Commission shall attach considerable significance if such firm learns that a court or jury has determined that one of its products has caused a serious injury or death and a reasonable person could conclude based on the lawsuit and other information obtained by the firm that the product creates an unreasonable risk of serious injury or death.

(b) *Unreasonable risk.* The use of the term ''unreasonable risk'' suggests that the risk of injury presented by a product should be evaluated to determine if that risk is a reasonable one. In determining whether a product presents an unreasonable risk, the firm

should examine the utility of the product, or the utility of the aspect of the product that causes the risk, the level of exposure of consumers to the risk, the nature and severity of the hazard presented, and the likelihood of resulting serious injury or death. In its analysis, the firm should also evaluate the state of the manufacturing or scientific art, the availability of alternative designs or products, and the feasibility of eliminating the risk. The Commission expects firms to report if a reasonable person could conclude given the information available that a product creates an unreasonable risk of serious injury or death. In its evaluation of whether a subject firm is required to file a report under the provisions of section 15 of the CPSA the Commission shall, as a practical matter, attach considerable significance if such firm obtains information which reasonably supports the conclusion that its product violates a standard or ban promulgated under the FHSA, FFA, PPPA or RSA and the violation could result in serious injury or death.

(c) *Serious injury or death.* The term ''serious injury'' is not defined in the CPSA. The Commission believes that the term includes not only the concept of ''grievous bodily injury,'' defined at §1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment, fractures, lacerations requiring sutures, concussions, injuries to the eye, ear, or internal organs requiring medical treatment, and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred. To determine whether an unreasonable risk of serious injury or death exists, the firm should evaluate chronic or long term health effects as well as immediate injuries.

[57 FR 34228, Aug. 4, 1992]

§ 1115.7 Relation to other provisions.

The reporting requirements of section 37 of the CPSA (15 U.S.C. 2084) are in addition to the requirement in section 15 of the CPSA. Section 37 requires a product manufacturer to report certain kinds of lawsuit information. It is intended as a supplement to, not a substitute for, the requirements of section 15(b) of the CPSA. Whether or not a firm has an obligation to provide information under section 37, it must consider whether it has obtained information which reasonably supports the conclusion that its product violates a consumer product safety rule, does not comply with a voluntary safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. If a firm has obtained such information, it must report under section 15(b) of the CPSA, whether or not it is required to report under section 37. Further, in many cases the Commission would expect to receive reports under section 15(b) long before the obligation to report under section 37 arises since firms have frequently obtained reportable information before settlements or judgments in their product liability lawsuits.

[57 FR 34229, Aug. 4, 1992]

§ 1115.8 Compliance with product safety standards.

(a) *Voluntary standards.* The CPSA and other federal statutes administered by the Commission generally encourage the private sector development of, and compliance with voluntary consumer product safety standards to help protect the public from unreasonable risks of injury associated with consumer products. To support the development of such consensus standards, Commission staff participates in many voluntary standards committees and other activities. The Commission also strongly encourages all firms to comply with voluntary consumer product safety standards and considers, where appropriate, compliance or non-compliance with such standards in exercising its authorities under the CPSA and other federal statutes, including when making determinations under section 15 of the CPSA. Thus, for example, whether a product is in compliance with applicable voluntary safety standards may be relevant to the Commission staff's preliminary determination of whether that product presents a substantial product hazard under section 15 of the CPSA.

(b) *Mandatory standards.* The CPSA requires that firms comply with all applicable mandatory consumer product safety standards and to report to the Commission any products which do not comply with either mandatory standards or voluntary standards upon which the Commission has relied. As is the case with voluntary consumer product safety standards, compliance or non-compliance with applicable mandatory safety standards may be considered by the Commission and staff in making relevant determinations and exercising relevant authorities under the CPSA and other federal statutes. Thus, for example, while compliance with a relevant mandatory product safety standard does not, of itself, relieve a firm from the need to report to the Commission a product defect that creates a substantial product hazard under section 15 of the CPSA, it will be considered by staff in making the determination of whether and what type of corrective action may be required.

[71 FR 42030, July 25, 2006]

§ 1115.9 [Reserved]

§ 1115.10 Persons who must report and where to report.

(a) Every manufacturer (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product contains a defect which could create a substantial risk of injury to the public shall immediately notify the Office of Compliance, Division of Corrective Actions, Consumer Product Safety Commission, Washington, DC 20207 (telephone: 301–504–0608), or such other persons as may be designated. Manufacturers (including importers), distributors, and retailers of consumer products subject to regulation by the Commission under provisions of the FFA, FHSA, PPPA, as well as consumer products subject to regulation under the CPSA and RSA, must comply with this requirement.

(b) Every manufacturer (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated. A subject firm need not report a failure to comply with a standard or regulation issued under the provisions of the RSA, FFA, FHSA, or PPPA unless it can be reasonably concluded that the failure to comply results in a defect which could create a substantial product hazard. (See paragraph (a) of this section.)

(c) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated.

(d) Every manufacturer (including importer), distributor, and retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product creates an unreasonable risk of serious injury or death shall immediately notify the Commission's Office of Compliance and Enforcement, Division of Corrective Actions or such other persons as may be designated. This obligation applies to manufacturers, distributors and retailers of consumer products subject to regulation by the Commission under the Flammable Fabrics Act, Federal Hazardous Substances Act, Poison Prevention Packaging Act, and Refrigerator Safety Act as well as products subject to regulation under the CPSA.

(e) A distributor or retailer of a consumer product (who is neither a manufacturer nor an importer of that product) is subject to the reporting requirements of section 15(b) of the CPSA but may satisfy them by following the procedure detailed in § 1115.13(b).

(f) A manufacturer (including an importer), distributor, or retailer need not inform the Commission under section 15(b) of the CPSA if that person

has actual knowledge that the Commission has been adequately informed of the defect or failure to comply. (See section 15(b) of the CPSA.)

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34229, Aug. 4, 1992; 62 FR 46667, Sept. 4, 1997]

§ 1115.11 Imputed knowledge.

(a) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. (See § 1115.14(b).)

(b) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to know what a reasonable person acting in the circumstances in which the firm finds itself would know. Thus, the subject firm shall be deemed to know what it would have known if it had exercised due care to ascertain the truth of complaints or other representations. This includes the knowledge a firm would have if it conducted a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. (See § 1115.14.)

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

(a) *General.* Subject firms should not delay reporting in order to determine to a certainty the existence of a reportable noncompliance, defect or unreasonable risk. The obligation to report arises upon receipt of information from which one could reasonably conclude the existence of a reportable noncompliance, defect which could create a substantial product hazard, or unreasonable risk of serious injury or death. Thus, an obligation to report may arise when a subject firm received the first information regarding a potential hazard, noncompliance or risk. (See § 1115.14(c).) A subject firm in its report to the Commission need not admit, or may specifically deny, that the information it submits reasonably supports the conclusion that its consumer product is noncomplying, contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA, or creates an unreasonable risk of serious injury or death. After receiving the report, the staff may conduct further investigation and will preliminarily determine whether the product reported upon presents a substantial product hazard. This determination can be based on information supplied by a subject firm or from any other source. If the matter is adjudicated, the Commission will ultimately make the decision as to substantial product hazard or will seek to have a court make the decision as to imminent product hazard.

(b) *Failure to comply.* A subject firm must report information indicating that a consumer product which it has distributed in commerce does not comply with an applicable consumer product safety standard or ban issued under the CPSA, or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA.

(c) *Unreasonable risk of serious injury or death.* A subject firm must report when it obtains information indicating that a consumer product which it has distributed in commerce creates an unreasonable risk of serious injury or death.

(d) *Death or grievous bodily injury.* Information indicating that a noncompliance or a defect in a consumer product has caused, may have caused, or contributed to the causing, or could cause or contribute to the causing of a death or grievous bodily injury (e.g., mutilation, amputation/dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorders, severe burns, severe electrical shocks, and injuries likely to require extended hospitalization) must be reported, unless the subject firm has investigated and determined that the information is not reportable.

(e) *Other information indicating a defect or noncompliance.* Even if there are no reports of a potential for or an actual death or grievous bodily injury, other information may indicate a reportable defect or noncompliance. In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to

know what a reasonable and prudent manufacturer (including an importer), distributor, or retailer would know. (See § 1115.11.)

(f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. Such information may include information that a firm has obtained, or reasonably should have obtained in accordance with § 1115.11, about product use, experience, performance, design, or manufacture outside the United States that is relevant to products sold or distributed in the United States. All information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

(1) Information about engineering, quality control, or production data.

(2) Information about safety-related production or design change(s).

(3) Product liability suits and/or claims for personal injury or damage.

(4) Information from an independent testing laboratory.

(5) Complaints from a consumer or consumer group.

(6) Information received from the Commission or other governmental agency.

(7) Information received from other firms, including requests to return a product or for replacement or credit. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned.

(g) *Evaluating substantial risk of injury.* Information which should be or has been reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect or noncompliance exists and whether it results in a substantial risk of injury to the public. In deciding whether to report, subject firms may be guided by the following criteria the staff and the Commission use in determining whether a substantial product hazard exists:

(1) *Hazard created by defect.* Section 15(a)(2) of the CPSA lists factors to be considered in determining whether a defect creates a substantial risk of injury. These factors are set forth in the disjunctive. Therefore, the exist- ence of any one of the factors could create a substantial product hazard. The Commission and the staff will consider some or all of the following factors, as appropriate, in determining the substantiality of a hazard created by a product defect:

(i) *Pattern of defect.* The Commission and the staff will consider whether the defect arises from the design, composition, contents, construction, finish, packaging, warnings, or instructions of the product or from some other cause and will consider the conditions under which the defect manifests itself.

(ii) *Number of defective products distributed in commerce.* Even one defective product can present a substantial risk of injury and provide a basis for a substantial product hazard determination under section 15 of the CPSA if the injury which might occur is serious and/or if the injury is likely to occur. However, a few defective products with no potential for causing serious injury and little likelihood of injuring even in a minor way will not ordinarily provide a proper basis for a substantial product hazard determination. The Commission also recognizes that the number of products remaining with consumers is a relevant consideration.

(iii) *Severity of the risk.* A risk is severe if the injury which might occur is serious and/or if the injury is likely to occur. In considering the likelihood of any injury the Commission and the staff will consider the number of injuries reported to have occurred, the intended or reasonably foreseeable use or misuse of the product, and the population group exposed to the product (e.g., children, elderly, handicapped).

(iv) *Other considerations.* The Commission and the staff will consider all other relevant factors.

(2) *Hazard presented by noncompliance.* Section 15(a)(1) of the CPSA states that a substantial product hazard exists when a failure to comply with an applicable consumer product safety rule creates a substantial risk of injury to the public. Therefore, the Commission and

staff will consider whether the noncompliance is likely to result in injury when determining whether the noncompliance creates a substantial product hazard. As appropriate, the Commission and staff may consider some or all of the factors set forth in paragraph (f)(1) of this section in reaching the substantial product hazard determination.

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34229, Aug. 4, 1992; 66 FR 54925, Oct. 31, 2001; 71 FR 42031, July 25, 2006]

§ 1115.13 Content and form of reports; delegations of authority.

(a) *Written reports.* The chief executive officer of the subject firm should sign any written reports to the Commission under section 15(b) of the CPSA unless this responsibility has been delegated by filing a written delegation of authority with the Commission's Office of Compliance and Enforcement, Division of Corrective Actions. Delegations of authority filed with the Commission under §1115.9 of the previous regulations interpreting section 15 of the CPSA will remain in effect until revoked by the chief executive officer of the subject firm. The delegation may be in the following form:

DELEGATION OF AUTHORITY

(Name of company) _____.

I _____ hereby certify that I am Chief Executive Officer of the above-named company and that as such I am authorized to sign documents and to certify on behalf of said company the accuracy and completeness of information in such documents.

Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person listed below.

This delegation is effective until revoked in writing. Authority delegated to:

(Name) _____

(Address) _____

(Title) _____

Extent of authority: _____

Signed:

(Name) _____

(Address) _____

(Title) _____

(b) *Distributors and retailers.* A distributor or retailer of a product (who is neither a manufacturer nor an importer of that product) satisfies the initial reporting requirements either by telephoning or writing the Office of Compliance and Enforcement, Division of Corrective Actions, Consumer Product Safety Commission, Washington, DC 20207, phone 301–504–0608; by sending a letter describing the noncompliance, defect or risk of injury to the manufacturer (or importer) of the product and sending a copy of the letter to the Commission's Division of Corrective Actions; or by forwarding to the Commission's Division of Corrective Actions reportable information received from another firm. A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this paragraph should contain the information detailed in paragraph (c) of this section insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned.

(c) *Initial report.* Immediately after a subject firm has obtained information which reasonably supports the conclusion that a product fails to comply with an applicable consumer product safety rule or a voluntary standard, contains a defecat which could create a substantial risk of serious injury or death, the subject firm should provide the Division of Corrective Actions, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207 (telephone: 301–504–0608), with an initial report containing the information listed in paragraphs (c) (1) through (6) of this section. This initial report may be made by any means, but if it is not in writing, it should be confirmed in writing within 48 hours of the initial report. (See §1115.14 for time computations.) The initial report should contain, insofar as is reasonably available and/or applicable:

(1) An identification and description of the product.

(2) The name and address of the manufacturer (or importer) or, if the manufacturer or importer is not known, the names and addresses of all known distributors and retailers of the product.

(3) The nature and extent of the possible defect, the failure to comply, or the risk.

(4) The nature and extent of the injury or risk of injury associated with the product.

(5) The name and address of the person informing the Commission.

(6) To the extent such information is then reasonably available, the data specified in §1115.13(d).

(d) *Full report.* Subject firms which file initial reports are required to file full reports in accordance with this paragraph. Retailers and distributors may satisfy their reporting obligations in accordance with §1115.13(b). At any time after an initial report, the staff may modify the requirements detailed in this section with respect to any subject firm. If the staff preliminarily determines that there is no substantial product hazard, it may inform the firm that its reporting obligation has been fulfilled. However, a subject firm would be required to report if it later became aware of new information indicating a reportable defect, noncompliance, or risk, whether the new information related to the same or another consumer product. Unless modified by staff action, the following information, to the extent that it is reasonably available and/or applicable, constitutes a ''full report,'' must be submitted to the staff, and must be supplemented or corrected as new or different information becomes known:

(1) The name, address, and title of the person submitting the ''full report'' to the Commission.

(2) The name and address of the manufacturer (or importer) of the product and the addresses of the manufacturing plants for that product.

(3) An identification and description of the product(s). Give retail prices, model numbers, serial numbers, and date codes. Describe any identifying marks and their location on the product. Provide a picture or a sample of the product.

(4) A description of the nature of the defect, failure to comply, or risk. If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect, failure to comply, or risk.

(6) The manner in which and the date when the information about the defect, noncompliance, or risk (e.g., complaints, reported injuries, quality control testing) was obtained. If any complaints related to the safety of the product or any allegations or reports of injuries associated with the product have been received, copies of such complaints or reports (or a summary thereof) shall be attached. Give a chronological account of facts or events leading to the report under section 15(b) of the CPSA, beginning with receipt of the first information which ultimately led to the report. Also included may be an analysis of these facts or events.

(7) The total number of products and units involved.

(8) The dates when products and units were manufactured, imported, distributed, and sold at retail.

(9) The number of products and units in each of the following: in the possession of the manufacturer or importer, in the possession of private labelers, in the possession of distributors, in the possession of retailers, and in the possession of consumers.

(10) An explanation of any changes (e.g., designs, adjustments, and additional parts, quality control, testing) that have been or will be effected to correct the defect, failure to comply, or risk and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(11) Information that has been or will be given to purchasers, including consumers, about the defect, noncompliance, or risk with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

(12) The details of and schedule for any contemplated refund, replacement, or repair actions, including plans for

disposing of returned products (e.g., repair, destroy, return to foreign manufacturer).

(13) A detailed explanation and description of the marketing and distribution of the product from the manufacturer (including importer) to the consumer (e.g., use of sales representatives, independent contractors, and/or jobbers; installation of the product, if any, and by whom).

(14) Upon request, the names and addresses of all distributors, retailers, and purchasers, including consumers.

(15) Such further information necessary or appropriate to the functions of the Commission as is requested by the staff.

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34229, Aug. 4, 1992]

§ 1115.14 Time computations.

(a) *General.* Weekends and holidays are excluded from the computation of the time periods in this part.

(b) *Imputing knowledge.* In evaluating whether or when a firm should have reported, the Commission shall impute to the subject firm knowledge of product safety related information received by an official or employee of a subject firm capable of appreciating the significance of the information. Under ordinary circumstances, 5 days should be the maximum reasonable time for information to reach the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 15(b) of the CPSA. The Commission will impute knowledge possessed by the Chief Executive Officer or by the official or employee responsible for complying with the reporting requirements of section 15(b) of the CPSA simultaneously to the subject firm.

(c) *Time when obligation to report arises.* The obligation to report under section 15(b) of the CPSA may arise upon receipt by a subject firm of the first information regarding a noncompliance, or a potential hazard presented by a product defect, or an unreasonable risk. Information giving rise to a reporting obligation may include, but is not limited to, complaints, injury reports, quality control and engineering data. A subject firm should not await complete or accurate risk estimates before reporting under section 15(b) of CPSA. However, if information is not clearly reportable, a subject firm may spend a reasonable time for investigation and evaluation. (See § 1115.14(d).)

(d) *Time for investigation and evaluation.* A subject firm may conduct a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. This investigation and evaluation should not exceed 10 days unless a firm can demonstrate that a longer period is reasonable. The Commission will deem that, at the end of 10 days, a subject firm has received and considered all information which would have been available to it had a reasonable, expeditious, and diligent investigation been undertaken.

(e) *Time to report.* Immediately, that is, within 24 hours, after a subject firm has obtained information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard, contains a defect which could create a substantial risk of injury to the public, or creates an unreasonable risk of serious injury or death, the firm should report. (See § 1115.13.) If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the firm has information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or voluntary consumer product safety standard upon which the Commission has relied under section 9, contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death. Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of the investigation, the firm may report the information immediately.

[43 FR 34998, Aug. 7, 1978, as amended at 57 FR 34230, Aug. 4, 1992]

§ 1115.15 Confidentiality and disclosure of data.

(a) *General.* The Commission does not routinely make reports available to the public until the staff has made a preliminary hazard determination. Copies of reports will not be available to the public in the Commission's public reading room, and information contained in reports will not ordinarily be disclosed to the public in the absence of a formal request.

(b) *Freedom of Information Act.* Any person who submits information to the Commission who believes that any portion of the information is entitled to exemption from public disclosure under the provisions of the Freedom of Information Act, as amended (15 U.S.C. 552(b)), of the CPSA, as amended, or of another Federal statute must accompany the submission with a written request that the information be considered exempt from disclosure or indicate that a written request will be submitted within 10 working days of the submission. The request shall (1) identify the portions of the information for which exemption is claimed, which may include the identity of the reporting firm and the fact that it is making a report, and (2) state the facts and reasons which support the claimed exemption. After the staff has made its preliminary hazard determination, and regardless of whether or not the staff preliminarily determines that a product presents a substantial product hazard, the Commission will no longer honor requests for exempt status for the identity of the reporting firm, the identity of the consumer product, and the nature of the reported alleged defect or noncompliance. This information, together with the staff's preliminary hazard determination, will be made available to the public in the Commission's public reading room. Information for which exempt status is claimed (such as alleged trade secrets, confidential commercial or financial information, or information the disclosure of which would constitute an unwarranted invasion of personal privacy) shall not be released to the public except in accordance with the applicable statute or the Commission's Freedom of Information Act regulations (16 CFR part 1015).

(c) *Section 6(b) of the CPSA.* The Commission believes that the first two sentences in section 6(b)(1) of the CPSA (15 U.S.C. 2055(b)(1)) apply to affirmative dissemination of information by the Commission (such as press releases or fact sheets distributed to the public) from which the public may ascertain readily the identity of the product's manufacturer and/or private labeler. Manufacturers and private labelers will ordinarily be given 30 days' notice before the Commission makes such affirmative disseminations. However, this 30-day notice will not apply if the Commission finds that a lesser notice period is required in the interest of public health and safety.

Subpart B—Remedial Actions and Sanctions

§ 1115.20 Voluntary remedial actions.

As appropriate, the Commission will attempt to protect the public from substantial product hazards by seeking one or more of the following voluntary remedies:

(a) *Corrective action plans.* A corrective action plan is a document, signed by a subject firm, which sets forth the remedial action which the firm will voluntarily undertake to protect the public, but which has no legally binding effect. The Commission reserves the right to seek broader corrective action if it becomes aware of new facts or if the corrective action plan does not sufficiently protect the public.

(1) Corrective action plans shall include, as appropriate:

(i) A statement of the nature of the alleged hazard associated with the product, including the nature of the alleged defect or noncompliance and type(s) of injury or potential injury presented.

(ii) A detailed statement of the means to be employed to notify the public of the alleged product hazard (e.g., letter, press release, advertising), including an identification of the classes of persons who will receive such notice and a copy or copies of the notice or notices to be used.

(iii) A specification of model number and/or other appropriate descriptions of the product.

(iv) Any necessary instructions regarding use or handling of the product pending correction.

(v) An explanation of the specific cause of the alleged substantial product hazard, if known.

(vi) A statement of the corrective action which will be or has been taken to eliminate the alleged substantial product hazard. The firm should indicate whether it is repairing or replacing the product or refunding its purchase price. If products are to be returned to a subject firm, the corrective action plan should indicate their disposition (e.g., reworked, destroyed, returned to foreign manufacturer). Samples of replacement products and relevant drawings and test data for repairs or replacements should be available.

(vii) A statement of the steps that will be, or have been, taken to reasonably prevent recurrence of the alleged substantial product hazard in the future.

(viii) A statement of the action which will be undertaken to correct product units in the distribution chain, including a timetable and specific information about the number and location of such units.

(ix) The signatures of representatives of the subject firm.

(x) An acknowledgment by the subject firm that the Commission may monitor the corrective action and that the firm will furnish necessary information, including customer lists.

(xi) An agreement that the Commission may publicize the terms of the plan to the extent necessary to inform the public of the nature and extent of the alleged substantial product hazard and of the actions being undertaken to correct the alleged hazard presented.

(xii) Additional points of agreement, as appropriate.

(xiii) If desired by the subject firm, the following statement or its equivalent: ''The submission of this corrective action plan does not constitute an admission by (the subject firm) that either reportable information or a substantial product hazard exists.''

(xiv) An acknowledgment that the corrective action plan becomes effective only upon its final acceptance by the Commission.

(2) In determining whether to recommend to the Commission acceptance of a corrective action plan, the staff shall consider favorably both the promptness of the subject firm's reporting and any remedial actions taken by the subject firm in the interest of public safety. The staff also shall consider, insofar as possible, prior involvement by the subject firm in corrective action plans and Commission orders if such involvement bears on the likelihood that the firm will comply fully with the terms of the corrective action plan.

(3) Upon receipt of a corrective action plan and staff recommendation, the Commission may:

(i) Approve the plan;

(ii) Reject the plan and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or

(iii) Take any other action necessary to insure that the plan is adequate.

(4) When time permits and where practicable in the interest of protecting the public, a summary of the plan shall be published in the Commission's Public Calendar. Those portions of the plan that are not restricted will be made available to the public in the Commission's public reading room as much in advance of the Commission meeting as practicable. Any interested person wishing to comment on the plan must file a Notice of Intent to Comment at least forty-eight (48) hours prior to the commencement of the Commission meeting during which the plan will be discussed. If no notices of intent are received, the Commission may take final action on the plan. If such notice is received within the time limits detailed above, the plan will, if practicable, be docketed for the following week's agenda. All comments must be in writing, and final written comments must be submitted at least forty-eight (48) hours before that session.

(b) *Consent order agreements under section 15 of CPSA.* The consent order agreement (agreement) is a document executed by a subject firm (Consenting Party) and a Commission staff representative which incorporates both a proposed complaint setting forth the

staff's charges and a proposed order by which such charges are resolved.

(1) Consent order agreements shall include, as appropriate:

(i) An admission of all jurisdictional facts by the Consenting Party.

(ii) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps, including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

(iii) A statement that the agreement is in settlement of the staff's charges.

(iv) A statement that the Commission's Order is issued under section 15 of the CPSA (15 U.S.C. 2064) and that a violation is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)) and may subject a violator to civil and/or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. 2069 and 2070).

(v) An acknowledgment that the Commission reserves its right to seek sanctions for any violations of the reporting obligations of section 15(b) of CPSA (15 U.S.C. 2064(b)) and its right to take other appropriate legal action.

(vi) An acknowledgment that the agreement becomes effective only upon its final acceptance by the Commission and its service upon the Consenting Party.

(vii) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public.

(viii) A listing of the acts or practices from which the Consenting Party will refrain.

(ix) A statement that the Consenting Party shall perform certain acts and practices pursuant to the agreement.

(x) An acknowledgment that any interested person may bring an action pursuant to section 24 of the CPSA (15 U.S.C. 2073) in any U.S. district court for the district in which the Consenting Party is found or transacts business to enforce the order and to obtain appropriate injunctive relief.

(xi) A description of the alleged substantial product hazard.

(xii) If desired by the Consenting Party, the following statement or its equivalent: ''The signing of this consent order agreement does not constitute an admission by (the Consenting Party) that either reportable information or a substantial product hazard exists.''

(xiii) The elements of a corrective action plan as set forth in § 1115.20(a).

(2) At any time in the course of an investigation, the staff may propose to a subject firm which is being investigated that some or all of the allegations be resolved by a consent order agreement. Additionally, such a proposal may be made to the staff by a subject firm.

(3) Upon receiving an executed agreement, the Commission may:

(i) Provisionally accept it;

(ii) Reject it and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or

(iii) Take such other action as it may deem appropriate.

(4) If the consent order agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the Commission's public calendar and in the FEDERAL REGISTER. Any interested person may request the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Such written request must be received in the Office of the Secretary no later than the close of business of the fifteenth (15th) calendar day following the date of announcement in the FEDERAL REGISTER.

(5) If the Commission does not receive any requests not to accept the agreement within the time period specified above, the consent order agreement shall be deemed finally accepted by the Commission on the twentieth (20th) calendar day after the date of announcement in the FEDERAL REGISTER, unless the Commission determines otherwise. However, if the Commission does receive a request not to accept the consent order agreement, then it will consider such request and vote on the acceptability of such agreement or the desirability of further action. After the consent order agreement is finally accepted, the Commission may then issue its complaint and order in such form as the circumstances may require. The order is a final order in disposition of

the proceeding and is effective immediately upon its service upon the Consenting Party pursuant to the Commission's Rules of Practice for Adjudicative Proceedings (16 CFR part 1025). The Consenting Party shall thereafter be bound by and take immediate action in accordance with such final order.

(6) If the Commission does not accept the consent order agreement on a final basis, it shall so notify the Consenting Party. Such notification constitutes withdrawal of the Commission's provisional acceptance unless the Commission orders otherwise. The Commission then may:

(i) Issue a complaint, in which case an administrative and/or judicial proceeding will be commenced;

(ii) Order further investigation; or

(iii) Take such other action as it may deem appropriate.

§ 1115.21 Compulsory remedial actions.

As appropriate, the Commission will attempt to protect the public from hazards presented by consumer products by seeking one or more of the following:

(a) *Adjudicated Commission Order.* An adjudicated Commission Order under section 15 (c) or (d) of the CPSA may be issued after parties and interested persons have had an opportunity for a hearing in accordance with section 554 of title 5, United States Code, and with section 15(f) of the CPSA. This hearing is governed by the Commission's Rules of Practice for Adjudicative Proceedings (16 CFR part 1025).

(b) *Injunctive relief.* The Commission may apply to a U.S. district court in accordance with the provisions of section 15(g) of the CPSA for a preliminary injunction to restrain the distribution in commerce of a product it has reason to believe presents a substantial product hazard. The Commission may seek enforcement of its orders issued under sections 15 (c) and (d) of the CPSA in accordance with provisions of sections 22 and 27(b)(7) of the CPSA (15 U.S.C. 2071 and 2076(b)(7)).

(c) *Judicial determination of imminent hazard.* The Commission may file a complaint in a U.S. district court in accordance with the provisions of section 12 of the CPSA (15 U.S.C. 2061).

(d) *Orders of the Secretary of the Treasury.* The Commission staff may inform the Secretary of the Treasury that a consumer product offered for importation into the customs territory of the United States fails to comply with an applicable consumer product safety rule and/or has a product defect which constitutes a substantial product hazard. The Commission may request the Secretary of the Treasury under section 17 of the CPSA (15 U.S.C. 2066) to refuse admission to any such consumer product.

§ 1115.22 Prohibited acts and sanctions.

(a) *Statements generally.* Whoever knowingly and willfully falsifies, or conceals a material fact in a report under the CPSA and rules thereunder, is subject to criminal penalties under 18 U.S.C. 1001.

(b) *Timeliness and adequacy of reporting.* A failure to inform the Commission immediately and adequately, as required by section 15(b) of the CPSA, is a prohibited act within section 19(a)(4) of the CPSA (15 U.S.C. 2068(a)(4)).

(c) *Failure to make reports.* The failure or refusal to make reports or provide information as required under the CPSA is a prohibited act within the meaning of section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)).

(d) *Noncomplying products.* The manufacture for sale, offering for sale, distribution in commerce, and/or importation into the United States of a consumer product which is not in conformity with an applicable consumer product safety rule under CPSA is a prohibited act within the meaning of sections 19 (a)(1) and (a)(2) of the CPSA (15 U.S.C. 2068 (a)(1) and (a)(2)).

(e) *Orders issued under section 15 (c) and/or (d).* The failure to comply with an order issued under section 15 (c) and/or (d) of the CPSA is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)).

(f) *Consequences of engaging in prohibited acts.* A knowing violation of section 19(a) of the CPSA subjects the violator to a civil penalty in accordance with section 20 of the CPSA (15 U.S.C. 2069). ''Knowing,'' as defined in section 20(c) of the CPSA (15 U.S.C. 2069(c)),

means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. A knowing and willful violation of section 19(a), after the violator has received notice of noncompliance, subjects the violator to criminal penalties in accordance with section 21 of the CPSA (15 U.S.C. 2070).

Subpart C—Guidelines and Requirements for Mandatory Recall Notices

SOURCE: 75 FR 3371, Jan. 21, 2010, unless otherwise noted.

§ 1115.23 Purpose.

(a) The Commission establishes these guidelines and requirements for recall notices as required by section 15(i) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(i)). The guidelines and requirements set forth the information to be included in a notice required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)). Unless otherwise ordered by the Commission under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a United States district court under section 12 of the CPSA (15 U.S.C. 2061), the content information required in this subpart must be included in every such notice.

(b) The Commission establishes these guidelines and requirements to ensure that every recall notice effectively helps consumers and other persons to:

(1) Identify the specific product to which the recall notice pertains;

(2) Understand the product's actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and

(3) Understand all remedies available to consumers concerning the product to which the recall notice pertains.

§ 1115.24 Applicability.

This subpart applies to manufacturers (including importers), retailers, and distributors of consumer products as those terms are defined herein and in the CPSA.

§ 1115.25 Definitions.

In addition to the definitions given in section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) *Recall* means any one or more of the actions required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(b) *Recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)).

(c) *Direct recall notice* means a notification required by an order under sections 12, 15(c), or 15(d) of the CPSA (15 U.S.C. 2061, 2064(c), or 2064(d)), that is sent directly to specifically-identified consumers.

(d) *Firm* means a manufacturer (including an importer), retailer, or distributor as those terms are defined in the CPSA.

(e) *Other persons* means, but is not limited to, consumer safety advocacy organizations, public interest groups, trade associations, industry advocacy organizations, other State, local, and Federal government agencies, and the media.

§ 1115.26 Guidelines and policies.

(a) *General.* (1) A recall notice should provide sufficient information and motivation for consumers and other persons to identify the product and its actual or potential hazards, and to respond and take the stated action. A recall notice should clearly and concisely state the potential for injury or death.

(2) A recall notice should be written in language designed for, and readily understood by, the targeted consumers or other persons. The language should be simple and should avoid or minimize the use of highly technical or legal terminology.

(3) A recall notice should be targeted and tailored to the specific product and circumstances. In determining the form and content of a recall notice, the manner in which the product was advertised and marketed should be considered.

(4) A direct recall notice is the most effective form of a recall notice.

(5) At least two of the recall notice forms listed in subsection (b) should be used.

(b) Form of recall notice—(1) Possible forms. A recall notice may be written, electronic, audio, visual, or in any other form ordered by the Commission in an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or by a United States district court under section 12 of the CPSA (15 U.S.C. 2061). The forms of, and means for communicating, recall notices include, but are not limited to:

(i) Letter, Web site posting, electronic mail, RSS feed, or text message;

(ii) Computer, radio, television, or other electronic transmission or medium;

(iii) Video news release, press release, recall alert, Web stream, or other form of news release;

(iv) Newspaper, magazine, catalog, or other publication; and

(v) Advertisement, newsletter, and service bulletin.

(2) *Direct recall notice.* A direct recall notice should be used for each consumer for whom a firm has direct contact information, or when such information is obtainable, regardless of whether the information was collected for product registration, sales records, catalog orders, billing records, marketing purposes, warranty information, loyal purchaser clubs, or other such purposes. Direct contact information includes, but is not limited to, name and address, telephone number, and electronic mail address. Forms of direct recall notice include, but are not limited to, United States mail, electronic mail, and telephone calls. A direct recall notice should prominently show its importance over other consumer notices or mail by including ''Safety Recall'' or other appropriate terms in an electronic mail subject line, and, in large bold red typeface, on the front of an envelope and in the body of a recall notice.

(3) *Web site recall notice.* A Web site recall notice should be on a Web site's first entry point such as a home page, should be clear and prominent, and should be interactive by permitting consumers and other persons to obtain recall information and request a remedy directly on the Web site.

(c) *Languages.* Where the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a United States district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), determines that it is necessary or appropriate to adequately inform and protect the public, a recall notice may be required to be in languages in addition to English. For example, it may be necessary or appropriate to require a recall notice be in a language in addition to English when a product label is in a language in addition to English, when a product is marketed in a language in addition to English, or when a product is marketed or available in a geographic location where English is not the predominant language.

§ 1115.27 Recall notice content requirements.

Except as provided in § 1115.29, every recall notice must include the information set forth below:

(a) *Terms.* A recall notice must include the word ''recall'' in the heading and text.

(b) *Date.* A recall notice must include its date of release, issuance, posting, or publication.

(c) *Description of product.* A recall notice must include a clear and concise statement of the information that will enable consumers and other persons to readily and accurately identify the specific product and distinguish it from similar products. The information must enable consumers to readily determine whether or not they have, or may be exposed to, the product. To the extent applicable to a product, descriptive information that must appear on a recall notice includes, but is not limited to:

(1) The product's names, including informal and abbreviated names, by which consumers and other persons should know or recognize the product;

(2) The product's intended or targeted use population (*e.g.*, infants, children, or adults);

(3) The product's colors and sizes;

(4) The product's model numbers, serial numbers, date codes, stock keeping unit (SKU) numbers, and tracking labels, including their exact locations on the product;

(5) Identification and exact locations of product tags, labels, and other identifying parts, and a statement of the specific identifying information found on each part; and

(6) Product photographs. A firm must provide photographs. Each photograph must be electronic or digital, in color, of high resolution and quality, and in a format readily transferable with high quality to a Web site or other appropriate medium. As needed for effective notification, multiple photographs and photograph angles may be required.

(d) *Description of action being taken.* A recall notice must contain a clear and concise statement of the actions that a firm is taking concerning the product. These actions may include, but are not limited to, one or more of the following: Stop sale and distribution in commerce; recall to the distributor, retailer, or consumer level; repair; request return and provide a replacement; and request return and provide a refund.

(e) *Statement of number of product units.* A recall notice must state the approximate number of product units covered by the recall, including all product units manufactured, imported, and/or distributed in commerce.

(f) *Description of substantial product hazard.* A recall notice must contain a clear and concise description of the product's actual or potential hazards that result from the product condition or circumstances giving rise to the recall. The description must enable consumers and other persons to readily identify the reasons that a firm is conducting a recall. The description must also enable consumers and other persons to readily identify and understand the risks and potential injuries or deaths associated with the product conditions and circumstances giving rise to the recall. The description must include:

(1) The product defect, fault, failure, flaw, and/or problem giving rise to the recall; and

(2) The type of hazard or risk, including, by way of example only, burn, fall, choking, laceration, entrapment, and/or death.

(g) *Identification of recalling firm.* A recall notice must identify the firm conducting the recall by stating the firm's legal name and commonly known trade name, and the city and state of its headquarters. The notice must state whether the recalling firm is a manufacturer (including importer), retailer, or distributor.

(h) *Identification of manufacturers.* A recall notice must identify each manufacturer (including importer) of the product and the country of manufacture. Under the definition in section 3(a)(11) of the CPSA (15 U.S.C. 2052(a)(11)), a manufacturer means ''any person who manufactures or imports a consumer product.'' If a product has been manufactured outside of the United States, a recall notice must identify the foreign manufacturer and the United States importer. A recall notice must identify the manufacturer by stating the manufacturer's legal name and the city and state of its headquarters, or, if a foreign manufacturer, the foreign manufacturer's legal name and the city and country of its headquarters.

(i) *Identification of significant retailers.* A recall notice must identify each significant retailer of the product. A recall notice must identify such a retailer by stating the retailer's commonly known trade name. Under the definition in section 3(a)(13) of the CPSA (15 U.S.C. 2052(a)(13)), a retailer means ''a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.'' A product's retailer is ''significant'' if, upon the Commission's information and belief, and in the sole discretion of the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or in the sole discretion of a United States district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), any one or more of the circumstances set forth below is present (the Commission may require manufacturers (including importers), retailers, and distributors to provide information relating to these circumstances):

(1) The retailer was the exclusive retailer of the product;

(2) The retailer was an importer of the product;

(3) The retailer has stores nationwide or regionally-located;

(4) The retailer sold, or held for purposes of sale or distribution in commerce, a significant number of the total manufactured, imported, or distributed units of the product; or

(5) Identification of the retailer is in the public interest.

(j) *Region.* Where necessary or appropriate to assist consumers in determining whether they have the product at issue, a description of the region where the product was sold, or held for purposes of sale or distribution in commerce, must be provided.

(k) *Dates of manufacture and sale.* A recall notice must state the month and year in which the manufacture of the product began and ended, and the month and year in which the retail sales of the product began and ended. These dates must be included for each make and model of the product.

(l) *Price.* A recall notice must state the approximate retail price or price range of the product.

(m) *Description of incidents, injuries, and deaths.* A recall notice must contain a clear and concise summary description of all incidents (including, but not limited to, property damage), injuries, and deaths associated with the product conditions or circumstances giving rise to the recall, as well as a statement of the number of such incidents, injuries, and deaths. The description must enable consumers and other persons to readily understand the nature and extent of the incidents and injuries. A recall notice must state the ages of all persons injured and killed. A recall notice must state the dates or range of dates on which the Commission received information about injuries and deaths.

(n) *Description of remedy.* A recall notice must contain a clear and concise statement, readily understandable by consumers and other persons, of:

(1) Each remedy available to a consumer for the product conditions or circumstances giving rise to the recall. Remedies include, but are not limited to, refunds, product repairs, product replacements, rebates, coupons, gifts, premiums, and other incentives.

(2) All specific actions that a consumer must take to obtain each remedy, including, but not limited to, instructions on how to participate in the recall. These actions may include, but are not limited to, contacting a firm, removing the product from use, discarding the product, returning part or all of the product, or removing or disabling part of the product.

(3) All specific information that a consumer needs in order to obtain each remedy and to obtain all information about each remedy. This information may include, but is not limited to, the following: Manufacturer, retailer, and distributor contact information (such as name, address, telephone and facsimile numbers, e-mail address, and Web site address); whether telephone calls will be toll-free or collect; and telephone number days and hours of operation including time zone.

(o) *Other information.* A recall notice must contain such other information as the Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a United States district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), deems appropriate and orders.

§ 1115.28 Multiple products or models.

For each product or model covered by a recall notice, the notice must meet the requirements of this subpart.

§ 1115.29 Final determination regarding form and content.

(a) *Commission or court discretion.* The recall notice content required by this subpart must be included in a recall notice whether or not the firm admits the existence of a defect or of an actual or potential hazard, and whether or not the firm concedes the accuracy or applicability of all of the information contained in the recall notice. The Commission will make the final determination as to the form and content of the recall notice for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), and a United States district court will make the final determination as to the form and content of a recall notice for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061).

(b) *Recall notice exceptions.* The Commission for purposes of an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), or a United States

district court for purposes of an order under section 12 of the CPSA (15 U.S.C. 2061), may determine that one or more of the recall notice requirements set forth in this subpart is not required, and will not be included, in a recall notice.

(c) *Commission approval.* Before a firm may publish, broadcast, or otherwise disseminate a recall notice to be issued pursuant to an order under section 15(c) or (d) of the CPSA (15 U.S.C. 2064(c) or (d)), the Commission must review and agree in writing to all aspects of the notice.

APPENDIX TO PART 1115—VOLUNTARY STANDARDS ON WHICH THE COMMISSION HAS RELIED UNDER SECTION 9 OF THE CONSUMER PRODUCT SAFETY ACT

The following are the voluntary standards on which the Commission has relied under section 9 of the Consumer Product Safety Act:

1. American National Standard for Power Tools—Gasoline-Powered Chain Saws—Safety Regulations, ANSI B175.1–1985 sections 4.9.4, 4.12, 4.15, 7 and 8, or the current version: ANSI B175.1–1991 sections 5.9.4, 5.12, 5.15, 8 and 9.

2. American National Standard for Gas-Fired Room Heaters, Volume II, Unvented Room Heaters, ANSI Z21.11.2–1989 and addenda ANSI Z21.11.2 a and b- 1991), sections 1.8, 1.20.9, and 2.9.

[57 FR 34230, Aug. 4, 1992]

PART 1116—REPORTS SUBMITTED PURSUANT TO SECTION 37 OF THE CONSUMER PRODUCT SAFETY ACT

Sec.

AUTHORITY: 15 U.S.C. 2055(e), 2084.

SOURCE: 57 FR 34239, Aug. 4, 1992, unless otherwise noted.

§ 1116.1 Purpose.

The purpose of this part 1116 is to establish procedures for filing with the Consumer Product Safety Commission (''the Commission'') reports required by section 37 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2084) and to set forth the Commission's interpretation of the provisions of section 37.

§ 1116.2 Definitions.

(a) A *24-month period(s)* means the 24-month period beginning on January 1, 1991, and each subsequent 24-month period beginning on January 1 of the calendar year that is two years following the beginning of the previous 24-month period. The first statutory two year period ends on December 31, 1992. The second begins on January 1, 1993 and ends on December 31, 1994, and so forth.

(b) *Grievous bodily injury* includes, but is not limited to, any of the following categories of injury:

(1) Mutilation or disfigurement. Disfigurement includes permanent facial disfigurement or non-facial scarring that results in permanent restriction of motion;

(2) Dismemberment or amputation, including the removal of a limb or other appendage of the body;

(3) The loss of important bodily functions or debilitating internal disorder. These terms include:

(i) Permanent injury to a vital organ, in any degree;

(ii) The total loss or loss of use of any internal organ,

(iii) Injury, temporary or permanent, to more than one internal organ;

(iv) Permanent brain injury to any degree or with any residual disorder (e.g. epilepsy), and brain or brain stem injury including coma and spinal cord injuries;

(v) Paraplegia, quadriplegia, or permanent paralysis or paresis, to any degree;

(vi) Blindness or permanent loss, to any degree, of vision, hearing, or sense of smell, touch, or taste;

(vii) Any back or neck injury requiring surgery, or any injury requiring joint replacement or any form of prosthesis, or;

(viii) Compound fracture of any long bone, or multiple fractures that result in permanent or significant temporary loss of the function of an important part of the body;

(4) Injuries likely to require extended hospitalization, including any injury requiring 30 or more consecutive days of in-patient care in an acute care facility, or 60 or more consecutive days of in-patient care in a rehabilitation facility;

(5) Severe burns, including any third degree burn over ten percent of the body or more, or any second degree burn over thirty percent of the body or more;

(6) Severe electric shock, including ventricular fibrillation, neurological damage, or thermal damage to internal tissue caused by electric shock.

(7) Other grievous injuries, including any allegation of traumatically induced disease.

Manufacturers may wish to consult with the Commission staff to determine whether injuries not included in the examples above are regarded as grievous bodily injury.

(c) A *particular model* of a consumer product is one that is distinctive in functional design, construction, warnings or instructions related to safety, function, user population, or other characteristics which could affect the product's safety related performance. (15 U.S.C. 2084(e)(2))

(1) The *functional design* of a product refers to those design features that directly affect the ability of the product to perform its intended use or purpose.

(2) The *construction* of a product refers to its finished assembly or fabrication, its materials, and its components.

(3) *Warnings or instructions related to safety* include statements of the principal hazards associated with a product, and statements of precautionary or affirmative measures to take during the use, handling, or storage of a product, to the extent that a reasonable person would understand such statements to be related to the safety of the product. Warnings or instructions may be written or graphically depicted and may be attached to the product or appear on the product itself, in operating manuals, or in other literature that accompanies or describes the product.

(4) The *function* of a product refers to its intended use or purpose.

(5) *User population* refers to the group or class of people by whom a product is principally used. While the manufacturer's stated intent may be relevant to an inquiry concerning the nature of the user population, the method of distribution, the availability of the product to the public and to specific groups, and the identity of purchasers or users of the product should be considered.

(6) *Other characteristics which could affect a product's safety related performance* include safety features incorporated into the product to protect against foreseeable risks that might arise during the use, handling, or storage of a product.

(d) The term *manufacturer* means any person who manufactures or imports a consumer product. (15 U.S.C. 2052(a)(4)).

[57 FR 34239, Aug. 4, 1992, as amended at 58 FR 16121, Mar. 25, 1993]

§ 1116.3 Persons who must report under section 37.

A manufacturer of a consumer product must report if:

(a) A particular model of the product is the subject of at least 3 civil actions filed in Federal or State Court;

(b) Each suit alleges the involvement of that particular model in death or grievous bodily injury;

(c) The manufacturer is—

(1) A party to, or

(2) Is involved in the defense of or has notice of each action prior to entry of a final order, and is involved in the discharge of any obligation owed to plaintiff under the settlement of or in satisfaction of the judgment after adjudication in each of the suits; and

(d) During one of the 24-month periods defined in §1116.2(a), each of the three actions results in either a final settlement involving the manufacturer or in a court judgment in favor of the plaintiff.

For reporting purposes, a multiple plaintiff suit for death or grievous bodily injury is reportable if the suit involves three or more separate incidents of injury. The reporting obligation arises when at least three plaintiffs have settled their claims or when a combination of settled claims and adjudications favorable to plaintiffs

reaches three. Multiple lawsuits arising from one incident involving the same product only count as one lawsuit for the purposes of section 37.

§ 1116.4 Where to report.

Reports must be sent in writing to the Commission's Office of Compliance and Enforcement, Division of Corrective Actions, Washington, DC 20207, telephone (301) 504–0608).

§ 1116.5 When must a report be made.

(a) A manufacturer must report to the Commission within 30 days after the final settlement or court judgment in the last of the three civil actions referenced in § 1116.3.

(b) If a manufacturer has filed a section 37 report within one of the 24-month periods defined in § 1116.2(a), the manufacturer must also report the information required by section 37(c)(1) for any subsequent settlement or judgment in a civil action that alleges that the same particular model of the product was involved in death or grievous bodily injury and that takes place during the same 24-month period. Each such supplemental report must be filed within 30 days of the settlement or final judgment in the reportable civil action.

§ 1116.6 Contents of section 37 reports.

(a) *Required information.* With respect to each of the civil actions that is the subject of a report under section 37, the report must contain the following information:

(1) The name and address of the manufacturer of the product that was the subject of each civil action;

(2) The model and model number or designation of the consumer product subject to each action;

(3) A statement as to whether the civil action alleged death or grievous bodily injury, and, in the case of an allegation of grievous bodily injury, a statement of the category of such injury;

(4) A statement as to whether the civil action resulted in a final settlement or a judgment in favor of the plaintiff; and

(5) In the case of a judgment in favor of the plaintiff, the name of the civil action, the number assigned to the civil action, and the court in which the civil action was filed.

(b) *Optional information.* A manufacturer furnishing a report may include:

(1) A statement as to whether any judgment in favor of the plaintiff is under appeal or is expected to be appealed (section 15 U.S.C. 2084(c)(2)(A));

(2) Any other information that the manufacturer chooses to provide (15 U.S.C. 2084(c)(2)(B)), including the dates on which final orders were entered in the reported lawsuits, and, where appropriate, an explanation why the manufacturer has not previously filed a report under section 15(b) of the CPSA covering the same particular product model that is the subject of the section 37 report; and

(3) A specific denial that the information it submits reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury.

(c) *Statement of amount not required.* A manufacturer submitting a section 37 report is not required by section 37 or any other provision of the Consumer Product Safety Act to provide a statement of any amount paid in final settlement of any civil action that is the subject of the report.

(d) *Admission of liability not required.* A manufacturer reporting to the Commission under section 37 need not admit that the information it reports supports the conclusion that its consumer product caused a death or grievous bodily injury.

§ 1116.7 Scope of section 37 and its relationship to section 15(b) of the CPSA.

(a) According to the legislative history of the Consumer Product Safety Improvement Act of 1990, the purpose of section 37 is to increase the reporting of information to the Commission that will assist it in carrying out its responsibilities.

(b) Section 37(c)(1) requires a manufacturer or importer (hereinafter ''manufacturer'') to include in a section 37 report a statement as to whether a civil action that is the subject of the report alleged death or grievous bodily injury. Furthermore, under section 37(c)(2), a manufacturer may specifically deny that the information it

submits pursuant to section 37 reasonably supports the conclusion that its consumer product caused a death or grievous bodily injury, and may also include any additional information that it chooses to provide. In view of the foregoing, the reporting obligation is not limited to those cases in which a product has been adjudicated as the cause of death or grievous injury or to those settled or adjudicated cases in which the manufacturer has satisfied itself that the product was the cause of such trauma. Rather, when the specific injury alleged by the plaintiff meets the definition of ''grievous bodily injury'' contained in §1116.2(b) of this part, the lawsuit falls within the scope of section 37 after settlement or adjudication. The manufacturer's opinion as to the validity of the allegation is irrelevant for reporting purposes. The category of injury alleged may be clear from the face of an original or amended complaint in a case or may reasonably be determined during pre-complaint investigation, post-complaint discovery, or informal settlement negotiation. Conclusory language in a complaint that the plaintiff suffered grievous bodily injury without further elaboration raises a presumption that the injury falls within one of the statutory categories, but is insufficient in itself to bring the suit within the ambit of the statute, unless the defendant manufacturer elects to settle such a matter without any investigation of the underlying facts. A case alleging the occurrence of grievous bodily injury in which a litigated verdict contains express findings that the injury suffered by the plaintiff did not meet the statutory criteria is also not reportable. Should a manufacturer believe that its product is wrongly implicated in an action, the statute expressly incorporates the mechanism for the manufacturer to communicate that belief to the Commission by denying in the report the involvement of the product or that the injury in fact suffered by the plaintiff was not grievous bodily injury, despite the plaintiff's allegations to the contrary. In addition, the statute imposes stringent confidentiality requirements on the disclosure by the Commission or the Department of Justice of information submitted pursuant to sections 37(c)(1) and 37(c)(2)(A). Moreover, it specifies that the reporting of a civil action shall not constitute an admission of liability under any statute or common law or under the relevant provisions of the Consumer Product Safety Act. In view of these safeguards, the reporting of lawsuits alleging the occurrence of death or grievous injury should have little adverse effect on manufacturers.

(c) Section 37 applies to judgments and ''final settlements''. Accordingly, the date on which a civil action is filed or the date on which the product that is the subject of such an action was manufactured is irrelevant to the obligation to report. A settlement is final upon the entry by a court of an order disposing of a civil action with respect to the manufacturer of the product that is the subject of the action, even through the case may continue with respect to other defendants.

(d) A judgment becomes reportable upon the entry of a final order by the trial court disposing of the matter in favor of the plaintiff and from which an appeal lies. Because section 37(c)(2) specifies that a reporting manufacturer may include a statement that a judgment in favor of a plaintiff is under appeal or is expected to be appealed, Congress clearly intended section 37 to apply prior to the exhaustion of or even the initiation of action to seek appellate remedies.

(e) No language in section 37 limits the reporting obligation to those litigated cases in which the plaintiff prevails completely. Therefore, if a court enters a partial judgment in favor of the plaintiff, the judgment is reportable, unless it is unrelated to the product that is the subject of the suit. For example, if a manufacturer's product is exonerated during a suit, but liability is assessed against another defendant, the manufacturer need not report under section 37.

(f)(1) Section 37 applies to civil actions that allege the involvement of a particular model of a consumer product in death or grievous bodily injury. Section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) defines a ''consumer product'' as any article, or component part thereof, produced or distributed for sale to a consumer for

use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or for the personal use, consumption, or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. The term ''consumer product'' does not include any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer.

(2) Since section 37 focuses on consumer products, it is the responsibility of the manufacturer of a product implicated in a civil action to determine whether the production or distribution of the product satisfies the statutory criteria of section 3(a). If it does, the action falls within the ambit of section 37. True industrial products are beyond the scope of section 37. However, if a lawsuit is based on an allegation of injury involving a consumer product, that suit falls within the scope of section 37, even though the injury may have occurred during the use of the product in employment. By the same token, occupational injuries arising during the fabrication of a consumer product are not reportable if the entity involved in the injury is not a consumer product at the time the injury occurs. In determining whether a product meets the statutory definition, manufacturers may wish to consult the relevant case law and the advisory opinions issued by the Commission's Office of the General Counsel. The unique circumstances surrounding litigation involving asbestos-containing products warrant one exception to this analysis. The Commission, as a matter of agency discretion, will require manufacturers of such products to report under section 37 only those lawsuits that allege the occurrence of death or grievous bodily injury as the result of exposure to asbestos from a particular model of a consumer product purchased by a consumer for personal use. Such lawsuits would include not only injury to the purchaser, but also to other consumers including family, subsequent property owners, and visitors. The Commission may consider granting similar relief to manufacturers of other products that present a risk of chronic injury similar to that presented by asbestos. Any such request must contain documented evidence demonstrating that compliance with the reporting requirements will be unduly burdensome and will be unlikely to produce information that will assist the Commission in carrying out its obligations under the statutes it administers.

(g) The definition of ''consumer product'' also encompasses a variety of products that are subject to regulation under the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*), the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*), the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Lawsuits involving such products are also subject to section 37, notwithstanding the fact that the products may be regulated or subject to regulation under one of the other statutes.

(h) Relationship of Section 37 to Section 15 of the CPSA. (1) Section 37 plays a complementary role to the reporting requirements of section 15(b) of the CPSA (15 U.S.C. 2064(b)). Section 15(b) establishes a substantial obligation for firms to review information as it becomes available to determine whether an obligation to report exists. Accordingly, the responsibility to report under section 15(b) may arise long before enough lawsuits involving a product are resolved to create the obligation to report under section 37. The enactment of section 15(b)(3) in the Consumer Product Safety Improvement Act of 1990 reinforces this expectation. Under this amendment, manufacturers must report to the Commission when they obtain information that reasonably supports the conclusion that a product creates an unreasonable risk of serious injury or death. Previously, the reporting obligation for unregulated products only arose when available information indicated that the product in question was defective and created a substantial product hazard because of the pattern of the defect, the severity of the risk of injury, the number of products distributed in commerce, etc. The effect of the 1990 amendment is discussed in detail in the

Commission's interpretative rule relating to the reporting of substantial product hazards at 16 CFR part 1115.

(2) The new substantive reporting requirements of section 15(b)(3) support the conclusion that Congress intended section 37 to capture product-related accident information that has not been reported under section 15(b). Between the time a firm learns of an incident or problem involving a product that raises safety-related concerns and the time that a lawsuit involving that product is resolved by settlement or adjudication, the firm generally has numerous opportunities to evaluate whether a section 15 report is appropriate. Such evaluation might be appropriate, for example, after an analysis of product returns, the receipt of an insurance investigator's report, a physical examination of the product, the interview or deposition of an injured party or an eyewitness to the event that gave rise to the lawsuit, or even preparation of the firm's responses to plaintiff's discovery requests. Even if a manufacturer does not believe that a report is required prior to the resolution of a single lawsuit, an obligation to investigate whether a report is appropriate may arise if, for example, a verdict in favor of the plaintiff raises the issue of whether the product in question creates an unreasonable risk of death or serious injury.

(3) In contrast, the application of section 37 does not involve the discretionary judgment and subjective analyses of hazard and causation associated with section 15 reports. Once the statutory criteria of three settled or adjudicated civil actions alleging grievous injury or death in a two year period are met, the obligation to report under section 37 is automatic. For this reason, the Commission regards section 37 as a ''safety net'' to surface product hazards that remain unreported either intentionally or by inadvertence. The provisions in the law limiting such reports to cases in which three or more lawsuits alleging grievous injury or death are settled or adjudicated in favor of plaintiffs during a two year period provide assurance that the product involved presents a sufficiently grave risk of injury to warrant consideration by the Commission. Indeed, once the obligation to report under section 37 arises, the obligation to file a section 15 report concurrently may exist if the information available to the manufacturer meets the criteria established in section 15(b) for reporting.

(4) Section 37 contains no specific record keeping requirements. However, to track and catalog lawsuits to determine whether they are reportable, prudent manufacturers will develop and maintain information systems to index and retain lawsuit data. In the absence of a prior section 15 report, once such systems are in place, such manufacturers will be in a position to perform a two-fold analysis to determine whether the information contained in such systems is reportable under either section 15(b) or 37. A manufacturer might conclude, for example, that the differences between products that are the subject of different lawsuits make them different models or that the type of injury alleged in one or more of the suits is not grievous bodily injury. Based on this analysis, the manufacturer might also conclude that the suits are thus not reportable under section 37. However, a reporting obligation under section 15 may exist in any event if the same information reasonably supports the conclusion that the product(s) contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

§ 1116.8 Determination of particular model.

(a) The obligation rests with the manufacturer of a product to determine whether a reasonable basis exists to conclude that a product that is the subject of a settled or adjudicated lawsuit is sufficiently different from other similar products to be regarded as a ''particular model'' under section 37 because it is ''distinctive.'' To determine whether a product is ''distinctive'', the proper inquiry should be directed toward the degree to which a product differs from other comparable products in one or more of the characteristics enumerated in section 37(e)(2) and §1116.2(c) of this part. A product is ''distinctive'' if, after an analysis of information relating to one or more of

the statutory characteristics, a manufacturer, acting in accordance with the customs and practices of the trade of which it is a member, could reasonably conclude that the difference between that product and other items of the same product class manufactured or imported by the same manufacturer is substantial and material. Information relevant to the determination of whether a product is a ''particular model'' includes:

(1) The description of the features and uses of the products in question in written material such as instruction manuals, description brochures, marketing or promotional programs, reports of certification of products, specification sheets, and product drawings.

(2) The differences or similarities between products in their observable physical characteristics and in components or features that are not readily observable and that are incorporated in those products for safety-related purposes;

(3) The customs and practices of the trade of which the manufacturer is a member in marketing, designating, or evaluating similar products.

(4) Information on how consumers use the products and on consumer need or demand for different products, such as products of different size. In analyzing whether products are different models, differences in size or calibration afford the basis for distinguishing between products only if those differences make the products distinctive in functional design or function.

(5) The history of the manufacturer's model identification and marketing of the products in question;

(6) Whether variations between products relate solely to appearance, ornamentation, color, or other cosmetic features; such variations are not ordinarily sufficient to differentiate between models.

(7) Whether component parts used in a product are interchangeable with or perform substantially the same function as comparable components in other units; if they are, the use of such components does not afford a basis for distinguishing between models.

(8) Retail price. Substantial variations in price arising directly from the characteristics enumerated in section 37(e)(2) for evaluating product models may be evidence that products are different models because their differences are distinctive. Price variations imposed to accommodate different markets or vendors are not sufficient to draw such a distinction.

(9) Manufacturer's designation, model number, or private label designation. These factors are not controlling in identifying ''particular models''.

(10) Expert evaluation of the characteristics of the products in question, and surveys of consumer users or a manufacturer's retail customers.

(b) The definition of ''consumer product'' expressly applies to components of consumer products. Should a component manufacturer be joined in a civil action against a manufacturer of a consumer product, the section 37 reporting requirements may apply to that manufacturer after a combination of three judgments or settlements involving the same component model during a two year period, even though the manufacturer of the finished product is exempt from such reporting because the lawsuits do not involve the same particular model of the finished consumer product. The same proposition holds true for common components used in different consumer products. If the manufacturer of such a component is a defendant in three suits and the requisite statutory criteria are met, the reporting obligations apply.

(c) Section 37 expressly defines the reporting obligation in terms of the particular model of a product rather than the manner in which a product was involved in an accident. Accordingly, even if the characteristic of a product that caused or resulted in the deaths of grievous injuries alleged in three or more civil actions is the same in all of the suits, the requirement to report under section 37 would arise only if the same particular model was involved in at least three of the suits. However, the existence of such a pattern would strongly suggest that the obligation to file a report under section 15(b) (2) or (3) (15 U.S.C. 2064(b) (2) or (3)) exists because the information reasonably supports the conclusion that the product contains a defect that

could present a substantial risk of injury to the public or creates an unreasonable risk of serious injury or death.

(d) Section 37 does not require that the same category of injury be involved in multiple lawsuits for the reporting obligation to arise. As long as a particular model of a consumer product is the subject of at least three civil actions that are settled or adjudicated in favor of the plaintiff in one of the statutory two year periods, the manufacturer must report, even though the alleged category of injury and the alleged causal relationship of the product to the injury in each suit may differ.

§ 1116.9 Confidentiality of reports.

(a) Pursuant to section 6(e) of the Consumer Product Safety Act (15 U.S.C. 2055(e)) no member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may publicly disclose information furnished to the Commission under section 37(c)(1) and section 37(c)(2)(A) of the Act, except that:

(1) An authenticated copy of a section 37 report furnished to the Commission by or on behalf of a manufacturer may, upon written request, be furnished to the manufacturer or its authorized agent after payment of the actual or estimated cost of searching the records and furnishing such copies; or

(2) Any information furnished to the Commission under section 37 shall, upon written request of the Chairman or Ranking Minority Member of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives or any subcommittee of such committee, be provided to the Chairman or Ranking Minority Member for purposes that are related to the jurisdiction of such committee or subcommittee.

(b) The prohibition contained in section 6(e) (15 U.S.C. 2055(e)) against the disclosure of information submitted pursuant to section 37 only applies to the specific items of information that a manufacturer is required to submit under section 37(c)(1) and to statements under section 37(c)(2)(A) relating to the possibility or existence of an appeal of a reported judgment adverse to a manufacturer. Section 6(e)(1) does not, by its terms, apply to information that the manufacturer voluntarily chooses to submit pursuant to section 37(c)(2)(B). Thus, disclosure of such information is governed by the other provisions of section 6 of the CPSA (15 U.S.C. 2055) and by the interpretative rules issued by the Commission (16 CFR parts 1101 and 1015). For example, if a manufacturer includes information otherwise reportable under section 15 as part of a section 37 report, the Commission will treat the information reported pursuant to section 15 as ''additional information'' submitted pursuant to section 37(c)(2)(B). Generally, any issue of the public disclosure of that information will be controlled by the relevant provisions of section 6(b), including section 6(b)(5) relating to the disclosure of substantial product hazard reports, and section 6(a) relating to the disclosure of confidential or trade secret information. However, to the extent the section 15 report reiterates or references information reported under section 37, the confidentiality provisions of section 6(e) still apply to the reiteration or reference. In addition, interpretative regulations issued under section 6(b) of the Act establish that disclosure of certain information may be barred if the disclosure would not be fair in the circumstances. 16 CFR 1101.33. Accordingly, issues of releasing additional information submitted pursuant to section 37 will also be evaluated under the fairness provisions of section 6(b). Should the Commission receive a request for such information or contemplate disclosure on its own initiative, the manufacturer will be given an opportunity to present arguments to the Commission why the information should not be disclosed, including, if appropriate, why disclosure of the information would be unfair in the circumstances. Among the factors the Commission will consider in evaluating the fairness of releasing the information are the nature of the information, the fact that it is an adjunct to a Congressional protected report, and whether the information in question supports the conclusion that a section 37 or 15(b), CPSA, report should have been filed earlier.

(c) Section 6(e) imposes no confidentiality requirements on information obtained by the Commission independently of a report pursuant to section 37. The provisions of section 6(b) govern the disclosure of such information.

§ 1116.10 Restrictions on use of reports.

No member of the Commission, no officer or employee of the Commission, and no officer or employee of the Department of Justice may use information provided to the Commission under section 37 for any purpose other than to carry out the responsibilities of the Commission.

§ 1116.11 Reports of civil actions under section 37 not admissions.

Pursuant to section 37(d), 15 U.S.C. 2084(d), the reporting of a civil action under section 37 shall not constitute an admission of—

(a) An unreasonable risk of injury;

(b) A defect in the consumer product which was the subject of the civil action;

(c) A substantial product hazard;

(d) An imminent hazard; or

(e) Any other liability under any statute or any common law.

§ 1116.12 Commission response to section 37 reports.

Upon receipt of a section 37 report, the Commission will evaluate the information contained in the report and any relevant information contained in its files or data bases to determine what, if any, follow-up or remedial action by the Commission is appropriate. If the Commission requires additional information, it will notify the manufacturer in writing of the specific information to provide. In addition, the Commission will routinely review section 37 reports to determine whether the reporting manufacturers have fulfilled their obligations under both sections 37 and 15(b) in a timely manner. Such a review may also engender a request for additional information, including the dates on which final orders were entered in each of the lawsuits reported under section 37. The Commission will treat any subsequent submission of information by the manufacturer as a submission under section 37(c)(2)(B) subject to the restrictions on public disclosure contained in sections 6(a) and (b) of the Consumer Product Safety Act.

PART 1117—REPORTING OF CHOKING INCIDENTS INVOLVING MARBLES, SMALL BALLS, LATEX BALLOONS AND OTHER SMALL PARTS

Sec.

AUTHORITY: Section 102 of the Child Safety Protection Act (Pub. L. No. 103–267), section 16(b), 15 U.S.C. 2065(b) and 5 U.S.C. 553.

SOURCE: 60 FR 10493, Feb. 27, 1995, unless otherwise noted.

§ 1117.1 Purpose.

The purpose of this part is to set forth the Commission's interpretative regulations for reporting of choking incidents required by the Child Safety Protection Act. The statute requires that each manufacturer, distributor, retailer, and importer of a marble, small ball, or latex balloon, or a toy or a game that contains a marble, small ball, latex balloon, or other small part, shall report to the Commission any information obtained by such manufacturer, distributor, retailer, or importer which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on such a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in such toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional.

§ 1117.2 Definitions.

(a) *Small part* means any part, component, or piece of a toy or game, which, when tested in accordance with the

procedures in 16 CFR 1501.4(a) and 1501.4(b)(1), fits entirely within the cylinder shown in Figure 1 appended to 16 CFR 1501.

(b) *Small ball* means any ball that under the influence of its own weight, passes, in any orientation, entirely through a circular hole with a diameter of 1.75 inches (4.445 cm) in a rigid template .25 inches (6 mm.) thick. For purposes of this designation, the term ''ball'' includes any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, or bounced, and is either not permanently attached to another toy or article, or is attached to such a toy or article by means of a string, elastic cord, or similar tether. The term *ball* includes any multi-sided object formed by connecting planes into a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball, and any novelty item of a generally spherical, ovoid, or ellipsoidal shape that is designated or intended to be used as a ball.

(c) *Choked* means suffered an obstruction of the airways.

(d) A *latex balloon* is a toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities, such as rafts, water wings, life rings, etc.

(e) A *marble* is a ball made of a hard material, such as glass, agate, marble or plastic, that is used in various children's games, generally as a playing piece or marker.

(f) *Serious injury* includes not only the concept of ''grievous bodily injury'' defined in the Commission's rule for Substantial Hazard Reports at 16 CFR 1115.12(d), but also any other significant injury. Injuries necessitating hospitalization which require actual medical or surgical treatment and injuries necessitating absence from school or work of more than one day are examples of situations in which the Commission shall presume that such a serious injury has occurred.

(g) *Subject firm* means any manufacturer, distributor, retailer or importer of marbles, small balls, latex balloons, or a toy or game that contains a marble, small ball, latex balloon, or other small part.

(h) *Toy or game* includes any toy or game, including those exempt under 16 CFR 1501.3 from the small parts banning provisions of 16 CFR 1500.18(a)(9).

[60 FR 10493, Feb. 27, 1995, as amended at 60 FR 41801, Aug. 14, 1995]

§ 1117.3 Reportable information.

A subject firm shall report any information it obtains which reasonably supports the conclusion that a reportable incident occurred. Generally, firms should report any information provided to the company, orally or in writing, which states that a child choked on a marble, small ball, latex balloon, or on a marble, small ball, latex balloon or other small part contained in a toy or game *and,* as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Subject firms must not wait until they have investigated the incident or conclusively resolved whether the information is accurate or whether their product was involved in the incident. Firms shall not wait to determine conclusively the cause of the death, injury, cessation of breathing or necessity for treatment. An allegation that such a result followed the choking incident is sufficient to require a report.

§ 1117.4 Time for filing a report.

(a) A subject firm must report within 24 hours of obtaining information which reasonably supports the conclusion that an incident occurred in which a child (regardless of age) choked on a marble, small ball, or latex balloon or on a marble, small ball, latex balloon, or other small part contained in a toy or game and, as a result of that incident the child died, suffered serious injury, ceased breathing for any length of time, or was treated by a medical professional. Section 1117.5 of this part sets forth the information that must be reported.

(b) The Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected

to be capable of appreciating the significance of the information. Under ordinary circumstances, 5 days shall be the maximum reasonable time for information to reach such an employee, the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 102 of the Child Safety Protection Act.

§ 1117.5 Information that must be reported and to whom.

(a) Reports shall be directed to the Division of Corrective Actions, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20815 (Mailing Address: Washington, D.C. 20207) (Phone: 301–504–0608, facsimile: 301–504–0359).

(b) Subject firms must report as much of the following information as is known when the report is made:

(1) The name, address, and title of the person submitting the report to the Commission,

(2) The name and address of the subject firm,

(3) The name and address of the child who choked and the person(s) who notified the subject firm of the choking incident,

(4) Identification of the product involved including the date(s) of distribution, model or style number, a description of the product (including any labeling and warnings), a description of the marble, small ball, latex balloon or other small part involved, and pictures or sample if available,

(5) A description of the choking incident and any injuries that resulted or medical treatment that was necessary,

(6) Copies of any information obtained about the choking incident,

(7) Any information about changes made to the product or its labeling or warnings with the intention of avoiding such choking incidents, including, but not limited to, the date(s) of the change and its implementation, and a description of the change. Copies of any engineering drawings or product and label samples that depict the change(s).

(8) The details of any public notice or other corrective action planned by the firm,

(9) Such other information as appropriate.

(c) Retailers or distributors should supply as much of the information required in paragraph (b) of this section as is available to them but are not required to obtain information about product design changes or recall activities from the product manufacturer.

(d) Within ten days of their initial report, subject firms must supplement their reports to supply any of the information required by paragraph (b) of this section that was not available at the time of the initial report.

§ 1117.6 Relation to section 15(b) of the CPSA.

Section 15(b) of the CPSA requires subject firms to report when they obtain information which reasonably supports the conclusion that products they distributed in commerce fail to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA, contain a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. The Commission's rules interpreting this provision are set forth at 16 CFR part 1115. The requirements of section 102 of the CSPA and this part are in addition to, but not to the exclusion of, the requirements in section 15(b) and part 1115. To comply with section 15(b), subject firms must continue to evaluate safety information they obtain about their products. Subject firms may have an obligation to report under section 15(b) of the CPSA whether or not they obtain information about choking incidents. Firms must also comply with the lawsuit-reporting provisions of section 37 of the CPSA, interpreted at 16 CFR part 1116.

§ 1117.7 Confidentiality of reports.

The confidentiality provisions of section 6 of the CPSA, 15 U.S.C. 2055, apply to reports submitted under this part. The Commission shall afford information submitted under this part the protection afforded to information submitted under section 15(b), in accordance with section 6(b)(5) of the CPSA

and subpart G of part 1101 of title 16 of the CFR.

§ 1117.8 Effect of reports on liability.

A report by a manufacturer, distributor, retailer, or importer under this part shall not be interpreted, for any purpose, as an admission of liability or of the truth of the information contained in the report.

§ 1117.9 Prohibited acts and sanctions.

(a) Whoever knowingly and willfully falsifies or conceals a material fact in a report submitted under this part is subject to criminal penalties under 18 U.S.C. 1001.

(b) A failure to report to the Commission in a timely fashion as required by this part is a prohibited act under section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3).

(c) A subject firm that knowingly fails to report is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069. *Knowing* means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Section 20(d) of the CPSA, 15 U.S.C. 2069(d).

(d) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission may be subject to criminal penalties under section 21 of the CPSA, 15 U.S.C. 2070.

PART 1118—INVESTIGATIONS, INSPECTIONS AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

Subpart A—Procedures for Investigations, Inspections, and Inquiries

Sec.

Subpart B—Consent Order Agreements

AUTHORITY: 15 U.S.C. 2063; 15 U.S.C. 2065; 15 U.S.C. 2068; 15 U.S.C. 2076; sec. 3, Pub. L. 110–314, 122 Stat. 3016.

SOURCE: 44 FR 34929, June 18, 1979, unless otherwise noted.

Subpart A—Procedures for Investigations, Inspections, and Inquiries

§ 1118.1 Definitions, initiation of investigations, inspections, and inquiries and delegations.

(a) *Definitions.* For the purpose of these rules, the following definitions apply:

(1) *Act* means the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*).

(2) *Commission* means the Consumer Product Safety Commission.

(3) *Firm* means a manufacturer, private labeler, distributor, or retailer of a consumer product, except as otherwise provided by section 16(b) of the Act.

(4) *Investigation* is an undertaking by the Commission to obtain information for implementing, enforcing, or determining compliance with the Consumer Product Safety Act and the regulations, rules, and orders issued under the Act. The term investigation includes, but is not limited to, inspections (§ 1118.2), investigational hearings (§ 1118.5), and inquiries; employing subpoenas (§ 1118.4), depositions (§ 1118.6), and general or special orders (§ 1118.9).

(5) The definition of the terms set forth in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1118.

(b) *Initiation of Investigations and Inquiries.* Investigations and inquiries will be initiated by the Commission in any manner authorized by law.

(c) *Initiation of Inspections.* An inspection as described in § 1118.2 is initiated

when the Commission or its delegate authorizes the issuance of a written notice of inspection, described in §1118.2(c).

(d) *Delegations of Authority.* The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor, the Directors of the Divisions of Enforcement; the Solicitor, the Directors of the Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the directors of area offices, the power to initiate inspections in the same manner as the Commission.

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in §1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter referred to as ''notice''). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in §1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, firewalled third party conformity assessment body, or establishment in which products are manufactured, tested, or held, in connection with distribution in commerce, or any conveyance being used to transport products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, firewalled third party conformity assessment body, or establishment where products are manufactured, tested, held, or transported and that may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging, or labeling which:

(i) Are required by the Commission to be established, made or maintained, or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules, and orders promulgated under the Act, and

(4) To obtain:

(i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm;

(ii) Samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's, third party conformity assessment body's, or retailer's cost, unless voluntarily provided; and

(iii) Information, both oral and written, concerning any matter referred to in the Act and these rules.

(b) A separate notice shall be given for each inspection, but a notice is not required for each entry made during the course of the same inspection. Each inspection shall be commenced at and completed within a reasonable period of time.

(c) The notice of inspection shall include the name and address of the person or firm being inspected; the name and title of the Commission officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to access is based; pertinent extracts from §1118.2 of these rules setting forth the authority of Commission officers or employees and the types of information and items they are authorized to obtain; a statement that the inspection will be conducted and the information will be provided with the cooperation of the person or firm being inspected; a statement which sets forth the purposes of the inspection and the nature of the information and items to be obtained and/or copied; and a statement that those from whom information is requested should state in writing whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section

6(a)(2) of the Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be entitled to exemption from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10496, February 22, 1977) or as amended. Any statement asserting this claim of confidentiality must be in writing, and any request for exemption of the information from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended.

(d) If upon being presented with a notice by an officer or employee duly designated by the Commission, the person or agent-in-charge of the firm being inspected refuses to allow entry or inspection, the Commission may then seek a search warrant or take other appropriate legal action. If the person refuses to provide information, to allow access to or the copying of records, or to supply samples as provided in these rules, the officer or employee of the Commission shall complete the investigation to the extent that voluntary cooperation is provided. The Commission may take such additional action, including but not limited to seeking an ex parte search warrant, employing the compulsory process provided for in these rules, and/or taking other suitable legal action. If the person or agent in charge refuses to accept the notice upon its presentation, the officer or employee may affix the notice to a public entrance way on the premises and this shall constitute presentation of the notice.

[44 FR 34929, June 18, 1979, as amended at 78 FR 15868, Mar. 12, 2013]

§ 1118.3 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Commission may elect either to seek an ex parte search warrant and/or use any other reasonable means authorized by law to initiate investigations, inspections, or inquires to obtain information for the purposes set forth in §1118.1(a), including but not limited to the following compulsory processes:

(1) Subpoenas;

(2) Investigational hearings;

(3) Depositions; and

(4) General or special orders.

(b) Service in connection with any of the compulsory processes in §1118.3(a) shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

(2) By certified mail or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of; or

(3) In the case of general or special orders where personal service, mailing or delivery has been unsuccessful, service may also be effected by publication in the FEDERAL REGISTER.

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the FEDERAL REGISTER. In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) These rules shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Anyone submitting information in response to any of the compulsory processes referred to in §1118.3(a) should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Commission to be confidential in accordance with section 6(a)(2) of the Consumer Product Safety Act (15 U.S.C. 2055(a)(2)) and whether any of the information is believed to be exempt from disclosure by the Commission under the provisions of the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended. Any claim of confidentiality must be in writing, and any request for exemption

from disclosure must be made in accordance with the Commission's Freedom of Information Act regulations, 16 CFR part 1015 (42 FR 10490, February 22, 1977), or as amended.

§ 1118.4 Subpoenas.

The Commission may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in § 1118.9.

§ 1118.5 Investigational hearings.

(a) The Commission by subpoena may require any person or firm to provide information at an investigational hearing. These hearings shall be for the purpose of taking the testimony, under oath, of witnesses and receiving documents and other data relating to any subject under investigation. The hearings shall be presided over by the Commission, by one or more of the Commissioners, by an administrative law judge, or by a duly designated officer or employee, who shall be referred to as the presiding official. The hearings shall be stenographically reported, and the transcript shall be made a part of the record.

(b) A Commissioner who participates in a hearing or other investigation, inspection, or inquiry shall not be disqualified solely by reason of that participation from subsequently participating in a Commission decision in the same matter.

(c) Investigational hearings shall be closed to the public, unless otherwise ordered by the Commission.

(d) The release of the record of the hearing shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that a person required to give testimony or a deposition may, in accordance with § 1118.7(d), obtain a copy of his or her testimony or deposition.

§ 1118.6 Depositions.

(a) The Commission by subpoena may require testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person who is designated by the Commission and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Commission. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), the Commission's regulations under that Act, 16 CFR part 1015 (42 FR 10490, February 22, 1977) or as amended and/or other applicable laws or regulations, except that the deponent may, in accordance with § 1118.7(d), obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Commission may designate. Whenever a deponent is required to sign in less than ten days, the Commission shall notify the deponent of the reasons for such shorter time period.

If the deponent does not sign the deposition within the prescribed time period, the Commission designee shall sign it and state on the record the fact of the waiver of the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by these rules, or any other proceeding, as allowed by applicable rules.

§ 1118.7 Rights of witnesses at investigational hearings and of deponents at depositions.

(a) Any person, agent, or officer of a firm, who is required to produce documentary evidence or give testimony as a witness at an investigational hearing conducted under provisions of § 1118.5 or as a deponent at a deposition taken under provisions of § 1118.6 may be accompanied by an attorney, or an officer or partner of the firm, who may act as representative for the witness or the deponent. However, a person who is subpoenaed to produce documentary evidence or give testimony at an investigational hearing or deposition cannot act as attorney or representative for another witness or deponent at the same proceeding. The term attorney refers to members of the bar of a Federal court or the courts of any State or Territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. The witness or deponent and his or her attorney or representative may act as follows during the course of an investigational hearing or deposition:

(1) A witness or deponent may confer, in confidence, with his or her attorney or representative concerning any questions asked of the witness or deponent. If the witness, deponent, or his or her attorney or representative objects to a question or any other matter relevant to the investigational hearing or deposition, the objection and basis for it shall be stated on the record. In the case of an objection based upon self-incrimination, the privilege must be asserted by the witness or deponent. If a witness at an investigational hearing refuses to answer a question or provide other information, the presiding official shall have the authority to immediately order the witness to answer the question or provide the information requested, except in circumstances where, in the discretion of the presiding official an immediate ruling would be unwarranted and except where a refusal is based upon the privilege against self-incrimination. Otherwise all objections shall be ruled upon by presiding official at the time the objection is made.

(2) Objections timely made under the provisions of § 1118.7(a) shall be noted on the record, shall be treated as continuing, and shall be preserved throughout the proceeding without the necessity of repetition during similar lines of inquiry.

(3) Except as provided by § 1118.7(a), counsel for a witness or deponent may not interrupt the examination of the witness or the deponent by making objections or statements on the record.

(4) Upon completion of the examination, any witness at an investigational hearing may clarify on the record any of his or her answers, or, if the witness is accompanied by an attorney or representative, the attorney or representative may examine the witness on the record as to answers previously given. In addition, the witness or his or her attorney or representative may make a brief statement at the conclusion of the hearing giving his, her or the firm's position with regard to matters under investigation. In order to prevent abuse of the investigational process, the presiding official shall have the authority to impose reasonable limitations on the period of time allowed for objections, clarification of answers, and statements of position.

(5) Upon completion of all testimony, a deponent may clarify on the record any of his or her answers. The attorney or representative for a deponent may examine that deponent on the record to clarify answers previously given.

(b) Any person, agent, or officer who is required to appear in person at an investigational hearing or at a deposition shall testify as to matters and information known and/or reasonably available to the person or firm involved.

(c) Any person, agent or officer who is compelled by subpoena to appear in person at an investigational hearing or at a deposition shall receive the same fees and mileage allowances as are paid witnesses in the courts of the United States.

(d) Any person, agent, or officer who is required to appear at an investigational hearing or at a deposition shall be entitled to retain a copy of any document submitted by him or her and, upon payment of lawfully prescribed costs, in accordance with the Commission's regulations under the Freedom of Information Act, shall be entitled to

procure a copy of his or her own testimony as recorded.

(e) The presiding official shall take all necessary action to regulate the course of the hearing, to avoid delay and to assure that reasonable standards of orderly and ethical conduct are maintained. The presiding official, for reasons stated on the record, shall immediately report to the Commission any instance in which a witness or his or her attorney or representative has refused to comply with the presiding official's directions or to adhere to reasonable standards of orderly and ethical conduct in the course of the hearing. The Commission shall take whatever action is appropriate under the circumstances.

§ 1118.8 General or special orders seeking information.

The Commission may require by the issuance of general or special orders any person or firm to submit in writing any reports and answers to questions as the Commission may prescribe. The reports or answers shall be made under oath, and shall be filed within the time prescribed by the Commission. Procedures regarding compliance with general or special orders and motions to limit or quash such orders are provided for in § 1118.9.

§ 1118.9 Motions to limit or quash subpoenas and general or special orders and delegation to modify terms for compliance.

(a) The Commission hereby delegates to the Associate Executive Director for Compliance and Enforcement; the Solicitor; the Directors of Divisions of Enforcement, Product Defect Correction, and Regulatory Management; and the General Counsel the authority:

(1) To negotiate and approve the terms of satisfactory compliance with subpoenas and general or special orders;

(2) To impose conditions upon compliance with such compulsory processes; and

(3) To extend the time for compliance and the time for filing motions to limit or quash.

(b) The person or firm served with a subpoena or general or special order may file a motion to limit or quash the subpoena or order. Any motion to limit or quash shall set forth the reasons why the subpoena or order should be limited or quashed and may be accompanied by memoranda, affidavits, or other documents submitted in support of the motion. The motion must be received in the Office of the Secretary of the Commission within 10 calendar days of receipt of the subpoena or order unless:

(1) The subpoena or order provides for a different time; or

(2) The Commission, for good cause shown, grants an extension of time to file a motion.

(c) Upon receipt of a motion to limit or quash, the Office of the Secretary shall immediately notify and transmit a copy to the appropriate staff member. Unless a different period of time is specified in the subpoena or order, the staff shall file an answer with the Office of the Secretary within 10 calendar days after receipt of the motion. A copy of the answer shall be served upon the moving party or the counsel of the moving party. No reply to the answer will be permitted.

(d) All motions to limit or quash shall be ruled upon by the Commission. The Office of the Secretary shall serve the decision on a motion to limit or quash upon the moving party or the counsel for the moving party and shall furnish a copy of the decision to the appropriate staff member. The Commission's decision is a final decision. Motions for reconsideration will not be received.

§ 1118.10 Remedies for failure to permit authorized investigations.

In the event a person or firm fails to comply with any investigative process authorized by these rules, the Commission may seek appropriate action within its authority under the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*)

§ 1118.11 Nonexclusive delegation of power.

No provision contained herein delegating any of the Commission's powers shall be construed as limiting the authority of the Commission to exercise the same powers.

Subpart B—Consent Order Agreements

§ 1118.20 Procedures for consent order agreements.

(a) For the procedure to be followed regarding consent order agreements involving section 15 of the Act (15 U.S.C. 2064), refer to the Commission's regulations relating to substantial product hazards (16 CFR part 1115). For all other consent order agreements under the Consumer Product Safety Act, the provisions set forth below are applicable.

(b) The consent order agreement is a document executed by a person, or firm (consenting party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved. A consent order agreement shall contain the following provisions, as appropriate:

(1) An admission of all jurisdictional facts by the consenting parties;

(2) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's order;

(3) A statement that the agreement is in settlement of the staff's charges and does not constitute an admission by the consenting party that the law has been violated;

(4) A statement describing the alleged hazard, non-compliance or violation.

(5) A statement that the Commission's order is issued under the provisions of the Act (15 U.S.C. 2051, *et seq.*); and that a violation of such order may subject the consenting party to appropriate legal action.

(6) An acknowledgment that the consent order agreement only becomes effective upon its final acceptance by the Commission and its service upon the consenting party;

(7) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public;

(8) A statement that the consenting party shall comply with the provisions of the agreement and order;

(9) A statement that the requirements of the order are in addition to and not to the exclusion of other remedies under the Act.

(c) At any time in the course of an investigation, the staff, with the approval of the Commission, may propose to the person or firm being investigated that any alleged violation be resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may:

(1) Provisionally accept it;

(2) Reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR part 1025, June 21, 1977 or as amended) and/or

(3) Take such other action as it may deem appropriate.

(e) If the agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the FEDERAL REGISTER. Any interested person may ask the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Any request must be received in the Office of the Secretary no later than the close of business of the 15th calendar day following the date of announcement in the FEDERAL REGISTER.

(f) If no requests are received, the agreement shall be deemed finally accepted by the Commission on the 16th calendar day after the date of the announcement in the FEDERAL REGISTER. Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in

disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance. The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

PART 1119—CIVIL PENALTY FACTORS

Sec.

AUTHORITY: 15 U.S.C. 2058, 2063, 2064, 2067(b), 2068, 2069, 2076(e), 2084, 1261, 1263, 1264, 1270, 1273, 1278, 1191, 1192, 1193, 1194, 1195, 1196.

SOURCE: 75 FR 15998, Mar. 31, 2010, unless otherwise noted.

§ 1119.1 Purpose.

This part sets forth the Consumer Product Safety Commission's (Commission) interpretation of the statutory factors considered in determining the amount of civil penalties that the Commission may seek or compromise. The policies behind, and purposes of, civil penalties include the following: Deterring violations; providing just punishment; promoting respect for the law; promoting full compliance with the law; reflecting the seriousness of the violation; and protecting the public.

§ 1119.2 Applicability.

This part applies to all civil penalty determinations the Commission may seek or compromise under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2089), the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1278), and the Flammable Fabrics Act (FFA) (15 U.S.C. 1191–1204). Any person who knowingly violates section 19 of the CPSA, section 4 of the FHSA, or section 5(e) of the FFA, is subject to a civil penalty.

§ 1119.3 Definitions.

For purposes of this rule, the following definitions apply:

(a) *Product defect* means a defect as referenced in the CPSA and defined in Commission regulations at 16 CFR 1115.4.

(b) *Violation* means a violation committed knowingly, as the term ''knowingly'' is defined in section 19 of the CPSA, section 4 of the FHSA, or section 5 of the FFA.

(c) *Person* means any manufacturer (including importer), distributor, or retailer, as those terms are defined in the CPSA, FHSA, or FFA, and any other legally responsible party.

§ 1119.4 Factors considered in determining civil penalties.

(a) *Statutory Factors.* (1) Section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA, specify factors considered by the Commission in determining the amount of a civil penalty to be sought upon commencing an action for knowing violations of each act. These factors are:

(i) *CPSA (15 U.S.C. 2069(b))*. The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the product defect;

(B) The severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The number of defective products distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(ii) *FHSA (15 U.S.C. 1264 (c)(3))*. The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the substance;

(B) Severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The amount of substance distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(iii) *FFA (15 U.S.C. 1194 (e)(2))*. The nature, circumstances, extent, and gravity of the violations:

(A) The severity of the risk of injury;

(B) The occurrence or absence of injury;

(C) The appropriateness of such penalty in relation to the size of the business of the person charged; and

(D) Such other factors as appropriate.

(2) *The nature, circumstances, extent, and gravity of the violation*. Under this factor, the Commission will consider the totality of the circumstances and all other facts concerning a violation. The Commission will consider the enumerated statutory factors, as well as the factors described in paragraph (b) of this section.

(3) *Nature of the product defect*. The Commission will consider the nature of the product defect associated with a CPSA violation. This consideration will include, for example, whether the defect arises from the product's design, composition, contents, construction, manufacture, packaging, warnings, or instructions, and will include consideration of conditions or circumstances in which the defect arises. The Commission will also consider the nature of the substance associated with an FHSA violation. Two of the statutory factors in the CPSA civil penalty factors include the terms ''product defect'' or ''defective products.'' However, certain violations of the CPSA, for example, failing to supply a required certificate that the product complies with an applicable consumer product safety rule, do not necessarily require that there be a product defect or defective product. The terms ''product defect'' or ''defective products'' would not apply to such situation. In such cases, however, the other civil penalty factors would still be considered.

(4) *Severity of the risk of injury*. Consistent with its discussion of severity of the risk at 16 CFR 1115.12, the Commission will consider, among other factors, the potential for serious injury, illness, or death (and whether any injury or illness required medical treatment including hospitalization or surgery); the likelihood of injury; the intended or reasonably foreseeable use or misuse of the product; and the population at risk (including vulnerable populations such as children, the elderly, or those with disabilities).

(5) *The occurrence or absence of injury*. The Commission will consider whether injuries, illnesses, or deaths have or have not occurred with respect to any product or substance associated with a violation, and, if so, the number and nature of injuries, illnesses, or deaths. Both acute illnesses and the likelihood of chronic illnesses will be considered.

(6) *The number of defective products distributed*. The Commission will consider the number of defective products or amount of substance distributed in commerce. The statutory language makes no distinction between those defective products distributed in commerce that consumers received and those defective products distributed in commerce that consumers have not received. Therefore both could be considered in appropriate cases. This factor will not be used to penalize a person's decision to conduct a wider-than-necessary recall out of an abundance of caution. This would not include situations where such a recall is conducted

due to a person's uncertainty concerning how many or which products may need to be recalled.

(7) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses.

(i) The Commission is required to consider the size of the business of the person charged in relation to the amount of the penalty. This factor reflects the relationship between the size of a business and the policies behind, and purposes of, a penalty (as noted above in §1119.1). In considering business size, the Commission may look to several factors including, but not limited to, the number of employees, net worth, and annual sales. A business's size and a business's ability to pay a penalty are separate considerations. In some cases for small businesses, however, these two considerations may relate to each other. The Commission will be guided, where appropriate, by relevant financial factors to determine a small business's ability to pay a penalty, including, but not limited to, liquidity, solvency, and profitability. The burden to present clear, reliable, relevant, and sufficient evidence relating to a business's size and ability to pay rests on the business.

(ii) The statute requires the Commission to consider how to mitigate the adverse economic impacts on small businesses only if those impacts would be undue. What the Commission considers in determining what is undue may include, but is not limited to, the business's size and financial factors relating to its ability to pay. When considering how to mitigate undue adverse economic impacts, the Commission will, as appropriate, also follow its Small Business Enforcement Policy set forth at §1020.5.

(b) *Other factors as appropriate.* In determining the amount of any civil penalty to be sought for a violation of the CPSA, FHSA, or FFA, the Commission may consider, as appropriate, such other factors in addition to those listed in the statutes. Both the Commission and a person may raise any factors they believe are relevant in determining an appropriate penalty amount. A person will be notified of any factors beyond those enumerated in the statutes that the Commission relies on as aggravating factors for purposes of determining a civil penalty amount. Additional factors that may be considered in a case include, but are not limited to, the following:

(1) *Safety/compliance program and/or system relating to a violation.* The Commission may consider, when a safety/compliance program and/or system as established is relevant to a violation, whether a person had at the time of the violation a reasonable and effective program or system for collecting and analyzing information related to safety issues. Examples of such information would include incident reports, lawsuits, warranty claims, and safety-related issues related to repairs or returns. The Commission may also consider whether a person conducted adequate and relevant premarket and production testing of the product at issue; had a program in place for continued compliance with all relevant mandatory and voluntary safety standards; and other factors as the Commission deems appropriate. The burden to present clear, reliable, relevant, and sufficient evidence of such program, system, or testing rests on the person seeking consideration of this factor.

(2) *History of noncompliance.* The Commission may consider whether or not a person's history of noncompliance with the CPSA, FHSA, FFA, and other laws that the CPSC enforces, and the regulations thereunder, should increase the amount of the penalty. A person's history of noncompliance may be indicated by, for example, multiple violations of one or more laws or regulations that the CPSC enforces, including repeated violations of the same law or regulation. History of noncompliance may include the number of previous violations or how recently a previous violation occurred.

(3) *Economic gain from noncompliance.* The Commission may consider whether a person benefitted economically from a failure to comply, including a delay in complying, with the CPSA, FHSA, FFA, and other laws that the CPSC enforces, and the regulations thereunder.

(4) *Failure to respond in a timely and complete fashion to the Commission's requests for information or remedial action.*

The Commission may consider whether a person's failure to respond in a timely and complete fashion to requests from the Commission for information or for remedial action should increase a penalty. This factor is intended to address a person's dilatory and egregious conduct in responding to written requests for information or remedial action sought by the Commission, but not to impede any person's lawful rights.

§ 1119.5 Enforcement notification.

A person will be informed in writing if it is believed that the person has violated the law and if the Commission intends to seek a civil penalty. Any person who receives such a writing will have an opportunity to submit evidence and arguments that it should not pay a penalty or should not pay a penalty in the amount sought by the Commission.

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

Sec.

AUTHORITY: 15 U.S.C. 2064(j).

SOURCE: 76 FR 37640, June 28, 2011, unless otherwise noted.

§ 1120.1 Authority.

Under the authority of section 15(j) of the Consumer Product Safety Act (CPSA), the Commission determines that consumer products or classes of consumer products listed in §1120.3 of this part have characteristics whose existence or absence present a substantial product hazard under section 15(a)(2) of the CPSA. The Commission has determined that the listed products have characteristics that are readily observable and have been addressed by a voluntary standard, that the voluntary standard has been effective, and that there is substantial compliance with the voluntary standard. The listed products are subject to the reporting requirements of section 15(b) of the CPSA and to the recall provisions of section 15(c) and (d) of the CPSA, and shall be refused entry into the United States under section 17(a)(4) of the CPSA.

§ 1120.2 Definitions.

The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1120.

(a) *Substantial product hazard* means a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) *Hand-supported hair dryer* means an electrical appliance, intended to be held with one hand during use, which creates a flow of air over or through a self-contained heating element for the purpose of drying hair.

(c) *Drawstring* means a non-retractable cord, ribbon, or tape of any material to pull together parts of upper outerwear to provide for closure.

[76 FR 37640, June 28, 2011, as amended at 76 FR 42507, July 19, 2011]

§ 1120.3 Products deemed to be substantial product hazards.

The following products or class of products shall be deemed to be substantial product hazards under section 15(a)(2) of the CPSA:

(a) Hand-supported hair dryers that do not provide integral immersion protection in compliance with the requirements of section 5 of Underwriters Laboratories (UL) *Standard for Safety for Household Electric Personal Grooming Appliances,* UL 859, 10th Edition, approved August 30, 2002, and revised through June 3, 2010, or section 6 of *UL Standard for Safety for Commercial Electric Personal Grooming Appliances,* UL 1727, 4th Edition, approved March 25, 1999, and revised through June 25, 2010. The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from UL, Inc., 333 Pfingsten Road, Northbrook, IL 60062; telephone 888–853–3503; *http://*www.comm-2000.com . You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the

National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) (1) Children's upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear,* approved June 10, 1997, published August 1998. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www2.astm.org/*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(2) At its option, the Commission may use one or more of the following methods to determine what sizes of children's upper outerwear are equivalent to sizes 2T to 16:

(i) Garments in girls' size Large (L) and boys' size Large (L) are equivalent to girls' or boys' size 12, respectively. Garments in girls' and boys' sizes smaller than Large (L), including Extra-Small (XS), Small (S), and Medium (M), are equivalent to sizes smaller than size 12. The fact that an item of children's upper outerwear with a hood and neck drawstring is labeled as being larger than a size Large (L) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 12.

(ii) Garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16. The fact that an item of children's upper outerwear with a waist or bottom drawstring is labeled as being larger than size Extra-Large (XL) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 16.

(iii) In cases where garment labels give a range of sizes, if the range includes any size that is subject to a requirement in ASTM F 1816–97, the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject to the requirement. For example, a coat sized 12 through 14 remains subject to the prohibition of hood and neck area drawstrings, even though this requirement of ASTM F 1816–97 only applies to garments up to size 12. A coat size 13 through 15 would not be considered within the scope of ASTM F 1816–97's prohibition of neck and hood drawstrings, but would be subject to the requirements for waist or bottom drawstrings.

(iv) To fall within the scope of paragraphs (b)(2)(i) through (2)(iii) of this section, a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term ''girls,'' the term ''boys,'' or whether the garment is designed or intended for girls or boys.

(v) The Commission may use any other evidence that would tend to show that an item of children's upper outerwear is a size that is equivalent to sizes 2T to 16.

[76 FR 37640, June 28, 2011, as amended at 76 FR 42507, July 19, 2011]

PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

Sec.

FIGURE 2 TO PART 1130—BACK OF REGISTRATION FORM

AUTHORITY: 15 U.S.C. 2056a, 2065(b).

SOURCE: 74 FR 68676, Dec. 29, 2009, unless otherwise noted.

§ 1130.1 Purpose, scope, and effective date.

(a) *Purpose.* This part prescribes a consumer product safety rule establishing requirements for consumer registration of durable infant or toddler products. These requirements are intended to improve the effectiveness of recalls of, and safety alerts regarding, such products.

(b) *Scope.* Part 1130 applies to manufacturers, including importers, of durable infant or toddler products, as defined in §1130.2(a). It does not apply to infant or child restraint systems intended for use in automobiles that are covered by the registration program of the National Highway Traffic and Safety Administration (NHTSA) at 49 CFR 571.213, or to products that comprise a travel system, and are sold with a child restraint system that is covered by the NHTSA registration program at 49 CFR 571.213.

(c) *Compliance Date.* Compliance with this part 1130 shall be required on June 28, 2010 for the following products: full-size cribs and nonfull-size cribs; toddler beds; high chairs, booster chairs, and hook-on chairs; bath seats; gates and other enclosures for confining a child; play yards; stationary activity centers; infant carriers; strollers; walkers; swings; and bassinets and cradles. Compliance with this part 1130 shall be required on December 29, 2010 for the following products: Children's folding chairs, changing tables, infant bouncers, infant bath tubs, bed rails and infant slings. The rule shall apply to durable infant or toddler products, as defined in §1130.2(a), that are manufactured on or after those dates.

§ 1130.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply:

(a) *Durable infant or toddler product* means the following products, including combinations thereof:

(1) Full-size cribs and non-full-size cribs;
(2) Toddler beds;
(3) High chairs, booster seats, and hook-on chairs;
(4) Bath seats;
(5) Gates and other enclosures for confining a child;
(6) Play yards;
(7) Stationary activity centers;
(8) Infant carriers;
(9) Strollers;
(10) Walkers;
(11) Swings; and
(12) Bassinets and cradles;
(13) Children's folding chairs;
(14) Changing tables;
(15) Infant bouncers;
(16) Infant bathtubs;
(17) Bed rails;
(18) Infant slings.

(b) *Manufacturer,* for purposes of this part, in the case of a product produced within the United States, means the domestic manufacturer of the product, and in the case of an imported product, means the importer of the product.

(c) *Product recall* means action taken pursuant to sections 12, 15(c) or 15(d) of the CPSA (15 U.S.C. 2061, 2054(c), or 2064(d)), and action taken pursuant to a corrective action plan implemented by a company in cooperation with the Commission, where the firm is conducting one or more of the following: repair of the product; replacement of the product; or refund of the purchase price of the product.

(d) *Safety alert* means notice or warning of a potential problem with an individual product or class of products so that consumers and other users of the affected products respond accordingly to reduce or eliminate the potential for injury.

§ 1130.3 General requirements.

(a) Each manufacturer of a durable infant or toddler product shall:

(1) Provide consumers with a postage-paid consumer registration form that meets the requirements of this part 1130 with each such product;

(2) Maintain a record in accordance with the requirements set forth in §1130.8 of the contact information (names, addresses, e-mail addresses, and telephone numbers) of consumers

who register their products with the manufacturer under this part 1130;

(3) Permanently place the manufacturer name and contact information, model name and number, and the date of manufacture on each durable infant or toddler product in accordance with the requirements set forth in §1130.4.

(b) Consumer information collected by a manufacturer pursuant to the requirements of this part 1130 shall not be used by the manufacturer, nor disseminated by the manufacturer to any other party, for any purpose other than notification to such consumer in the event of a product recall or safety alert.

[74 FR 68676, Dec. 29, 2009, as amended at 77 FR 9524, Feb. 17, 2012]

§1130.4 Identification on the product.

(a) Each durable infant or toddler product shall be permanently marked with the manufacturer name, and contact information (U.S. address and telephone number, toll free if available) model name and number, and date of manufacture.

(1) If the manufacturer regularly uses only a model name or a model number, but not both, to identify the product, he/she may provide only the model name or number rather than creating a model name or number for the sole purpose of this part 1130.

(2) If the manufacturer regularly identifies the product by a product identification number (''PIN'') or other similar identifying number rather than a model number, he/she may provide that identifying number instead of a model number.

(3) The date referred to in paragraph (a) of this section shall include the month and year of manufacture and can be stated in code.

(4) A permanent mark is one that can reasonably be expected to remain on the product during the useful life of the product.

(b) The information required by this section shall be in English, legible, and in a location that is conspicuous to the consumer.

(c) The information required by this section may be combined with other information marked on the product.

§1130.5 Requirements for registration forms.

The registration form required under §1130.3(a)(1) shall:

(a) Comply with the format and text requirements set forth in §§1130.6 as shown in figures 1 and 2 of this part;

(b) State all information required by this part 1130 in the English language;

(c) Be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer must notice and handle the form after purchasing the product;

(d) Include the manufacturer's name, model name and number for the product, and the date of manufacture;

(e) Include an option for consumers to register through the Internet;

(f) Include the statement required in §1130.6(c)(1) that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

[74 FR 68676, Dec. 29, 2009, as amended at 77 FR 9524, Feb. 17, 2012]

§1130.6 Requirements for format and text of registration forms.

(a) *Size of form.* The form shall be at least the size of two standard post cards, connected with perforation for later separation, so that each of the two portions is at least 3½ inches high x 5 inches wide x 0.007 inches thick.

(b) *Layout of form* (1) *General.* The form shall consist of four parts: top and bottom, divided by perforations for easy separation, and front and back.

(2) *Font size and typeface.* The registration form shall use bold black typeface. The size of the type shall be at least 0.12 in (3.0 mm) for the purpose statement required in paragraph (c)(1) of this section, and no less than 0.10 in (2.5 mm) for the other information in the registration form. The title of the purpose statement and the retention statement required in paragraph (d)(2) of this section shall be in all capitals. All other information shall be in capital and lowercase type.

(c) *Front of form* (1) *Top front of form: Purpose statement.* The top portion of the front of each form shall state: ''PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL ONLY. We will use the information provided

on this card to contact you only if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. To register your product, please complete and mail the bottom part of this card, or visit our online registration at: *www.Web sitename.com.*'' Manufacturers that do not have a Web site may provide an email address and state at the end of the purpose statement: ''To register your product, please complete and mail the bottom part of this card, or email your contact information, the model name and number, and date of manufacture of the product, as provided on this card, to: *name@firmname.com.*''

(2) *Bottom front of form: Manufacturer's mailing address.* The bottom portion of the front of each form shall be preaddressed and postage-paid with the manufacturer's name and mailing address where registration information is to be collected. A manufacturer may list a brand name in addition to the manufacturer's name. If a manufacturer uses a third party to process registration forms, the third party's name may be included as a ''c/o'' (''in care of'') in the address on the form.

(d) *Back of the form* (1) *Top back of form* (i) *Product information and manufacturer's identification.* The top portion of the back of each form shall state: ''Manufacturer's Contact Information'' and provide the manufacturer's name and contact information (a U.S. mailing address displayed in sentence format, Web site address, a telephone number, toll-free, if available); product model name and number (or other identifier as described in §1130.4(a)(1) and (2)); and manufacture date of the product. A rectangular box shall be placed around the model name, model number, and manufacture date. A manufacturer may list the brand name in addition to the manufacturer's name.

(ii) *Retention statement.* On the back of each form, just above the perforation line, the form shall state: ''KEEP THIS TOP PART FOR YOUR RECORDS. FILL OUT AND RETURN BOTTOM PART.''

(2) *Bottom back of form* (i) *Consumer information.* The bottom portion of the back of each form shall have blocks for the consumer to provide his/her name, address, telephone number, and email address. These blocks shall be 5 mm wide and 7 mm high, with as many blocks as possible to fill the width of the card allowing for normal printing practices.

(ii) *Product information.* The following product information shall be provided on the bottom portion of the back of each form below the blocks for consumer information printed directly on the form or on a pre-printed label that is applied to the form: the model name and number (or other identifier as described in §1130.4(a)(1) and (2)), and the date of manufacture of the product. A rectangular box shall be placed around the model name, model number, and manufacture date. A manufacturer may include its name on the bottom portion of the back of the form if they choose to do so.

[77 FR 9524, Feb. 17, 2012]

§ 1130.7 Requirements for Web site registration or alternative e-mail registration.

(a) *Link to registration page.* The manufacturer's Web site, or other Web site established for the purpose of registration under this part 1130, shall be designed with a link clearly identified on the main web page that goes directly to ''Product Registration.''

(b) *Purpose statement.* The registration page shall have the following statement at the top of the page: ''PRODUCT REGISTRATION FOR SAFETY ALERT OR RECALL ONLY. We will use the information provided on this page only to contact you if there is a safety alert or recall for this product. We will not sell, rent, or share your personal information. If you register on this Web site you do not need to fill out the card that came with your product.''

(c) *Content of registration page.* The Web site registration page shall request only the consumer's name, address, telephone number, e-mail address, product model name and number, and the date of manufacture. The consumer's telephone number and e-mail address shall not be required for the consumer to submit the registration form. No other information shall appear on the electronic registration form, except for identification of the

manufacturer or a link to the manufacturer's home page, a field to confirm submission, and a prompt to indicate any incomplete or invalid fields before submission. Accessing the electronic registration form shall not cause additional screens or electronic banners to appear.

(d) *Alternative for manufacturers without a Web site.* A manufacturer that lacks a Web site shall provide for consumers to register their product through e-mail. Such e-mail addresses shall be set up to provide an automatic reply to confirm receipt of the consumer's registration information.

[74 FR 68676, Dec. 29, 2009. Redesignated at 77 FR 9525, Feb. 17, 2012]

§ 1130.8 Recordkeeping and notification requirements.

(a) Each manufacturer of a durable infant or toddler product shall maintain a record of registrants for each product manufactured that includes all of the information provided by each consumer registered.

(b) Each manufacturer of a durable infant or toddler product shall use the information provided by the registrant to notify the registrant in the event of a voluntary or involuntary recall of, or safety alert regarding, such product.

(c) Each manufacturer of a durable infant or toddler product shall maintain a record of the information provided by the registrant for a period of not less than 6 years after the date of manufacture of the product.

(d) Records required under this section shall be made available within 24 hours, upon the request of any officer, employee, or agent acting on behalf of the U.S. Consumer Product Safety Commission.

(e) *Optional barcode.* (1) A manufacturer may include a barcode, or other machine readable data, that when scanned would provide a direct link for the consumer to register the product.

(2) Such a link must comply with all the requirements of this part 1130, including those in § 1130.7 and the restriction that the manufacturer shall not use or disseminate the consumer registration information for any purpose other than notifying the consumer of a safety alert or recall.

[74 FR 68676, Dec. 29, 2009. Redesignated and amended at 77 FR 9525, Feb. 17, 2012]

FIGURE 1 TO PART 1130—FRONT OF REGISTRATION FORM

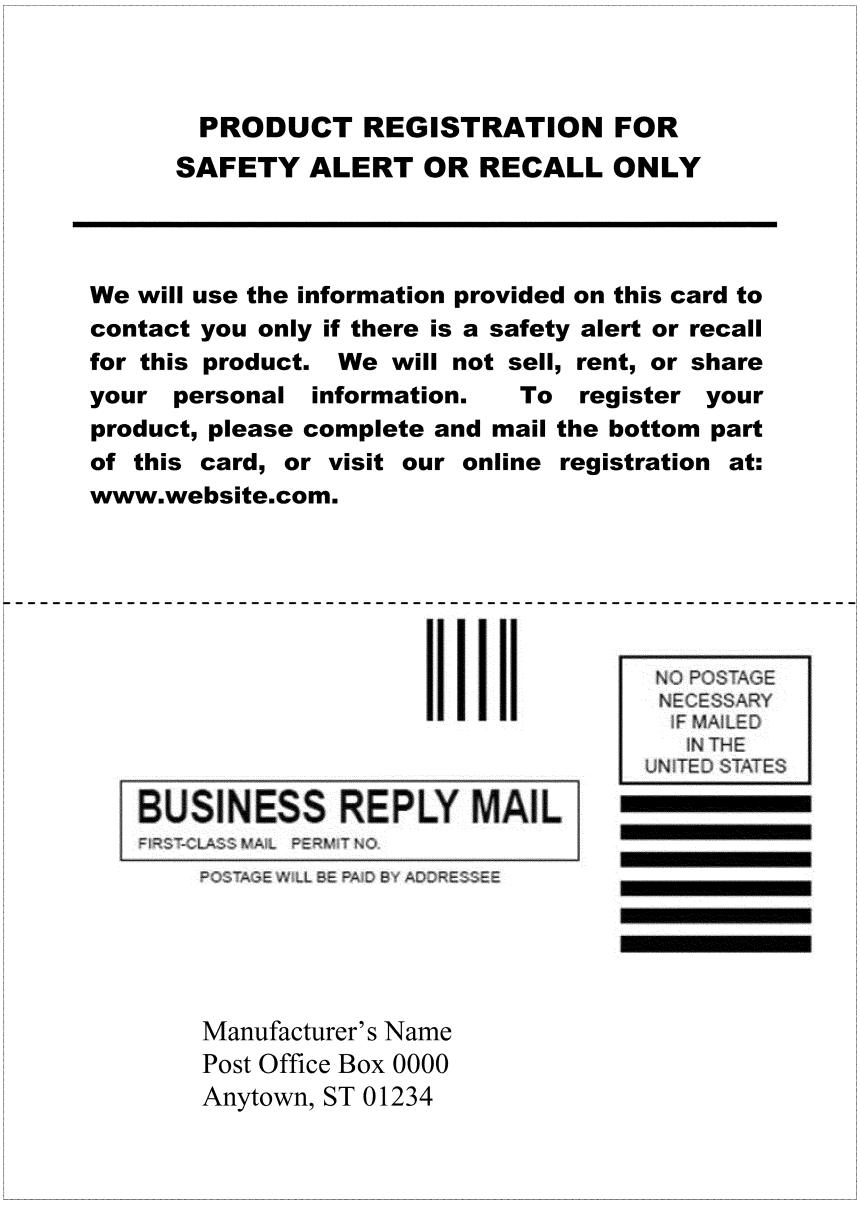


FIGURE 1 TO PART 1130 – FRONT OF REGISTRATION FORM

[74 FR 68676, Dec. 29, 2009, as amended at 77 FR 9525, Feb. 17, 2012]

FIGURE 2 TO PART 1130—BACK OF REGISTRATION FORM

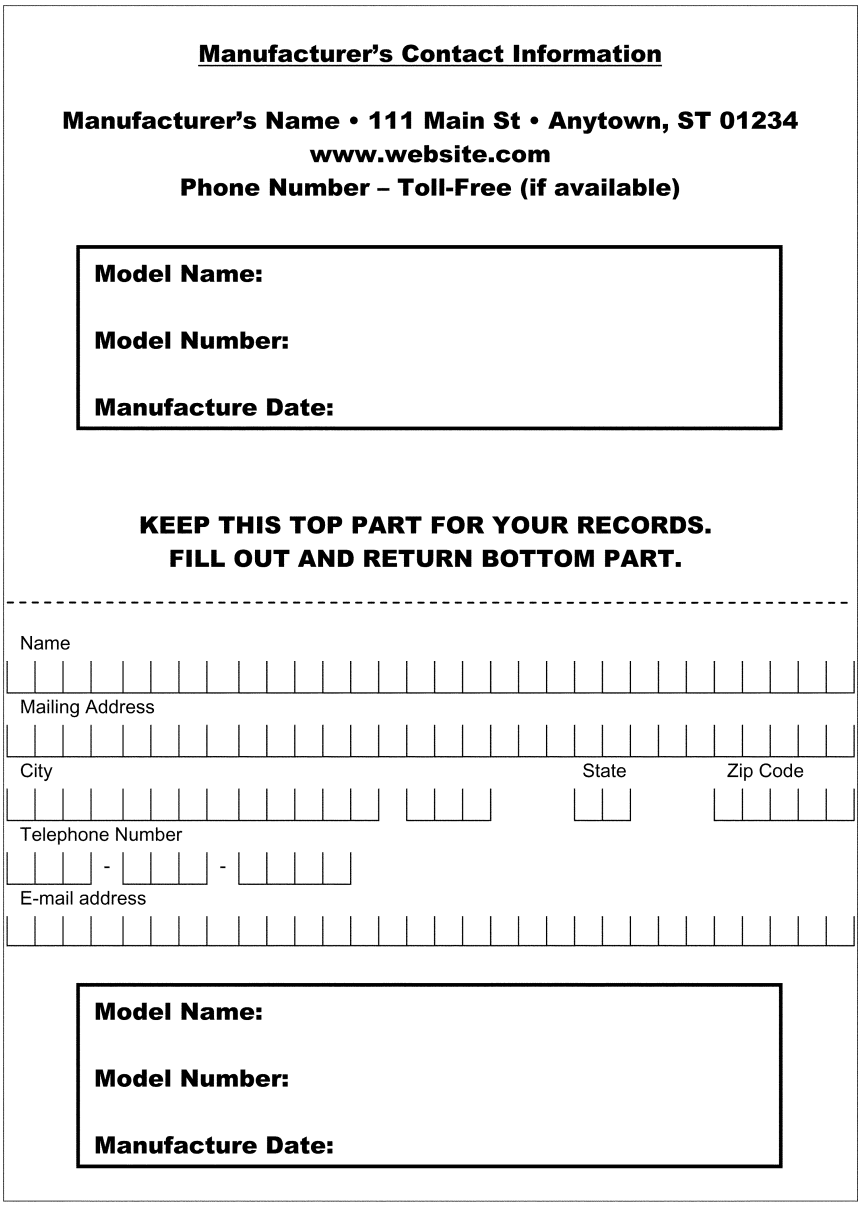


FIGURE 2 TO PART 1130 – BACK OF REGISTRATION FORM

[74 FR 68676, Dec. 29, 2009, as amended at 77 FR 9526, Feb. 17, 2012]

PART 1145—REGULATION OF PRODUCTS SUBJECT TO OTHER ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

Sec.

AUTHORITY: 15 U.S.C. 2079(d).

§ 1145.1 Scope.

In this part 1145, the Commission establishes rules which provide that risks of injury associated with consumer products that could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1274), the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471–1476), or the Flammable Fabrics Act (FFA) (15 U.S.C. 1191–1204) will be regulated under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2081). Section 30(d) of the CPSA, as amended, provides that a risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the FHSA, PPPA, or the FFA may be regulated under this act only if the Commission by rule finds it is in the public interest to regulate such risk of injury under this act.

[42 FR 44192, Sept. 1, 1977]

§ 1145.2 Paint (and other similar surface-coating materials) containing lead; toys, children's articles, and articles of furniture bearing such paint (or similar surface-coating materials); risk of lead poisoning.

(a) The Commission finds that it is in the public interest to reduce the risk of lead poisoning to young children from the ingestion of paint and other similar surface-coating materials by action under the Consumer Product Safety Act rather than under the Federal Hazardous Substances Act because of the desirability of consolidating the public procedures related to such regulation with the proceeding to determine a safe level of lead under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846), as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94–317; 90 Stat. 705–706). Consolidation of these proceedings facilitates greater public participation and a more expeditious resolution of the issues.

(b) Paint and other similar surface-coating materials containing lead and toys, children's articles, and articles of furniture bearing such paint or other similar surface-coating materials that present a risk of lead poisoning to young children by ingestion shall therefore be regulated under the Consumer Product Safety Act. Such regulation shall include all directly related pending and future rulemaking, as well as all directly related pending and future action on petitions.

[42 FR 44192, Sept. 1, 1977]

§ 1145.3 Extremely flammable contact adhesives; risk of burns from explosive vapor ignition and flashback fire.

(a) The Commission finds that it is in the public interest to regulate the risk of burns from explosive vapor ignition and flashback fire associated with certain extremely flammable contact adhesives under the Consumer Product Safety Act rather than under the Federal Hazardous Substances Act because of the desirability of avoiding possibly lengthy, resource consuming, and inefficient rulemaking proceedings under the Federal Hazardous Substances Act and because of the availability of civil

penalties under the CPSA. The Commission also believes that the complexity and formality of the rulemaking proceedings under the FHSA, in contrast to rulemaking proceedings under the CPSA may make it difficult for interested persons to participate.

(b) Extremely flammable contact adhesives and other similar liquid or semi-liquid products in containers over one-half pint that present a risk of burns from explosive vapor ignition and flashback fire shall therefore be regulated under the Consumer Product Safety Act. Such regulation shall include all directly related pending and future rulemaking, as well as all directly related future action on petitions. However, such action shall not include labeling that may be required under the Federal Hazardous Substances Act to address flammability hazards associated with other adhesives not subject to the ban.

[42 FR 63731, Dec. 19, 1977]

§ 1145.4 Consumer patching compounds containing respirable free-form asbestos; risk of cancer associated with inhalation of asbestos fibers.

(a) The Commission finds that it is in the public interest to regulate the risk of cancer associated with inhalation of asbestos fibers from consumer patching compounds containing respirable free-form asbestos under the Consumer Product Safety Act (CPSA) rather than under the Federal Hazardous Substances Act (FHSA) because of the desirability of avoiding possibly lengthy resource-consuming, inefficient rulemaking proceedings under the FHSA and because of the availability of civil penalties under the CPSA for knowing noncompliance.

(b) Therefore, consumer patching compounds containing respirable free-form asbestos are regulated under CPSA.

[42 FR 63354, Dec. 15, 1977]

§ 1145.5 Emberizing materials (embers and ash) containing respirable free-form asbestos; risk of cancer associated with inhalation of asbestos fibers.

(a) The Commission finds that it is in the public interest to regulate the risk of cancer associated with inhalation of asbestos fibers from artificial emberizing materials (embers and ash) containing respirable free-form asbestos under the Consumer Product Safety Act (CPSA) rather than under the Federal Hazardous Substances Act (FHSA) because of the desirability of avoiding possibly lengthy, resource-consuming, inefficient rulemaking proceedings under the FHSA, and because of the availability of civil penalties under the CPSA for knowing noncompliance.

(b) Therefore, artificial emberizing materials (embers and ash) containing respirable free-form asbestos are regulated under the CPSA.

[42 FR 63354, Dec. 15, 1977]

§§ 1145.9–1145.15 [Reserved]

§ 1145.16 Lighters that are intended for igniting smoking materials and that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children, rather than regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with lighters that are intended for igniting smoking materials, where such risks exist because the lighters can be operated by young children, shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

[58 FR 37556, July 12, 1993]

§ 1145.17 Multi-purpose lighters that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact

that multi-purpose lighters can be operated by young children, rather than to regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with multi-purpose lighters because the lighters can be operated by young children shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks that are associated with such lighters, and that are based solely on the fact that the lighters contain a hazardous substance, shall continue to be regulated under the Federal Hazardous Substances Act.

[64 FR 71884, Dec. 22, 1999]

PART 1199— CHILDREN'S TOYS AND CHILD CARE ARTICLES CONTAINING PHTHALATES: GUIDANCE ON INACCESSIBLE COMPONENT PARTS

AUTHORITY: 15 U.S.C. 1251–1289, 86 Stat. 1207, 125 Stat. 273.

SOURCE: 78 FR 10506, Feb. 14, 2013, unless otherwise noted.

§ 1199.1 Children's toys and child care articles: Phthalate-containing inaccessible component parts.

(a) Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of three specified phthalates (di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP)). Section 108 of the CPSIA also prohibits, on an interim basis, ''toys that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of three additional phthalates (diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DnOP)). A ''children's toy'' is defined as a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. A toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth. The term ''child care article'' means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 years and younger, or to help such children with sucking or teething.

(b) Section 108(d) of the CPSIA provides that the prohibitions in paragraph (a) of this section do not apply to component parts of a children's toy or child care article that are not accessible to children through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible if it is not physically exposed, by reason of a sealed covering or casing, and does not become physically exposed through reasonably foreseeable use and abuse of the product, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

(c) Section 108(d)(3) of the CPSIA directs the Commission to promulgate a rule to provide guidance with respect to what product components or classes of components will be considered to be inaccessible for a children's toy or child care article that contains phthalates or adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regard to accessibility of lead under section 101(b)(2)(B) (15 U.S.C. 1278a(b)(2)(B)), with additional consideration, as appropriate, of whether such component can be placed in a child's mouth. 15 U.S.C. 2057c(d)(3). The Commission adopts the same guidance with respect to inaccessibility for the phthalates that was adopted by the Commission with regard to accessibility of lead, however, vinyl (or other plasticized material) covered mattresses/sleep surfaces, that contain phthalates that are designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, are considered accessible and would

not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(d) The accessibility probes specified for sharp points or edges under the Commission's regulations at 16 CFR 1500.48–1500.49 should be used to assess the accessibility of phthalate-containing component parts of a children's toy or child care article. A phthalate-containing component part would be considered accessible if it can be contacted by any portion of the specified segment of the accessibility probe. A phthalate-containing component part would be considered inaccessible if it cannot be contacted by any portion of the specified segment of the accessibility probe.

(e) For children's toys or child care articles intended for children that are 18 months of age or younger, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.51 (excluding the bite test of §1500.51(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(f) For children's toys or child care articles intended for children that are over 18 months, but not over 36 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.52 (excluding the bite test of §1500.52(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy or child care article as a result of normal and reasonably foreseeable use and abuse of the product.

(g) For children's toys intended for children that are over 36 months, but not over 96 months of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of §1500.53(c)), should be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(h) For children's toys intended for children over 96 months through 12 years of age, the use and abuse tests set forth under the Commission's regulations at 16 CFR 1500.50 and 16 CFR 1500.53 (excluding the bite test of §1500.53(c)) intended for children ages 37–96 months should be used to evaluate accessibility of phthalate-containing component parts of a children's toy as a result of normal and reasonably foreseeable use and abuse of the product.

(i) Because the Commission adopts the same guidance with respect to inaccessibility for phthalates that was adopted by the Commission with regard to inaccessibility of lead, paint, coatings, and electroplating may not be considered a barrier that would render phthalate-containing component parts of toys and child care articles inaccessible. A children's toy or child care article that is or contains a phthalate-containing part that is enclosed, encased, or covered by fabric and passes the appropriate use and abuse tests on such covers, is considered inaccessible to a child, unless the product or part of the product, in one dimension, is smaller than 5 centimeters. However, vinyl (or other plasticized material) covered mattresses/sleep surfaces that contain phthalates that are designed or intended by the manufacturer to facilitate sleep of children age 3 and younger, are considered accessible and would not be considered inaccessible through the use of fabric coverings, including sheets and mattress pads.

(j) The intentional disassembly or destruction of products by children older than age 8 years, by means or knowledge not generally available to younger children, including use of tools, will not be considered in evaluating products for accessibility of phthalate-containing components.

PART 1200—DEFINITION OF CHILDREN'S PRODUCT UNDER THE CONSUMER PRODUCT SAFETY ACT

Sec.

AUTHORITY: 15 U.S.C. 2052(2).

SOURCE: 75 FR 63077, Oct. 14, 2010, unless otherwise noted.

§ 1200.1 Purpose.

This part provides guidance on the definition of children's product and the factors the Commission will consider when making determinations regarding children's products as set forth under 15 U.S.C. 2052(2).

§ 1200.2 Definition of children's product.

(a) *Definition of ''Children's Product''*—(1) Under section 3(a)(2) of the Consumer Product Safety Act (CPSA), a children's product means a consumer product designed or intended primarily for children 12 years of age or younger. The term ''designed or intended primarily'' applies to those consumer products mainly for children 12 years old or younger. Whether a product is primarily intended for children 12 years of age or younger is determined by considering the four specified statutory factors. These factors are:

(i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(iii) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(iv) The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(2) The examples discussed herein may also be illustrative in making such determinations; however, the determination of whether a product meets the definition of a children's product depends on factual information that may be unique to each product and, therefore, would need to be made on a case-by-case basis. The term ''for use'' by children 12 years or younger generally means that children will physically interact with such products based on the reasonably foreseeable use of such product. Toys and articles that are subject to the small parts regulations at 16 CFR Part 1501 and in ASTM F963 would fall within the definition of children's product since they are intended for children 12 years of age or younger. Toys and other articles intended for children up to 96 months (8 years old) that are subject to the requirements at 16 CFR 1500.48 through 1500.49 and 16 CFR 1500.50 through 1500.53 would similarly fall within the definition of children's product given their age grading for these other regulations. Therefore, a manufacturer could reasonably conclude on the basis of the age grading for these other regulations that its product also must comply with all requirements applicable to children's products including, but not limited to, those under the Federal Hazardous Substances Act, ASTM F963, ''Standard Consumer Safety Specification for Toy Safety,'' and the Consumer Product Safety Improvement Act of 2008.

(b) *Definition of ''General Use Product''*—(1) A general use product means a consumer product that is not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products designed or intended primarily for consumers older than age 12. Some products may be designed or intended for use by consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. Examples of general use products may include products with which a child would not likely interact, or products with which consumers older than 12 would be as likely, or more likely to interact. Products used by children 12 years of age or younger that have a declining appeal for teenagers are likely to be considered children's products.

(2) Other products are specifically not intended for children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, products that incorporate performance requirements for child resistance are

not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

(c) *Factors Considered*—To determine whether a consumer product is primarily intended for a child 12 years of age or younger the four specified statutory factors must be considered together as a whole. The following four factors must be considered:

(1) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable. A manufacturer's statement about the product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children does not preclude a product from being regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger, as indicated, for example, by decorations or embellishments that invite use by the child, being sized for a child or being marketed to appeal primarily to children. Similarly, a label indicating that a product is for ages 9 and up does not necessarily make it a children's product if it is a general use product. Such a label may recommend 9 years old as the earliest age for a prospective user, but may or may not indicate the age for which the product is primarily intended. The manufacturer's label, in and of itself, is not considered to be determinative.

(2) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(i) These representations may be express or implied. For example, advertising by the manufacturer expressly declaring that the product is intended for children 12 years of age or younger will support a determination that a product is a children's product. While, for example advertising by the manufacturer showing children 12 years of age or younger using the product may support a determination that the product is a children's product. These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

(ii) The product's physical location near, or visual association with, children's products may be a factor in making an age determination, but is not determinative. For example, a product displayed in a children's toy section of a store may support a determination that the product is a children's product. However, where that same product is also sold in department stores and marketed for general use, further evaluation would be necessary. The Commission recognizes that manufacturers do not necessarily control where a product will be placed in a retail establishment and such lack of control will be considered. The Commission evaluates products more broadly than on a shelf-by-shelf or store-by-store basis.

(iii) The product's association or marketing in conjunction with nonchildren's products may not be determinative as to whether the product is a children's product. For example, packaging and selling a stuffed animal with a candle would not preclude a determination that the stuffed animal is a children's product since stuffed animals are commonly recognized as being primarily intended for children.

(3) Whether the product is commonly recognized by consumers as being intended for use by children 12 years of age or younger. Consumer perception of the product's use by children, including its reasonably foreseeable use, will be evaluated. Sales data, market analyses, focus group testing, and other marketing studies may help support an analysis regarding this factor.

(i) Features and Characteristics—additional considerations that may help distinguish children's products from nonchildren's products include:

(A) Small sizes that would not be comfortable for the average adult;

(B) Exaggerated features (large buttons, bright indicators) that simplify the product's use;

(C) Safety features that are not found on similar products intended for adults;

(D) Colors commonly associated with childhood (pinks, blues, bright primary colors);

(E) Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets);

(F) Features that do not enhance the product's utility (such as cartoons) but contribute to its attractiveness to children 12 years of age or younger; and

(G) Play value, *i.e.*, features primarily attractive to children 12 years of age or younger that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

(ii) Principal use of the product—the principal uses of a product take precedence over other actions that are less likely to be performed with a product. For example, when a child pretends that a broom is a horse, that does not mean the item is a children's product because the broom's principal use is for sweeping;

(iii) Cost—the cost of a given product may influence the determination of the age of intended users; and

(iv) Children's interactions, if any, with the product—products for use in a child's environment by the caregiver but not for use by the child would not be considered to be primarily intended for a child 12 years of age or younger.

(4) The Age Determination Guidelines issued by the Consumer Product Safety Commission staff in September 2002, and any successor to such guidelines. The product's appeal to different age groups and the capabilities of those age groups may be considered when making determinations about the appropriate user groups for products.

(d) *Examples*—To help manufacturers understand what constitutes a children's product under the CPSA, the following additional examples regarding specific product categories are offered:

(1) Furnishings and Fixtures—General home furnishings and fixtures (including, but not limited to: Rocking chairs, shelving units, televisions, digital music players, ceiling fans, humidifiers, air purifiers, window curtains, tissue boxes, rugs, carpets, lamps, clothing hooks and racks) that often are found in children's rooms or schools would not be considered children's products unless they are decorated or embellished with a childish theme and invite use by a child 12 years of age or younger, are sized for a child, or are marketed to appeal primarily to children. Examples of home or school furnishings that are designed or intended primarily for use by children and considered children's products include: Infant tubs, bath seats, small bean bag chairs with childish decorations, beds with children's themes, child-sized desks, and child-sized chairs. Decorative items, such as holiday decorations and household seasonal items that are intended only for display, with which children are not likely to interact, are generally not considered children's products, since they are intended to be used by adults.

(2) Collectibles—Adult collectibles may be distinguished from children's collectibles by themes that are inappropriate for children 12 years of age or younger, have features that preclude use by children during play, such as high cost, limited production, fragile features, display features (such as hooks or pedestals), and are not marketed alongside children's products (for example, in a children's department) in ways that make them indistinguishable from children's products. For example, collectible plush bears have high cost, are highly detailed, with fragile accessories, display cases, and platforms on which to pose and hold the bears. Children's bears have lower costs and simple accessories that can be handled without fear of damage to the product. Another example of collectible items includes model railways and trains made for hobbyists.

(3) Jewelry—Jewelry intended for children is generally sized, themed, and marketed to children. The following characteristics may cause a piece of jewelry to be considered a children's product: Size; very low cost; play value; childish themes on the jewelry; sale with children's products (such as a child's dress); sale with a child's book,

a toy, or party favors; sale with children's cereal or snacks; sale at an entertainment or educational event attended primarily by children; sale in a store that contains mostly children's products; and sale in a vending machine. In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased including: Advertising; promotional materials; packaging graphics and text; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, and level of realism); and cost. These characteristics will help jewelry manufacturers and consumers determine whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger.

(4) DVDs, Video Games, and Computer Products—Most computer products and electronic media, such as CDs, DVDs, and video games, are considered general use products. However, CDs and DVDs with encoded content that is intended for and marketed to children, such as children's movies, games, or educational software may be determined to be children's products. CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. In addition, electronic media players and devices that are embellished or decorated with childish themes that are intended to attract children 12 years of age or younger, are sized for children, or are marketed to appeal primarily to children, are not likely to fall under the general use category where children 12 years or younger likely would be the primary users of such devices. However, electronic devices such as CD players, DVD players, game consoles, book readers, digital media players, cell phones, digital assistant communication devices, and accessories to such devices that are intended mainly for children older than 12 years of age or adults are products for general use.

(5) Art Materials—Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints, and modeling dough, would be considered children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use. Consideration of the marketing and labeling of raw materials and art tools (such as modeling clay, paint, and paint brushes) may often be given high priority in an age determination because the appeal and utility of these raw materials has such a wide audience. If a distributor or retailer sells or rents a general use product in bulk (such as a raw art materials or art tools) through distribution channels that target children 12 years of age or younger in educational settings, such as schools, summer camps, or child care facilities, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. The requirements of the Labeling of Hazardous Art Materials Act are similar to the labeling requirements of the FHSA, of which it is a part. Therefore, third party testing to LHAMA is not required. An art material designed or intended primarily for children 12 years of age or younger would have to be tested by a third party laboratory to demonstrate compliance with CPSIA, but it would not require third party testing and certification to the LHAMA requirements. For the same reasons, no general conformity certificate is required for general use art materials.

(6) Books—The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. The age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Some children's books have a wide appeal to the general public, and in those

instances, further analysis may be necessary to assess who the primary intended audience is based on consideration of relevant additional factors, such as product design, packaging, marketing, and sales data.

(7) Science Equipment—Microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, are considered general use products. Equipment that is intended by the manufacturer for use primarily by adults, although there may be use by children through such programs, is a general use product. Toy versions of such items are considered children's products. If a distributor or retailer sells or rents a general use product in bulk through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. Products mainly intended for use by the instructor would not be considered children's products. In general, scientific equipment that is specifically sized for children, such as protective gear, eyewear, gloves, or aprons and/or has childish themes or decorations and invites use by a child 12 years of age or younger or is marketed to appeal primarily to children is considered a children's product.

(8) Sporting Goods and Recreational Equipment—Sporting goods that are intended primarily for consumers older than 12 years of age are considered general use items. Sporting equipment, sized for adults, are general use items even though some children 12 years of age or younger will use them. Unless such items are specifically marketed to children 12 years of age or younger, or have extra features that make them more suitable for children 12 years of age or younger than for adults, they would be considered general use products. If children 12 years or younger would mainly use the product because it would be too small or inappropriate for older children to use, then it likely would be considered a children's product. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features by the manufacturer.

(9) Musical Instruments—Musical instruments, including electronically-aided instruments suited for an adult musician, are general use products. Instruments intended primarily for children can be distinguished from adult instruments by their size and marketing themes. The Commission notes that if a distributor or retailer sells or rents in bulk, a general use musical instrument through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination.

PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Subpart A—The Standard

Sec.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 19, Pub. L. 92–573, 86 Stat. 1212–17; (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2068).

SOURCE: 42 FR 1441, Jan. 6, 1977, unless otherwise noted.

Subpart A—The Standard

§ 1201.1 Scope, application and findings.

(a) *Scope.* This part 1201, a consumer product safety standard, prescribes the safety requirements for glazing materials used or intended for use in any of the following architectural products:

(1) Storm doors or combination doors.

(2) Doors.

(3) Bathtub doors and enclosures.

(4) Shower doors and enclosures.

(5) [Reserved]

(6) Sliding glass doors (patio-type).

It also requires that these architectural products which incorporate glazing materials be constructed with glazing materials that meet the requirements of this part. The safety requirements are designed to reduce or eliminate unreasonable risks of death or serious injury to consumers when glazing material is broken by human contact.

(b) *Application.* This part 1201 shall apply to glazing materials, as that term is defined in §1201.2(a)(11), for use in the architectural products listed in paragraph (a) of this section; and to those architectural products listed in paragraph (a) of this section if they are made with, or incorporate glazing materials as that term is defined in §1201.2(a)(11). The standard applies to glazing materials and architectural products incorporating glazing materials that are produced or distributed for sale to or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence or in recreational, school, public, or other buildings or parts thereof. This part 1201 applies only to those glazing materials manufactured after the effective date of the standard; and to those architectural products identified in paragraph (a) of this section that are manufactured after the effective date of the standard. Thus, architectural products identified in paragraph (a) of this section manufactured after the effective date of the standard must incorporate glazing materials that comply with the standard. For purposes of this standard, fabricators are considered to be manufacturers of the architectural products listed in paragraph (a) of this section. Architectural glazing materials used in the products listed in paragraph (a) of this section and used in mobile homes are not subject to the provisions of this part 1201. While this part 1201 prescribes a test method to determine whether glazing materials subject to this part 1201 standard meet the requirements of the standard, the standard itself does not require that a manufacturer test any glazing materials or products subject to the standard. All obligations of manufacturers to perform testing are imposed by section 14 of the Consumer Product Safety Act and certification regulations which will be established by a separate rulemaking proceeding. However, the Commission intends to use the test procedures set forth in this part 1201 to determine whether materials and products subject to the standard meet the requirements of the standard.

(c) *Exemptions.* The following products, materials and uses are exempt from this part 1201:

(1) Wired glass used in doors or other assemblies to retard the passage of fire, where such door or assembly is required by a federal, state, local, or municipal fire ordinance.

(2) Louvers of jalousie doors;

(3) Openings in doors through which a 3 inch diameter sphere is unable to pass;

(4) Carved glass (as defined in §1201.2(a)(36)), dalle glass (as defined in §1201.2(a)(37)), or leaded glass (as defined in §1201.2(a)(14)), which is used in doors and glazed panels (as defined in

§§ 1201.2(a)(7) and (a)(10)) if the glazing material meets all of the following criteria:

(i) The coloring, texturing, or other design qualities or components of the glazing material cannot be removed without destroying the material; and

(ii) The primary purpose of such glazing is decorative or artistic; and

(iii) The glazing material is conspicuously colored or textured so as to be plainly visible and plainly identifiable as aesthetic or decorative rather than functional (other than for the purpose of admitting or controlliing admission of light components or heat and cold); and

(iv) The glazing material, or assembly into which it is incorporated, is divided into segments by conspicuous and plainly visible lines.

(5) Glazing materials used as curved glazed panels in revolving doors;

(6) Commercial refrigerated cabinet glazed doors.

(d) *Findings*[1]—(1) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The Commission finds that the nature of the risks of injury this standard is designed to eliminate or reduce are as follows:

(i) Lacerations, contusions, abrasions, and other injury or death resulting from walking or running into glazed doors or sliding glass doors believed to be open or glazed panels mistaken as a means of ingress or egress, or pushing against glazing material in doors or glazed panels in an attempt to open a door.

(ii) Lacerations, contusions, abrasions, and other injury or death resulting from accidentally falling into or through glazed doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures.

(iii) Lacerations, contusions, abrasions, and other injury or death resulting from the act of installing, replacing, storing or otherwise manipulating glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures, or from broken glazing material in doors, sliding glass doors, glazed panels, bathtub doors and enclosures and shower doors and enclosures. The Commission estimates that 73,000 injuries associated with architectural glazing materials in the architectural products within the scope of this standard were treated in hospital emergency rooms during 1975, and that about 2,400 of these injuries required the patients to be hospitalized. Extrapolating to total injuries in the United States the Commission further estimates that approximately 190,000 injuries were associated with architectural glazing products covered by this standard. Although injuries occur at any age, children aged 14 and under appear to be at particular risk of injury since as a group they represent approximately half the injuries while comprising less than 30 percent of the population. Lacerations are the most common injuries associated with architectural glazing materials and account for 72 percent to 93 percent of the injuries associated with the architectural products identified in paragraph (a) of this section. These lacerative injuries span a broad spectrum of severity and extent of body part affected. During 1975, an estimated 200 injuries were treated in emergency rooms for lacerations over 25 to 50 percent of the victims' bodies and over 7,000 persons were treated for lacerations to the head or face. On the basis of all injury information available to the Commission, it is apparent that the severity of the injuries associated with architectural glazing materials ranges from minor cuts to damage to tendons, nerves, muscles, and blood vessels resulting in extensive surgery. Peripheral nerve injuries result in varying degres of loss in sensation and motion which may never be restored

[1] The Commission's findings apply to the architectural glazing standard as issued at 42 FR 1426, on January 6, 1977. Since that date, the Commission has revoked portions of the standard which prescribed requirements for ''glazed panels'' (45 FR 57383, August 28, 1980); an accelerated environmental durability test for plastic glazing materials intended for outdoor exposure (45 FR 66002, October 6, 1980); and a modulus of elasticity test, a hardness test, and an indoor aging test applicable to plastic glazing materials (47 FR 27856, June 28, 1982). However, the findings have not been revised and they are therefore, not fully applicable to the remaining requirements of the standard.

completely. Tendon and muscle injuries may involve loss of movement. Some victims of architectural glazing material incidents are disfigured, and sustain emotional trauma as well. Severing of arteries and veins has led to death. One way of quantifying the extent of the public health problem relating to injuries associated with products is to estimate the total number of disability days resulting from the injuries. Using average days of restricted activity by age for specific injuries and body parts (Vital and Health Statistics, Series 10, Number 57, National Center for Health Statistics, U.S. Department of Health, Education, and Welfare), it is estimated that about 230,000 days of restricted activity resulted from injuries associated with architectural products which were treated in emergency rooms alone.

(2) *The approximate number of consumer products, or types or classes thereof, subject to the standard.* The types of glazing materials affected by or subject to the standard are laminated glass, tempered glass, wired glass, organic-coated glass, annealed glass, and plastics. Architectural products that incorporate the aforementioned glazing materials that are also affected by or subject to the standard are: storm doors or combination doors, doors, bathtub doors, and enclosures, shower doors and enclosures, glazed panels and sliding glass doors (patio-type) (see paragraph (a) of this section). The Commission has estimated that 13 to 16 percent of the total market for glazing material incorporated in products within the scope of the standard will be affected by the standard. Most of the glazing subject to the standard is currently covered by state safety glazing legislation. To date, more than 30 states have enacted safety glazing legislation, but this legislation is neither consistent nor completely uniform among states. Annual markets for the architectural products which incorporate glazing material and that are within the scope of the standard have been estimated by the Commission in terms of square feet of glazed area and number of units. The market for glazing material incorporated in products within the scope of the standard was estimated to be 234.8 million square feet in 1975. These figures are discussed in the Economic Impact Statement, pp. 3–7, and appendix A to the Economic Impact Statement, pp. 18–30, which are available for review in the Office of the Secretary of the Commission, Washington, D.C. 20207.

(3) *The need of the public for the architectural glazing material and products incorporating that glazing material subject to the standard, and the probable effect of the standard upon the utility, cost or availability of those products to meet the need of the public*—(i) *The need of the public for the architectural glazing materials and products incorporating that glazing material.* The need of the public for architectural products within the scope of the standard incorporating glazing material is substantial since these products serve such functions as transmission of light, visual communication, protection from weather, ventilation, and indoor climate control, and since reasonable substitutes for these products do not exist as a group. Each of the types of glazing material subject to the standard has individual properties which meet public needs, although one type of glazing material is often an acceptable substitute for another.

(ii) *Probable effect of the standard upon the cost of architectural glazing materials and architectural products incorporating the glazing material to meet the need of the public for the products.* The probable cost effects of the standard for architectural glazing materials are listed below.

(A) The cost impact of the standard on consumers will be concentrated in those states with no present state safety glazing legislation. In those states, the average increase in cost per housing start resulting from the standard is estimated to range from $30 to $50, or approximately one-tenth of one percent of the price of a typical new house; and the cost for residential remodeling and replacement is expected to be in the range of $0.25 to $0.30 per household annually.

(B) The increased cost of glazing material for nonresidential uses will be paid ultimately by consumers through higher prices of goods and services. Generally, the increased cost of glazing

is not passed to consumers immediately, but is spread over the life of the nonresidential structure. Therefore, the increased cost to consumers for glazing material in nonresidential structures will probably rise slowly over time to an annual level of approximately $1.10 per household in states with no safety glazing legislation and $0.20 to $0.50 per household in the other states. In many of the states with state regulations, the impact of the standard on residential construction and new housing prices will be near zero, since most of the glazing is currently covered by the state glazing legislation.

(C) The probable effect of the standard on the various glazing materials within the scope of the standard will differ. The retail price of laminated glass used in some Category II applications will probably increase by 10 to 15 percent per square foot. The incremental cost to consumers for ungraded laminated glass is estimated to be approximately $0.14 per household, annually. The cost to consumers for tempered glass, organic-coated glass, and plastics is not expected to increase because of the standard. Information available to the Commission indicates that the technology needed for producing wired glass which can comply with the standard is not readily available. See appendix A of the Economic Impact Statement, pp. 45–56, for the incremental cost calculation by product category and application.

(iii) *Probable effect of the standard upon the utility of architectural glazing materials and architectural products incorporating the glazing materials to meet the need of the public for the products.* The probable effect of the standard in regard to the utility of architectural glazing materials and the architectural products incorporating glazing material should be to increase the utility of the products. The basic effect of the standard would be the substitution of certain safer glazing materials for annealed glass in certain architectural products. The Commission believes that such a substitution would increase utility for most consumers because of the usually increased durability of the glazing material that complies with the Commission's standard, and the knowledge that the product incorporating the glazing material is safer. There will be disutility for those consumers who prefer non-complying wired glass and organic-coated glass when these materials become unavailable for certain applications due to their likely inability to comply with the standard. However, the share of the glazing material market claimed by organic-coated and wired glass is small.

(iv) *Probable effect of the standard upon the availability of architectural glazing materials and architectural products incorporating the glazing materials to meet the need of the public for the products.* The Commission finds that the proposed standard should not have impacts of significant magnitude on the availability of architectural products within the scope of the standard, since domestic production capacity appears to be sufficient to handle any increased demand for glazing material to be used in those products. In addition, an increased demand for raw materials necessary to manufacture glazing materials that comply with the standard will be small in comparison to the volume of raw materials currently used for glazing for the products that will be subject to the standard. Furthermore, no major change in demand for the architectural products subject to the standard incorporating glazing materials which would affect production is expected. The Commission finds that, in the absence of technological advances, certain glazing materials will no longer be available for particular applications. Unless technological advances are made, wired glass will be unavailable for use in the architectural products within the scope of the standard with the exception of fire door applications where special provisions of the standard apply. Similarly, organic-coated glass which has the film applied to annealed glass at the factory may no longer be available for Category II products due to an inability to pass those impact test provisions of the standard. The availability of glass replacement glazing in residential applications may be reduced, since plastic glazing often will be the only economical material available to consumers when immediate replacement is needed.

(4) *Any means of achieving the objectives of the standard while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety*. The Commission has considered other means of achieving the objective of the standard, but has found none that it believes would have fewer adverse effects on competition or that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety. For the glazing industry in general, the disruptions and dislocations of existing manufacturing and commercial practices due to the standard are expected to be minor. However, it is possible that individual segments of the glazing materials industry are likely to be adversely affected by the standard. Specifically, there is likely to be disruption to the wired glass market, the organic-coated glass market and, to a lesser extent, to the laminated glass market. Manufacturers of wired glass will face a serious problem because technological improvements in the product will need to be made before wired glass can be used in Category I applications and because it probably will not be usable at all in Category II applications (see §1201.2(a) (3) and (4) of the standard), since there appears to be little prospect at this time of developing a wired glass product capable of withstanding the Category II, 400 foot pound impact test prescribed in §1201.4 of the standard. Laminated glass currently used for Category I applications can meet the 150 foot pound impact test requirements, but not all laminated glass currently used for Category II applications can meet the 400 foot pound impact test requirements. The price increase for technologically upgrading laminated glass will be borne by consumers. The Commission believes, however, that the competitive impact of the proposed changes would not severely weaken the position of laminated glass in the market place. The wired glass, organic-coated glass, and laminated glass markets affected by the standard are small in relation to the entire industry. The standard is not expected to have an appreciable impact on foreign or domestic competition. Increased competition is expected between primary glass temperers and regional temperers, with primary temperers taking an increased share of the original storm door, sliding door, bathtub enclosure and shower door markets. Sales of nonresidential glazing for major nonresidential buildings will remain with the primary glass companies. The regional temperers are expected to handle almost all the tempering of glazing for smaller nonresidential buildings. Thus, they will gain some of this market at the expense of local dealers and distributors. However, the distributors and dealers probably will operate as order takers for the smallest jobs. It is expected that glazing distributors and dealers will experience reduced market shares in both the residential and nonresidential new glazing markets. This will occur as a result of the transfer of business to the primary glass manufacturers and regional temperers, since tempered glass must be produced to size and it is not feasible to keep in inventory all sizes which might be needed.

(5) *Summary finding*. The Commission finds that there are unreasonable risks of injury associated with architectural glazing materials used in the architectural products listed in paragraph (a) of this section. In assessing the question of whether unreasonable risks of injury or injury potential are associated with architectural glazing materials, the Commission has balanced the degree, nature and frequency of injury against the potential effect of the standard on the ability of architectural glazing materials to meet the need of the public and the effect of the standard on the cost, utility, and availability of architectural glazing materials to meet that need. The Commission finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with architectural glazing materials and that promulgation of the standard is in the public interest.

(Sec. 9(e), Pub. L. 92–573, 86 Stat. 1215 (15 U.S.C. 2058(e)) (5 U.S.C. 553)

[42 FR 1441, Jan. 6, 1977, as amended at 43 FR 57246 Dec. 7, 1978; 45 FR 57389, Aug. 28, 1980; 47 FR 27856, June 28, 1982; 49 FR 7107, Feb. 27, 1984]

§ 1201.2 Definitions.

(a) As used in this part 1201:

(1) *Annealed glass* means glass that has been subjected to a slow, controlled cooling process during manufacture to control residual stresses so that it can be cut or subjected to other fabrication. Regular polished plate, float, sheet, rolled, and some patterned surface glasses are examples of annealed glass.

(2) *Bathtub doors and enclosures* means assemblies of panels and/or doors that are installed on the lip of or immediately surrounding a bathtub.

(3) *Category I products* means any of the following architectural products:

(i) Storm doors or combination doors that contain no single piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(ii) Doors that contain no single piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(4) *Category II products* means any of the following architectural products:

(i) Shower doors and enclosures.

(ii) Bathtub doors and enclosures.

(iii) Sliding glass doors (patio type).

(iv) Storm doors or combination doors that contain any piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(v) Doors that contain any piece of glazing material greater than 9 square feet (0.83 square meters) in surface area of one side of the piece of glazing material.

(5) *Distributor* means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, including persons cutting glazing material to size, except that such term does not include a manufacturer or retailer of such product.

(6) *Distribution in commerce* means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(7) *Door* means an assembly that is installed in an interior or exterior wall; that is movable in a sliding, pivoting, hinged, or revolving manner of movement; and that is used by consumers to produce or close off an opening for use as a means of human passage.

(8) *Fabricator* means any person who assembles or otherwise incorporates glazing materials into an architectural product listed in §1201.1(a). A fabricator is considered a manufacturer as defined in paragraph (a)(16) of this section.

(9) *Glass* means a hard, brittle, amorphous substance produced by fusion, usually consisting of mutually dissolved silica and silicates that also contains sods and lime. It may be transparent, translucent, or opaque.

(10) [Reserved]

(11) *Glazing material* means glass, including annealed glass, organic coated glass, tempered glass, laminated glass, wired glass; or combinations thereof where these are used:

(i) In openings through the architectural products listed in §1201.1(a), or

(ii) As the architectural products themselves, e.g. unframed doors.

(12) *Jalousie door* means a door (as ''door'' is defined in paragraph (a)(7) of this section) having an opening glazed with operable, overlapping louvers. Each louver is one of a series of overlapping pieces of glazing material designed to admit ventilation and light but exclude rain and is typically operated by a crank and gear mechanism.

(13) *Laminated glass* means glazing material composed of two or more pieces of glass, each piece being either tempered glass, heat strengthened glass, annealed glass or wired glass, bonded to an intervening layer or layers of resilient plastic material.

(14) *Leaded glass* means a decorative composite glazing material made of individual pieces of glass whose perimeter is enclosed by lengths of durable metal such as lead or zinc and the pieces of glass are completely held together and supported by such metal. Such pieces of glass can be clear, colored, beveled, painted, or flashed and etched.

(15) *Manufacture* means to manufacture, produce or assemble.

(16) *Manufacturer* means any person who manufactures, fabricates or imports a glazing material or architectural product listed in §1201.1(a) that incorporates glazing material.

(17) *Mirror* means a treated, polished or smooth glazing material that forms images by the reflection of light.

(18) *Mobile home* means a structure transportable in one or more sections, which is eight body feet (2.4 body meters) or more in width and is thirty-two body feet (9.7 body meters) or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(19) *Other buildings or parts thereof* means buildings or parts thereof (other than residential, school, public, or recreational buildings) in which all or part of the building is open to the public with or without specific invitation. Included are buildings or parts thereof such as banks and recreational or retail facilities in a building and multiuse buildings that contain residential units.

(20) *Organic-coated glass* means a glazing material consisting of a piece of glass, coated and bonded on one or both sides with an applied polymeric coating, sheeting, or film.

(21) *Patio door* (See ''sliding glass doors (patio-type)'' in paragraph (a)(31) of this section).

(22) *Permanent label* means a label that will remain permanently legible and visible after installation of the glazing material and that would be destroyed in attempts to remove it from the glazing material and includes (but is not limited to) sandblast, acid etch, hot-stamp, and destructible polyester labels.

(23) [Reserved]

(24) *Private labeler* means an owner of a brand or trademark on the label of a consumer product which bears a private label, and includes any fabricator, distributor, or installer who cuts certified and permanently labeled glazing materials into smaller pieces.

(25) *Public building* means a building of public assembly or meeting including (but not limited to) a museum, place of worship, or restaurant.

(26) *Recreational building* means a building used for recreational purposes including (but not limited to) a theater, stadium, gymnasium, amusement park building or library.

(27) *Residential building* means a building, permanent or temporary, such as a single or multifamily residence, including (but not limited to) a house, apartment building, lodging home, dormitory, hotel, motel, hospital, sanitarium, and nursing home, used as a dwelling for one or more persons or families and any structure which is attached to, a part of, or appurtenant to such a building. Public areas of all residential buildings, such as lobbies and other common facilities, are included within the definition of ''other buildings or parts thereof'' in paragraph (a)(19) of this section. For purposes of this part 1201, a mobile home as defined in paragraph (a)(18) of this section is not considered to be a residential building.

(28) *Retailer* means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer; the term retailer includes a person who cuts glazing material to size for consumers.

(29) *School building* means a building designed primarily for the conduct of educational instruction and includes the classrooms, libraries, administrative offices, auditoriums, eating and sanitary facilities, stadiums, gymnasiums and all other structures associated with such buildings.

(30) *Shower door and enclosure* means an assembly of one or more panels installed to form all or part of the wall and or door of a shower stall.

(31) *Sliding glass door (patio-type)* means an assembly of one or more panels, at least one of which is suitably movable for use as a means of human ingress or egress. The term includes the nonmovable and movable panels of such assembly.

(32) *Storm door (or combination door)* means a movable assembly, used in tandem with an exterior door to protect the exterior door against weather elements and/or to improve indoor climate control.

(33) *Tempered glass* means a piece of specially heat treated or chemically treated glass that cannot be cut,

drilled, ground, or polished after treatment without fracture. When fractured at any point, if highly tempered, the entire piece breaks into small particles.

(34) *Wired glass* means a single piece of annealed glass that contains wire embedded in the body of the glass.

(35) *Commission* means the Consumer Product Safety Commission.

(36) *Carved glass* means a decoration glazing material in which a permanent visible design has been produced by polishing, grinding, or otherwise removing portions of the surface.

(37) *Dalle glass* or dalle de verre (including faceted glass) means a decorative composite glazing material made of individual pieces of glass which are imbedded in a cast matrix of concrete or epoxy.

(b) Definitions given in the Consumer Product Safety Act, and not repeated in this section, are applicable to this part.

(c) Test methods and recommended practices published by the American Society for Testing and Materials (ASTM)[1], and referred to in this part 1201, are hereby incorporated by reference into this part.

(d) Test methods and recommended practices published by the American National Standards Institute (ANSI) and referred to in this part 1201, are hereby incorporated by reference into this part.

(Sec. 9(e), Pub. L. 92–573, 86 Stat. 1215; (15 U.S.C. 2058(e); (5 U.S.C. 553))

[42 FR 1441, Jan. 6, 1977, as amended at 42 FR 61860, Dec. 7, 1977; 43 FR 50422, Oct. 30, 1978; 43 FR 57247, Dec. 7, 1978; 45 FR 57389, Aug. 28, 1980; 47 FR 27856, June 28, 1982]

§ 1201.3 General requirements.

(a) All glazing materials to which this standard applies, as described in § 1201.1, shall meet the impact and environmental test requirements in § 1201.4, and shall be labeled by manufacturers in accordance with § 1201.5.

(b) Glazing materials used in architectural products not listed in § 1201.1(a) are not subject to this part. Any material not listed in the definition of ''glazing material'' in § 1201.2(a)(11) is not subject to this part 1201.

[42 FR 1441, Jan. 6, 1977, as amended at 47 FR 27856, June 28, 1982]

§ 1201.4 Test procedures.

(a) *Types of tests*—(1) *Impact test.* Specimens shall be struck as prescribed by paragraph (d)(1) of this section using equipment specified by paragraphs (b) (1) and (2) of this section. Results of the impact test are to be interpreted in accordance with paragraph (e)(1) of this section. The test specimens shall be selected in accordance with paragraphs (c) (1) and (2) of this section.

(2) *Accelerated environmental durability tests.* Each specimen of glazing material subject to this part 1201 shall be tested in accordance with the accelerated tests referenced in table 1, ''Accelerated Tests'' of this section. However, tempered glass, wired glass, and annealed glass are not required to be subjected to the accelerated environmental durability tests.

TABLE 1—ACCELERATED TEST (APPLICABLE PARAGRAPHS)

Glazing materials	Specimen	Test equipment	Exposure	Criteria for passing
Laminated glass	§ 1201.4(c)(1) and (c)(3)(i)	§ 1201.4(b)(3)(i)	§ 1201.4(d)(2)(i)	§ 1201.4(e)(2)(i)
Organic coated glass	§ 1201.4(c)(1) and (c)(3)(ii)(B)	§ 1201.4(b)(3)(ii)	§ 1201.4(d)(2)(ii)(B)	§ 1201.4(e)(2)(ii)(B)
Tempered glass	Exempt			
Wired glass	Exempt			
Annealed glass	Exempt			

[1] ASTM test methods and recommended practices are approved by, published by, and available for purchase from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Separate testing is required for different glazing materials or for differences within a type of glazing material that could noticeably affect performance in the impact or environmental durability tests. Such differences could include (but are not limited to): Nominal thickness or thicknesses, method of manufacture (in appropriate cases), types and amounts of additives, and composition of base materials and adhesives.

(b) *Test equipment*—(1) *Impact test frame and subframe.* (See figures 1, 2, 3, and 4.) (i) The impact test frame shall be constructed to minimize movement and deflection of its members during testing. For this purpose, the structural framing and bracing members shall be steel angles 3 inches by 5 inches by ¼ inch (7.7 centimeters by 12.7 centimeters by 0.7 centimeters) or other sections and materials of equal or greater rigidity.

(ii) The structural framing shall be welded or securely bolted at the corners and braced by one of the alternate methods shown in figure 1 and shall be securely bolted to the floor.

(iii) The inner subframe (see figures 2, 3, and 4) for securing the test specimen on all four edges shall be reinforced at each corner. The material is shown as wood in figure 3, but other materials may be used: *Provided*, The test specimen will contact only the neoprene strips, which shall have a shore A durometer hardness of 30 to 50.

(iv) Any reasonable means may be used to secure the subframe to the test frame so long as the mounting is secure and the pressure on the glazing in the subframe is not significantly altered when the subframe is removed.

(v) Pressures on the test specimen shall be controlled, and the compression of the neoprene strips shall be between 10 and 15 percent of the original thickness of the neoprene. Securing methods such as wing bolts and clamps shall be uniformly spaced no greater than 18 inches (45 centimeters) apart with no fewer than two on any edge. To limit the compression of the neoprene and prevent distortion of the subframe, metal shims of an appropriate thickness shall be used as shown in figures 3 and 4.

(2) *Impactor.* (i) The impactor shall be a leather punching bag as shown in figure 5 on this section. The bag shall be filled with No. 7½ chilled lead shot to a total weight of completed assembly as shown in figure 5, of 100 pounds ±4 ounces (45.36±0.11 kilograms). The rubber bladder shall be left in place and filled through a hole cut into the upper part. After filling the rubber bladder, the top should be either twisted around the threaded metal rod below the metal sleeve or pulled over the metal sleeve and tied with a cord or leather thong. Note that the hanging strap must be removed. The bag should be laced in the normal manner. The exterior of the bag shall be completely covered by ½ inch (1.3 centimeters) wide glass filament reinforced pressure sensitive tape. (Figure 5.)

(ii) Provisions shall be made for raising the impactor or to drop heights of up to 48 inches (1.22 meters). At its release it shall have been supported so that the rod going through its center was in line with the steel support cable in a manner designed to minimize wobble or oscillation after its release.

(3) *Environmental durability test equipment*—(i) *Boil test.* Two containers of water shall be provided with means to maintain one at 150° ±5 °F (66° ±2 °C) and the second at a slow boil at atmospheric pressure. The containers shall be large enough to accept a rack holding three specimens, each 12 inches (30 centimeters) square, of the glazing material in a vertical position. The rack shall be positioned so that each specimen is surrounded by at least one inch (2.5 centimeters) of water.

(ii) *Simulated weathering test.* The equipment shall be a xenon arc (water-cooled) Weather-Ometer employing a lamp rated at 6500 watts and automatic light monitoring and control systems. Borosilicate inner and outer filters shall be used. An appropriate water spray cycle shall be used. Operating procedures shall be in accordance with ASTM G 26–70, ''Standard Recommended Practice for Operating Light—and Water-Exposure Apparatus (Xenon-Arc Type) for Exposure of Nonmetallic Materials,'' April 13, 1970, as augmented for plastics by ASTM D 2565–70, ''Standard Recommended Practice for Operating Xenon-Arc Type

(Water-Cooled) Light- and Water-Exposure Apparatus for Exposure of Plastics,'' Procedure B, June 12, 1970, which are incorporated by reference. Copies of both documents are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html*. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist in the edition which has been approved by the Director of the Federal Register and which has been filed with the Office of the Federal Register.

(c) *Test specimens*—(1) *Condition of specimens*. All specimens shall be tested as supplied by the manufacturer, following removal of any temporary protective masking materials. No tests shall be commenced before the specimens have been stored in the laboratory for 4 hours. Specimens shall be arranged to permit free circulation of air to all surfaces during this period.

(2) *Impact specimens*. Impact specimens shall be of the largest size manufactured up to a maximum width of 34 inches (86 centimeters) and a maximum height of 76 inches (1.9 meters). Specimens shall be tested for each nominal thickness offered by the manufacturer.

(3) *Environmental durability specimens*—(i) *Boil test*. Three pieces 12 inches by 12 inches (30 centimeters by 30 centimeters) with nominal thickness identical to those submitted for the impact test shall be used.

(ii) *Weathering tests*—(A) [Reserved]

(B) *Organic-coated glass*—(*1*) *Orientation specified*. Six organic-coated glass specimens 2 inches by 6 inches (5 centimeters by 15 centimeters) by nominal thickness identical to those submitted for the impact test shall be used.

(*2*) *Orientation unspecified*. Nine organic-coated glass specimens, 2 inches by 6 inches (5 centimeters by 15 centimeters) by nominal thickness identical to those submitted for the impact test shall be used except that when the glazing material is symmetric across its thickness, six specimens may be used.

(iii) *Indoor service*. Four additional samples identical to those submitted for the impact test.

(d) *Test procedures*—(1) *Impact test procedure*. Each specimen shall be struck within 2 inches (5 centimeters) of its geometric center with the impactor dropped from a single height, designated according to the product category. Specimens for Category I shall be impacted one time from a drop height of 18 to 18½ inches (458 to 470 millimeters). Specimens for Category II shall be impacted one time from drop height of 48 to 48½ inches (1.22 to 1.23 meters). For all specimens that are not symmetric from surface to surface, an equal number of specimens shall be impacted on each side. For glazing materials which will be evaluated by paragraph (e)(1)(iii) of this section, this impact test procedure is not required.

(2) *Environmental durability test procedures*—(i) *Boil test*. The specimens shall be immersed in the 150 F (66 °C) water for 3 minutes. They shall then be quickly removed and immersed in the boiling water and left there for 2 hours. The specimens shall then be removed, cooled, and dried for examination as specified in paragraph (e)(2)(i) of this section.

(ii) *Accelerated weathering test*. The specimens shall be retained in the Weather-Ometer (paragraph (b)(3)(ii) of this section) for a period of 1200±1 hours, and exposed to a radiant flux of 50 microwatts per square centimeter (12 calories per second per square centimeter) while monitoring at a wavelength of 340 nanometers.

(A) [Reserved]

(B) *Organic-coated glass*—(*1*) *Orientation specified*. Three specimens shall be mounted with the surface that is intended to be oriented indoors faced away from the radiation source; the other three specimens shall be kept in darkness at 73 °F (23 °C) for use as controls. Materials so tested shall be labeled according to §1201.5(c) of this part 1201.

(*2*) *Orientation unspecified*. Three specimens shall be mounted with one of the surfaces toward the radiation; three specimens shall be mounted with

the other surface toward the radiation, and three specimens shall be kept in darkness at 73 °F (23 °C) for use as controls. When the glazing material is symmetric across its thickness, three specimens shall be irradiated.

(e) *Interpretation of results*—(1) *Impact test.* A glazing material may be qualified for use in both Category I and Category II products if it meets the impact requirements for Category II. A glazing material shall be judged to pass the impact test if the specimen tested meets any one of the criteria listed in paragraphs (e)(1) (i) through (v) of this section:

(i) When breakage occurs (numerous cracks and fissures may occur) no opening shall develop in the test sample through which a 3 inch (76 millimeter) diameter solid steel sphere, weighing 4 pounds ±3 oz (1.81±0.08 kilograms), passes when placed (not dropped) in the opening and permitted to remain for a period of one second. For this criterion, the sample after being impacted shall be placed, while remaining in the subframe, in a horizontal, impact side up position with a minimum of one foot (31 centimeters) of free space immediately beneath the specimen.

(ii) When breakage occurs, what appear to be the 10 largest particles shall be selected within 5 minutes subsequent to the test and shall weigh no more than the equivalent weight of 10 square inches (64 square centimeters) of the original specimen. For the purposes of this section *particle* means a portion of a broken test specimen which is determined by identifying the smallest possible perimeter around all points in the portion of the broken test specimen, always passing along cracks or exposed surfaces.

(iii) [Reserved]

(iv) The specimen does not remain within the subframe and no breakage is caused by the impactor.

(v) The specimen does not break.

(2) *Environmental durability tests*— (i) *Boil test.* The glass itself may crack in this test, but no bubbles or other defects shall develop more than ½ inch (12 millimeters) from the outer edge of the specimen or from any crack that may develop. Any specimen in which the glass cracks to an extent that confuses the interpretation of the results shall be discarded, and another specimen shall be tested in its stead.

(ii) *Accelerated weathering test*—(A) [Reserved]

(B) *Organic-coated glass.* Specimens shall be judged satisfactory if they pass both the adhesion test and the tensile test described below in paragraph (e)(ii)(B) (*1*) and (*2*) of this section.

(*1*) *Adhesion test* (*organic-coated glass only*)—(*i*) *Specimens.* The specimens for this test are the 2 inch by 6 inch (5 centimeters by 15 centimeters) weathered specimens and the control specimens. The specimens shall be conditioned just prior to the performance of the adhesion test at 73° ±6 °F (23° ±3 °C) and 50±5 percent relative humidity for 24 hours.

(*ii*) *Apparatus.* The test apparatus shall consist of a constant-rate-of-extension-type (CRE) tensile tester with the moving crosshead set to move at 12 inches per minute (5 millimeters per second) and load range such that the average pull force will fall at 30 to 50 percent of full scale. A cutter shall be used containing new razor blades for cutting 1 inch (25 millimeter) wide specimens of the organic coating on the glass. The razor blades shall be used one time only.

(*iii*) *Procedure.* Using the razor cutter, cut a straight, 1 inch (25 millimeter) wide strip of the organic coating in the lengthwise direction of the glass specimen along and within ¼ inch (6 millimeters) of one edge. Peel back, cleanly and evenly, about 2 inches (50 millimeters) of one end of the 1 inch (25 millimeters) wide organic strip. Attach a strip of reinforced pressure sensitive tape to the side of the organic strip opposite the adhesive, to extend this free end to about 8 inches (200 millimeters) in length. Place the end of the glass panel from which the organic strip was removed in the lower clamp of the tensile tester and the free end of the tape in the upper clamp. Peel the remainder of the organic strip from the glass mechanically and obtain a record of the pull force value. Determine and record the average pull force value for each specimen from the chart. Weathered and control specimens are to be tested alternately.

(*iv*) *Interpretation of results.* The organic-coated glass adhesion shall be judged satisfactory if the average pull force for the weathered specimens is no less than 90 percent of the average pull force for the control specimens.

(*2*) *Tensile strength test* (*organic-coated glass only*). (*i*) The specimens for this test are the same 2 inch by 6 inch (5 centimeter by 15 centimeter) specimens used in the adhesion test.

(*ii*) *Apparatus.* The CRE tensile tester shall be used with the moving crosshead set to move at 2 inches per minute (0.8 millimeter per second) and the load range such that the specimens will break at 30 to 60% of full scale. A cutter shall be used containing new razor blades for cutting ½ inch (12 millimeter) wide specimens of the organic coating on the glass. The razor blades shall be used one time only.

(*iii*) *Procedure.* Using the ½ inch (12 millimeter) razor cutter, cut a straight strip of the organic coating in the lengthwise direction of the glass specimen for the full 6 inch (15 centimeter) length. Carefully peel this strip from the glass panel and test it for breaking strength in the tensile tester.

(*iv*) *Interpretation of results.* The organic coating tensile strength shall be judged satisfactory if the average tensile value of the weathered specimens is no less than 75 percent of the average of the control specimens. Weathered and control specimens are to be tested alternately.

(Sec. 9(e) Pub. L. 92–573, 86 Stat. 1215; (15 U.S.C. 2058(e)); (5 U.S.C. 553); sec. 9(h), Consumer Product Safety Act, as amended by the Consumer Product Safety Amendments of 1981 (Pub. L. 92–673, as amended by Pub. L. 97–35, 15 U.S.C. 2057(h)) and 5 U.S.C. 553)

[42 FR 1441, Jan. 6, 1977, as amended at 43 FR 43708, Sept. 27, 1978; 43 FR 57594, Dec. 8, 1978; 45 FR 66007, Oct. 6, 1980; 46 FR 63250, Dec. 31, 1981; 47 FR 27857, June 28, 1982]

§ 1201.5 Certification and labeling requirements.

(a) Manufacturers and private labelers of glazing materials covered by this part 1201 shall comply with the requirements of section 14 CPSA (15 U.S.C. 2063) and regulations issued under section 14.

(b) [Reserved]

(c) Organic-coated glass that has been tested for environmental exposure from one side only must bear a permanent label on the coating stating ''GLAZE THIS SIDE IN'' and shall bear in the central 50 percent of the surface area the following message in letters at least ¼ inch (7 millimeters) high: ''SEE PERMANENT LABEL FOR IMPORTANT MOUNTING INSTRUCTION.'' The latter message shall be attached to either side of the glazing by any means which shall ensure the message will remain in place until installation.

[42 FR 1441, Jan. 6, 1977, as amended at 45 FR 66007, Oct. 6, 1980]

§ 1201.6 Prohibited stockpiling.

(a) *Stockpiling.* For the purposes of this section, the term *stockpiling* means manufacturing or importing the affected products between the date of issuance of this part in the FEDERAL REGISTER and the effective date set out below in § 1201.7 at a rate significantly greater (prescribed in paragraph (b) of this section) than the rate at which the affected products were produced or imported during a base period (prescribed in paragraph (c)(2) of this section).

(b) *Prohibited acts.* Manufacturers and importers of glazing materials, fabricators, and manufacturers or importers of architectural products specified in § 1201.1(a) who incorporate glazing material shall not incorporate glazing materials which do not comply with the requirements of this part 1201 into such products between the date of issuance of this part in the FEDERAL REGISTER and the effective date set out in § 1201.7 below at a rate greater than the rate of production or importation during the base period (defined in paragraph (c)(2) of this section) plus ten percent. For wired glass used in doors or other assemblies subject to this part 1201 and intended to retard the passage of fire, when such doors or other assemblies are required by a Federal, State, local or municipal fire ordinance, the rate of production during the base period may be increased annually by no more than 10 percent.

(c) *Definitions.* As used in this section:

(1) *Rate of production (or importation)* means the total number of affected architectural products incorporating

glazing material not complying with this part manufactured or imported during a stated base period.

(2) *Base period* means, at the option of the manufacturer or importer, any period of 180 consecutive days prior to January 6, 1977, said period to be selected within an interval which begins July 6, 1975.

§ 1201.7 Effective date.

The effective date of this part 1201 shall be July 6, 1977 except:

(a) For glazing materials used in doors or other assemblies subject to this part and intended to retard the passage of fire when such doors or other assemblies are required by a Federal, State, or local or municipal fire ordinance, the effective date shall be January 6, 1980.

(b) Architectural glazing materials manufactured before July 6, 1977 may be incorporated into architectural products listed in §1201.1(a) through July 5, 1978 if:

(1) The architectural glazing material conforms to ANSI Standard Z97.1–1972 or 1975, ''Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings,'' 1972 or 1975[2], which is incorporated by reference, and

(2) The architectural glazing material is permanently labeled to indicate it conforms to ANSI Z97.1–1972 or 1975 or is accompanied by a certificate certifying conformance to ANSI Z97.1 1972 or 1975.

(c) Tempered glass manufactured before July 6, 1977 may be incorporated into architectural products listed in §1201.1(a) through July 5, 1981 if:

(1) The tempered glass conforms to ANSI Z97.1–1972 or 1975; and

(2) The tempered glass is permanently labeled to indicate it conforms to ANSI Z97.1–1972 or 1975 or is accompanied by a certificate certifying conformance to ANSI Z97.1–1972 or 1975.

(d) Laminated glass manufactured on or after July 6, 1977 through December 3, 1977 may be incorporated into category II products as defined in §1201.2(a)(4) through July 5, 1978 if:

(1) The laminated glass conforms to ANSI Z97.1–1972 or 1975; and

(2) The laminated glass is permanently labeled to indicate that it conforms to ANSI Z97.1–1972 or 1975 or is accompanied by a certificate in accordance with section 14(a) of the CPSA certifying conformance to ANSI Z97.1–1972 or 1975.

(e) Architectural products manufactured between July 6, 1977 and July 5, 1978 incorporating glazing material in accordance with paragraph (b) of this section, may be distributed and sold without restriction.

(f) Architectural products manufactured between July 6, 1977 and July 5, 1981 incorporating tempered glass in accordance with paragraph (c) of this section, may be distributed and sold without restriction.

(g) Architectural products identified in §1201.2(a)(4) manufactured between July 6, 1977 and July 5, 1978 incorporating laminated glass in accordance with §1201.7(d) may be distributed and sold without restriction.

(h) Patinaed glass manufactured between July 6, 1977 and January 8, 1979, in accordance with the Commission's stay order published in the FEDERAL REGISTER of August 9, 1977 (42 FR 40188), may be sold without restriction. Architectural products incorporating such glazing may also be sold without restriction.

[43 FR 50422, Oct. 30, 1978, as amended at 43 FR 57247, Dec. 7, 1978; 46 FR 63250, Dec. 31, 1981]

[2] Copies of ANSI Standard Z97.1–1972 or 1975 are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html*.This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist in the editions which have been approved by the Director of the Federal Register and which have been filed with the Office of the Federal Register.

FIGURE 1 TO SUBPART A OF PART 1201—GLASS IMPACT TEST STRUCTURE

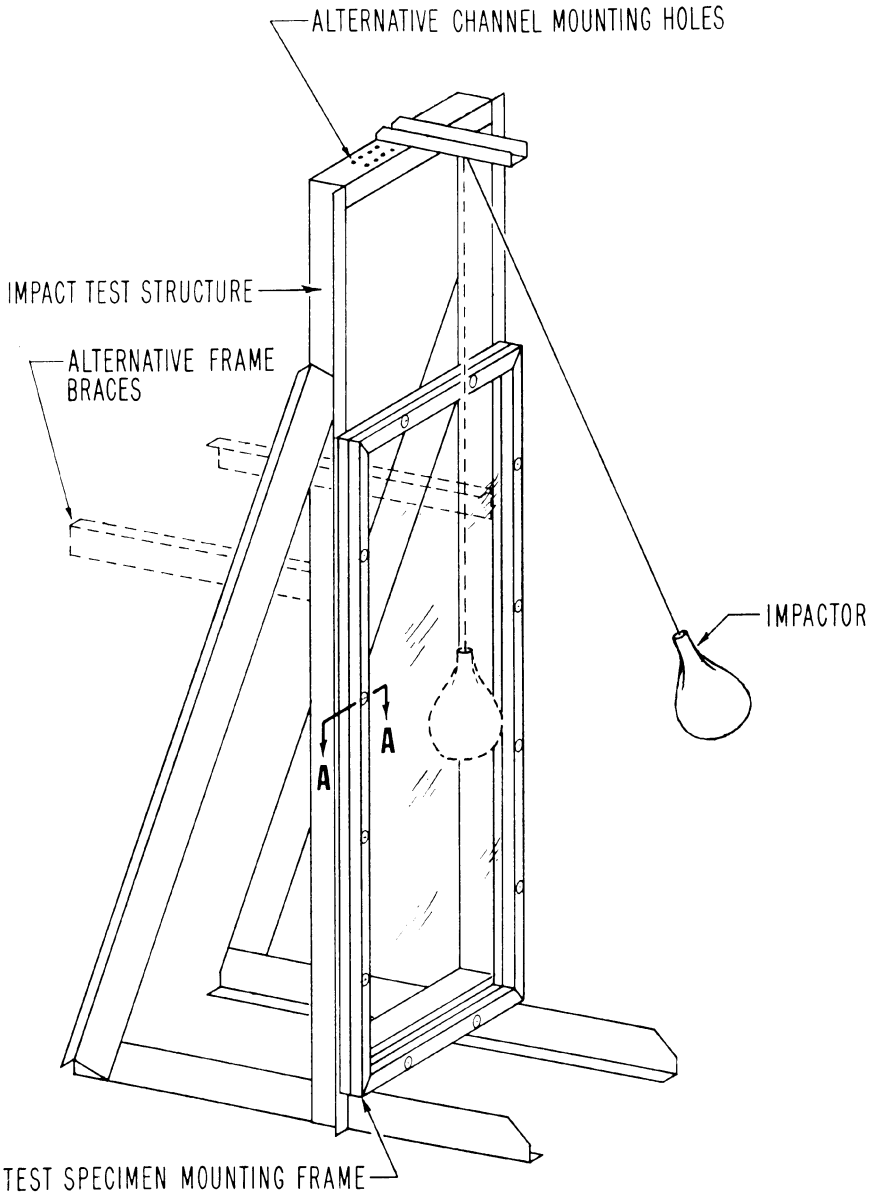


FIG I-GLASS IMPACT TEST STRUCTURE

FIGURE 2 TO SUBPART A OF PART 1201—TEST FRAME

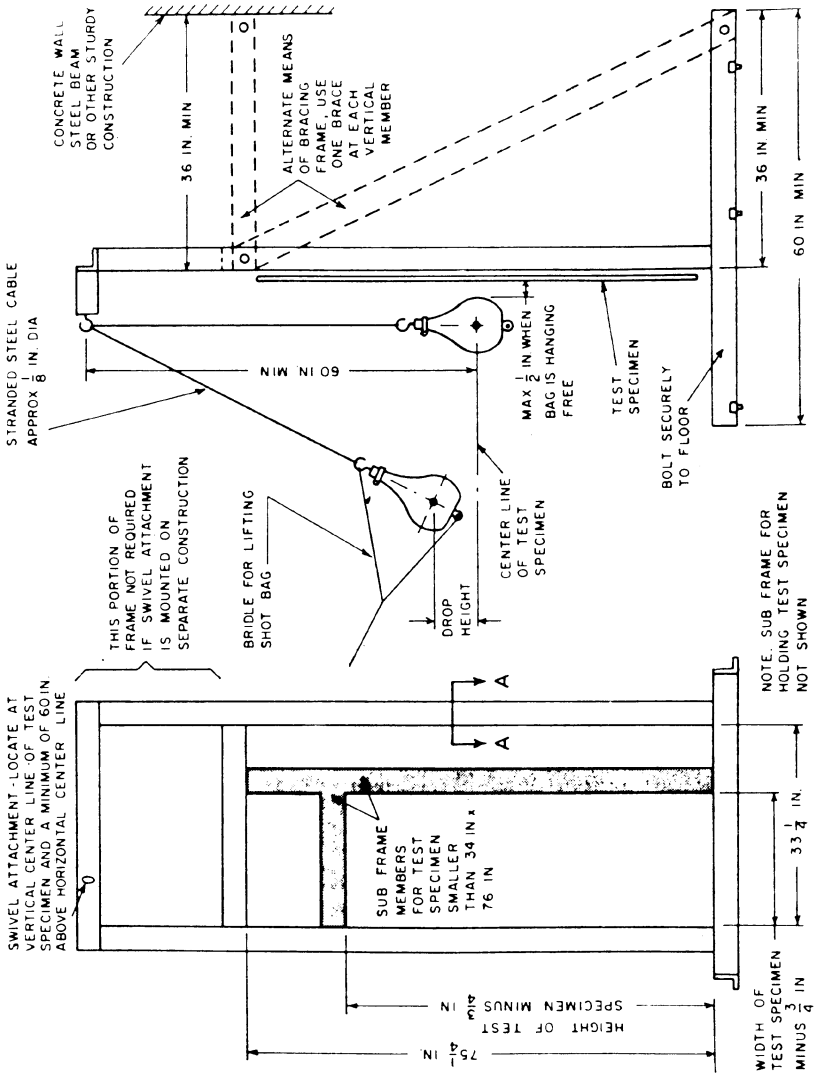


FIG 2–TEST FRAME

FIGURES 3 AND 4 TO SUBPART A OF PART 1201—TEST SPECIMENS

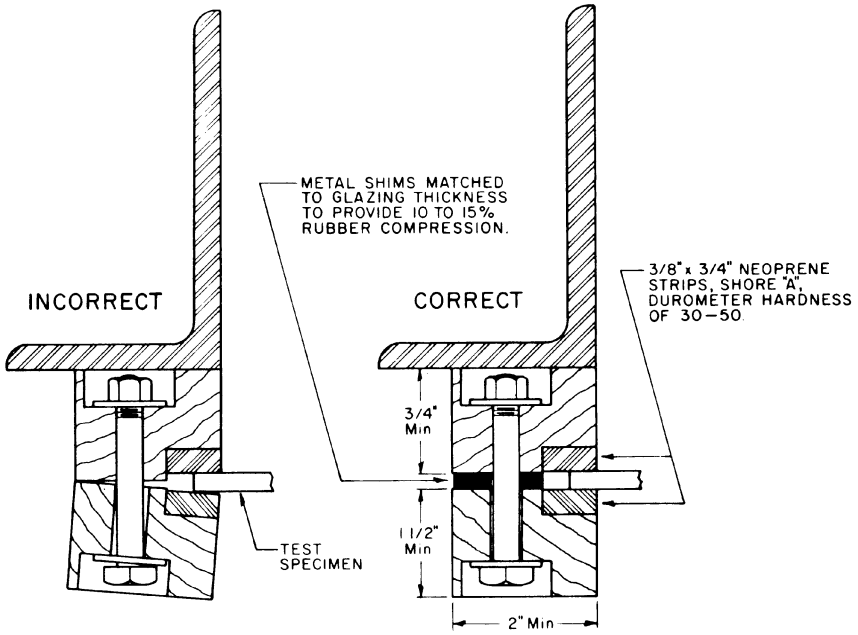


FIG 3—PROPERLY & IMPROPERLY CLAMPED TEST SPECIMEN (>1/8" THICK)

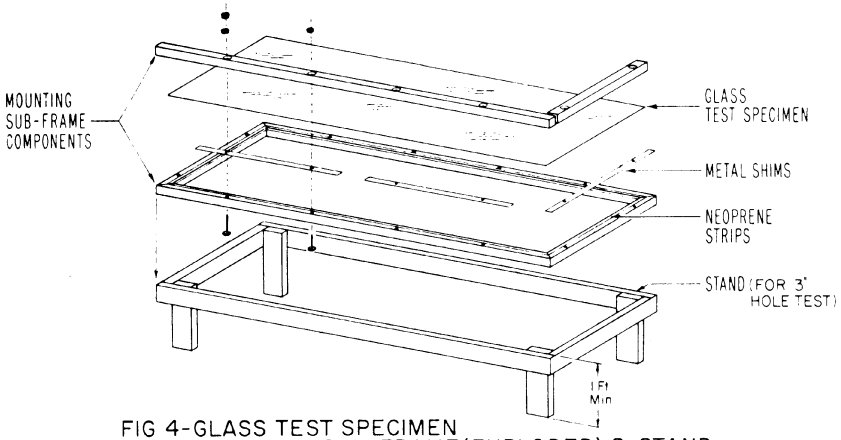


FIG 4-GLASS TEST SPECIMEN MOUNTING SUB-FRAME(EXPLODED) & STAND

FIGURE 5 TO SUBPART A OF PART 1201—IMPACTOR

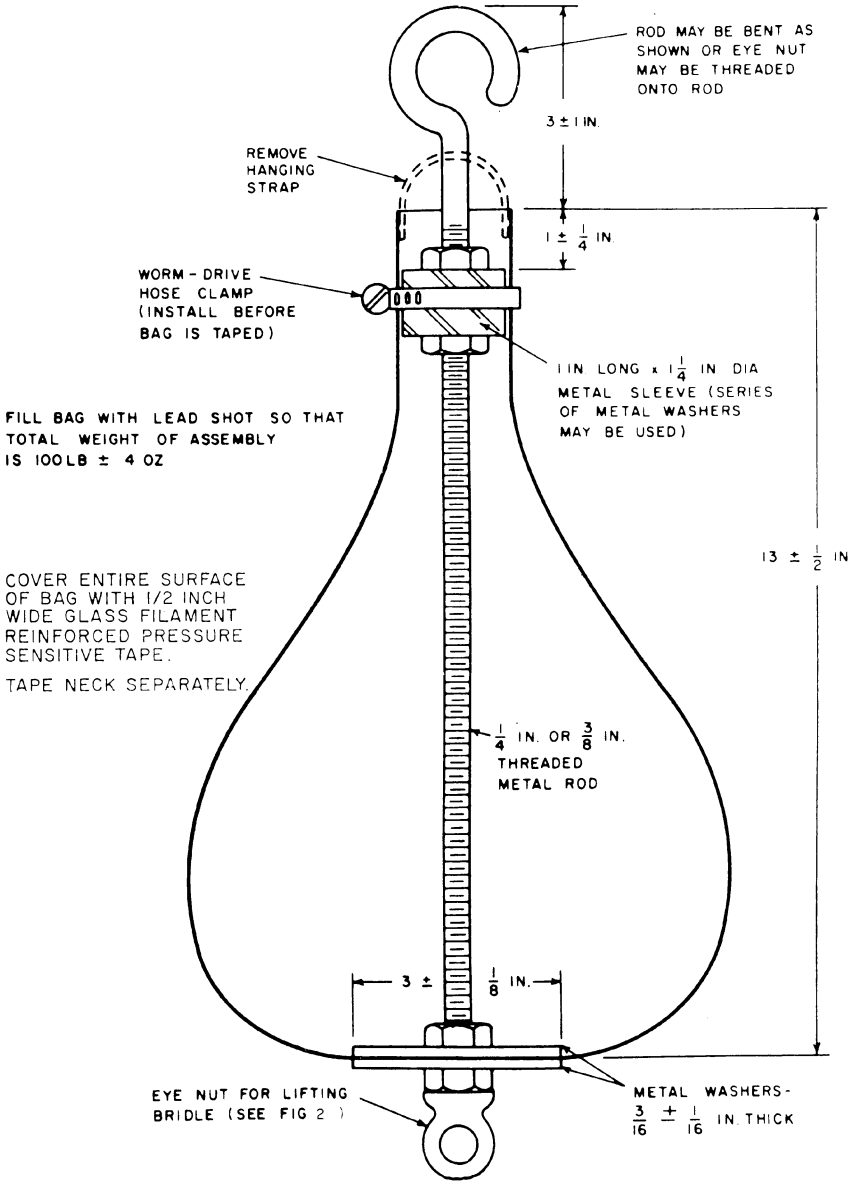


FIG 5 – IMPACTOR

Subpart B [Reserved]

Subpart C—Statements of Policy and Interpretation

§ 1201.40 Interpretation concerning bathtub and shower doors and enclosures.

(a) *Purpose and background.* The purpose of this section is to clarify the scope of the terms ''bathtub doors and enclosures'' and ''shower door and enclosure'' as they are used in the Standard in subpart A. The Standard lists the products that are subject to it (§ 1201.1(a)). This list includes *bathtub doors and enclosures,* a term defined in the Standard to mean ''assemblies of panels and/or doors that are installed on the lip of or immediately surrounding a bathtub'' (§ 1201.2(a)(2)). The list also includes *shower doors and enclosures,* a term defined to mean ''(assemblies) of one or more panels installed to form all or part of the wall and/or door of a shower stall'' (§ 1201.2(a)(30)). Since the Standard became effective on July 6, 1977, the question has arisen whether the definitions of these products include glazing materials in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building. The definitions of the terms ''bathtub doors and enclosures'' and ''shower door and enclosure'' contain no specific exemption for glazing materials in such windows. If read literally, the Standard could include glazing materials in an exterior wall window located above a bathtub because that window could be interpreted as being ''immediately surrounding'' the bathtub. Similarly, the Standard, if read literally, could include glazing materials in an exterior wall window because that window could be interpreted as forming ''all or part of the wall * * * of a shower stall.''

(b) *Interpretation.* When the Consumer Product Safety Commission issued the Standard, it did not intend the standard to apply to any item of glazing material in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building. The Commission clarifies that the Standard does not apply to such items of glazing material or such windows. This interpretation applies only to the term ''bathtub doors and enclosures'' and ''shower door and enclosure'' and does not affect the applicability of the Standard to any other product.

[46 FR 45751, Sept. 15, 1981]

PART 1202—SAFETY STANDARD FOR MATCHBOOKS

Sec.
1202.1 Scope and effective date.
1202.2 Findings.
1202.3 Definitions.
1202.4 Matchbook general requirements.
1202.5 Certification.
1202.6 Marking.
1202.7 Prohibited stockpiling.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 16, and 19. Pub. L. 92–573, 86 Stat. 1212–17 (15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2065, and 2068).

SOURCE: 43 FR 53709, Nov. 17, 1978, unless otherwise noted.

§ 1202.1 Scope and effective date.

(a) *Scope.* This part 1202, a consumer product safety standard, prescribes the safety requirements, including labeling requirements, for the matchbook. This part 1202 applies to all matchbooks manufactured in or imported into the United States after its effective date.

(b) *Effective date.* The effective date shall be May 4, 1978.

§ 1202.2 Findings.[1]

(a) *Risk of injury.* The Commission finds that unreasonable risks of injury from accidents are associated with matchbooks. These unreasonable risks,

[1] The Commission's findings apply to the matchbook standard that it published on May 4, 1977 (42 FR 22656–70). On Mar. 31, 1978, the U.S. Court of Appeals for the First Circuit set aside portions of that standard (*D. D. Bean & Sons, Co.* v. *CPSC,* 574 F. 2d 643). On Nov. 17, 1978, the Commission published a revised version of the standard which reflects the court's decision. However, the findings have not been revised and they are therefore not fully applicable to the revised matchbook requirements. For example, the revised standard does not address the unreasonable risk of injury of ''[b]urn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches'' (§ 1202.2(a)(6)) because the court set aside the afterglow performance requirement.

which this part 1202 is intended to reduce or eliminate, are:

(1) Burn injuries, sustained by children and others, including mentally or physically impaired persons, who play with or otherwise improperly use bookmatches.

(2) Burn injuries sustained by persons who use bookmatches that fragment or have delayed ignition.

(3) Eye injuries sustained by persons who use bookmatches that fragment and cause particles from such matches to lodge in a person's eye.

(4) Burn injuries sustained by persons who use bookmatches that, when struck, ignite the remaining matches in the matchbook.

(5) Burn injuries sustained by persons from fires that have resulted from unexpected ignition of bookmatches with no deliberate action by the user.

(6) Burn injuries that have been sustained by persons from fires that have been set by the afterglow of extinguished bookmatches.

(b) *Products subject to this standard.* (1) The products subject to this standard are those kinds of manufactured ignition devices known as matchbooks. The matchbook consists of a group of bookmatches joined together and fastened within a cover. Although matchbooks are commonly referred to as paper matches or paper-stem matches to distinguish them from individual stick matches such as wooden stem matches packaged in boxes, all matchbooks, regardless of the materials of manufacture of the covers or of the bookmatches fastened within, are subject to this standard.

(2) Matchbooks subject to this standard can be divided into two basic categories: Resale matchbooks and special reproduction matchbooks. Resale matchbooks can be subdivided into advertising and nonadvertising matchbooks. Nonadvertising matchbooks are generally sold by large chain stores, and constitute a small portion of the total resale matchbook volume. Resale matchbooks with advertising are generally given away by tobacco shops, drug stores, vending firms, and other mass distribution outlets. Special reproduction matchbooks, characterized by their distinctive and unique cover designs, are purchased and distributed for promotional purposes by hotels, restaurants, financial institutions, and other business enterprises, and are given free to users.

(3) The Commission estimates that resale matchbooks accounted for almost 75 percent of the volume of matchbooks in 1975, or about 15 billion matchbooks, while special reproduction matchbooks accounted for just over 25 percent, or about 5.5 billion matchbooks.

(c) *Effects on utility, cost, and availability.* (1) The Commission finds that the public need for ignition devices which are small, portable, and can be used to provide a source of fire, is substantial since such products meet basic requirements for a source of fire to ignite tobacco products, fires, candles, or other products, and are also used for miscellaneous other purposes such as providing short term illumination. Three types of products: Matchbooks, individual stick matches, and lighters, predominantly supply the source of fire to meet these requirements.

(i) The Commission estimates that in 1976 U.S. consumers required approximately 645 billion such fire sources or ''lights,'' as they are known, with almost 98 percent of this total required for tobacco products. In the aggregate, the requirements by U.S. consumers for a source of fire has been growing at an annual rate of approximately 3 percent. Matchbooks, the products regulated in this standard, are estimated to have supplied about 65 percent of the source of lights, lighters accounted for about 25 percent, and individual stick matches (primarily wooden-stem type) accounted for the remainder.

(ii) The Commission also finds that matchbooks fulfill a need by institutions and business enterprises for a particular form of specialty advertising that is both relatively inexpensive and effective in reaching a specified audience or population segment with the advertiser's message. Various studies of matchbooks as a form of advertising have found that readership can average 3 to 15 times higher than average readership, listenership, and viewership figures from competing media such as magazines, newspapers,

radio, and television, and that readership retention of the matchbook advertising message was extremely high, about 45 percent. In addition, matchbooks tend to be considerably less expensive than other forms of specialty advertising, including those competing advertising items such as address books, key cases, litterbags, and the like, which are themselves relatively inexpensive.

(2) The Commission finds that the standard will have no adverse effects on the utility that consumers derive from matchbooks. To the extent that injuries and property damage associated with the use of matchbooks is reduced or eliminated as a result of this standard, the utility of matchbooks as a source of fire will be increased.

(3) The Commission estimates that manufacturing cost increases as a direct or indirect effect of this standard will be modest for the industry as a whole. Such increases will tend to be concentrated in one-time costs to complete changeover to reverse friction, and in costs to establish and implement testing programs and certification procedures.

(i) Because some 80–90 percent of the matchbooks produced annually are given free to consumers, there is not likely to be any direct cost impact on the consumer as a result of the standard. Some proportion of increased manufacturing costs will be passed on to the institutions and business enterprises that purchase matchbooks for promotional purposes. To the extent that increases in advertising and promotional costs may be reflected in higher prices for goods and services sold by these businesses, there may be indirect cost effects on consumers. If so, such impacts would likely be small, if not imperceptible.

(ii) For the 12–20 percent of matchbooks that are purchases at retail by consumers, some proportion of any manufacturing cost increases may be passed on to the consumer. A resulting increase in retail prices for such matchbooks will be small, no more than a few cents per box of 50 matchbooks.

(4) The Commission finds that the standard will not have impacts of significant magnitude on the availability of matchbooks. Although some institutions and business enterprises may reduce their matchbook purchases or eliminate them in response to any increased price of matchbooks, the large number of such purchasers, and the large volume purchased annually, are such that curtailment of purchases by some businesses is likely to have very small effects on the total number of matchbooks available to U.S. consumers.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of the standard throughout the course of its development. Certain other more elaborate test requirements were considered and were shown to have the potential for severe adverse effects on competition and estimated to result in disruptions and dislocations of manufacturing and commercial practices. Therefore, having considered and rejected such other means of achieving the objective of the standard, the Commission has found none that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety than this standard.

(2) Because of competition from substitute products such as inexpensive disposable butane lighters and because of other prevailing business and economic conditions, the industry manufacturing matchbooks has been in a state of contraction in recent years. This contraction, marked by the exit of some firms and by plant closings or consolidations, is likely to continue in the future; but this will neither be the result of, nor significantly accelerated by, effects of the standard. Currently, aggressive price and service competition prevails among firms vying for customer accounts. It is anticipated that this competition for sales may increase as an indirect effect of the standard. To the extent that this occurs, there may be some disruption or dislocation of manufacturing, sales, or distribution practices in certain matchbook product categories and market segments. Marginal firms and firms producing limited product categories or for limited market segments may be affected to a greater degree

than multiproduct category or multimarket firms.

(e) *Conclusion.* The Commission finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with matchbooks and that the issuance of the standard is in the public interest.

§ 1202.3 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for the purpose of this standard:

(a) *Bookmatch* means a single splint, with a matchhead attached, that comes from a matchbook.

(b) *Bridge* means the matchhead material held in common by two or more splints.

(c) *Broken bridge* means a bridge that has become separated.

(d) *Caddy* means a package of two or more matchbooks wrapped or boxed together at a production plant.

(e) *Comb* means a piece of wood, paper, or other suitable material that has been formed into splints, that remain joined at their base, and that are designed to have matchheads attached to their tips.

(f) *Cover* means the paperboard or other suitable material that is wrapped around and fastened to the comb(s).

(g) *Friction* means the dried chemical mixture on the matchbook cover used to ignite the bookmatch.

(h) *Match* means a single splint with matchhead attached.

(i) *Matchbook* means one or more combs with matchheads attached and a cover that is wrapped around and fastened to those combs.

(j) *Matchhead* means the dried chemical mixture on the end of a splint.

(k) *Splint* means the support for the matchhead or that portion normally held when using the bookmatch.

§ 1202.4 Matchbook general requirements.

A matchbook shall meet the following general requirements:

(a) The friction shall be located on the outside back cover near the bottom of the matchbook.

(b) The cover shall remain closed without external force.

(c) No friction material shall be located on the inside of the cover where possible contact with the matchheads may occur during ordinary use.

(d) There shall be no bridge(s) or broken bridge(s).

(e) No matchhead in the matchbook shall be split, chipped, cracked, or crumbled.

(f) No portion of any matchhead shall be outside the matchbook cover when the cover is closed.

(g) No part of a staple or other assembly device for securing the cover and combs shall be within or touching the friction area.

(h) A staple used as an assembly device for securing the cover and combs shall be fully clinched so that the ends are flattened or turned into the cover.

§ 1202.5 Certification.

Certification shall be in accordance with section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)). Under this provision, manufacturers and private labelers of products subject to safety standards must certify that their products conform to the standard, based on either a test of each product or on a reasonable testing program.

§ 1202.6 Marking.

(a) The manufacturer's or private labeler's name and city or a symbol which will identify the name and city shall appear on the matchbook. In addition, every private labeler must label the matchbook with a code which enables it to identify, if requested, the manufacturer of the product.

(b) Boxes or cartons in which two or more caddies are shipped shall be marked ''For safety, store in a cool, dry place.''

§ 1202.7 Prohibited stockpiling.

Section 9(d)(2) of the Consumer Product Safety Act (15 U.S.C. 2058(d)(2)) authorizes the Commission to prohibit manufacturers and importers from stockpiling a product subject to a consumer product safety standard between its date of issuance and its effective date. A manufacturer or importer is in violation of Section 9(d)(2) and of this

section if it fails to comply with the following:

(a) *Definitions.* (1) *Base period* means, at the option of the manufacturer or importer concerned, any period of 365 consecutive days beginning on or after January 1, 1973, and ending on or before December 31, 1975.

(2) *Rate of production (or importation)* means the total number of matchbooks manufactured (or imported) during a stated time period. In determining whether a matchbook was manufactured during a stated time period, the date on which the cover and combs were assembled to form a matchbook shall be used. In the event that a manufacturer currently operates a matchbook manufacturing plant that it did not operate during the base period, or that it did not operate for an entire base period, that manufacturer shall use, as the rate of production during the base period for that plant, either (i) the average daily rate of production (including nonproduction days such as Sundays, holidays, and vacations) for the part of the base period he did operate that plant, multiplied by 365 or (ii) the rate of production during the base period of his most nearly similar matchbook manufacturing plant.

(b) *Prohibited act.* Manufacturers and importers of matchbooks, as these products are defined in §1202.3(i), shall not manufacture or import matchbooks that do not comply with the requirements of this part between the date that this part is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 15 percent of that rate.

(c) *Documentation.* Manufacturers and importers shall maintain, for a period of six (6) months after the effective date specified in §1202.1(b), appropriate documentation to be able to substantiate to the Commission that they are in compliance with the provisions of this section.

PART 1203—SAFETY STANDARD FOR BICYCLE HELMETS

Subpart A—The Standard

Sec.

Subpart B—Certification

Subpart C—Recordkeeping

Subpart D—Requirements for Bicycle Helmets Manufactured From March 17, 1995, Through March 10, 1999

AUTHORITY: 15 U.S.C. 2056, 2058, and 6001–6006. Subpart B is also issued under 15 U.S.C. 2063. Subpart C is also issued under 15 U.S.C. 2065.

SOURCE: 63 FR 11729, Mar. 10, 1998, unless otherwise noted.

Subpart A—The Standard

§ 1203.1 Scope, general requirements, and effective date.

(a) *Scope.* The standard in this subpart describes test methods and defines minimum performance criteria for all bicycle helmets, as defined in § 1203.4(b).

(b) *General requirements*—(1) *Projections.* All projections on bicycle helmets must meet the construction requirements of § 1203.5.

(2) *Labeling and instructions.* All bicycle helmets must have the labeling and instructions required by § 1203.6.

(3) *Performance tests.* All bicycle helmets must be capable of meeting the peripheral vision, positional stability, dynamic strength of retention system, and impact-attenuation tests described in §§ 1203.7 through 1203.17.

(4) *Units.* The values stated in International System of Units (''SI'') measurements are the standard. The inch-pound values stated in parentheses are for information only.

(c) *Effective date.* The standard shall become effective March 10, 1999 and shall apply to all bicycle helmets manufactured after that date. Bicycle helmets manufactured from March 17, 1995 through March 10, 1999, inclusive, are subject to the requirements of Subpart D, rather than this subpart A.

§ 1203.2 Purpose and basis.

The purpose and basis of this standard is to reduce the likelihood of serious injury and death to bicyclists resulting from impacts to the head, pursuant to 15 U.S.C. 6001–6006.

§ 1203.3 Referenced documents.

(a) The following documents are incorporated by reference in this standard. (1) Draft ISO/DIS Standard 6220–1983—Headforms for Use in the Testing of Protective Helmets.[1]

(2) SAE Recommended Practice SAE J211 OCT88, Instrumentation for Impact Tests.

(b) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the standards may be obtained as follows. Copies of the draft ISO/DIS Standard 6220–1983 are available from American National Standards Institute, 11 W. 42nd St., 13th Floor, New York, NY 10036. Copies of the SAE Recommended Practice SAE J211 OCT88, Instrumentation for Impact Tests, are available from Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096. Copies may be inspected at the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

§ 1203.4 Definitions.

(a) *Basic plane* means an anatomical plane that includes the auditory meatuses (the external ear openings) and the inferior orbital rims (the bottom edges of the eye sockets). The ISO headforms are marked with a plane corresponding to this basic plane (see Figures 1 and 2 of this part).

(b) *Bicycle helmet* means any headgear that either is marketed as, or implied through marketing or promotion to be, a device intended to provide protection from head injuries while riding a bicycle.[2]

[1] Although the draft ISO/DIS 6220–1983 standard was never adopted as an international standard, it has become a consensus national standard because all recent major voluntary standards used in the United States for testing bicycle helmets establish their headform dimensions by referring to the draft ISO standard.

[2] Helmets specifically marketed for exclusive use in a designated activity, such as skateboarding, rollerblading, baseball, roller hockey, etc., would be excluded from this definition because the specific focus of their marketing makes it unlikely that such helmets would be purchased for other than their stated use. However, a multi-purpose helmet—one marketed or represented as providing protection either during general use or in a variety of specific activities other

(c) *Comfort or fit padding* means resilient lining material used to configure the helmet for a range of different head sizes.

(d) *Coronal plane* is an anatomical plane perpendicular to both the basic and midsagittal planes and containing the midpoint of a line connecting the right and left auditory meatuses. The ISO headforms are marked with a transverse plane corresponding to this coronal plane (see Figures 1 and 2 of this part).

(e) *Field of vision* is the angle of peripheral vision allowed by the helmet when positioned on the reference headform.

(f) *Helmet positioning index (''HPI'')* is the vertical distance from the brow of the helmet to the reference plane, when placed on a reference headform. This vertical distance shall be specified by the manufacturer for each size of each model of the manufacturer's helmets, for the appropriate size of headform for each helmet, as described in § 1203.10.

(g) *Midsagittal plane* is an anatomical plane perpendicular to the basic plane and containing the midpoint of the line connecting the notches of the right and left inferior orbital ridges and the midpoint of the line connecting the superior rims of the right and left auditory meatuses. The ISO headforms are marked with a longitudinal plane corresponding to the midsagittal plane (see Figures 1 and 2 of this part).

(h) *Modular elastomer programmer (''MEP'')* is a cylindrical pad, typically consisting of a polyurethane rubber, used as a consistent impact medium for the systems check procedure. The MEP shall be 152 mm (6 in) in diameter, and 25 mm (1 in) thick and shall have a durometer of 60±2 Shore A. The MEP shall be affixed to the top surface of a flat 6.35 mm (¼ in) thick aluminum plate. See § 1203.17(b)(1).

(i) *Preload ballast* is a ''bean bag'' filled with lead shot that is placed on the helmet to secure its position on the headform. The mass of the preload ballast is 5 kg (11 lb).

(j) *Projection* is any part of the helmet, internal or external, that extends beyond the faired surface.

(k) *Reference headform* is a headform used as a measuring device and contoured in the same configuration as one of the test headforms A, E, J, M, and O defined in draft ISO DIS 6220–1983. The reference headform shall include surface markings corresponding to the basic, coronal, midsagittal, and reference planes (see Figures 1 and 2 of this part).

(l) *Reference plane* is a plane marked on the ISO headforms at a specified distance above and parallel to the basic plane (see Figure 3 of this part).

(m) *Retention system* is the complete assembly that secures the helmet in a stable position on the wearer's head.

(n) *Shield* means optional equipment for helmets that is used in place of goggles to protect the eyes.

(o) *Spherical impactor* is an impact fixture used in the instrument system check of § 1203.17(b)(1) to test the impact-attenuation test equipment for precision and accuracy. The spherical impactor shall be a 146 mm (5.75 in) diameter aluminum sphere mounted on the ball-arm connector of the drop assembly. The total mass of the spherical-impactor drop assembly shall be 5.0±0.1 kg (11.0±0.22 lb).

(p) *Test headform* is a solid model in the shape of a human head of sizes A, E, J, M, and O as defined in draft ISO/DIS 6220–1983. Headforms used for the impact-attenuation test shall be constructed of low-resonance K–1A magnesium alloy. The test headforms shall

than bicycling—would fall within the definition of bicycle helmet if a reasonable consumer could conclude, based on the helmet's marketing or representations, that bicycling is among the activities in which the helmet is intended to be used. In making this determination, the Commission will consider the types of specific activities, if any, for which the helmet is marketed, the similarity of the appearance, design, and construction of the helmet to other helmets marketed or recognized as bicycle helmets, and the presence, prominence, and clarity of any warnings, on the helmet or its packaging or promotional materials, against the use of the helmet as a bicycle helmet. A multi-purpose helmet marketed without specific reference to the activities in which the helmet is to be used will be presumed to be a bicycle helmet. The presence of warnings or disclaimers advising against the use of a multi-purpose helmet during bicycling is a relevant, but not necessarily controlling, factor in the determination of whether a multi-purpose helmet is a bicycle helmet.

include surface markings corresponding to the basic, coronal, midsagittal, and reference planes (see Figure 2 of this part).

(q) *Test region* is the area of the helmet, on and above a specified impact test line, that is subject to impact testing.

§ 1203.5 Construction requirements—projections.

Any unfaired projection extending more than 7 mm (0.28 in.) from the helmet's outer surface shall break away or collapse when impacted with forces equivalent to those produced by the applicable impact-attenuation tests in §1203.17 of this standard. There shall be no fixture on the helmet's inner surface projecting more than 2 mm into the helmet interior.

§ 1203.6 Labeling and instructions.

(a) *Labeling.* Each helmet shall be marked with durable labeling so that the following information is legible and easily visible to the user:

(1) Model designation.

(2) A warning to the user that no helmet can protect against all possible impacts and that serious injury or death could occur.

(3) A warning on both the helmet and the packaging that for maximum protection the helmet must be fitted and attached properly to the wearer's head in accordance with the manufacturer's fitting instructions.

(4) A warning to the user that the helmet may, after receiving an impact, be damaged to the point that it is no longer adequate to protect the head against further impacts, and that this damage may not be visible to the user. This label shall also state that a helmet that has sustained an impact should be returned to the manufacturer for inspection, or be destroyed and replaced.

(5) A warning to the user that the helmet can be damaged by contact with common substances (for example, certain solvents [ammonia], cleaners [bleach], etc.), and that this damage may not be visible to the user. This label shall state in generic terms some recommended cleaning agents and procedures (for example, wipe with mild soap and water), list the most common substances that damage the helmet, warn against contacting the helmet with these substances, and refer users to the instruction manual for more specific care and cleaning information.

(6) *Signal word.* The labels required by paragraphs (a) (2) through (5) of this section shall include the signal word ''WARNING'' at the beginning of each statement, unless two or more of the statements appear together on the same label. In that case, the signal word need only appear once, at the beginning of the warnings. The signal word ''WARNING'' shall be in all capital letters, bold print, and a type size equal to or greater than the other text on the label.

(b) *Instructions.* Each helmet shall have fitting and positioning instructions, including a graphic representation of proper positioning.

§ 1203.7 Samples for testing.

(a) *General.* Helmets shall be tested in the condition in which they are offered for sale. To meet the standard, the helmets must be able to pass all tests, both with and without any attachments that may be offered by the helmet's manufacturer and with all possible combinations of such attachments.

(b) *Number of samples.* To test conformance to this standard, eight samples of each helmet size for each helmet model offered for sale are required.

§ 1203.8 Conditioning environments.

Helmets shall be conditioned to one of the following environments prior to testing in accordance with the test schedule at §1203.13. The barometric pressure in all conditioning environments shall be 75 to 110 kPa (22.2 to 32.6 in of Hg). All test helmets shall be stabilized within the ambient condition for at least 4 hours prior to further conditioning and testing. Storage or shipment within this ambient range satisfies this requirement.

(a) *Ambient condition.* The ambient condition of the test laboratory shall be within 17 °C to 27 °C (63 °F to 81 °F), and 20 to 80% relative humidity. The ambient test helmet does not need further conditioning.

(b) *Low temperature.* The helmet shall be kept at a temperature of −17 °C to

−13 °C (1 °F to 9 °F) for 4 to 24 hours prior to testing.

(c) *High temperature.* The helmet shall be kept at a temperature of 47 °C to 53 °C (117 °F to 127 °F) for 4 to 24 hours prior to testing.

(d) *Water immersion.* The helmet shall be fully immersed ''crown'' down in potable water at a temperature of 17 °C to 27 °C (63 °F to 81 °F) to a crown depth of 305 mm ±25 mm (12 in. ±1 in.) for 4 to 24 hours prior to testing.

§ 1203.9 Test headforms.

The headforms used for testing shall be selected from sizes A, E, J, M, and O, as defined by DRAFT ISO/DIS 6220–1983, in accordance with § 1203.10. Headforms used for impact testing shall be rigid and be constructed of low-resonance K–1A magnesium alloy.

§ 1203.10 Selecting the test headform.

A helmet shall be tested on the smallest of the headforms appropriate for the helmet sample. A headform size is appropriate for a helmet if all of the helmet's sizing pads are partially compressed when the helmet is equipped with its thickest sizing pads and positioned correctly on the reference headform.

§ 1203.11 Marking the impact test line.

Prior to testing, the impact test line shall be determined for each helmet in the following manner.

(a) Position the helmet on the appropriate headform as specified by the manufacturer's helmet positioning index (HPI), with the brow parallel to the basic plane. Place a 5-kg (11-lb) preload ballast on top of the helmet to set the comfort or fit padding.

(b) Draw the impact test line on the outer surface of the helmet coinciding with the intersection of the surface of the helmet with the impact line planes defined from the reference headform as shown in:

(1) Figure 4 of this part for helmets intended only for persons 5 years of age and older.

(2) Figure 5 of this part for helmets intended for persons age 1 and older.

(c) The center of the impact sites shall be selected at any point on the helmet on or above the impact test line.

§ 1203.12 Test requirements.

(a) *Peripheral vision.* All bicycle helmets shall allow unobstructed vision through a minimum of 105° to the left and right sides of the midsagittal plane when measured in accordance with § 1203.14 of this standard.

(b) *Positional stability.* No bicycle helmet shall come off of the test headform when tested in accordance with § 1203.15 of this standard.

(c) *Dynamic strength of retention system.* All bicycle helmets shall have a retention system that will remain intact without elongating more than 30 mm (1.2 in.) when tested in accordance with § 1203.16 of this standard.

(d) *Impact attenuation criteria*—(1) *General.* A helmet fails the impact attenuation performance test of this standard if a failure under paragraph (d)(2) of this section can be induced under any combination of impact site, anvil type, anvil impact order, or conditioning environment permissible under the standard, either with or without any attachments, or combinations of attachments, that are provided with the helmet. Thus, the Commission will test for a ''worst case'' combination of test parameters. What constitutes a worst case may vary, depending on the particular helmet involved.

(2) *Peak acceleration.* The peak acceleration of any impact shall not exceed 300 g when the helmet is tested in accordance with § 1203.17 of this standard.

§ 1203.13 Test schedule.

(a) Helmet sample 1 of the set of eight helmets, as designated in Table 1203.13, shall be tested for peripheral vision in accordance with § 1203.14 of this standard.

(b) Helmet samples 1 through 8, as designated in Table 1203.13, shall be conditioned in the ambient, high temperature, low temperature, and water immersion environments as follows: helmets 1 and 5—ambient; helmets 2 and 7—high temperature; helmets 3 and 6—low temperature; and helmets 4 and 8—water immersion.

(c) Testing must begin within 2 minutes after the helmet is removed from the conditioning environment. The helmet shall be returned to the conditioning environment within 3 minutes after it was removed, and shall remain

in the conditioning environment for a minimum of 2 minutes before testing is resumed. If the helmet is out of the conditioning environment beyond 3 minutes, testing shall not resume until the helmet has been reconditioned for a period equal to at least 5 minutes for each minute the helmet was out of the conditioning environment beyond the first 3 minutes, or for 4 hours, (whichever reconditioning time is shorter) before testing is resumed.

(d) Prior to being tested for impact attenuation, helmets 1–4 (conditioned in ambient, high temperature, low temperature, and water immersion environments, respectively) shall be tested in accordance with the dynamic retention system strength test at §1203.16. Helmets 1–4 shall then be tested in accordance with the impact attenuation tests on the flat and hemispherical anvils in accordance with the procedure at §1203.17. Helmet 5 (ambient-conditioned) shall be tested in accordance with the positional stability tests at §1203.15 prior to impact testing. Helmets 5–8 shall then be tested in accordance with the impact attenuation tests on the curbstone anvil in accordance with §1203.17. Table 1203.13 summarizes the test schedule.

TABLE 1203.13—TEST SCHEDULE

	§1203.14 Peripheral vision	§1203.15 Positional stability	§1203.16 Retention system strength	§1203.17 Impact tests	
				Anvil	Number of Impacts
Helmet 1, Ambient	X		X	X Flat	2
				X Hemi	2
Helmet 2, High Temperature			X	X Flat	2
				X Hemi	2
Helmet 3, Low Temperature			X	X Flat	2
				X Hemi	2
Helmet 4, Water Immersion			X	X Flat	2
				X Hemi	2
Helmet 5, Ambient		X		X Curb	1
Helmet 6, Low Temperature				X Curb	1
Helmet 7, High Temperature				X Curb	1
Helmet 8, Water Immersion				X Curb	1

§1203.14 Peripheral vision test.

Position the helmet on a reference headform in accordance with the HPI and place a 5-kg (11-lb) preload ballast on top of the helmet to set the comfort or fit padding. (NOTE: Peripheral vision clearance may be determined when the helmet is positioned for marking the test lines.) Peripheral vision is measured horizontally from each side of the midsagittal plane around the point K (see Figure 6 of this part). Point K is located on the front surface of the reference headform at the intersection of the basic and midsagittal planes. The vision shall not be obstructed within 105 degrees from point K on each side of the midsagittal plane.

§1203.15 Positional stability test (roll-off resistance).

(a) *Test equipment.* (1) *Headforms.* The test headforms shall comply with the dimensions of the full chin ISO reference headforms sizes A, E, J, M, and O.

(2) *Test fixture.* The headform shall be secured in a test fixture with the headform's vertical axis pointing downward and 45 degrees to the direction of gravity (see Figure 7 of this part). The test fixture shall permit rotation of the headform about its vertical axis and include means to lock the headform in the face up and face down positions.

(3) *Dynamic impact apparatus.* A dynamic impact apparatus shall be used to apply a shock load to a helmet secured to the test headform. The dynamic impact apparatus shall allow a 4-kg (8.8-lb) drop weight to slide in a guided free fall to impact a rigid stop anvil (see Figure 7 of this part). The entire mass of the dynamic impact assembly, including the drop weight, shall be no more than 5 kg (11 lb).

(4) *Strap or cable.* A hook and flexible strap or cable shall be used to connect the dynamic impact apparatus to the

helmet. The strap or cable shall be of a material having an elongation of no more than 5 mm (0.20 in.) per 300 mm (11.8 in.) when loaded with a 22-kg (48.5 lb) weight in a free hanging position.

(b) *Test procedure.* (1) Orient the headform so that its face is down, and lock it in that orientation.

(2) Place the helmet on the appropriate size full chin headform in accordance with the HPI and fasten the retention system in accordance with the manufacturer's instructions. Adjust the straps to remove any slack.

(3) Suspend the dynamic impact system from the helmet by positioning the flexible strap over the helmet along the midsagittal plane and attaching the hook over the edge of the helmet as shown in Figure 7 of this part.

(4) Raise the drop weight to a height of 0.6 m (2 ft) from the stop anvil and release it, so that it impacts the stop anvil.

(5) The test shall be repeated with the headform's face pointing upwards, so that the helmet is pulled from front to rear.

§ 1203.16 Dynamic strength of retention system test.

(a) *Test equipment.* (1) ISO headforms without the lower chin portion shall be used.

(2) The retention system strength test equipment shall consist of a dynamic impact apparatus that allows a 4-kg (8.8-lb) drop weight to slide in a guided free fall to impact a rigid stop anvil (see Figure 8 of this part). Two cylindrical rollers that spin freely, with a diameter of 12.5±0.5 mm (0.49 in.±0.02 in.) and a center-to-center distance of 76.0±1 mm (3.0±0.04 in.), shall make up a stirrup that represents the bone structure of the lower jaw. The entire dynamic test apparatus hangs freely on the retention system. The entire mass of the support assembly, including the 4-kg (8.8-lb) drop weight, shall be 11 kg±0.5 kg (24.2 lb±1.1 lb).

(b) *Test procedure.* (1) Place the helmet on the appropriate size headform on the test device according to the HPI. Fasten the strap of the retention system under the stirrup.

(2) Mark the pre-test position of the retention system, with the entire dynamic test apparatus hanging freely on the retention system.

(3) Raise the 4-kg (8.8-lb) drop weight to a height of 0.6 m (2 ft) from the stop anvil and release it, so that it impacts the stop anvil.

(4) Record the maximum elongation of the retention system during the impact. A marker system or a displacement transducer, as shown in Figure 8 of this part, are two methods of measuring the elongation.

§ 1203.17 Impact attenuation test.

(a) *Impact test instruments and equipment*—(1) *Measurement of impact attenuation.* Impact attenuation is determined by measuring the acceleration of the test headform during impact. Acceleration is measured with a uniaxial accelerometer that is capable of withstanding a shock of at least 1000 g. The helmet is secured onto the headform and dropped in a guided free fall, using a monorail or guidewire test apparatus (see Figure 9 of this part), onto an anvil fixed to a rigid base. The center of the anvil shall be aligned with the center vertical axis of the accelerometer. The base shall consist of a solid mass of at least 135 kg (298 lb), the upper surface of which shall consist of a steel plate at least 12 mm (0.47 in.) thick and having a surface area of at least 0.10 m^2 (1.08 ft^2).

(2) *Accelerometer.* A uniaxial accelerometer shall be mounted at the center of gravity of the test headform, with the sensitive axis aligned within 5 degrees of vertical when the test headform is in the impact position. The acceleration data channel and filtering shall comply with SAE Recommended Practice J211 OCT88, Instrumentation for Impact Tests, Requirements for Channel Class 1000.

(3) *Headform and drop assembly—centers of gravity.* The center of gravity of the test headform shall be at the center of the mounting ball on the support assembly and within an inverted cone having its axis vertical and a 10-degree included angle with the vertex at the point of impact. The location of the center of gravity of the drop assembly (combined test headform and support assembly) must meet the specifications of Federal Motor Vehicle Safety Standard No. 218, Motorcycle Helmets, 49

CFR 571.218 (S7.1.8). The center of gravity of the drop assembly shall lie within the rectangular volume bounded by x=−6.4 mm (−0.25 in.), x=21.6 mm (0.85 in.), y=6.4 mm (0.25 in.), and y=−6.4 mm (−0.25 in.), with the origin located at the center of gravity of the test headform. The origin of the coordinate axes is at the center of the mounting ball on the support assembly. The rectangular volume has no boundary along the z-axis. The positive z-axis is downward. The x-y-z axes are mutually perpendicular and have positive or negative designations as shown in Figure 10 of this part. Figure 10 shows an overhead view of the x-y boundary of the drop assembly center of gravity.

(4) *Drop assembly.* The combined mass of the drop assembly, which consists of instrumented test headform and support assembly (excluding the test helmet), shall be 5.0±0.1 kg (11.00±0.22 lb).

(5) *Impact anvils.* Impact tests shall be performed against the three different solid (*i.e.,* without internal cavities) steel anvils described in this paragraph (a)(5).

(i) *Flat anvil.* The flat anvil shall have a flat surface with an impact face having a minimum diameter of 125 mm (4.92 in.). It shall be at least 24 mm (0.94 in.) thick (see Figure 11 of this part).

(ii) *Hemispherical anvil.* The hemispherical anvil shall have a hemispherical impact surface with a radius of 48±1 mm (1.89±0.04 in.) (see Figure 12 of this part).

(iii) *Curbstone anvil.* The curbstone anvil shall have two flat faces making an angle of 105 degrees and meeting along a striking edge having a radius of 15 mm±0.5 mm (0.59±0.02 in.). The height of the curbstone anvil shall not be less than 50 mm (1.97 in.), and the length shall not be less than 200 mm (7.87 in.) (see Figure 13 of this part).

(b) *Test Procedure*—(1) *Instrument system check (precision and accuracy).* The impact-attenuation test instrumentation shall be checked before and after each series of tests (at least at the beginning and end of each test day) by dropping a spherical impactor onto an elastomeric test medium (MEP). The spherical impactor shall be a 146 mm (5.75 in.) diameter aluminum sphere that is mounted on the ball-arm connector of the drop assembly. The total mass of the spherical-impactor drop assembly shall be 5.0±0.1 kg (11.0±0.22 lb). The MEP shall be 152 mm (6 in.) in diameter and 25 mm (1 in.) thick, and shall have a durometer of 60±2 Shore A. The MEP shall be affixed to the top surface of a flat 6.35 mm (¼ in.) thick aluminum plate. The geometric center of the MEP pad shall be aligned with the center vertical axis of the accelerometer (see paragraph (a)(2) of this section). The impactor shall be dropped onto the MEP at an impact velocity of 5.44 m/s±2%. (Typically, this requires a minimum drop height of 1.50 meters (4.9 ft) plus a height adjustment to account for friction losses.) Six impacts, at intervals of 75±15 seconds, shall be performed at the beginning and end of the test series (at a minimum at the beginning and end of each test day). The first three of six impacts shall be considered warm-up drops, and their impact values shall be discarded from the series. The second three impacts shall be recorded. All recorded impacts shall fall within the range of 380 g to 425 g. In addition, the difference between the high and low values of the three recorded impacts shall not be greater than 20 g.

(2) *Impact sites.* Each of helmets 1 through 4 (one helmet for each conditioning environment) shall impact at four different sites, with two impacts on the flat anvil and two impacts on the hemispherical anvil. The center of any impact may be anywhere on or above the test line, provided it is at least 120 mm (4.72 in), measured on the surface of the helmet, from any prior impact center. Each of helmets 5 through 8 (one helmet for each conditioning environment) shall impact at one site on the curbstone anvil. The center of the curbstone impacts may be on or anywhere above the test line. The curbstone anvil may be placed in any orientation as long as the center of the anvil is aligned with the axis of the accelerometer. As noted in §1203.12(d)(1), impact sites, the order of anvil use (flat and hemispherical), and curbstone anvil sites and orientation shall be chosen by the test personnel to provide the most severe test for the helmet. Rivets and other mechanical fasteners, vents, and any other helmet feature

within the test region are valid test sites.

(3) *Impact velocity*. The helmet shall be dropped onto the flat anvil with an impact velocity of 6.2 m/s±3% (20.34 ft/s±3%). (Typically, this requires a minimum drop height of 2 meters (6.56 ft), plus a height adjustment to account for friction losses.) The helmet shall be dropped onto the hemispherical and curbstone anvils with an impact velocity of 4.8 m/s±3% (15.75 ft/s±3%). (Typically, this requires a minimum drop height of 1.2 meters (3.94 ft), plus a height adjustment to account for friction losses.) The impact velocity shall be measured during the last 40 mm (1.57 in) of free-fall for each test.

(4) *Helmet position*. Prior to each test, the helmet shall be positioned on the test headform in accordance with the HPI. The helmet shall be secured so that it does not shift position prior to impact. The helmet retention system shall be secured in a manner that does not interfere with free-fall or impact.

(5) *Data*. Record the maximum acceleration in g's during impact. See Subpart C, §1203.41(b).

Subpart B—Certification

§ 1203.30 Purpose, basis, and scope.

(a) *Purpose*. The purpose of this subpart is to establish requirements that manufacturers and importers of bicycle helmets subject to the Safety Standard for Bicycle Helmets (subpart A of this part 1203) shall issue certificates of compliance in the form specified.

(b) *Basis*. Section 14(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a)(1), requires every manufacturer (including importers) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard. Section 14(a)(1) further requires that the certificate be based either on a test of each product or on a ''reasonable testing program.'' The Commission may, by rule, designate one or more of the manufacturers and private labelers as the persons who shall issue the required certificate. 15 U.S.C. 2063(a)(2).

(c) *Scope*. The provisions of this subpart apply to all bicycle helmets that are subject to the requirements of the Safety Standard for Bicycle Helmets, subpart A of this part 1203.

§ 1203.31 Applicability date.

All bicycle helmets manufactured on or after March 11, 1999, must meet the standard and must be certified as complying with the standard in accordance with this subpart B.

§ 1203.32 Definitions.

The following definitions shall apply to this subpart:

(a) *Foreign manufacturer* means an entity that manufactured a bicycle helmet outside the United States, as defined in 15 2052(a)(10) and (14).

(b) *Manufacturer* means the entity that either manufactured a helmet in the United States or imported a helmet manufactured outside the United States.

(c) *Private labeler* means an owner of a brand or trademark that is used on a bicycle helmet subject to the standard and that is not the brand or trademark of the manufacturer of the bicycle helmet, provided the owner of the brand or trademark caused, authorized, or approved its use.

(d) *Production lot* means a quantity of bicycle helmets from which certain bicycle helmets are selected for testing prior to certifying the lot. All bicycle helmets in a lot must be essentially identical in those design, construction, and material features that relate to the ability of a bicycle helmet to comply with the standard.

(e) *Reasonable testing program* means any tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more bicycle helmets selected from the production lot to determine whether there is reasonable assurance that all of the bicycle helmets in that lot comply with the requirements of the standard.

§ 1203.33 Certification testing.

(a) *General*. Manufacturers, as defined in §1203.32(b) to include importers, shall conduct a reasonable testing program to demonstrate that their bicycle helmets comply with the requirements of the standard.

(b) *Reasonable testing program.* This paragraph provides guidance for establishing a reasonable testing program.

(1) Within the requirements set forth in this paragraph (b), manufacturers and importers may define their own reasonable testing programs. Reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs. However, manufacturers and importers are responsible for ensuring compliance with all requirements of the standard in subpart A of this part.

(2) As part of the reasonable testing program, the bicycle helmets shall be divided into production lots, and sample bicycle helmets from each production lot shall be tested. Whenever there is a change in parts, suppliers of parts, or production methods, and the change could affect the ability of the bicycle helmet to comply with the requirements of the standard, the manufacturer shall establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the standard's test procedures. However, a reasonable testing program need not be identical to the tests prescribed in the standard.

(4) If the reasonable testing program shows that a bicycle helmet may not comply with one or more requirements of the standard, no bicycle helmet in the production lot can be certified as complying until sufficient actions are taken that it is reasonably likely that no noncomplying bicycle helmets remain in the production lot. All identified noncomplying helmets in the lot must be destroyed or altered by repair, redesign, or use of a different material or component, to the extent necessary to make them conform to the standard.

(5) The sale or offering for sale of a bicycle helmet that does not comply with the standard is a prohibited act and a violation of section 19(a) of the CPSA (15 U.S.C. 2068(a)), regardless of whether the bicycle helmet has been validly certified.

§ 1203.34 Product certification and labeling by manufacturers (including importers).

(a) *Form of permanent label of certification.* Manufacturers, as defined in § 1203.32(a), shall issue certificates of compliance for bicycle helmets manufactured after March 11, 1999, in the form of a durable, legible, and readily visible label meeting the requirements of this section. This label is the helmet's certificate of compliance, as that term is used in section 14 of the CPSA, 15 U.S.C. 2063.

(b) *Contents of certification label.* The certification labels required by this section shall contain the following:

(1) The statement ''Complies with U.S. CPSC Safety Standard for Bicycle Helmets for Persons Age 5 and Older'' or ''Complies with U.S. CPSC Safety Standard for Bicycle Helmets for Persons Age 1 and Older (Extended Head Coverage)'', as appropriate; this label may spell out ''U.S. Consumer Product Safety Commission'' instead of ''U.S. CPSC'';

(2) The name of the U.S. manufacturer or importer responsible for issuing the certificate or the name of a private labeler;

(3) The address of the U.S. manufacturer or importer responsible for issuing the certificate or, if the name of a private labeler is on the label, the address of the private labeler;

(4) The name and address of the foreign manufacturer, if the helmet was manufactured outside the United States;

(5) The telephone number of the U.S. manufacturer or importer responsible for issuing the certificate or, if the name of a private labeler is on the label, the telephone number of the private labeler;

(6) An identification of the production lot; and

(7) The uncoded month and year the product was manufactured.

(c) *Coding.* (1) The information required by paragraphs (b)(4) and (b)(6) of this section, and the information referred to in paragraph (c)(2) of this section, may be in code, provided:

(i) The person or firm issuing the certificate maintains a written record of the meaning of each symbol used in the code, and

(ii) The record shall be made available to the distributor, retailer, consumer, and Commission upon request.

(2) A serial number may be used in place of a production lot identification on the helmet if it can serve as a code to identify the production lot. If a bicycle helmet is manufactured for sale by a private labeler, and if the name of the private labeler is on the certification label, the name of the manufacturer or importer issuing the certificate, and the name and address of any foreign manufacturer, may also be in code.

(d) *Placement of the label(s).* The information required by paragraphs (b)(2), (b)(3), and (b)(5) of this section must be on one label. The other required information may be on separate labels. The label(s) required by this section must be affixed to the bicycle helmet. If the label(s) are not immediately visible to the ultimate purchaser of the bicycle helmet prior to purchase because of packaging or other marketing practices, a second label is required. That label shall state, as appropriate, ''Complies with U.S. CPSC Safety Standard for Bicycle Helmets for Persons Age 5 and Older'', or ''Complies with U.S. CPSC Safety Standard for Bicycle Helmets for Persons Age 1 and Older (Extended Head Coverage)''. The label shall be legible, readily visible, and placed on the main display panel of the packaging or, if the packaging is not visible before purchase (e.g., catalog sales), on the promotional material used with the sale of the bicycle helmet. This label may spell out ''U.S. Consumer Product Safety Commission'' instead of ''U.S. CPSC.''

(e) *Additional provisions for importers*—(1) *General.* The importer of any bicycle helmet subject to the standard in subpart A of this part 1203 must issue the certificate of compliance required by section 14(a) of the CPSA and this section. If a reasonable testing program meeting the requirements of this subpart has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance, provided:

(i) The importer is a resident of the United States or has a resident agent in the United States,

(ii) There are records of such tests required by §1203.41 of subpart C of this part, and

(iii) Such records are available to the Commission within 48 hours of a request to the importer.

(2) *Responsibility of importers.* Importers that rely on tests by the foreign manufacturer to support the certificate of compliance shall—in addition to complying with paragraph (e)(1) of this section—examine the records supplied by the manufacturer to determine that they comply with §1203.41 of subpart C of this part.

Subpart C—Recordkeeping

§ 1203.40 Effective date.

This subpart is effective March 10, 1999, and applies to bicycle helmets manufactured after that date.

§ 1203.41 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for bicycle helmets subject to the standard in subpart A of this part shall maintain records which show that the certificates are based on a reasonable testing program. The records shall be maintained for a period of at least 3 years from the date of certification of the last bicycle helmet in each production lot. These records shall be available, upon request, to any designated officer or employee of the Commission, in accordance with section 16(b) of the CPSA, 15 U.S.C. 2065(b). If the records are not physically available during the inspection because they are maintained at another location, the firm must provide them to the staff within 48 hours.

(b) *Records of helmet tests.* Complete test records shall be maintained. These records shall contain the following information.

(1) An identification of the bicycle helmets tested;

(2) An identification of the production lot;

(3) The results of the tests, including the precise nature of any failures;

(4) A description of the specific actions taken to address any failures;

(5) A detailed description of the tests, including the helmet positioning index (HPI) used to define the proper position of the helmet on the headform;

(6) The manufacturer's name and address;

(7) The model and size of each helmet tested;

(8) Identifying information for each helmet tested, including the production lot for each helmet;

(9) The environmental condition under which each helmet was tested, the duration of the helmet's conditioning, the temperatures in each conditioning environment, and the relative humidity and temperature of the laboratory;

(10) The peripheral vision clearance;

(11) A description of any failures to conform to any of the labeling and instruction requirements;

(12) Performance impact results, stating the precise location of impact, type of anvil used, velocity prior to impact, and maximum acceleration measured in g's;

(13) The results of the positional stability test;

(14) The results of the dynamic strength of retention system test;

(15) The name and location of the test laboratory;

(16) The name of the person(s) who performed the test;

(17) The date of the test; and

(18) The system check results.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information. Certification test results may be kept on paper, microfiche, computer disk, or other retrievable media. Where records are kept on computer disk or other retrievable media, the records shall be made available to the Commission on paper copies, or via electronic mail in the same format as paper copies, upon request.

Subpart D—Requirements For Bicycle Helmets Manufactured From March 17, 1995, Through March 10, 1999

§ 1203.51 Purpose and basis.

The purpose and basis of this subpart is to protect bicyclists from head injuries by ensuring that bicycle helmets comply with the requirements of appropriate existing voluntary standards, as provided in 15 U.S.C. 6004(a).

§ 1203.52 Scope and effective date.

(a) This subpart D is effective March 17, 1995, except for §1203.53(a)(8), which is effective March 10, 1998. This subpart D shall apply to bicycle helmets manufactured from March 17, 1995, through March 10, 1999, inclusive. Such bicycle helmets shall comply with the requirements of one of the standards specified in §1203.53. This subpart shall be considered a consumer product safety standard issued under the Consumer Product Safety Act.

(b) The term ''bicycle helmet'' is defined at §1203.4(b).

(c) These interim mandatory safety standards will not apply to bicycle helmets manufactured after March 10, 1999. Those helmets are subject to the requirements of Subparts A through C of this part 1203.

§ 1203.53 Interim safety standards.

(a) Bicycle helmets must comply with one or more of the following standards. The standards in paragraphs (a)(1) through (a)(7) of this section are incorporated herein by reference:

(1) American National Standards Institute (ANSI) standard Z90.4–1984, Protective Headgear for Bicyclists,

(2) ASTM standards F 1447–93 or F 1447–94, Standard Specification for Protective Headgear Used in Bicycling, incorporating the relevant provisions of ASTM F 1446–93 or ASTM F 1446–94, Standard Test Methods for Equipment and Procedures Used in Evaluating the Performance Characteristics of Protective Headgear, respectively,

(3) Canadian Standards Association standard, Cycling Helmets—CAN/CSA-D113.2-M89,

(4) Snell Memorial Foundation (Snell) 1990 Standard for Protective Headgear for Use in Bicycling (designation B–90),

(5) Snell 1990 Standard for Protective Headgear for Use in Bicycling, including March 9, 1994 Supplement (designation B–90S),

(6) Snell 1994 Standard for Protective Headgear for Use in Non-Motorized Sports (designation N–94), or

(7) Snell 1995 standard for Protective Headgear for Use with Bicycles B–95.

(8) Subparts A through C of this part 1203.

(b) The incorporation by reference of the standards listed in paragraphs (a)(1) through (a)(7) are approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards may be obtained as follows. Copies of the ANSI Z90.4 standard are available from: American National Standards Institute, 11 W. 42nd Street, 13th Floor, New York, NY 10036. Copies of the ASTM standards are available from: ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of the Canadian Standards Association CAN/CSA-D113.2-M89 standard are available from: CSA, 178 Rexdale Boulevard, Rexdale (Toronto), Ontario, Canada, M9W 1R3. Copies of the Snell standards are available from: Snell Memorial Foundation, Inc., 6731–A 32nd Street, North Highlands, CA 95660. Copies may be inspected at the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

FIGURE 1 TO PART 1203—ANATOMICAL PLANES

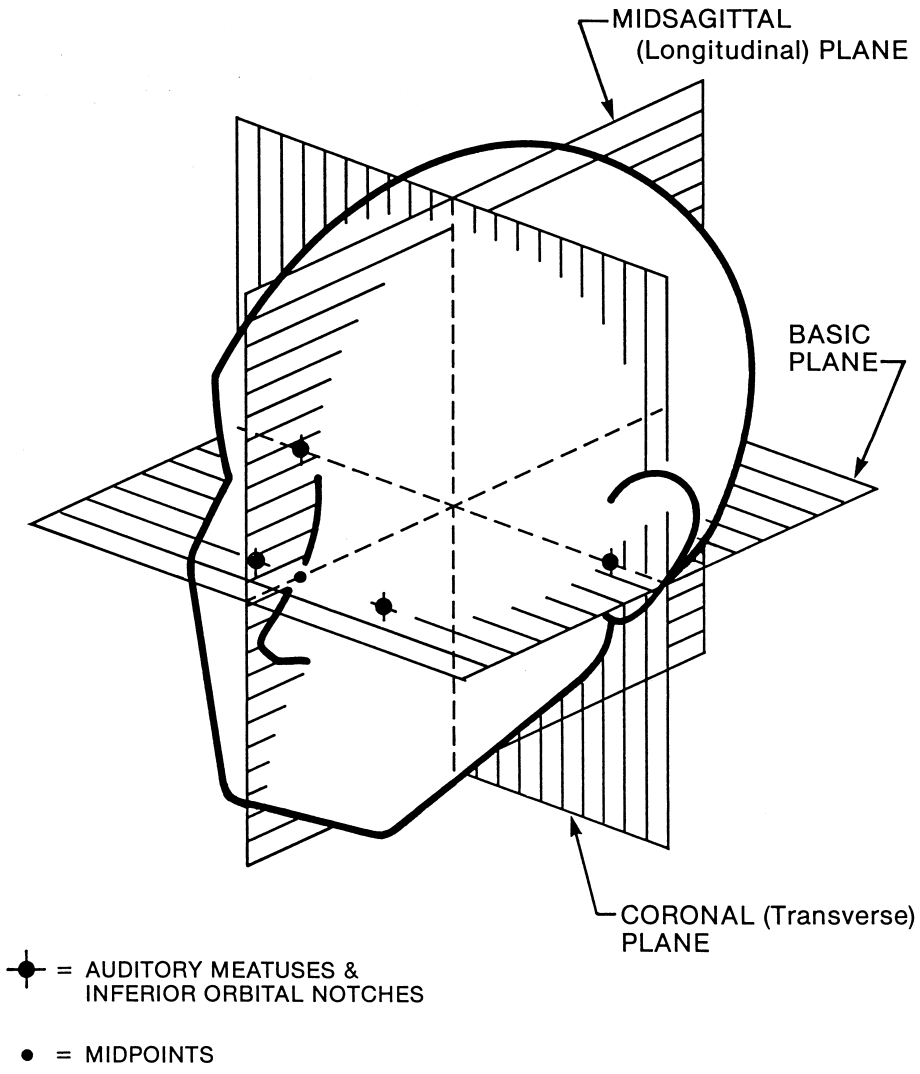


Figure 1. Anatomical Planes

FIGURE 2 TO PART 1203—ISO HEADFORM-BASIC, REFERENCE, AND MEDIAN PLANES

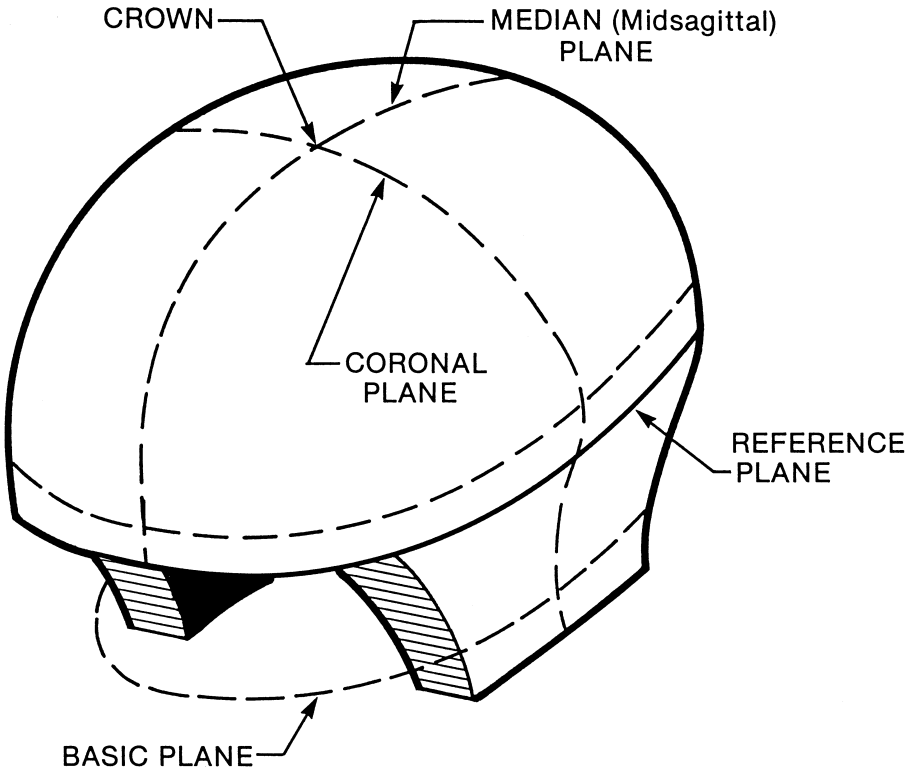
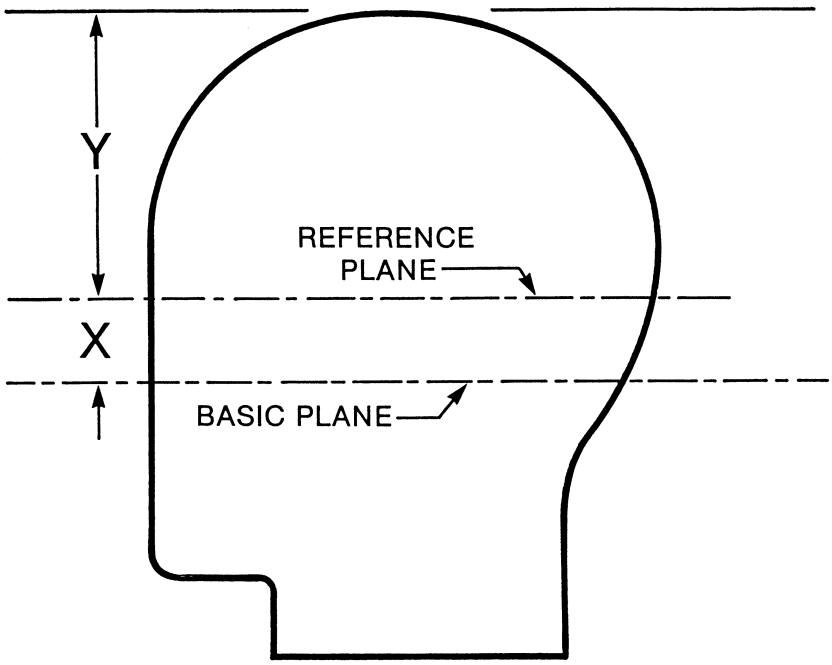


Figure 2. ISO Headform-Basic, Reference, and Median Planes

FIGURE 3 TO PART 1203—LOCATION OF REFERENCE PLANE

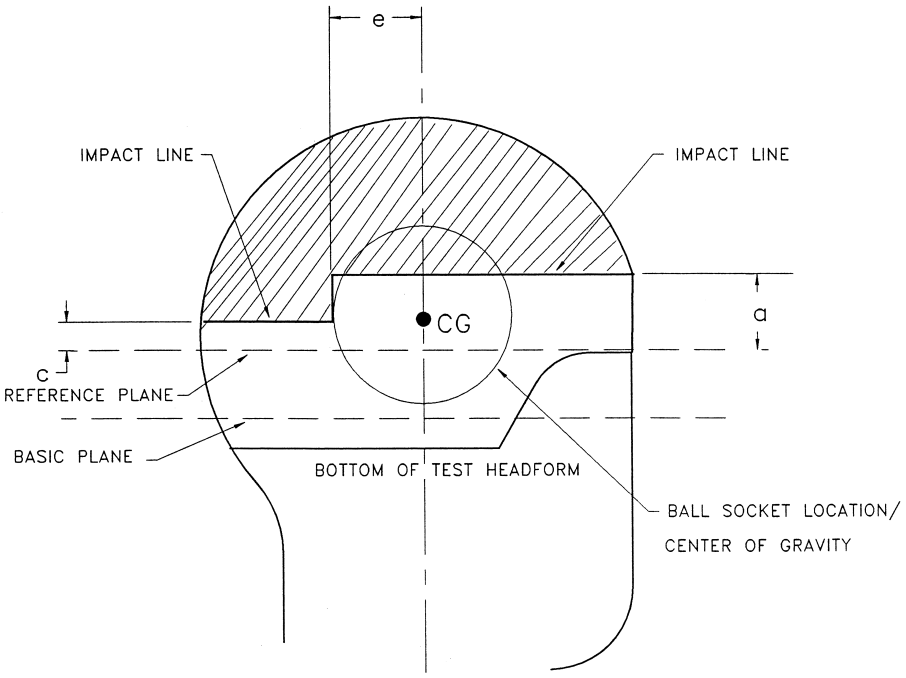


HEADFORM	SIZE	X	Y
A	500	24	90
E	540	26	96
J	570	27.5	102.5
M	600	29	107
O	620	30	110

DIMENSIONS IN MILLIMETERS

Figure 3. Location of Reference Plane

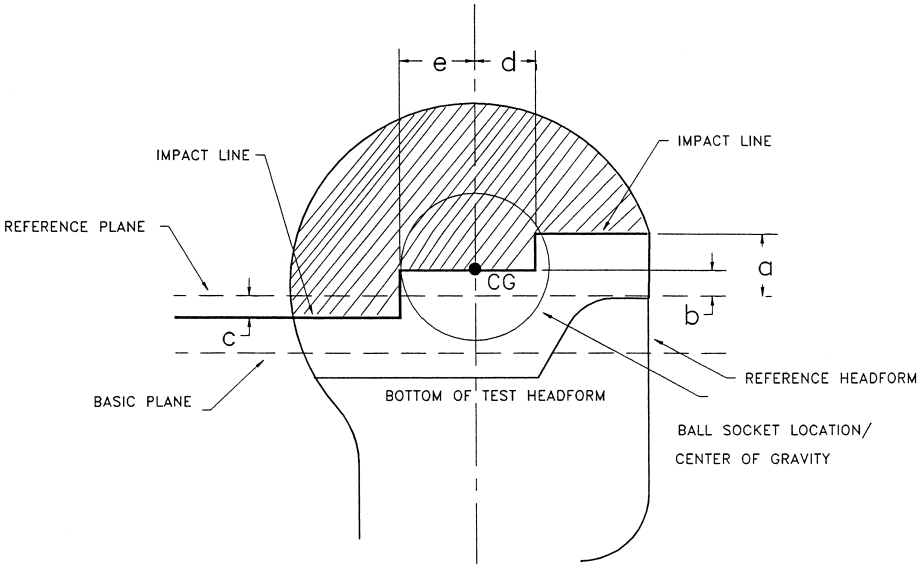
FIGURE 4 TO PART 1203—LOCATION OF TEST LINES FOR HELMETS INTENDED FOR PERSONS FIVE (5) YEARS OF AGE AND OLDER



HEADFORM	DIMENSIONS mm(in)		
	a	c	e
ISO A	38 (1.49)	27 (1.06)	49 (1.93)
ISO E	39 (1.54)	27 (1.06)	52 (2.05)
ISO J	41 (1.61)	27 (1.06)	54 (2.13)
ISO M	41 (1.61)	27 (1.06)	55 (2.16)
ISO O	42 (1.65)	27 (1.06)	56 (2.20)

Figure 4. Location of Test Lines for Helmets Intended for Persons Five (5) Years of Age and Older.

FIGURE 5 TO PART 1203—LOCATION OF TEST LINES FOR HELMETS INTENDED FOR PERSONS AGES 1 AND OLDER



HEADFORM	DIMENSIONS mm (in)				
	a	b	c	d	e
ISO A	30 (1.18)	12.7 (0.50)	15 (0.59)	25 (0.98)	30 (1.18)
ISO E	32 (1.26)	12.7 (0.50)	16 (0.63)	27 (1.06)	32 (1.26)

Figure 5. Location of Test Lines for Helmets Intended for Persons Ages 1 and Older

FIGURE 6 TO PART 1203—FIELD OF VISION

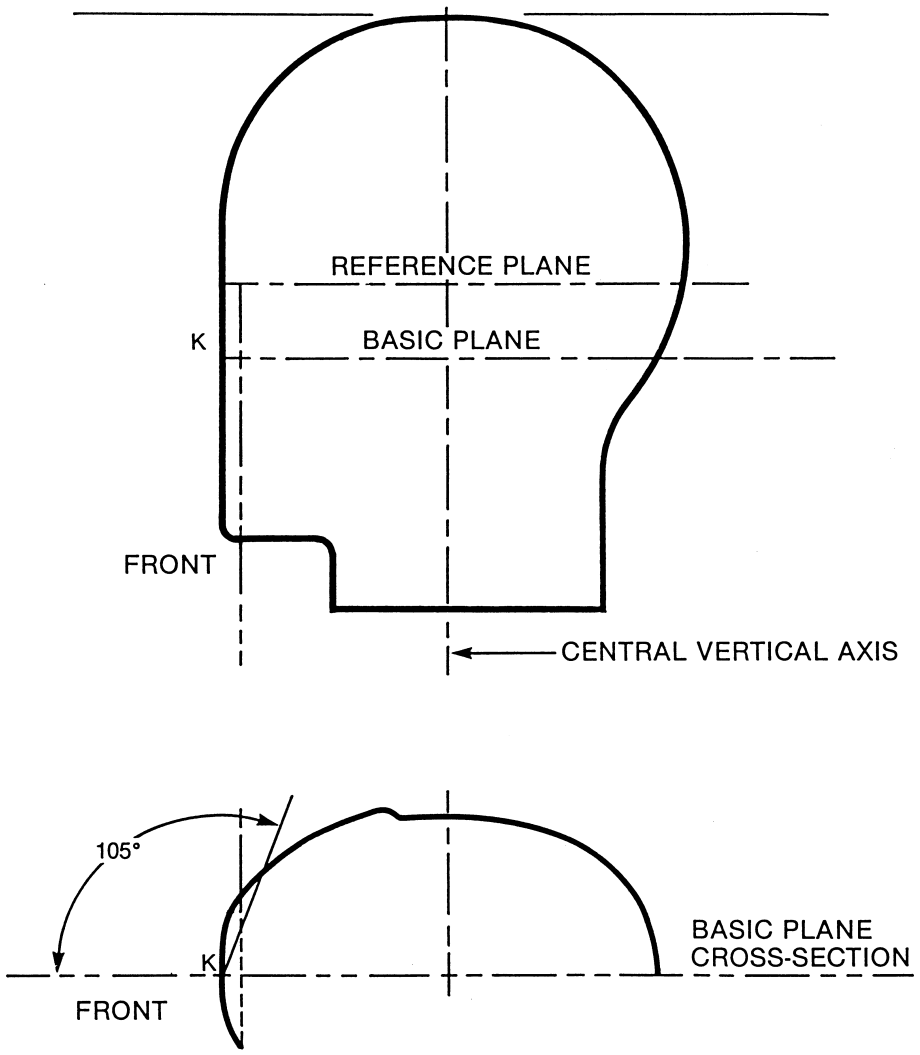


Figure 6. Field of Vision

FIGURE 7 TO PART 1203—TYPICAL TEST APPARATUS FOR POSITIONAL STABILITY TEST

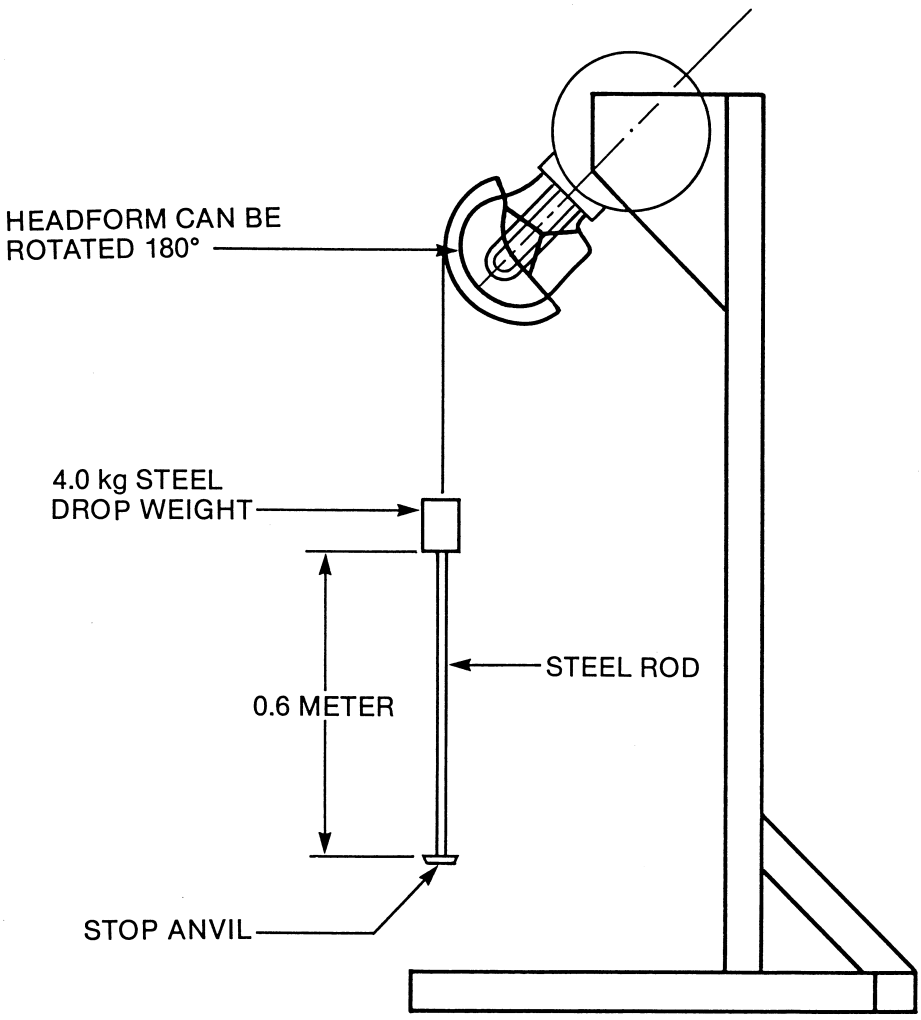


Figure 7. Typical Test Apparatus for Positional Stability Test

FIGURE 8 TO PART 1203—APPARATUS FOR TEST OF RETENTION SYSTEM STRENGTH

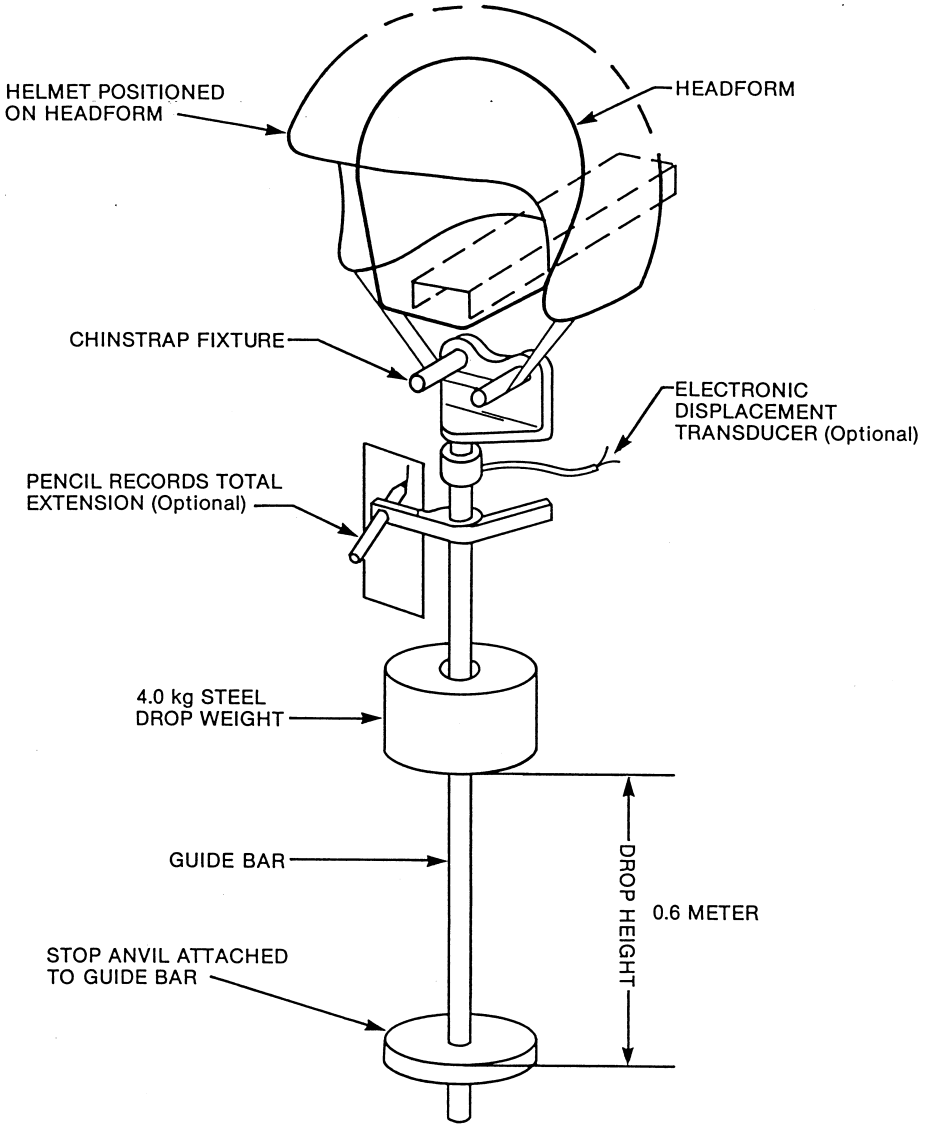


Figure 8. Apparatus for Test of Retention System Strength

FIGURE 9 TO PART 1203—IMPACT TEST APPARATUS

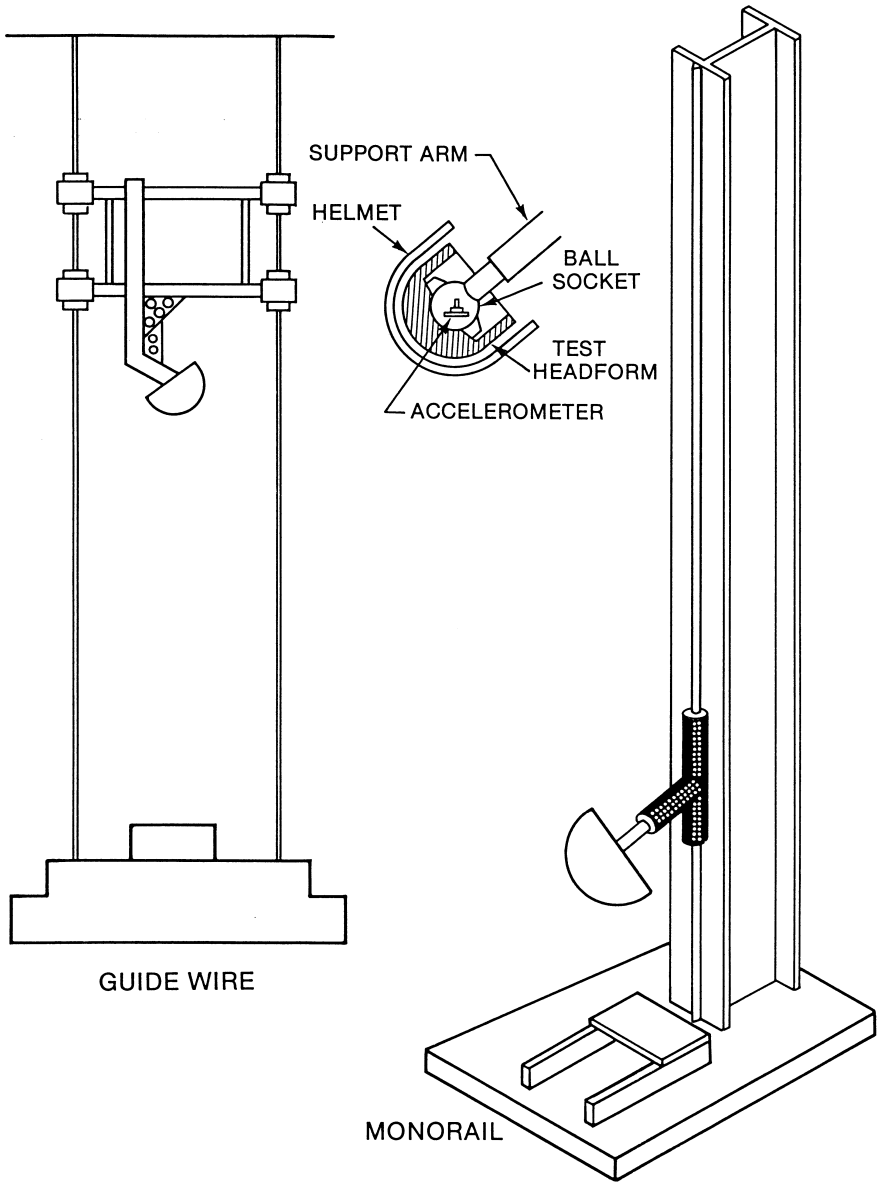


Figure 9. Impact Test Apparatus

FIGURE 10 TO PART 1203—CENTER OF GRAVITY FOR DROP ASSEMBLY

Overhead View of Ball-Arm as Installed on Impact Test Apparatus

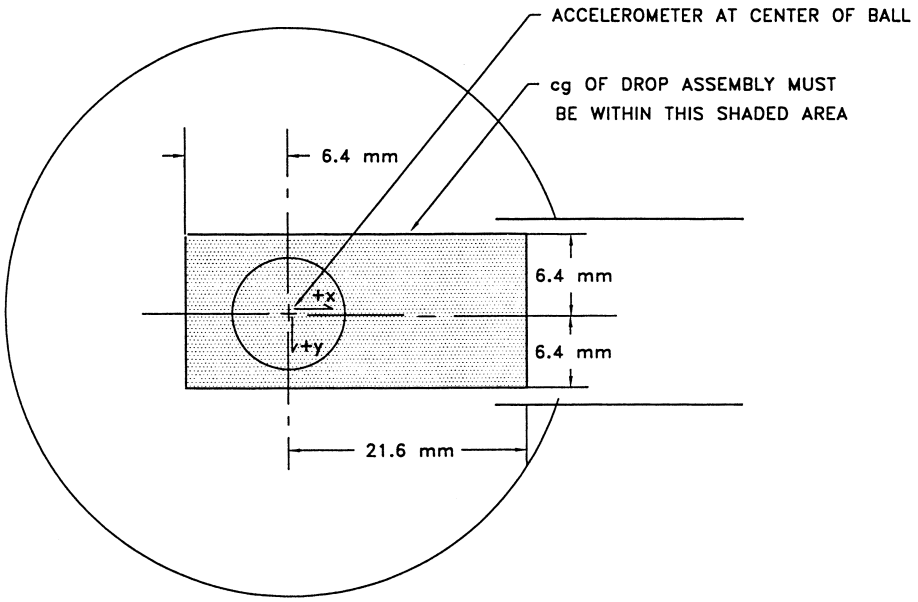


Figure 10. Center of Gravity for Drop Assembly

FIGURES 11, 12 AND 13 TO PART 1203—HEMISPHERICAL ANVIL AND CURBSTONE ANVIL

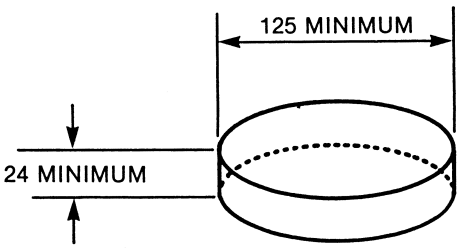


Figure 11. Flat Anvil

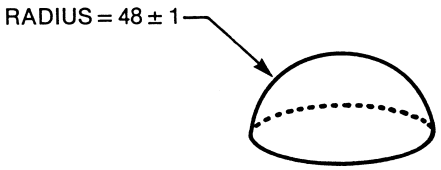


Figure 12. Hemispherical Anvil

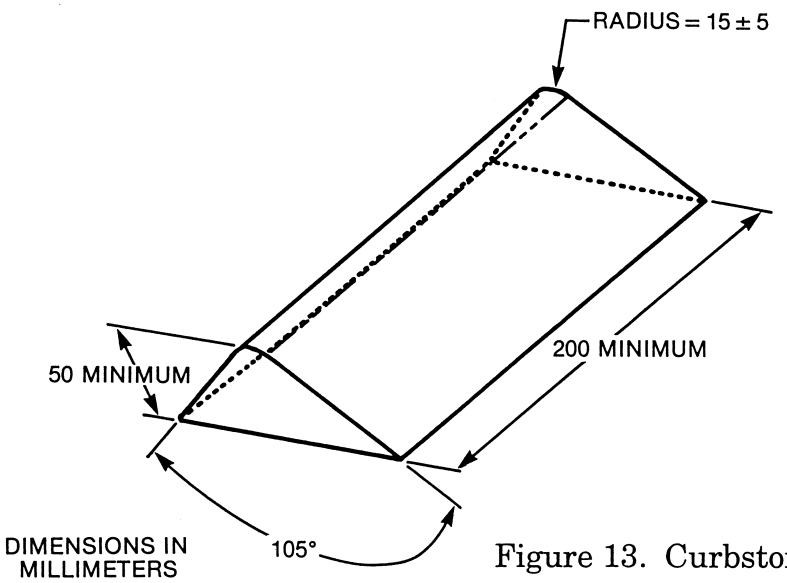


Figure 13. Curbstone Anvil

PART 1204—SAFETY STANDARD FOR OMNIDIRECTIONAL CITIZENS BAND BASE STATION ANTENNAS

Subpart A—The Standard

Subpart B—Certification

AUTHORITY: Secs. 2, 3, 5, 7, 9, 14, 16, 19, 25, Pub. L. 92–573, 86 Stat. 1207, 1208, 1211–17, 1220, as amended Pub. L. 95–319, sec. 1, 92 Stat. 386, Pub. L. 94–284, 90 Stat. 503; 15 U.S.C. 2051, 2052, 2054, 2056, 2058, 2063, 2065, 2068, 2074.

SOURCE: 47 FR 36201, Aug. 19, 1982, unless otherwise noted.

Subpart A—The Standard

§ 1204.1 Scope of the standard.

(a) *General.* This subpart A of part 1204 is a consumer product safety standard which prescribes safety requirements for Citizens Band omnidirectional base station antennas. The standard is intended to reduce the risk of electrocution or serious injuries occurring if the antenna contacts an electric power line while the antenna is being put up or taken down. One way that this can be accomplished is to insulate the antenna so that if it contacts the power line, there is less of a likelihood that a harmful electric current will be transmitted from the power line through the antenna and mast and ultimately through a person holding the antenna mast. Another possible way to provide this protection is to incorporate an insulating barrier between the antenna and the mast or other supporting structure, so that a harmful electric current will not pass from the antenna to a person in contact with the mast. (If this alternative were chosen, the feed cable from the antenna would have to be insulated or otherwise protected so that it would not provide an electrical path to the mast or a person touching the cable.)

(b) *Description of the standard*—(1) *Performance tests.* The standard describes two performance tests to determine if the means chosen by the manufacturer to protect against the shock hazard will provide adequate protection.

(i) First, there is an Insulating Material Effectiveness Test (§ 1204.4(d) of this subpart) in which a high voltage electrode or test rod is brought into contact with the antenna at any point within the protection zone established by § 1204.2(k) of this subpart to ensure that the insulation can withstand the voltage for 5 minutes without transmitting more than 5 milliamperes (mA) root-mean-square (rms) of electric current.

(ii) The other test is an Antenna-Mast System Test (§ 1204.4(e) of this subpart) which is intended to determine whether the means provided to protect against electrocution will withstand the stress imposed when an antenna-mast system falls onto a power line. This test consists of mounting the antenna to be tested on a specified mast and allowing the assembled antenna and mast to fall onto a power line of 14,500 volts rms phase to ground.

(2) *Recommended materials.* (i) Since a substantial portion of the accidents addressed by this standard occur when the antenna is being taken down after it has been installed in an outdoor environment for a number of years, the materials selected to provide protection from shock should be weather resistant.

(ii) Although other materials may also be suitable, materials meeting the following criteria should be reasonably weather resistant:

(A) Material composition includes an ultraviolet stabilizer or screen.

(B) Heat resistance of 212 °F (100 °C) without loss of elasticity (ANSI/ASTM D 746–79).

(C) Moisture absorption of not more than 0.2 percent (ANSI/ASTM D 570–77).

(D) For heat shrinkable sleeving, temperature flexibility to −40 °F (−40 °C) with no cracks (Mil Spec. MIL-I-23053C, 20 May 1976).

(3) *Warning:* Section 1204.5 of this subpart requires a statement in the instructions that the standard will not protect in every instance against electrocution caused by contact with power lines. This is because the standard is intended to provide protection for power line voltages of up to 14,500 volts. Some power lines carry more voltage than this. In addition, not all portions of the antenna are required to be insulated, and the antenna's mast is not required to be insulated. If the power line were to contact one of these uninsulated areas, an electrocution could occur. Furthermore, when the antenna was manufactured it may not in fact have complied with the standard, or the insulation may have deteriorated or been damaged since the antenna was manufactured. In addition, the insulation cannot withstand high voltages indefinitely, and, after a period of time, the current may penetrate the insulation. Therefore, even if a harmful amount of current is not transmitted immediately, the user should not attempt to remove an antenna that falls into electric power lines, since the insulation could break down while the antenna is being removed. For these reasons, persons handling these antennas should ensure that the antennas are kept away from power lines so that the antenna cannot contact the line while being transported, installed, or removed, even if the antenna is dropped. The Commission recommends that antennas be located at least twice the combined length of the antenna and mast from the nearest power line.

(c) *Scope.* (1) Except as noted below, the standard applies to all omnidirectional CB base station antennas that are consumer products and are manufactured or imported on or after May 24, 1983.

(2) The Commission may extend the effective date of the standard for as long as an additional 90 days for any firm which has 750 employees or fewer and, is not a subsidiary or division of a firm having more than 750 employees, and which manufactures or imports products subject to the standard, upon written application, addressed to the Associate Executive Director for Compliance and Administrative litigation, Consumer Product Safety Commission, Washington, D.C. 20207, received not later than January 17, 1983. An application for extension of the effective date shall:

(i) Identify the requesting firm as a manufacturer or importer of products subject to the standard.

(ii) State the total number of employees of the firm, including all employees of any subsidiary or division, and all employees of any firm of which the requesting firm is a subsidiary or division.

(iii) Request extension of the effective date to a specific date not later than May 27, 1983.

(iv) Explain why the requested extension of the effective date is needed.

(v) Describe all activities undertaken by the requesting firm to achieve compliance with the requirements of the standard.

(vi) State that the requesting firm will market complying products after the extended effective date.

(3) The Associate Executive Director for Compliance and Administrative Litigation will evaluate each request for extension of the effective date. The following criteria will be used in determining whether to grant an application for extension of the effective date:

(i) Does the application demonstrate that the requesting firm cannot meet the general effective date,

(ii) Does the application demonstrate that the requesting firm has made a good faith effort to achieve compliance with the requirements of the standard by the general effective date.

(iii) Does the application demonstrate that the firm is likely to produce or market complying products if the requested extension is granted.

(4) The Associate Executive Director will advise each requesting firm in writing if the requested extension is granted or denied. If the Associate Executive Director for Compliance and Administrative Litigation denies a request for extension of the effective

date, the firm may request the Commission to reconsider the denial.

(5) Section 3(a)(1) of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2052(a)(1) defines the term *consumer product* as an ''article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.'' The term does not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer. A limited exception from coverage of the standard is provided by section 18(a) of the CPSA, 15 U.S.C. 2067, for certain products intended for export and meeting the requirements of section 18(b) of the CPSA.

(d) *Prohibited acts.* It is unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any product subject to this standard that does not conform with the standard.

(Sec. 9(h), Pub. L. 92–573, 86 Stat. 1207, as amended, Pub. L. 95–319, 92 Stat. 386, Pub. L. 95–631, 92 Stat. 3742, Pub. L. 96–373, 94 Stat. 1366, Pub. L. 97–35, 95 Stat. 703, 15 U.S.C. 2058(h))

[47 FR 36201, Aug. 19, 1982, as amended at 48 FR 29683, June 28, 1983]

§ 1204.2 Definitions.

In addition to the definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for the purposes of this standard.

(a) *Antenna system* means a device for radiating and/or receiving radio waves. Where they are present, the antenna system includes active elements, ground plane elements, matching networks, element-connecting hardware, mounting hardware, feed cable, and other functional or non-functional elements.

(b) *Antenna-mast system* means the completed assembly of the antenna system and the mast.

(c) *Base station* means a transmitter and/or receiver in a fixed location.

(d) *Citizens Band (CB)* means the frequency band allocated for citizen's band radio service.

(e) *Current* means the total rate at which electrical charge is transported through the antenna-mast system in response to the applied test voltage, including both capacitive and resistive components.

(f) *Electrical breakdown* means a failure of the insulating material used with the antenna, such that in the Antenna-Mast System Test of § 1204.4(e) of this subpart, the current flowing through the antenna-mast system is sufficient to actuate the automatic internal cut-off of the high voltage source or exceeds the current that can be measured by the current monitoring device.

(g) *Feed cable* means the electrical cable that connects the antenna system to the transmitter and/or receiver.

(h) *Field joint* means any joint between antenna system sections or parts, or between the antenna system and the mast, that is not assembled by the antenna manufacturer.

(i) *Insulating material and insulation* mean a material that has a very small electric conductivity.

(j) *Omnidirectional antenna* means an antenna system designed or intended primarily to exhibit approximately equal signal transmission or reception capabilities in all horizontal directions simultaneously.

(k) *Protection zone* means that portion of an antenna system which can contact the test rod during the Insulating Material Effectiveness Test or can contact the power line during the Antenna-Mast System Test. This zone consists of those elements of the antenna system extending from the uppermost tip of an upright antenna downward to a point that is 12.0 inches (30.5 cm) above the top of the mast when the antenna system is mounted according to the manufacturer's instructions.

(l) *Voltage, phase to ground,* means that voltage which exists between a single phase of a three phase power system and ground.

§ 1204.3 Requirements.

All omnidirectional CB base station antennas are required to comply with the following requirements.

(a) *Field joints.* Parts or accessories intended to protect a field joint so that it will meet any other requirement of this standard, and that must be put into place by the person assembling the antenna system, shall be integral with, or not readily removable from, at least one of the antenna sections or parts involved in the joint or shall be necessary in order to complete the joint.

(b) *Feed cable.* When compliance with the requirements of this standard depends on the insulating or other properties of the feed cable, at least 50 feet of the cable shall be supplied by the manufacturer with the antenna system.

(c) *Electrical protection.* Antenna systems shall be manufactured so that if all points within the protection zone of an antenna system were tested by the Insulating Material Effectiveness Test of §1204.4(d) of this subpart, and the Antenna-Mast System Test of §1204.4(e) of this subpart, the current measured by the current monitoring device connected to the mast would be no greater than 5.0 milliamperes rms and no electrical breakdown of the antenna system's insulating material would occur.

§ 1204.4 Electric shock protection tests.

(a) *Safety precautions.* For tests involving high voltage, the following recommended minimum safety precautions should be followed:

(1) At least one test operator and one test observer (preferably one with cardiopulmonary resusitation (CPR) training) should be present at every test.

(2) The test area (outdoors or indoors) should secure against accidental intrusion by other persons during tests.

(3) Test areas located indoors should be ventilated to avoid buildup of potentially hazardous concentrations of gaseous byproducts which may result from the tests.

(4) Fire extinguishers should be easily accessible in case materials on the test specimen ignite.

(5) ''High Voltage Test'' warning devices should be activated before start of a test.

(6) Emergency phone numbers should be posted.

(b) *Test conditions*—(1) *Specimens.* All specimens shall be tested as supplied by the manufacturer, following assembly in accordance with the manufacturer's instructions except as provided in paragraph (e)(2) of this section.

(2) *Temperature.* Ambient temperature shall be in the range from 32 °F (0 °C) to 104 °F (40 °C)

(3) *Relative humidity.* Ambient relative humidity shall be in the range of from 10 to 90 percent.

(4) *Voltage.* Voltage, phase to ground, of the power line or test probe shall be 14.5 kilovolts rms, 60 hertz.

(5) *Conditioning.* Prior to testing, all specimens shall be exposed for at least 4 hours to the ambient test area environment.

(c) *Test equipment.* (1) High voltage source capable of delivering at least 15 mA rms at 14.5 kV rms, 60 Hz. The source should have an automatic internal cut-off actuated by a preset current level.

(2) Instrumentation to measure the rms voltage applied to the antenna system.

(3) Current monitoring device to indicate hazardous components of the total rms current flowing to ground through the mast. One configuration of the circuitry for the current monitoring device (shown in Figure 1) consists of three parallel branches as follows. One branch consists of a resistor in series with a true-rms milliammeter with a maximum error of 5% of the reading in the frequency range of 50Hz to 10MHz (the total of the resistor and the internal resistance of the milliammeter is to be 1000 ohms). A parallel branch consists of a 1000 ohm resistor in series with a 0.08 microfarad capacitor. Another parallel branch should consist of a spark gap rated at 50 to 100 volts as a meter protection device. A different current monitoring device may be used if the measured value of the rms current corresponds to that indicated by the configuration described above.

(4) For the Insulating Material Effectiveness Test:

(i) High voltage electrode or test rod consisting of ¼ in. (6.4 mm) diameter aluminum rod.

(ii) Support jig, structure, or hanger made of insulating material which is capable of holding antenna system test specimens electrically isolated from all surrounding structures or ground.

(5) For the Antenna-Mast System Test, a high voltage test facility, as shown in Figures 2 and 3, which includes a single power line spanning between two poles 95 to 105 feet (29 to 32 meters) apart, a tensioning device to adjust the cable sag to from 9 to 12 inches (23 to 30 cm), and a pivot fixture (Figure 2), for holding the base of an antenna-mast system, which can be moved horizontally to adjust the distance to the cable. The cable consists of ¼ in. diameter 7 by 19 galvanized steel aircraft cable. The low point of the cable shall be between 28 and 29 feet (8.5 to 8.8 meters) above a horizontal plane through the pivot axis of the pivot fixture.

(d) *Insulating Material Effectiveness Test procedure.* (1) A short piece of typical tubular mast shall be attached to the antenna system to be tested, in accordance with mounting instructions provided with the antenna system by the manufacturer.

(2) If a feed cable is provided with the antenna system, it shall be used in the test. If no cable is provided with the antenna system, a RG–213 cable shall be used in the test (Mil Spec. MIL-C-17/75C, 15 March 1977). In either case, the cable shall be connected to the antenna system, installed parallel to the mast, and secured by taping or similar means at one point on the mast. The side of the bottom end of the cable also shall be secured to the mast.

(3) With the antenna system properly supported and isolated from ground and with the current monitoring device connected to the mast, the test rod shall be connected to the high voltage source and brought into contact with the antenna system at any point within the protection zone (see §1204.2(k) of this subpart). For each contact point, the voltage shall be increased from 0 to 14.5 kV at a rate of at least 2 kV per second and held at 14.5 kV for 5.0 minutes. Current shall be monitored and the maximum recorded.

(e) *Antenna-Mast System Test procedure.* (1) The antenna system to be tested shall be attached to a mast in accordance with mounting instructions provided by the manufacturer. The mast shall be assembled of commercially available 1¼ inch outside diameter 16 gauge tubular steel sections, commonly sold for antenna-mast installations in 5 and 10 feet lengths. The slip joints between the mast sections shall be secured (as with screws) to prohibit rotational or longitudinal movement at the joint. The length of the mast shall be such that when it is mounted in the pivot fixture of the high voltage test facility, the distance from the pivot to the uppermost point on the antenna system is 41.75 to 42.25 feet (12.7 to 12.9 meters).

(2) If a feed cable is provided with the antenna system, it shall be used in the test. If no cable is provided with the antenna system, a RG–213 feed cable shall be used in the test for specification of an RG–213 cable see (Mil. Spec. MIL-C-17/75C, 15 March 1977). In either case, the cable shall be connected to the antenna system, installed parallel to the mast, and secured by taping or similar means every two feet along the length of the mast. The side of the bottom end of the cable also shall be secured to the mast.

(3) The antenna-mast system shall be mounted in the pivot fixture. The pivot fixture shall be adjusted so that the point of impact between the antenna and the power line takes place at any desired point within the antenna's protection zone. The antenna-mast system shall then be erected to a position of up to 5° from the vertical, leaning toward the simulated power line (see Figure 4). The antenna-mast system shall then be released and allowed to fall against the power line. The test may be performed with different test positions such that the antenna system flexes after impact and slides off the power line and or so that it remains in contact with the power line for 5.0 minutes. Current flow from the antenna-mast system to ground shall be monitored and recorded for each test.

(f) *Interpretation of Results.* An antenna shall pass the Insulating Material Effectiveness Test or the Antenna-Mast System Test if no electrical

breakdown occurs and if no current reading exceeds 5 mA rms.

§ 1204.5 Manufacturer's instructions.

(a) For all antennas covered under this part 1204, the following statement shall be included in the manufacturer's instructions, in addition to the material required by 16 CFR 1402.4(a)(1)(ii):

Under some conditions, this antenna may not prevent electrocution. Users should keep antenna away from any overhead wires. If antenna contacts a power line, any initial protection could fail at any time. IF ANTENNA NEARS ANY OVERHEAD WIRES, IMMEDIATELY LET GO, STAY AWAY, AND CALL UTILITY COMPANY.

(b) This warning statement shall be in a separate paragraph immediately following the warning statement required by 16 CFR 1402.4(a)(1)(ii)(A).

(c) This warning statement shall be legible and conspicuous and shall be in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, or similar designations, and that is preferably no smaller than 10 point type.

§ 1204.6 Findings.

As required by section 9 (b) and (c) of the Consumer Product Safety Act, 15 U.S.C. 2058 (b) and (c), the Commission makes the following findings:

(a) *The degree and nature of the risk of injury the rule is designed to reduce.* (1) The rule addresses the risk of injury or death caused by electric shock occuring when the antenna comes into contact with electrical power lines while the antenna is being put up or taken down.

(2) About 175 fatalities were estimated to be associated with omnidirectional CB antennas in 1976. The estimated number of fatalities declined to about 125 in 1977 and to about 55 in 1978. Since then, the number of fatalities appears to have leveled off at about 45–50 each year. In addition to the 45–50 deaths, it is estimated that a somewhat greater number of injuries occur annually and that about half of them are serious enough to require surgery, amputation, skin grafts, etc. It is common for multiple deaths or injuries to occur in a single accident.

(3) The Commission's staff has estimated that since 1979 about 20 percent of the accidents involved antennas less than a year old, resulting in about 8 deaths in 1980.

(4) Since a substantial portion of the accidents associated with these antennas occur when the antenna is being taken down after it has been installed in an outdoor environment for a number of years, the standard recommends that materials selected to provide protection from shock be weather resistant.

(5) The standard specifies that protection shall be provided against voltages of 14,500 volts phase-to-ground. Voltages of this level or less are involved in 98 percent of the accidents and 95 percent of the total circuit mileage of distribution circuits.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* (1) The standard applies to omnidirectional CB base station antennas. The Commission estimates that there were approximately 5 million omnidirectional base station antennas in use in 1981, and at that time as many as 75,000 of these antennas were expected to be sold each year for the next several years.

(2) [Reserved]

(c)(1) *The need of the public for the consumer products subject to the rule.* Omnidirectional CB base station antennas are used in non-mobile applications to obtain essentially uniform receiving and transmitting capabilities in all directions simultaneously. Although directional antennas can obtain greater reception and transmitting capabilities in one or more directions than can omnidirectionals, directionals are generally more expensive and must be oriented so that they point in the desired direction. Therefore, omnidirectional antennas are preferred by many base station operators, and they can also be used in conjunction with a directional antenna to locate another station to which the directional antenna can then be oriented.

(2) CB stations are used by individuals as a communications device for both practical and personal enjoyment purposes. Some operators volunteer to monitor the commonly used and/or emergency channels for distress calls

and summon aid where appropriate, relay messages, and aid local authorities and motorists in monitoring traffic conditions and accidents.

(3) Although operators can fabricate their own antennas, and antennas made for other purposes can be adapted for CB use, for most operators there is no adequate substitute for the commercial CB base station antennas subject to this rule.

(d) *The probable effect of the rule upon the utility, cost, and availability of the product*—(1) *Utility*. Tests performed for the Commission have shown that an external layer of insulation that will enable the antenna to comply with this standard can be provided that will have no significant effect on the performance of the antenna that cannot be compensated for by minor changes in the antenna. It is also likely that an insulated antenna's useful life would be somewhat longer than that of an uninsulated antenna. To the extent that manufacturers minimize the number of antenna elements in the protection zone, antennas should become less complex and bulky, and installation may also be eased. This may tend to make installation and removal of the antenna somewhat safer as well. If the isolation technique were used to comply with the standard, there should be no effect on the performance of the antenna.

(2) *Cost*. For the simpler designs of omnidirectional CB base station antennas, the manufacturers' production costs will be increased by approximately 20 percent, or $4 per antenna. For a few models, the production cost increase could be as much as 50 percent. Some models of antennas for which cost increases could be expected to be substantially greater will likely be discontinued. Some manufacturers already make antennas that either comply with the standard or can be made to do so with changes that involve no significant cost increases. The average rise in retail prices due to the standard is expected to be from 20 percent, or about $10 per antenna.

(3) *Availability*. The 30 or more different models of omnidirectional CB base station antennas available to consumers in 1981 are expected to be reduced in number substantially, perhaps by as much as half, after product line changes are made to meet the standard. The difference among some of the models likely to be discontinued are small (often relating only to primarily cosmetic features that provide a certain degree of product differentiation but do not significantly affect performance). Changes in product lines may be discernible to some consumers, however, since different brands and models of antennas will tend to look more alike (i.e., without upper radials, ''hats'' or other physical appendages previously incorporated). The availability of replacement components for older antennas may also be restricted somewhat if new, complying components are not compatible with some older models. Production of complying antennas is expected to be sufficient to satisfy demand; no overall ''shortage'' of antennas is anticipated as a result of the standard. Sales will, instead, shift from relatively low levels for each of many models to relatively higher levels for fewer models.

(e) *Means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety*. (1) The standard may have significant adverse effects on competition among antenna producers. The additional costs associated with the standard, coupled with the recent history of decreasing sales, may cause a number of manufacturers, including one or two of the major producers, to abandon production of omnidirectional CB base station antennas. The standard is likely to impact most heavily on smaller manufacturers, which may have smaller and fewer capital sources from which to draw funds for product design and production changes and for product testing.

(2) Concentration of sales among the two largest manufacturers will probably increase as a result of the standard. However, the shrinking size of the market itself may prompt some major firms to drop this product line. Companies currently making antennas that substantially comply with the standard will probably gain a significant short-run competitive advantage over other

producers whose products do not already comply with the standard's basic provisions.

(3) Compliance with the standard may be relatively more burdensome for the smaller firms in the producing industry. Several small firms which entered the market in the early- and mid-1970's have already left the market due to the overall decrease in demand for the product. Those that remain account for less than 10 percent of annual unit shipments. None of these small firms is expected to go out of business as a result of issuance of the standard because most also produce directional CB and other base and mobile communications antennas and equipment. However, the Commission anticipates that most of these small firms will probably discontinue omnidirectional CB base station antenna production, at least temporarily, until a supplier of complying components is found, or until a decision can be made about long-term prospects.

(4) In order to minimize the adverse effects on competition and manufacturing and other commercial practices, the standard is a performance standard defined in terms of the factors the Commission determined to be significant for the protection of consumers. Thus, manufacturers have a maximum degree of flexibility in how to meet the standard, since the standard does not specify how the protection performance is to be obtained.

(5) The Commission also considered alternative technical approaches to reducing or eliminating unreasonable risks of injury associated with omnidirectional CB base station antennas, including incorporation of provisions in the standard which would allow the antenna to meet its requirements by grounding. The Commission rejected this approach because of the absence of any practical means for a consumer to ensure that the ground system will be adequate to dissipate the large amounts of power involved in a powerline contact accident. Additionally, the Commission considered the possibility that the standard might require CB base station antennas to incorporate a device to sense the electromagnetic field of a powerline. The Commission rejected this alternative because of the cost involved in such an approach, and because consumers could install an antenna even though the presence of a powerline is indicated.

(6) The Commission considered making the provisions of the standard less stringent and eliminating requirements applicable to the antenna's feed cable, in order to lessen the adverse impact of the standard on competition and manufacturing practices. However, it was determined that such changes to the standard would reduce the effectiveness of the standard and thus were not consistent with the public health and safety. Furthermore, these changes would not significantly reduce the adverse effects on competition and manufacturing practices. The elimination of requirements applicable to the feed cable would, with known technology, result in almost completely negating the benefits of the standard and is thus not consistent with the public health and safety.

(7) The Commission also considered the possibility of issuing the requirements of the standard as a voluntary test method rather than as a mandatory standard. The Commission estimated that if the provisions of the standard were issued as a voluntary test method, the total cost of such a voluntary test method to consumers during the first year after issuance would be about 30 percent of the total cost to consumers expected to result from promulgation of a mandatory standard. However, the Commission estimated that a voluntary test method would prevent only about 25 percent of the deaths and injuries which may be avoided by issuance of a mandatory standard. The Commission declined to issue the provisions of the standard as a voluntary test method because it concluded that such an approach would not only prevent fewer deaths and injuries each year than a mandatory standard, but would also have a less favorable ratio of benefits to costs than a mandatory standard.

(8) The Commission also considered the possibility of undertaking a joint effort with a trade association to inform all users of CB antennas of the dangers which can result from contact with overhead powerlines as an alternative to issuance of a mandatory

standard. The Commission observed that this alternative would have a relatively small economic impact on the industry. The Commission also observed that extensive efforts to promote public awareness of the dangers of contacting overhead powerlines have been conducted in the past by the Commission, antenna manufacturers, and utility companies, and that electrocutions and serious injuries continue to occur during installation and removal of CB base station antennas. For this reason, the Commission concluded that a public information campaign would prevent fewer deaths and injuries than issuance of a mandatory standard, and rejected such a campaign as an alternative to issuance of the standard.

(f) *The rule, including its effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.* (1) The provisions of the standard constitute a related system of performance parameters which are needed as a group to ensure that the performance of new antennas will provide the degree of safety which the Commission has determined is reasonably necessary. Minor changes in the value of each parameter would not significantly reduce the costs of the standard, although in some cases they could substantially reduce the standard's effectiveness.

(2) The Commission estimates that increased retail prices due to the standard will cost consumers up to about $750,000 per year. The Commission also estimates that the standard will prevent approximately 8 deaths and 8 or more injuries during the first year the standard is in effect. Thus, if the standard saves 8 lives per year, the cost of the standard will be about $94,000 for each life saved.[1]

(3) As to the benefits from reduced injuries, the Commission estimates that, if 8 injuries are prevented during the first year the standard is in effect, the actual costs saved by the accidents prevented by the standard will amount to up to $21,000 to $37,000, exclusive of pain, suffering, or disability. If a monetary factor for these less quantifiable components is included, annual injury reduction benefits could be about $288,000 to $1,680,000.

(4) The effective date of the standard was selected after balancing the increased costs to manufacturers and consumers that are associated with shorter effective dates against the benefits to the public that would be caused by having the effective date as soon as possible.

(5) The requirement for the cautionary statement in the instructions for the antenna is intended to ensure the effectiveness of the standard by discouraging any relaxation of present safety practices involving staying away from powerlines. Since instructions for this product are already required by 16 CFR part 1402, the additional statement should have little or no adverse economic impact.

(6) After considering the costs and benefits associated with the standard, the Commission concludes that the standard, including its effective date, is reasonably necessary to eliminate or reduce an unreasonable risk of electric shock injury associated with omnidirectional CB base station antennas and that promulgation of the rule is in the public interest.

Subpart B—Certification

§ 1204.11 General.

Section 14(a) of the Consumer Product Safety Act (''the act''), 15 U.S.C. 2063(a), requires each manufacturer, private labeler, or importer of a product which is subject to a Consumer Product Safety Standard and which is distributed in commerce to issue a certificate of compliance with the applicable standard and to base that certificate upon a test of each item or upon

[1] The Commission believes that, in the area of consumer product safety, it is not generally necessary or appropriate to assign a specific monetary value to human life. However, several studies on the costs of injuries and deaths have been conducted in recent years. Value-of-life estimates based on discounted future earnings and the willingness-to-pay approach range from about $200,000 to about $3 million. The estimated costs of the CB antenna standard per life saved fall below or within the range suggested by these value-of-life estimating methodologies.

a reasonable testing program. The purpose of this subpart B of part 1204 is to establish requirements that manufacturers and importers must follow to certify that their products comply with the Safety Standard for Omnidirectional CB base Station Antennas (16 CFR part 1204, subpart A). Private labelers of CB antennas subject to the standard need not issue a certificate of compliance if they have been furnished a certificate issued by the manufacturer or importer of the antennas. This subpart B describes the minimum features of a reasonable testing program and includes requirements for recordkeeping.

§ 1204.12 Definitions.

In addition to the definitions set forth in section 3 of the act, and in § 1204.2 of the standard, the following definitions shall apply to this subpart B of part 1204:

(a) *Private labeler* means an owner of a brand or trademark which is used on the label of a CB antenna subject to the standard, which bears a private label as defined in section 3(a)(7) of the act, 15 U.S.C. 2052(a)(7).

(b) *Production interval* means a period of time determined by the manufacturer or importer that is appropriate for conducting a test on one or more samples of the CB antennas produced during that period in order to provide a high degree of assurance that all of the products manufactured during that period meet the requirements of the standard. An appropriate production interval may vary depending on the construction of the antenna, the likelihood of variations in the production process, and the severity of the test that is used. The time period for a production interval shall be short enough to provide a high degree of assurance that if the samples selected for testing pass the test, all other CB antennas produced during the period will meet the standard.

§ 1204.13 Certificate of compliance.

(a) The manufacturer or importer of any product subject to the standard must issue the certificate of compliance required by section 14(a) of the act. If the testing required by this subpart B of part 1204 has been performed by or for the foreign manufacturer of a product, the importer may rely on such tests to support the certificate of compliance if the importer is a resident of the United States or has a resident agent in the U.S., and the records are maintained in the U.S. The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly with passing or acceptable results and that the records provide a reasonable assurance that all antennas imported comply with the standard.

(b) A certificate of compliance must accompany each product or otherwise be furnished to any distributor or retailer to whom the product is delivered by the manufacturer or importer.

(c) The certificate shall state:

(1) That the product ''complies with all applicable consumer product safety standards (16 CFR part 1204)'',

(2) The name and address of the manufacturer or importer issuing the certificate, and

(3) The date of manufacture and, if different from the address in paragraph (c)(2) of this section, the place of manufacture.

§ 1204.14 Certification tests.

(a) *General.* As explained in § 1204.11 of this subpart, certificates of compliance required by section 14(a) of the act must be based on either a test of each item or on a reasonable testing program.

(b) *Tests of each item.* If the certificate is based on tests of each item, the tests may be either those prescribed by the standard or any other test procedure that will determine that the item tested will comply with the standard.

(c) *Reasonable testing programs*—(1) *Requirements.* (i) A reasonable testing program for a particular model of CB antennas is one which demonstrates with a high degree of assurance that all the antennas of that model will meet all requirements of the standard. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program which does not test each item produced should be sufficiently stringent that any variations in production,

etc., over the production interval would not cause any antenna to fail if tested according to the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on one or more samples of the CB antennas representative of each model produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard and shall also include production tests, which must be performed during appropriate production intervals as long as the product is being manufactured.

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all antennas manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each item or of the reasonable testing program may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer is responsible for ensuring that all certification testing has been properly performed with passing or acceptable results and for maintaining all records of such tests in accordance with § 1204.17 of this subpart.

§ 1204.15 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of CB antennas which are subject to the standard distributes them in commerce, one or more samples of each model shall be tested to determine that all such antennas manufactured after the effective date of the standard will comply with the standard. The type of tests and the manner of selecting samples shall be determined by the manufacturer or importer to provide a reasonable assurance that all antennas subject to the standard will comply with the standard. Any or all of the qualification testing required by this paragraph may be performed before the effective date of the standard.

(b) *Product modifications.* If any changes are made to a product, after initial qualification testing, that could affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made before the changed antennas are manufactured for sale or distributed in commerce.

§ 1204.16 Production testing.

(a) *General.* Manufacturers and importers shall test antennas subject to the standard periodically as they are manufactured, to demonstrate that the antennas meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other antennas produced during the interval will meet the standard.

(c) *Test failure*—(1) *Sale of antennas.* If any test yields results which do not indicate that all antennas manufactured during the production interval will meet the standard, production must cease and the faulty manufacturing process or design must be corrected. In addition, products manufactured before the appropriate corrective action is taken may not be distributed in commerce unless they meet the standard. It may be necessary to modify the antennas or perform additional tests to ensure that only complying antennas are distributed in commerce. Antennas which are subject to the standard but do not comply with the requirements of the standard cannot be offered for sale, distributed in commerce, or imported in the United States.

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all antennas comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing and/or assembly process, equipment adjustment, repair or replacement, or other action deemed appropriate by the manufacturer or importer to achieve passing production test results.

§ 1204.17 Records.

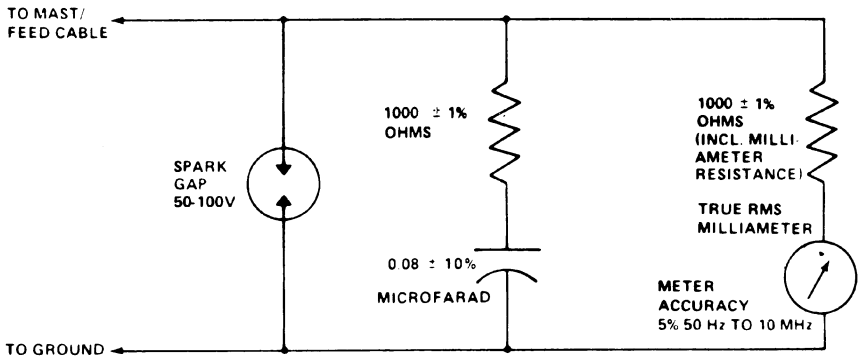
Each manufacturer or importer of CB antennas subject to the standard shall maintain the following records, which shall be maintained for 3 years after the creation of the records and shall be available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)):

(a) Records of the qualification and production testing required by this subpart B, including a description of the types of tests conducted, the dates and results of the tests, and the production interval selected for the performance of the production testing.

(b) Records of all corrective actions taken, including the specific actions taken to improve the design or manufacture and to correct any noncomplying antenna produced during the period, the date the action was taken, and the test failure which necessitated the action.

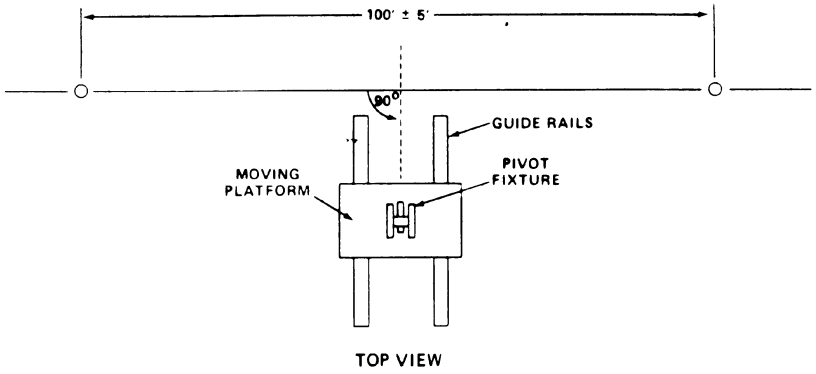
(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 3041–0006)

FIGURES 1 AND 2 TO PART 1204—SUGGESTED INSTRUMENTATION FOR CURRENT MONITORING DEVICE AND HIGH VOLTAGE FACILITY



SUGGESTED INSTRUMENTATION FOR CURRENT MONITORING DEVICE

FIGURE 1



HIGH VOLTAGE TEST FACILITY

FIGURE 2

FIGURES 3 AND 4 TO PART 1204—HIGH VOLTAGE TEST FACILITY AND ANTENNA SYSTEM TEST SETUP

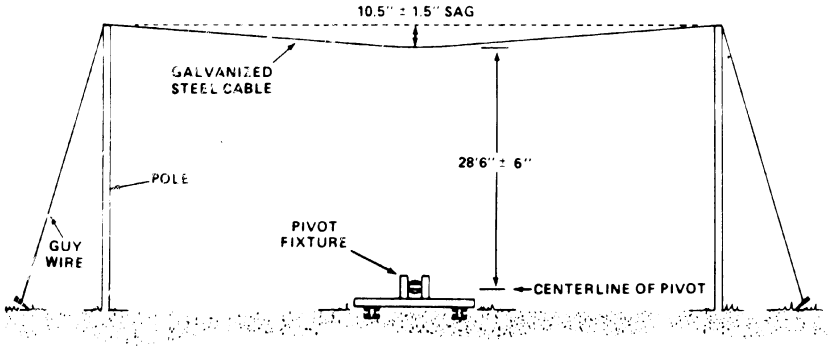


FIGURE 3

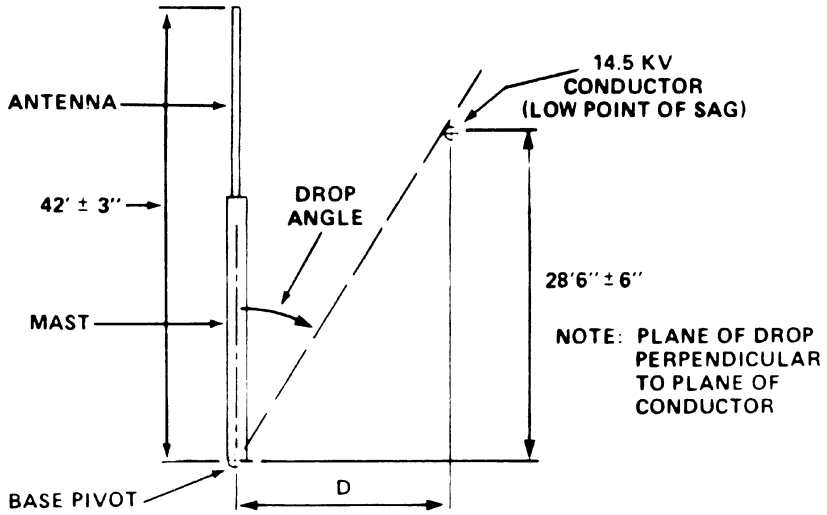


FIGURE 4

[47 FR 36201, Aug. 19, 1982; 48 FR 57125, Dec. 28, 1983]

PART 1205—SAFETY STANDARD FOR WALK-BEHIND POWER LAWN MOWERS

Subpart A—The Standard

Sec.
1205.1 Scope of the standard.
1205.2 Effective date.
1205.3 Definitions.
1205.4 Walk-behind rotary power mower protective shields.
1205.5 Walk-behind rotary power mower controls.
1205.6 Warning labels for reel-type and rotary power mowers.
1205.7 Prohibited stockpiling.
1205.8 Findings.

Subpart B—Certification

1205.30 Purpose, scope, and application.
1205.31 Effective date.
1205.32 Definitions.
1205.33 Certification testing.
1205.34 Recordkeeping requirements.
1205.35 Product certification and labeling by manufacturers.
1205.36 Product certification and labeling by importers.

AUTHORITY: Secs. 2, 3, 7, 9, 14, 19, Pub. L. 92–573, 86 Stat. 1207, 1208, 1212–1217, 1220, 1224; 15 U.S.C. 2051, 2052, 2056, 2058, 2063, 2068; sec. 1212, Pub. L. 97–35, 95 Stat. 357.

SOURCE: 44 FR 10024, Feb. 15, 1979, unless otherwise noted.

Subpart A—The Standard

§ 1205.1 Scope of the standard.

(a) *General.* This subpart A of part 1205 is a consumer product safety standard which prescribes safety requirements for certain walk-behind power lawn mowers, including labeling and performance requirements. The performance requirements of the standard apply to rotary mowers. The labeling requirements apply to both rotary and reel-type mowers. The standard is intended to reduce the risk of injury to consumers caused by contact, primarily of the foot and hand, with the rotating blade of the mower. A detailed discussion of the risk of injury and of the anticipated costs, benefits, and other factors associated with the standard is contained in §1205.8 *Findings.*

(b) *Scope.* (1) Except as provided in paragraph (c) of this section, all walk-behind rotary and reel-type power lawn mowers manufactured or imported on or after the effective date of the standard are subject to the requirements of this standard if they are ''consumer products''. ''Walk behind power lawn mower'' is defined as a grass cutting machine with a minimum cutting width of 12 in (305 mm) that employs an engine or motor as a power source. Section 3(a)(1) of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2052(a)(1), defines the term *consumer product* as an ''article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise.'' The term does not include products that are not customarily produced or distributed for sale to, or for the use or consumption by, or enjoyment of, a consumer.

(2) It is unlawful to manufacture for sale, offer for sale, distribute in commerce, or import into the United States any product subject to this standard that is not in conformity with the standard. The Commission is not applying the standard to rental transactions or to the ultimate sale of used rental mowers by rental firms.

(c) *Exclusions*—(1) *General.* Mowers that have all three of the following characteristics are not covered by the standard:

(i) A cutting width of 30 in (762 mm) or greater,

(ii) A weight of 200 lb (90.7 kg) or more, and

(iii) For engine-powered mowers, an engine of 8 horsepower (6 kw) or more.

(2) *Reel-type mowers.* Reel-type power lawn mowers need not meet the performance requirements of the standard but they must be labeled as required by §1205.6.

§ 1205.2 Effective date.

This standard applies to all rotary walk behind power lawn mowers manufactured after June 30, 1982, except §1205.6 *Warning labels,* applies to rotary and reel-type walk-behind power lawn

mowers manufactured after December 31, 1979.

[44 FR 10024, Feb. 15, 1979, as amended 45 FR 86417, Dec. 31, 1980]

§ 1205.3 Definitions.

(a) As used in this part 1205:

(1) *Blade* means any rigid or semi-rigid device or means that is intended to cut grass during mowing operations and includes all blades of a multi-bladed mower.

(2) *Blade tip circle* means the path described by the outermost point of the blade as it moves about its axis.

(3) *Crack* means a visible external fissure in a solid body caused by tensile, compressive, or shear forces.

(4) *Cutting width* means the blade tip circle diameter or, for a multi-bladed mower, the width, measured perpendicular to the forward direction, of a composite of all blade tip circles.

(5) *Deform* means any visible alteration of shape or dimension of a body caused by stresses induced by external forces.

(6) *Engine* means a power producing device which converts thermal energy from a fuel into mechanical energy.

(7) *Manual starting* means starting the mower engine with power obtained from the physical efforts of the operator.

(8) *Maximum operating speed* means the maximum revolutions per minute (rpm) obtainable by the engine or motor under the conditions of the particular test where the term is used. For an electrically powered mower, it is the speed attained when the mower is energized from a 60 Hz alternating current source that delivers a voltage no greater than 120 V and no less than 115 V at the power input to the mower, with the mower running. For a battery-powered mower, it is the speed attained after the battery has been fully charged in accordance with the mower manufacturer's instructions.

(9) *Motor* means a power producing device that converts electrical energy into mechanical energy.

(10) *Normal starting means* is the primary mechanism intended to be actuated by the operator to start a mower's engine or motor (e.g., the cord mechanism of a manual start engine, the switch of an electric motor, or a power start mechanism).

(11) *Operating control zone* means the space enclosed by a cylinder with a radius of 15 in (381 mm) having a horizontal axis that is (1) perpendicular to the fore-aft centerline of the mower and (2) tangent to the rearmost part of the mower handle, extending 4 in (102 mm) beyond the outermost portion of each side of the handle (See Fig. 1).

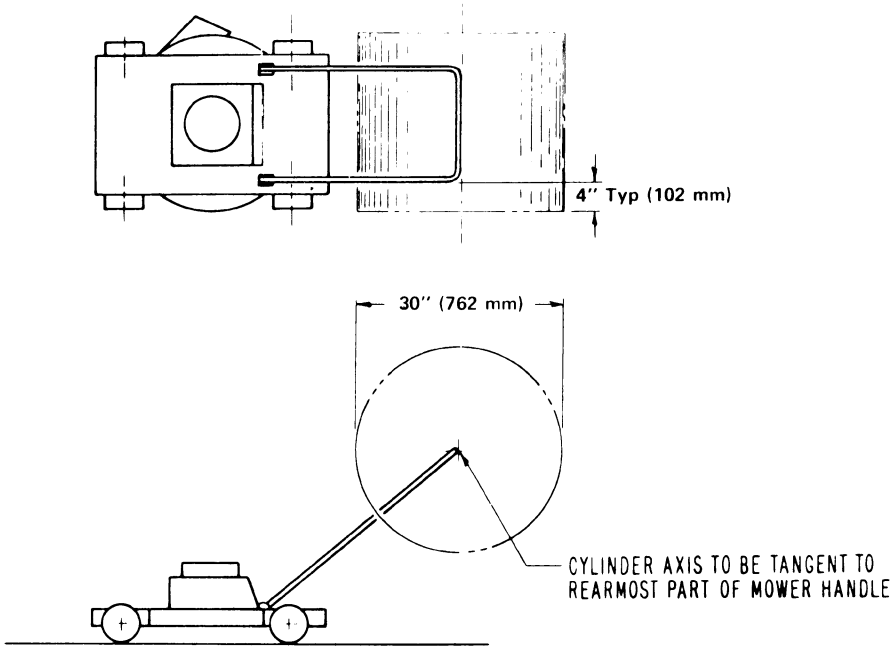


FIGURE 1 – OPERATING CONTROL ZONE

(12) *Power source* means an engine or motor.

(13) *Reel-type mower* means a lawn mower which cuts grass by rotating one or more helically formed blades about a horizontal axis to provide a shearing action with a stationary cutter bar or bed knife.

(14) *Rotary mower* means a power lawn mower in which one or more cutting blades rotate in essentially a horizontal plane about at least one vertical axis.

(15) *Separate* means to cause to have any apparent relative displacement induced by external forces.

(16) *Shield* means a part or an assembly which restricts access to a hazardous area. For the purposes of this part 1205, the blade housing is considered a shield.

(17) *Stress* means a force acting across a unit area in a solid material in resisting separation, compacting, or sliding that tends to be induced by external forces.

(18) *Top of the mower's handles* means the uppermost portion(s) of the handle that would be gripped by an operator in the normal operating position.

(19) *Walk-behind power lawn mower* means a grass cutting machine either pushed or self-propelled, with a minimum cutting width of 12 in (305 mm) that employs an engine or a motor as a power source and is normally controlled by an operator walking behind the mower.

(b) Where applicable, the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1205.

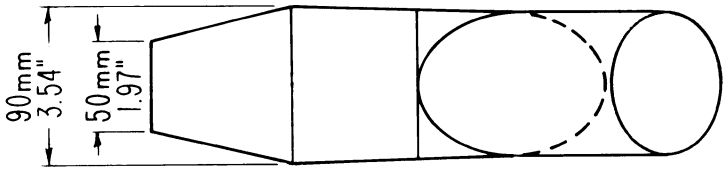
[44 FR 10024, Feb. 15, 1979, as amended at 46 FR 54934, Nov. 5, 1981]

§ 1205.4 Walk-behind rotary power mower protective shields.

(a) *General requirements.* Walk-behind rotary power mowers shall meet the following requirements:

(1) When the foot probe of Fig. 2 is inserted under any point within the areas

to be probed during the foot probe test of paragraph (b)(1) of this section, the shields shall prevent the foot probe from entering the path of the blade or causing any part of the mower to enter the path of the blade.



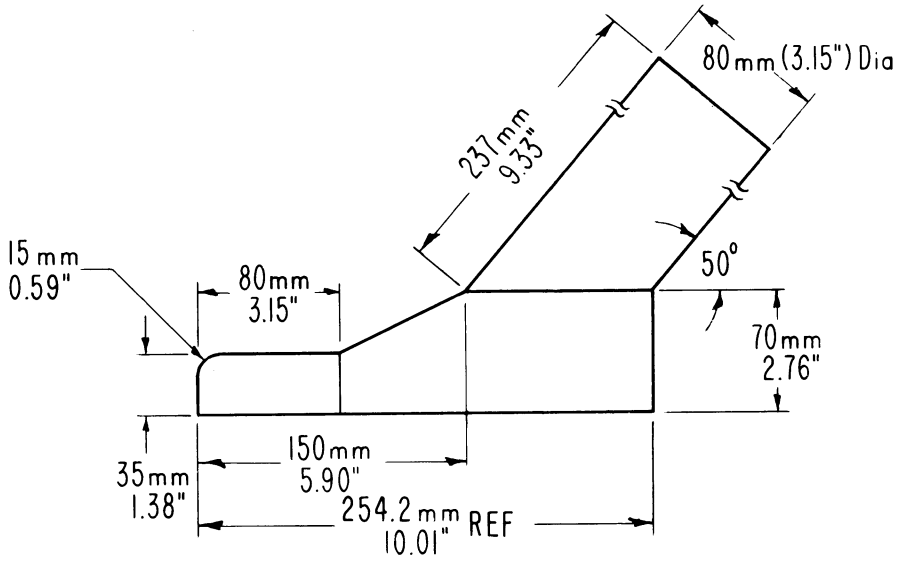


FIG 2—FOOT PROBE

(2) Any shield located totally or partly within the areas to be probed, as defined in paragraph (b)(1)(ii) of this section, shall not permanently separate, crack, or deform when the shield is subjected to a 50 lb (222 N) static tensile force, uniformly distributed over not less than half the length of the

shield. The force shall be applied for at least 10 seconds in the direction which produces the maximum stress on the shield. While being tested, a shield shall be attached to the mower in the manner in which it is intended to be used. (This requirement does not apply to the housing.)

(3) During the obstruction test of paragraph (b)(2) of this section, shields shall not:

(i) Stop the mower as a result of contact with the raised obstacle,

(ii) Enter the path of the blade, or

(iii) Cause more than one wheel at a time to be lifted from the fixture surface.

(b) *Shield tests—general*—(1) *Foot probe test.* (i) The following test conditions shall be observed:

(A) The test shall be performed on a smooth level surface.

(B) Pneumatic tires, when present, shall be inflated to the cold pressures recommended by the mower manufacturer.

(C) The mower housing shall be adjusted to its highest setting relative to the ground.

(D) The blade shall be adjusted to its lowest position relative to the blade housing.

(E) The mower shall be secured so that the mower may not move horizontally but is free to move vertically.

(ii) *Areas to be probed.* (A)(*1*) The minimum area to be probed shall include an area both 60 degrees to the right and 60 degrees to the left of the rear of the fore-aft centerline of the cutting width. For single-blade mowers, these angles shall be measured from a point on this fore-aft centerline which is at the center of the blade tip circle (see Fig. 3). For multi-blade mowers, these angles shall be measured from a point on the fore-aft centerline of the cutting width which is one half of the cutting width forward of the rearmost point of the composite of all the blade tip circles (See Fig. 4).

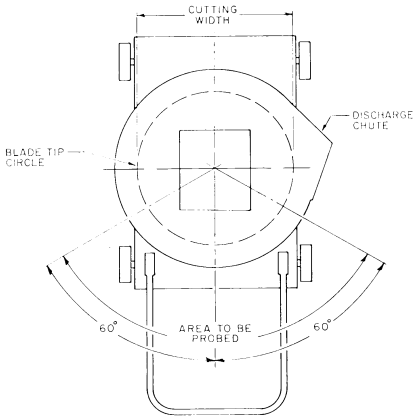


FIGURE 3 - AREA TO BE PROBED

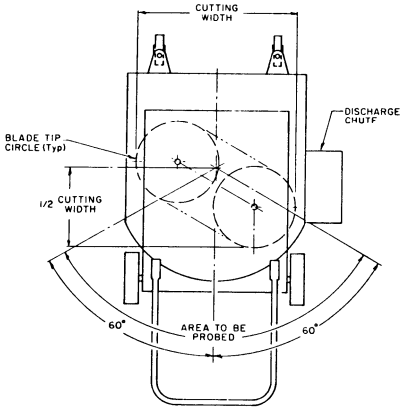


FIGURE 4 - AREA TO BE PROBED MULTI-BLADE MOWERS

(*2*) For a mower with a swing-over handle, the areas to be probed shall be determined as in paragraph (b)(1)(ii)(A)(*1*) of this section from both possible rear positions. (See Fig. 5.)

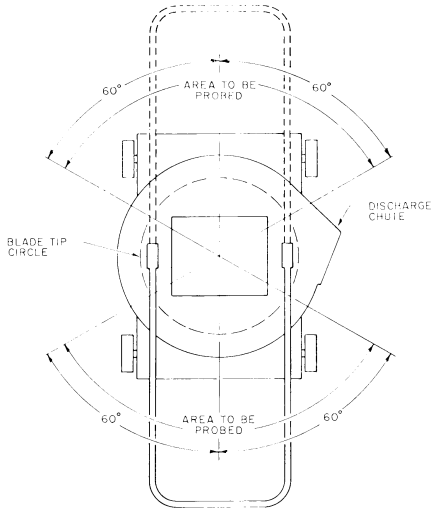


FIGURE 5 - AREA TO BE PROBED SWINGOVER HANDLE

(B) Where a 360 degree foot protective shield is required by §1205.5(a)(1)(iv)(B) or §1205.5(c), the entire periphery of the mower shall be probed (including any discharge chute comprising part of the periphery).

(iii) *Procedure.* Within the areas specified in paragraph (b)(1)(ii), the foot probe of Fig. 2 shall be inserted under the bottom edge of the blade housing and shields. During each insertion, the ''sole'' of the probe shall be kept in contact with the supporting surface. Insertion shall stop when the mower housing lifts or the horizontal force used to insert the probe reaches 4 lb (17.8 N), whichever occurs first. As the foot probe is withdrawn after each insertion, the ''toe'' shall be pivoted upward around the ''heel'' as much as possible without lifing the mower.

(2) *Obstruction test.* (i) The following test conditions shall be observed:

(A) Pneumatic tires, when present, shall be inflated to the cold pressure recommended by the mower manufacturer.

(B) The mower housing shall be at its highest setting relative to the ground.

(ii) The test shall be performed on the fixture of Fig. 6, which consists of a level surface having (A) a 0.99 in (25 mm) deep depression with a 5.90 in (150 mm) radius of curvature and (B) a raised obstacle 0.60 in (15 mm) square, each extending the full width of the fixture. The depression shall be lined with a material having a surface equivalent to a 16- to 36-grit abrasive. The depression and the obstacle shall be located a sufficient distance apart so that the mower contacts only one at a time.

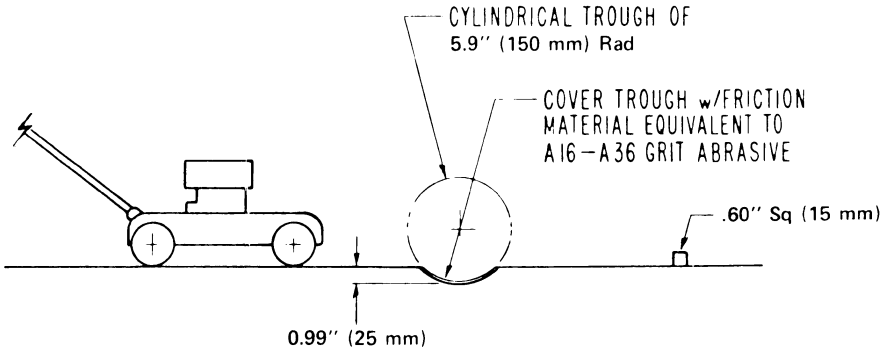


FIGURE 6 – OBSTRUCTION TEST FIXTURE

(iii) The test fixture may be relieved, only to the extent necessary, to prevent interference with any blade retaining device.

(iv) The mower shall be pushed forward and pulled rearward perpendicular to and across the depression and the raised obstacle on the fixture. The mower shall be pulled and pushed, without lifting, with a horizontal force sufficient to transit the obstruction fixture at a speed not to exceed 2.2 ft/sec (0.7 m/sec).

(c) *Movable shields*—(1) *General.* Movable shields must meet the general shield requirements of paragraph (a) of this section. In addition, movable shields which are in any of the areas to be probed defined in paragraph (b)(1)(ii) of this section and which are intended to be movable for the purpose of attaching auxiliary equipment, when deflected to their extreme open position in the manner intended by the manufacturer and released, shall either:

(i) Return automatically to a position that meets the requirements of subpart A of this part 1205 when the attached equipment is not present, or

(ii) Prevent operation of the blade(s) unless the attached equipment is present or the movable shield is returned to a position that meets the requirements of subpart A of this part 1205.

(2) *Tests.* (i) Automatic return of a movable shield shall be determined by manually deflecting the shield to its extreme open position, then releasing the shield and visually observing that it immediately returns to the closed position.

(ii) Prevention of operation of the blade(s) shall be determined, first by manually deflecting the shield to its extreme open position, then, following the appropriate manufacturer's instructions, completing the procedures necessary to operate the blade. Observe, using any safe method, that the blade(s) has been prevented from operating.

[44 FR 10024, Feb. 15, 1979, as amended at 45 FR 86417, 86418, Dec. 31, 1980; 46 FR 54934, Nov. 5, 1981; 48 FR 6328, Feb. 11, 1983]

§ 1205.5 Walk-behind rotary power mower controls.

(a) *Blade control systems*—(1) *Requirements for blade control.* A walk-behind rotary power mower shall have a blade control system that will perform the following functions:

(i) Prevent the blade from operating unless the operator actuates the control.

(ii) Require continuous contact with the control in order for the blade to continue to be driven.

(iii) Cause the blade motion in the normal direction of travel to come to a complete stop within 3.0 seconds after release of the control.

(iv) For a mower with an engine and with only manual starting controls, this blade control shall stop the blade without stopping the engine, unless:

(A) The engine starting controls for the lawn mower are located within 24 inches from the top of the mower's handles, or

(B) The mower has a protective foot shield which extends 360 degrees around the mower housing (see § 1205.4 (b)(1)(ii)(B)).[1]

(2) All walk-behind rotary power mowers shall have, in addition to any blade control required by paragraph (a)(1) of this section, another means which must be manually actuated before a stopped blade can be restarted. This additional means may be either a control which is separate from the control required by paragraph (a)(1) of this section, or may be incorporated into the control required by paragraph (a)(1) of this section as a double-action device requiring two distinct actions to restart the blade.

(b) *Blade stopping test*—(1) *General.* Any test method that will determine the time between the release of the blade control and the complete stop of the blade motion in the normal direction of travel may be used.

(2) *Conditions.* (i) The mower shall be operated at maximum operating speed

[1] Paragraphs (A) and (B) of § 1205.5(a)(1)(iv), permitting mowers that stop the blade by stopping the engine but that do not have power restart, were added to the standard as directed by Sec. 1212 of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 357.

for at least 6 minutes immediately prior to the test.

(ii) The blade must be at maximum operating speed when the blade control is released.

(c) *Starting controls location.* Walk-behind mowers with blades that begin operation when the power source starts shall have their normal starting means located within the operating control zone unless the requirements of paragraphs (a)(1)(iv) (A) or (B) of this section apply to the mowers.

[44 FR 10024, Feb. 15, 1979, as amended at 46 FR 54934, Nov. 5, 1978]

§ 1205.6 Warning label for reel-type and rotary power mowers.

(a) *General.* Walk-behind power lawn mowers shall be labeled on the blade housing or, in the absence of a blade housing, on other blade shielding or on an adjacent supporting structure or assembly, with the warning label shown in Fig. 7. The label shall be at least 3.25 in (82.5 mm) high and 4 in (102 mm) wide, and the lettering and symbol shall retain the same size relation to each other and to the label as shown in Fig. 7.

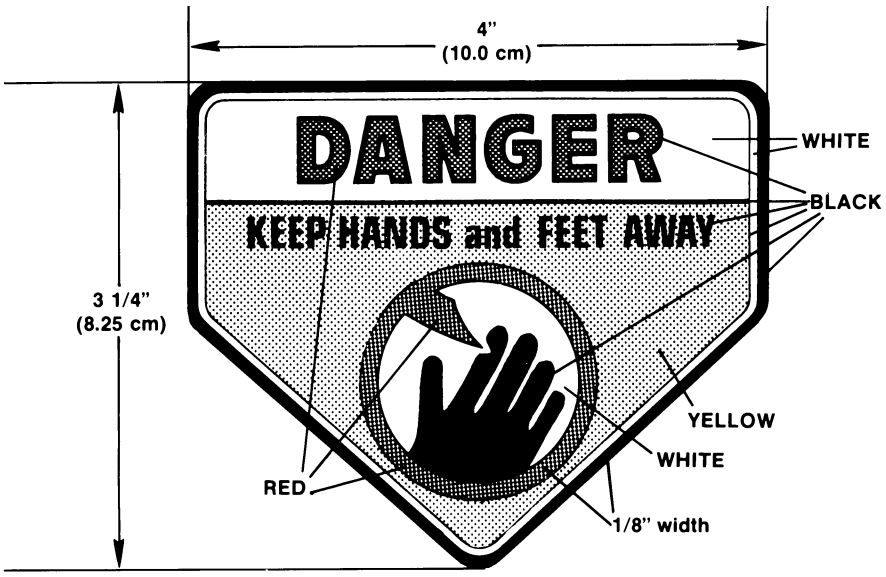


FIGURE 7

(b) *Rotary mowers.* Walk-behind rotary mowers shall have one label as shown in Fig. 7, on the blade housing. The label shall be located as close as possible to any discharge opening, or, if there is no discharge opening, in a position that is conspicuous to an operator in the normal operating position.

(c) *Reel-type mowers.* Walk-behind power reel-type mowers shall have one label as shown in Fig. 7, located as close to the center of the cutting width of the blade as possible. However, in the absence of a suitable mounting surface near the center of the cutting width, the label shall be placed on the nearest suitable mounting surface to the center of the cutting width.

[44 FR 10024, Feb. 15, 1979, as amended at 45 FR 86417, Dec. 31, 1980]

§ 1205.7 Prohibited stockpiling.

(a) *Stockpiling. Stockpiling* means manufacturing or importing a product

which is the subject of a consumer product safety rule between the date of issuance of the rule and its effective date at a rate that is significantly greater than the rate at which such product was produced or imported during a base period prescribed by the Consumer Product Safety Commission.

(b) *Prohibited acts.* Stockpiling of power lawn mowers that do not comply with this subpart A of part 1205 at a rate that exceeds by 20% the rate at which the product was produced or imported during the base period described in paragraph (c) of this section is prohibited.

(c) *Base period.* The base period for power lawn mowers is, at the option of each manufacturer or importer, any period of 365 consecutive days beginning on or after September 1, 1971, and ending on or before August 31, 1978.

§ 1205.8 Findings.

(a) *General.* In order to issue a rule such as part 1205, the Consumer Product Safety Act requires the Commission to consider and make appropriate findings with respect to a number of topics. These findings are discussed below.

(b) *The degree and nature of the risk of injury part 1205 is designed to eliminate or reduce.* (1) The Commission estimates that there are approximately 77,000 injuries to consumers each year caused by contact with the blades of power lawn mowers. From 1977 data, the Commission estimates that each year there are approximately 7,300 finger amputations, 2,600 toe amputations, 2,400 avulsions (the tearing of flesh or a body part), 11,450 fractures, 51,400 lacerations, and 2,300 contusions. Among the lacerations and avulsions, 35,800 were to hands and fingers and 18,000 were to toes and feet. The estimated costs caused by these injuries are $253 million, not counting any monetary damages for pain and suffering. These injuries are caused when consumers accidentally contact the blade, either inadvertently while in the vicinity of the mower, or while intentionally performing some task which they erroneously believe will not bring their hand or foot into the path of the blade.

(2) Part 1205 is expected to eliminate or reduce the severity of about 60,000 blade contact injuries per year, or 77% of all such injuries. The Commission estimates that if all mowers had been in compliance with the standard in 1977, about 6,800 finger amputations, 1,500 toe amputations, 11,000 fractures, 1,800 avulsions, 38,400 lacerations, and several hundred contusions would not have occurred. Of the lacerations and avulsions, 28,300 were finger injuries and 9,400 were toe injuries.

(c) *Consumer products subject to the rule.* The products subject to this standard are walk-behind power mowers. Power mowers with rigid or semi-rigid rotary blades are subject to all the provisions of the standard while reel-type and rotary mowers are subject to the labeling requirements. Mowers that in combination have engines of 8 hp or greater, weigh 200 lb or more, and have a cutting width of 30 in or more are excluded from the standard. The Commission estimates that at least 98% of the total annual market (by unit volume) for walk-behind mowers will be affected by the standard, and the Commission estimates that in 1978 this market was 5.4 million units.

(d) *Need of the public for the products subject to the rule.* The Commission finds that the public need for walk-behind power mowers, which provide a relatively quick and effective way to cut grass, is substantial. Riding mowers, lawn and garden tractors, hand reel mowers, trimmers and edgers, and sickle-bar mowers also provide grass-cutting services, but walk-behind power rotary mowers are by far the most commonly used devices for maintaining household lawns. There are no devices that can completely substitute for walk-behind power mowers as a group, since they have applications for which other products are not as suitable. Each type of walk-behind power mower has individual properties which meet public needs, although one type of walk-behind is often an acceptable substitute for another. The newly developed monofilament line mower is not included within the scope of the standard and could be a substitute for mowers using rigid or semi-rigid blades under some conditions.

(e) *Probable effect of the rule upon the utility of the product.* (1) The Commission finds that the probable overall effect of the standard on the utility of mowers should be to increase their utility. In the first place, consumers are likely to experience an increased sense of security from having a safer mower. A study of brake-clutch mowers conducted by the Federal Supply Service (GSA) shows that almost all users appreciated the safety features on brake-clutch mowers. In addition, by releasing the blade control and stopping the blade, the operator can then travel over gravel or other surfaces without fear of thrown objects or of the blade striking objects that might damage the mower. Brake-clutch type mowers would also give an increase in utility by virtue of enabling the operator to use the clutch to prevent stalling when the mower bogs down in heavy grass. On the other hand, there may be some minor adverse effects on utility caused by some aspects of complying mowers. For example, in very heavy mowing conditions, there may be some difficulty in engaging the blade in a blade-clutch mower. (However, mowers that are currently on the market that are not equipped with a blade clutch may have difficulty in starting the engine in heavy grass.) Complying mowers may require slightly more time and a few additional actions to operate. Since complying mowers may have more electrical and mechanical parts than current mowers, they may weigh more and require more maintenance than current mowers. No significant increase in mowing time is expected if a brake-clutch device is used to comply with the standard since each engagement of the blade would require only a few seconds. The amount of additional time and expense required for maintenance, if any, will be dependent on the design solution used. Such disutilities are expected to be slight and to be more than balanced by the increased sense of security consumers are likely to experience from having a safer mower.

(2) During the development of the rule, questions were raised about whether changes in the shields necessitated by the foot probe requirements would adversely affect utility by causing mowers to be hard to push in grass or to be unable to mow close to walls. At the time of issuance of this rule, mowers are available that will pass a 360° foot probe and others are available that will pass rear and side foot probing without any significant loss of utility caused by shielding. Therefore, the Commission concludes that this requirement will not adversely affect the utility of mowers. Mowers with swing-over handles, however, may be more difficult to design in this regard, since 120° at each end of the mower are subject to the foot probe requirement. However, since mowers meeting this requirement have already been built without apparent loss of utility, the Commission concludes that shielding can be designed so that there should be no loss of utility even for mowers with swing-over handles.

(3) As required by section 9(b) of the CPSA, the Commission, in considering the issues involved in issuing a power lawn mower safety standard, has considered and taken into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule. The Commission has determined that there will be no significant adverse effect on such persons as a result of this part 1205. In the first place, the rule can affect only those persons who are physically capable of using a power lawn mower. None of the rule's provisions will make it more difficult to operate a mower that complies with the standard. On the contrary, complying mowers should be easier to use because the need for manually restarting the mower will be less and because, if the mower uses a brake-clutch to comply with the blade control requirement, use of the brake-clutch can reduce the tendency of the engine to stall in heavy grass. Although a person's ability to hold a device such as a blade control for a long period of time will decline with age, the force required to hold the blade control can be made low enough that it will not be a problem during the length of time that it takes for consumers to mow a lawn.

(4) After considering the possible adverse effects on mowers that could be caused by the standard and balancing

them against the increase in utility that is expected, the Commission concludes that, for a typical consumer, the increases in utility should more than offset any decreases.

(f) *Probable effect of the rule upon the cost of the product.* The Commission estimates that the retail price impact of the standard will be about $35 for the average walk-behind mower. Based on an average useful mower-life of about 8 years, the additional annual cost to the purchaser is expected to average about $4.40. The probable effect of the standard will differ on the various types of mowers within its scope. Percentage increases in price will vary from about a 7 percent increase for power-restart self-propelled mowers to about a 30 percent increase for gasoline-powered manual start push mowers. The costs attributable to individual requirements of the standard are discussed in paragraph (i) of this section.

(g) *Probable effect of the rule upon the availability of the product.* (1) The Commission finds that the standard is not expected to have a significant impact on the availability of walk-behind rotary mowers, since domestic production capacity appears to be sufficient to handle any increased demand for safety-related components or materials. Although adapting some types of power mowers to the standard may be more costly than others, the effects of the standard on the price or utility of a particular category of power mowers are not expected to cause radical shifts in demand among types of mowers. The Commission finds that all types of power mowers subject to the standard will be available, although some, such as house-current-powered mowers, may increase their market shares becauses they can be brought into compliance with the standard at a lesser cost.

(2) Because some manufacturers may not revise their entire product line before the effective date of the standard, individual mower manufacturers may initially have less varied lines than at present, but there should be no decrease in the overall types and features of mowers available to consumers.

(h) *Alternative methods.* (1) The Commission has considered other means of achieving the objective of the standard. For example, alternatives were considered such as hand probes, ''blade harmless'' tests, and blade control by engine kill but allowing manual restart. These alternatives have been rejected by the Commission as being either unfeasible or not as effective as the rule which is being issued.

(2) Similarly, the Commission has found no alternative means of achieving the objective of the standard that it believes would have fewer adverse effects on competition or that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety.

(i) *Unreasonable risk of injury.* (1) The determination of whether a consumer product safety rule is reasonably necessary to reduce an unreasonable risk of injury involves a balancing of the degree and nature of risk of injury addressed by the rule against the probable effect of the rule on the utility, cost, or availability of the product. The factors of utility and availability of the products, adverse effects on competition, and disruption or dislocation of manufacturing and other commercial practices have been discussed above. The following discussion concerns the relationship of anticipated injury reduction and costs for various requirements of the standard. (See the report, *Economic Impact of Blade Contact Requirements for Power Mowers,* January 1979, for a detailed analysis of the possible effects of discounting and inflation on the computation of the quantifiable benefits associated with this regulation.)

(2) The foot probe and related requirements are expected to reduce the number of blade contact injuries to the foot by 13,000 each year. It is not possible to apportion this injury reduction among the respective requirements. The cost of these requirements is estimated to be about $4.00 per mower, mostly for redesign of the shields. The shield strength requirement is similar to a requirement in the existing voluntary standard that is almost universally complied with, and should comprise only a small portion of the $4.00 retail cost increase compared to prestandard mowers that is attributable to this related group of requirements.

Also, shields complying with the movable shield requirement are featured in some currently produced mowers.

(3) The foot probe and related requirements should result in a cost increase of about $22,000,000 and undiscounted injury savings of about $46,000,000, exclusive of any allowance for pain and suffering.

(4) The starting location control requirement would apply only to mowers with a power restart capability using engine kill to stop the blade. The cost for relocating the power restart switch, if necessary, should be very minor, and more than offset by the elimination of a clutch, as discussed below.

(5) The requirement that the blade stop within 3 seconds of the release of the blade control is supported by (i) the requirement that those mowers that stop the blade by stopping the engine must have a power restart (to remove the motivation to disable the blade control because of the inconven- ience of manually starting the mower each time the control is released) and by (ii) the requirement for an additional control that must be actuated before the blade can resume operation (to prevent accidental starting of the blade). Together, these requirements are expected to reduce the number of blade contact injuries by 46,500 per year for an undiscounted savings in injury costs of about $165,000,000 per year, exclusive of pain and suffering.

(6) Virtually all mowers will be subjected to a cost increase of about $3 for the blade control actuating means and $1 for the second control required to restart the blade. (The $1 cost could be eliminated for power restart-engine kill mowers that do not start when the blade control is actuated.)

(7) Also, most mowers would require a brake for the blade in order to achieve a 3 second stop time. This would add another $6.50–$8.50, depending on the type of mower. Mowers with power restart capability could stop the blade by killing the engine and thus would not need to provide a clutch to disconnect the engine from the blade. Mowers using manual restart would have to provide a clutch or other blade disengagement devices, which would probably be combined with the brake in a unitary brake-clutch mechanism.

(8) The following are the Commission's estimates of the probable retail price increases associated with certain types of currently produced mowers that will be caused by the blade control requirements.

Type of mower	Blade control retail price increases
Electric mowers (house current or battery powered)	$15.00
Present Electric start gasoline mowers	13.00–19.50
Present Manual start gasoline mowers brake clutch approach	32.50
Power restart approach	29.00–39.50

(9) The weighted average retail price increase of the blade stop requirements is expected to be about $31 per mower for a total retail cost increase of $167,000,000.

(10) The foot probe and blade stop requirements of the standard will obviously not completely protect the users of mowers under all circumstances. It is still essential for consumers to be aware of the hazard of blade contact and take the proper precautions to protect themselves. It is especially important that users not become complacent with the knowledge that the mower incorporates blade contact safety requirements. Accordingly, the Commission has determined that it is desirable that mowers complying with the standard bear a label warning of the danger of blade contact. Such a requirement would result in practically no effect on the retail price of mowers since labels are very inexpensive and practically all currently produced mowers bear some type of warning label. In view of the hazard that will be associated with power mowers even after the effective date of the standard, and the low cost of the label, the Commission concludes there is an unreasonable risk of injury that can be addressed by the label requirements in this part 1205.

(j) *Conclusion.* Therefore, after considering the anticipated costs and benefits of part 1205 and the other factors discussed above, and having taken into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by the rule, the Commission finds that part 1205 (including the effective dates) is reasonably necessary to eliminate or reduce

the unreasonable risk of injury associated with walk-behind power lawn mowers and that promulgation of the rule is in the public interest.

[44 FR 10024, Feb. 15, 1979, as amended at 45 FR 86417, Dec. 31, 1980]

Subpart B—Certification

SOURCE: 44 FR 70386, Dec. 6, 1979, unless otherwise noted.

§ 1205.30 Purpose, scope, and application.

(a) *Purpose.* Section 14(a) of the Consumer Product Safety Act, 15 U.S.C. 2063(a), requires every manufacturer (including importer) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product conforms to the applicable standard, and to base that certificate either on a test of each product or on a ''reasonable testing program.'' The purpose of this subpart B of part 1205 is to establish requirements that manufacturers and importers of walk-behind rotary power lawn mowers subject to the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205, subpart A), shall issue certificates of compliance in the form of specified labeling and shall keep records of the testing program on which the certificates are based.

(b) *Scope and application.* (1) The provisions of this rule apply to all rotary walk-behind power lawn mowers which are subject to the requirements of the Safety Standard for Walk-Behind Power Lawn Mowers. This rule does not apply to reel-type mowers, which are subject only to the labeling requirements of the standard.

(2) As authorized by section 14(a)(2) of the act, the Commission exempts manufacturers who manufacture or import only component parts, and private labelers, from the requirement to issue certificates. (Private labelers who are also importers must still certify.)

§ 1205.31 Effective date.

Any walk-behind rotary power mower manufactured after December 31, 1981, must meet the standard and must be certified as complying with the standard in accordance with this rule.

§ 1205.32 Definitions.

In addition to the definitions set forth in section 3 of the act (15 U.S.C. 2052) and in § 1205.3 of the standard, the following definitions shall apply to this subpart B of part 1205:

(a) *Manufacturer* means any person or firm that manufactures or imports power lawn mowers subject to this standard, and includes those that assemble power lawn mowers from parts manufactured by other firms.

(b) *Manufactured* means the earliest point at which the mower is in the form in which it will be sold or offered for sale to the consumer or is in the form in which it will be shipped to a distributor or retailer. In these forms, a ''manufactured'' mower may still require partial assembly by the consumer or the lawn mower dealer.

(c) *Private labeler* means an owner of a brand or trademark which is used on a power lawn mower subject to the standard and which is not the brand or trademark of the manufacturer of the mower, provided the owner of the brand or trademark has caused or authorized the mower to be so labeled and the brand or trademark of the manufacturer of such mower does not appear on the label.

(d) *Production lot* means a quantity of mowers from which certain mowers are selected for testing prior to certifying the lot. All mowers in a lot must be essentially identical in those design, construction, and material features which relate to the ability of a mower to comply with the standard.

(e) *Reasonable testing program* means any test or series of tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more mowers of the production lot for the purpose of determining whether there is reasonable assurance that the mowers in that lot comply with the requirements of the standard.

§ 1205.33 Certification testing.

(a) *General.* Manufacturers and importers shall either test each individual rotary walk-behind power lawn mower (or have it tested) or shall rely

upon a reasonable testing program to demonstrate compliance with the requirements of the standard.

(b) *Reasonable testing program.* (1) A reasonable testing program for rotary walk-behind power mowers is one that provides reasonable assurance that the mowers comply with the standard. Manufacturers and importers may define their own reasonable testing programs. Such reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs.

(2) To conduct a reasonable testing program, the mowers shall be divided into production lots. Sample mowers from each production lot shall be tested in accordance with the reasonable testing program so that there is a reasonable assurance that if the mowers selected for testing meet the standard, all mowers in the lot will meet the standard. Where there is a change in parts, suppliers of parts, or production methods that could affect the ability of the mower to comply with the requirements of the standard, the manufacturer should establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the test procedures contained in the standard. However, a manufacturer's reasonable testing program may include either tests prescribed in the standard or any other reasonable test procedures. (For example, in the shield strength test (§1205.4), the manufacturer might choose to use a force higher than the 50 lb force specified in the standard.)

(4) If the reasonable testing program shows that a mower does not comply with one or more requirements of the standard, no mower in the production lot can be certified as complying until the noncomplying mowers in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard. The sale or offering for sale of mowers that do not comply with the standard is a prohibited act and a violation of section 19(a)(1) of the CPSA, regardless of whether the mower has been validly certified.

§ 1205.34 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for walk-behind rotary power lawn mowers subject to the standard shall maintain written records which show that the certificates are based on a test of each mower or on a reasonable testing program. The records shall be maintained for a period of at least 3 years from the date of certification of each mower or each production lot. These records shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the act (15 U.S.C. 2065(b)).

(b) *Content of records.* Records shall identify the mower tested and the production lot and describe the tests the mowers have been subjected to and the results of the tests.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information.

§ 1205.35 Product certification and labeling by manufacturers.

(a) *Form of permanent label of certification.* Manufacturers (including importers) shall issue certificates of compliance for walk-behind rotary power lawn mowers manufactured after the effective date of the mower standard in the form of a label which can reasonably be expected to remain on the mower during the period the mower is capable of being used. Such labeling shall be deemed to be a ''certificate'' of compliance as that term is used in section 14 of the act. (15 U.S.C. 2063.)

(b) *Contents of certification label.* The certification labels required by this section shall clearly and legibly contain the following information:

(1) The statement ''Meets CPSC blade safety requirements.''

(2) An identification of the production lot.

(3) The name of the person or firm issuing the certificate.

(4) The location where the product was principally assembled.

(5) The month and year the product was manufactured.

(c) *Coding.* Except for the requirements of paragraphs (b)(1) and (b)(3) of

this section, all of the information required by §1205.35 may be in code, provided the person or firm issuing the certificate maintains a written record of the meaning of each symbol used in the code that will be made available to the distributor, retailer, consumer, and the Commission upon request. If a mower is manufactured for sale by a private labeler, and if the name of the private labeler is also on the certification label, the name of the manufacturer or importer issuing the certificate may also be in such a code.

(d) *Placement of label.* The label required by this section must be visible and legible to the ultimate purchaser of the lawn mower. For mowers manufactured before January 1, 1984, where the label is not visible to the consumer at the time of sale because of packaging or marketing practices, an additional label or notice, which may be temporary, stating ''Meets CPSC blade safety requirements'' shall also appear on the container, or, if the container is not so visible, the promotional material, used in connection with the sale of the mowers.

[44 FR 70386, Dec. 6, 1979, as amended at 49 FR 28241, July 11, 1984]

§1205.36 Product certification and labeling by importers.

(a) *General.* The importer of any rotary walk-behind power lawn mower subject to the standard must issue the certificate of compliance required by section 14(a) of the Act and §1205.35 of this regulation. If testing of each mower, or a reasonable testing program, meeting the requirements of this subpart B of part 1205 has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided the importer is a resident of the United States or has a resident agent in the United States and the records of such tests required by §1205.34 of this part are maintained in the United States.

(b) *Responsibility of importer.* If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer bears the responsibility for examining the records supplied by the manufacturer to determine that the records of such tests appear to comply with §1205.34 of this part.

PART 1207—SAFETY STANDARD FOR SWIMMING POOL SLIDES

Sec.

AUTHORITY: Secs. 2, 7, 9, 14, 30, Pub. L. 92–573; 86 Stat. 1207, 1212, 1215, 1220, 1236; (15 U.S.C. 2051, 2056, 2058, 2063, 2079).

SOURCE: 41 FR 2751, Jan. 19, 1976, unless otherwise noted.

§1207.1 Scope, purpose, and findings.

(a) *Scope and purpose.* This part 1207 sets forth the consumer product safety standard issued by the Consumer Product Safety Commission for the manufacture and construction of slides for use in swimming pools. The requirements of this standard are designed to reduce or eliminate the unreasonable risks of death or injury associated with swimming pool slides. This standard also makes certain recommendations regarding the installation, maintenance, and intended use of swimming pool slides that supplement its mandatory requirements. This standard is applicable to all swimming pool slides manufactured after July 17, 1976. Paragraph (b) of this section sets forth the findings which the Commission is required to make by section 9(c) of the Consumer Product Safety Act (15 U.S.C. 2058(c)).

(b) *Findings.*[1] (1) The Commission finds that unreasonable risks of death

[1] The Commission's findings apply to the swimming pool slide standard that it published on January 19, 1976 (42 FR 2751). On March 3, 1978 the U.S. Court of Appeals for the Fifth Circuit set aside portions of that standard (*Aqua Slide 'N' Drive Corporation* v. *CPSC*, 569 F.2d 831 (5th Cir. 1978)). On December 18, 1978, the Commission published revisions to the standard which reflect the

Continued

or injury from accidents are associated with swimming pool slides. These risks are (i) quadriplegia and paraplegia resulting from users (primarily adults using the swimming pool slide for the first time) sliding down the slide in a head first position and striking the bottom of the pool, (ii) leg fractures resulting from feet first entry, (iii) impact of sliders with other people in the pool, and (iv) falls from the slide ladder.

(2) The Commission finds that the types or classes of products that are subject to this standard are those swimming pool slides manufactured, constructed, or imported for use in connection with all swimming pools, whether in-ground, on-ground, or above-ground, regardless of the materials of manufacture or structural characteristics of the slides. It is estimated that 350,000 of these slides are currently in service and that each year the number of slides in use may increase by 5 to 10 percent.

(3) The Commission finds that the public uses swimming pool slides in recreation at both public and private swimming pools, and it is estimated that 75% of these slides are located at residential pools. It is anticipated that public demand for the products will decline slightly for a time following issuance of this standard as a result of consumer awareness of hazards associated with the product caused by the mandatory signs placed on the slides and as a result of recommendations regarding the installation and intended use of the products. The decline in demand is expected to be short-term. It is anticipated that the utility of the slides as a recreational device will be increased to the extent that injury or death associated with the use of the product is eliminated or reduced.

(4) The Commission also finds that manufacturing cost increases as a direct result of this standard and promotional cost increases as an indirect result of this standard are expected to be modest for the industry as a whole. Any resulting increase in the cost of slides to consumers attributable directly or indirectly to the requirements of this standard will be small. No adverse effect on the availability of the product to consumers is expected.

(5) The Commission has considered other means of achieving the objective of the standard, but has found none that would have fewer adverse effects on competition or that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with the public health and safety.

(6) The Commission also finds that this standard, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with swimming pool slides and that promulgation of the standard is in the public interest.

[41 FR 2751, Jan. 19, 1976; 41 FR 9307, Mar. 4, 1976, as amended at 41 FR 23187, June 9, 1976; 43 FR 58813, Dec. 18, 1978]

§ 1207.2 Effective date.

This part 1207 shall become effective July 17, 1976. All swimming pool slides manufactured after that date must meet the requirements of this part 1207.

[41 FR 23187, June 9, 1976]

§ 1207.3 Definitions.

(a) As used in this part 1207:

(1) *Aboveground pool slide ladder* means a slide ladder that is not anchored in the ground or support deck and that can be removed from the slide or hinged and locked so that unauthorized or unsupervised use of the slide is prevented.

(2) *Abrasion hazard* means a sharp or rough surface of a swimming pool slide that would scrape the skin upon casual contact.

(3) *Assembled product* means all parts, components, and fasteners as defined in and assembled according to the manufacturer's assembly and installation instructions.

court's decision. However, the findings have not been revised and they are therefore not fully applicable to the revised swimming pool slide requirements. For example, the revised standard does not address the risk of quadriplegia and paraplegia (except insofar as the standard specifies a low angle of attack of the slider into the water) because the court set aside the provisions concerning installation instructions and warning signs.

(4) *Bracing* means members providing structural support to the assembled, installed slide.

(5) *Casual contact* means contact of any body part with the slide occurring by chance or nonchalant encounters.

(6) *Center of gravity* means the point that represents the mean position of the concentrated mass of a body.

(7) *Curved slide* means a slide whose runway curves out of the vertical plane at any point along the slide path.

(8) *Cutting hazard* means a slide surface that would cut the skin under casual contact.

(9) *Designated waterline* means the horizontal line through whichever of the following is applicable: (i) The midpoint of the operating range of the skimmers, or (ii) on pools with overflow systems, the height of the overflow rim.

(10) *Edge guards* means shields designed to cover sharp edges on slides.

(11) [Reserved]

(12) *Freestanding slide* means a slide designed for aboveground pools that is not fastened to the pool deck or the ground. This slide may have attachments to the aboveground pool to prevent misalignment.

(13) *Friction* means the force tending to reduce the velocity of the slider on the slide.

(14) [Reserved]

(15) *Intended use* means behavior on swimming pool slides as disclosed by the manufacturer, as specified in this part 1207, or to which the slide may be subjected by a reasonable user (including reasonably foreseeable misuse).

(16) *Ladder angle* means the angle of the ladder measured from a plumbline.

(17) *Ladder platform* means a platform built into the slide ladder.

(18) *Operational strength* means the strength of the slide and/or its components after installation according to the manufacturer's instructions.

(19) *Performance test* means a test to measure the functional or structural characteristics of the slide and may include:

(i) Observations and measurements of the slide's functioning in the ''intended use'' mode, installed according to the manufacturer's installation instructions, and/or

(ii) Observations and measurements of the slide's response to dynamic and static loads.

(20) [Reserved]

(21) *Pinching hazard* means any configuration of slide components that would pinch or entrap the fingers or toes of a child or an adult.

(22) *Puncture hazard* means any slide surface or protrusion that would puncture a child's skin under casual contact.

(23) *Runway* means the surface on which the user slides in the intended use of a slide.

(24) *Runway rail* means a raised edge or guard that keeps the slider on the runway.

(25) *Runway length* means the length of the runway measured along its centerline.

(26) *Slide width* means the width of the slide runway measured between the inside of the left and right runway rails.

(27) *Straight slide* means a slide whose runway curves only in the vertical plane.

(28) *Swimming pool slide* means any device used to enter a swimming pool by sliding down an inclined plane.

(29) *Tamperproof* means that tools are required to alter or remove portions of the slide such as guards, treads, etc.

(30) *Trajectory* means the path of a slider's center of gravity from start to finish.

(31) [Reserved]

(32) *Tread contact surface* means foot contact surfaces of ladder, step, stair, or ramp.

[41 FR 2751, Jan. 19, 1976, as amended at 43 FR 58813, Dec. 18, 1978]

§ 1207.4 Recommended standards for materials of manufacture.

(a) *General.* The materials used in swimming pool slides should be compatible with man and compatible with the environment in which they are installed. These materials should be capable of fulfilling the design requirements prescribed by § 1207.5.

(b) *Effects of environment.* The choice of materials for swimming pool slides should be such that the operational strength of the entire slide assembly, as defined by the performance tests in

§ 1207.5, should not be adversely affected by exposure to rain, snow, ice, sunlight, local, normal temperature extremes, local normal wind variations, expected local air pollution products, and the mechanical, electrical, and chemical environment in and around swimming pools. For purposes of this part 1207, ''local normal'' temperature extremes and wind variations are defined as the average annual record limits for the past 10 years at any slide installation point in the U.S.A. where such statistical information exists (see reference (a) in § 1207.11)

(c) *Materials selection.* The selection of all materials for swimming pool slides should be such that all surfaces and edges that may come in contact with the user are assembled, arranged, and/or finished (deburred, polished, etc.) so that they will not constitute a cutting, pinching, puncturing, or abrasion hazard under casual contact and intended use by children or adults.

(d) *Toxicity.* The selection of materials used in swimming pool slides should be such that the assembled and installed products should not be toxic to man or harmful to the environment under intended use and reasonably foreseeable abuse or disposal. All paints and finishes used on swimming pool slides shall comply with 16 CFR 1303.2(b)(2) and 1303.4(a).

(e) *Chemical compatibility.* The selection of materials for swimming pool slides should be such that the assembled and installed product, and the parts, are chemically compatible with the materials and environment contacted under intended use and reasonably foreseeable abuse.

[41 FR 2751, Jan. 19, 1976, as amended at 43 FR 58813, Dec. 18, 1978]

§ 1207.5 Design.

(a) *Strength.* The strength of the assembled and installed swimming pool slide shall be such that no structural failures of any component part shall cause failures of any other component part of the slide as described in the performance tests in paragraphs (d)(4) and (f)(9) of this section.

(b) *Edges.* Edges of swimming pool slide runways, ladders, handrails, and deck anchor flanges shall be designed, finished (deburred, polished, etc.), or protected in such a manner as to prevent cutting human tissue on casual contact and intended use. If edge guards are used, they shall be permanently affixed to the structure in a tamper-proof fashion.

(c) *Ladders, steps, stairs, or ramps*—(1) *General.* Swimming pool slide ladders, steps, stairs, or ramps shall have treads, not rungs, if the angle of the incline is 15° or greater from a plumbline.

(2) *Angle.* Swimming pool slide ladders not using rungs shall be designed and installed in such a manner that the user's center of gravity will be approximately positioned directly over each step during the use of the ladder. When tread design ladders are used, the minimum installed angle shall be not less than 15° from a plumbline dropped from a ladder step as shown in figure A. If stairs or ramps are used to ascent to the top of the slide, they shall be designed in accordance with reference (c) of § 1207.11, pages 457–463.

(NOTE: To convert the English system values given in the figures to metric values, the following conversion factors should be used: 1 inch=2.54 cm., 1 foot=30.48 cm., 1 square inch=6.452 sq. cm., 1 lb. (mass)=0.4536 kg., 1 lb. (force)=4.448 newtons, and 1 ft.-lb.=1.356 newton-meters.)

TYPICAL LADDER SLOPE MEASUREMENT

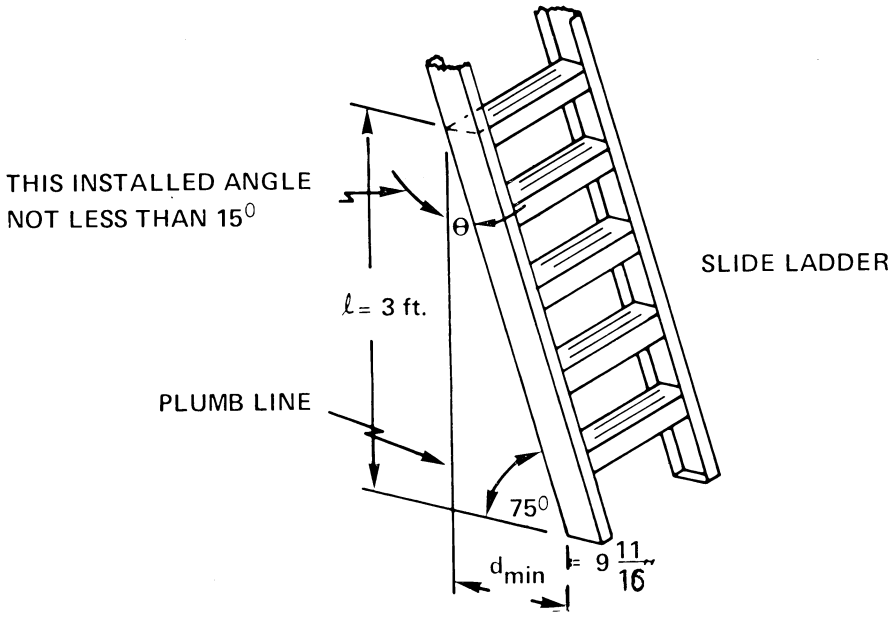


FIGURE A

(3) *Steps*—(i) *Dimensions.* Slide ladder treads may have flat or curved tread surfaces and shall be designed so that they have a minimum tread width of 2 inches (5.08 cm) and a minimum length of 12 inches (30.48 cm) (reference (c) of §1207.11). The riser height of slide ladder treads shall be no more than 12 inches (30.5 cm) nor less than 7 inches (17.8 cm) and shall be constant over the entire height of the ladder (reference (c) of §1207.11).

LADDER TREAD DIMENSIONS

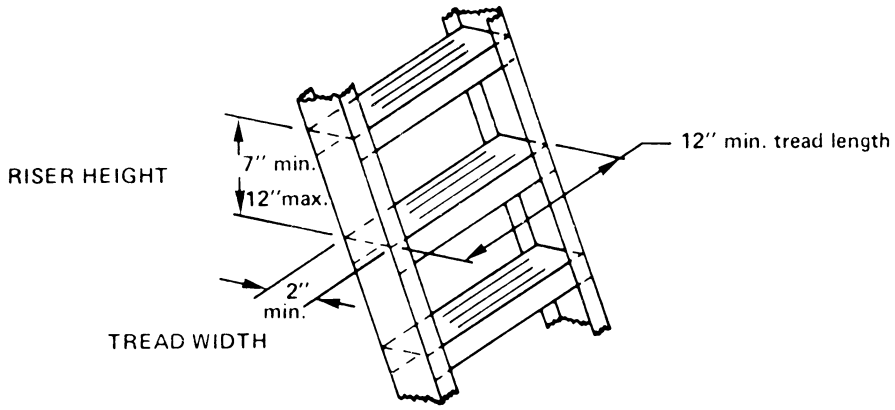


FIGURE B

(ii) *Tread curvature.* If slide ladder tread surfaces are curved, they shall not have a radius of curvature less than seven times the tread width.

(iii) *Slip resistant surfaces*—(A) *General.* The tread surface of all swimming pool slide ladders shall have a slip-resistant surface that is either an integral part of or permanently attached to the ladder steps. The performance test is designed to insure that all tread slip-resistant surfaces shall have the ability to maintain a barefooted 50-percentile adult male (reference (d) of §1207.11) at an angle of repose of 33° ±1° without movement with a safety factor of 2.0. The angle of repose is the angle formed by the intersection of the ladder rails and the line connecting the user's feet and center of gravity. The tread and the foot shall be wet for this test.

(B) *Performance test.* A wooden block shall be prepared in accordance with figure C. The contact surface area of the block shall be 8 square inches (51.61 square cm) to simulate the ball of the foot (reference (d) of §1207.11). It shall be covered with ¼±⅛ inch (.64±.32 cm) of natural or silicone rubber sponge capped with porous soft leather as shown in figure C.

TEST BLOCK FOR SLIP-RESISTANCE MEASUREMENTS OF SLIDE LADDER TREADS

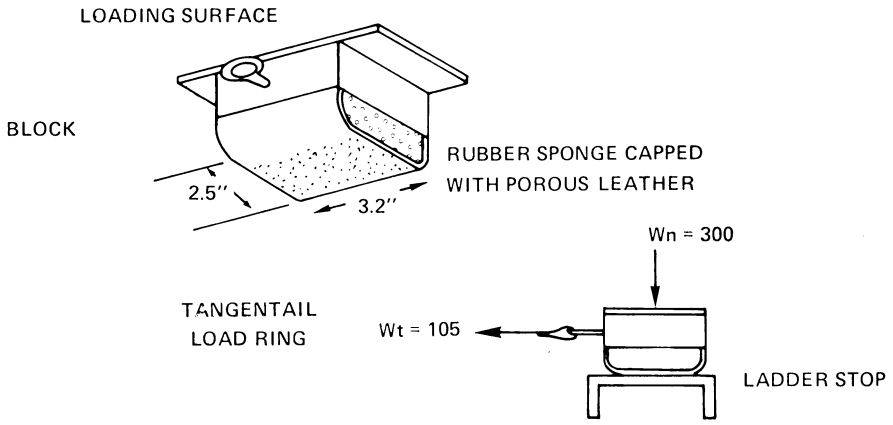


FIGURE C

The tests shall be carried out on a slide assembled and installed according to the manufacturer's instructions. The block shall be soaked in pool water for at least 3 minutes and placed at the midpoint of the wet step with the centroid of load of the block on the longitudinal axis of the step. The block shall be loaded symmetrically on its upper bearing surface with a weight of 300±2 pounds (136.1±.9 kg). A controlled and measured force shall be applied at the tangential load ring of the block tangent to the horizontal and increased at a rate of no more than 20 pounds (88.96 newtons) per second. If the block does not move at the point that the tangential load is equal to 105 pounds (467.1 newtons), the tread surface passes this performance test. Other force-creating means that produce equal forces on the block (300±2lbs, 1,334 newtons) may be substituted for weights if they result in substantially identical slip-resistance measurements.

(iv) *Fastener requirements.* Ladder treads shall be attached to the ladder rails in such a manner that continued intended use or reasonably foreseeable abuse shall not cause any fastener to loosen, crack, or break. All attachment methods that are used to hold the ladder tread to the ladder rails shall be permanent and tamperproof. If fasteners are used for the tread-rail attachment, the number and placement of such fasteners shall not cause a failure of the tread under the ladder loading conditions specified in this paragraph (c)(3).

(v) *Aboveground pool ladders.* Aboveground pool slides equipped with swing-up ladders shall be designed so that the ladders may be fixed in the up position by a tamperproof lock.

(vi) *Ladder platforms.* Swimming pool slides whose height above the surface upon which the slide is mounted is greater than 7.5 feet (2.29 meters) shall have a platform built into the ladder. This platform shall be located at least 6 feet (1.83 meters) above the deck and shall have minimum dimensions of 12 by 12 inches (30.48×30.48 cm.). The floor of the platform shall have a slip-resistant surface whose performance exceeds the requirements of the tests specified in paragraph (c)(3)(iii)(B) of this section. A minimum dimension of two times the riser height shall be maintained from the platform to the top of

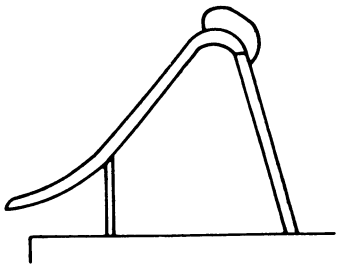
the slide runway. Transitional handrails shall be provided when a platform is used.

(vii) *Static load performance test.* Ladder treads or rungs shall be capable of supporting a 300-pound (1,334–newton) static load in the center without failure or permanent deformation.

(d) *Handrails.* Swimming pool slide ladders shall be equipped with handrails to aid the slider in safely making the transition to the runway. The handrails shall extend no more than 18 inches (45.72 cm) above the top of the slide runway platform (see figure D_1).

FIG. D_1

TYPICAL TRANSITION HANDRAIL

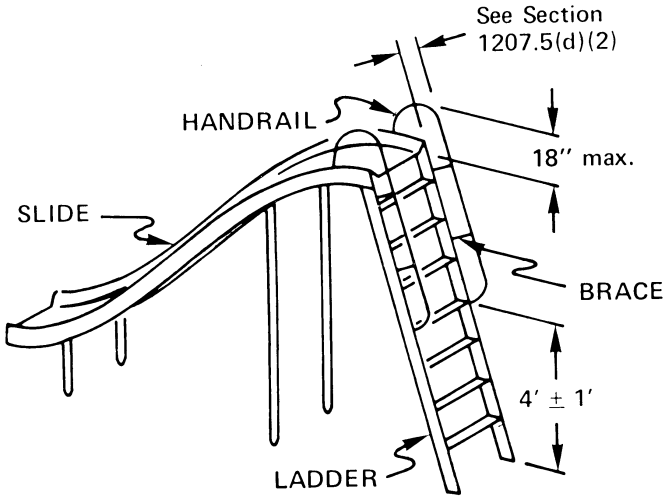


(1) *Size.* The outside diameter of handrails shall be between 1.00 and 1.90 inches (2.54 and 4.83 cm) (references (c) and (d) of §1207.11).

(2) *Extent of handrails*—(i) *Maximum angle ladder.* If ladder handrails for a ladder inclined 15 degrees or less from the vertical extend below the slide transition area, they shall be parallel to the ladder rails at a perpendicular distance from them of 4 to 6 inches (10.16 to 15.24 cm) (see figure D_2). The handrail shall begin 3 to 5 feet (0.91 to 1.52 meters) above the pool deck. Handrails should not provide a means of entrapment.

FIG. D_2

MAXIMUM/MINIMUM DIMENSIONS FOR SLIDE LADDER HANDRAILS



(ii) *Extent of handrails for ladders, steps, stairs, or ramps.* For slides not using the minimum angle ladder (15 degrees or less from the vertical), the perpendicular distance between the ladder handrails and the ladder rails below the slide transition area shall be the distance ''*l*'' as shown in table 1.

TABLE 1—VARIATIONS OF *l*

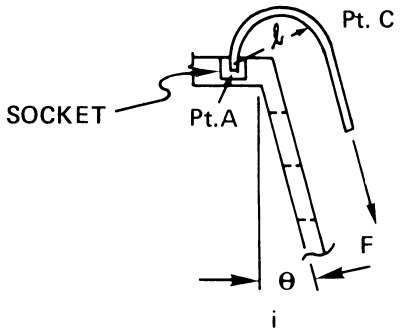
Ladders:	$15°<\theta<40°$	$L=(34.09\theta_{rad}-3.86)\ \pm 1''$
		$=(86.59\theta_{rad}-9.80)\pm 2.54$ cm
Stairs:	$40°<\theta<70°$ ...	$l=34''\pm 1''$
		$=86.36\pm 2.54$ cm
Ramps:	$\theta<70°$	$l=42''\pm 1''$
		$=106.68\pm 2.54$ cm

(3) *Bracing of handrails.* If handrail braces are used, they shall withstand intended use and reasonably foreseeable abuse.

(4) *Attachment and strength of handrails.* Handrails and their fasteners shall withstand allowable shear, bending, and cyclical loading in intended use and reasonably foreseeable abuse. All fasteners for handrail connections shall be vibrationproof, selflocking, and tamperproof. Threaded fasteners shall be capable of withstanding a 1-foot-pound (1,356-newton meter) backoff torque.

(i) *Sockets performance test.* If handrail sockets are used, the handrail end shall be permanently fixed in the socket so that it cannot be pulled out or bent at the socket by a moment of 233 foot-pounds (316 newton-meters) applied clockwise around point A in figure E. The socket shall not permanently deform under the maximum applied loads.

FIG. E
APPLICATION OF HANDRAIL MOMENTS

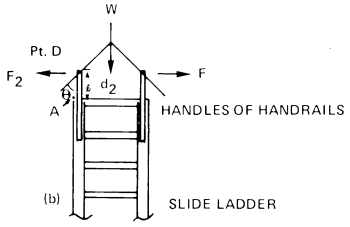


MOMENT = FORCE x DISTANCE = f x ℓ = 233 ft. lbs.

WHERE : Pt. C IS TAKEN AT THE MAXIMUM MOMENT ARM " ℓ FROM Pt. A.

(ii) *Side forces.* If the handrail is in a socket or attached to the side of the slide runway rail, the attachment methods must be capable of withstanding all shear and bending forces induced by a 172-foot-pound (233-newton-meter) moment counterclockwise around point A in figure F.

FIG. F
APPLICATION OF HANDRAILS MO.



MOMEMT = F_2 x d_2 = FORCE x DISTANCE = 172 ft. lbs.

(iii) *Performance tests*—(A) *Strength for climbing and falls.* (*1*) Attach a pull loop to point C of the upper handrail (figure E). Point C is the point where a perpendicular to the axis of the handrail passes through point A, the socket, or other attachment point. Attach a stranded steel cable or wire rope to point C. All cables and ropes shall have at least a 1,000-pound (4,448-newton) tensile capacity. Attach a 162-pound (73.5-kg) weight to this cable at least 4 feet (1.22 meters) below point C. Observe any permanent deformation or bending on the hand-rail at point A. If none exists, the handrail passes this performance test.

(*2*) Lift the weight one foot (30.48 cm) from its maximum static position and drop it. Observe any permanent deformation of the handrail or its attachments at point A. If each handrail will still support the 162-pound (73.5-kg) weight for a period of 15 minutes and has not been bent more than 45° from its original direction, it passes this performance test.

(B) *Transition handrail strength.* Rotate the assembled slide into the horizontal position on its side on a loading dock or other platform. Move the slide into such a position that the entire

handrail assembly overhangs the platform and level the slide. Fasten the slide firmly in this position and attach a 115-pound (52.2-kg) weight to point D, as shown in figure F, and check for any visible permanent deformation of the handrail at point A. If none exists, the handrails pass this performance test.

(e) *Lubrication.* Swimming pool slides shall either be equipped with a method of lubrication (for example, water) or have a similar coefficient of friction so that the slider has a smooth, continuous slide. If water is used, the nozzles, piping, or hoses that deliver water to the runway shall be recessed or designed in such a fashion as not to interfere with a slider's progress down the slide or create tripping hazards on the slide.

(f) *Runways*—(1) *Curvature.* Slide runway curvature between the front and rear support legs of the slide shall be consistent with maintaining the slider safely on the slide during intended use and reasonably foreseeable abuse.

(2) *Dynamic equilibrium.* (i) Swimming pool slide runways, whether straight or curved, shall be designed as ''balanced curves.'' On a balanced curve, the test fixture discussed in paragraph (f)(2)(ii) of this section shall stay on a trajectory that keeps it within a distance of ±41 percent of the runway width to the runway centerline at all points along the runway without contacting the runway rails.

(ii) *Performance test*—(A) *Direct measurement.* Build a wooden pallet no larger than 5 by 5 inches (12.7×12.7 cm), as shown in figure G. Securely attach a lead rod or bar on the pallet. Size the bar so that the weight-to-area ratio of the assembly is 1.30±0.05 lbs./sq. in. (8,960±340 newtons/sq. meter) and the pallet does not tip over when in motion. Attach a felt pen or other suitable marking device to the pallet assembly as shown in figure G to mark the slide during descent.

(B) *Test.* Lubricate the slide in accordance with the manufacturer's instructions. Center the pallet at the top of the slide runway and release. Observe the pallet's descent and note if it touches the slide's side rails. If it touches, check alignment and installation again. With water off and the slide dry, center the pallet at the top of the runway and release. Measure the distance from the felt pen marked line to the centerline of the runway. If within ±41 percent of the width measured from the centerline along the entire path and if the pallet does not contact the runway rails, the slide is dynamically balanced and passes this performance test.

(3) *Runway side rails.* Swimming pool slide runways shall have permanent runway side rails of at least 2 inches (5.08 cm) and height to prevent lateral discharge of the slider off the slide under intended use and reasonably foreseeable abuse.

(4) *Runway side-rail heights.* Runway side-rail heights shall be designed as a function of the maximum slide-slope angle (as shown in figure H). Table 2 that follows shows side-rail height versus maximum slide-slope angle. If the maximum slide-slope angle is not shown in table 2, the next higher side-rail height must be used. Maximum slide-slope angles shall not exceed 75°. (See figure H.)

FIG. G
ASSEMBLY FOR MEASUREMENT OF RUNWAY EQUILIBRIUM

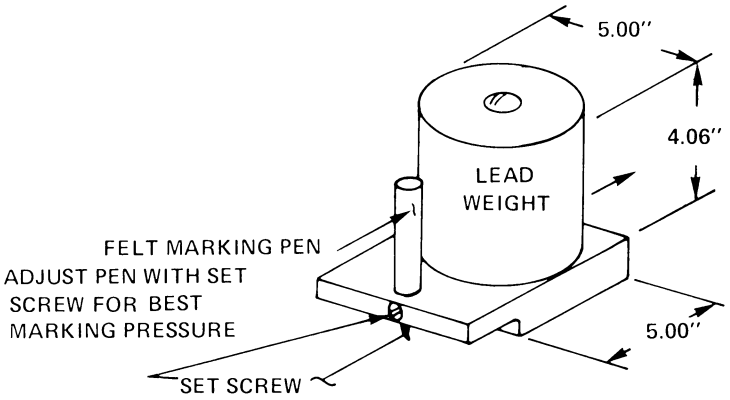
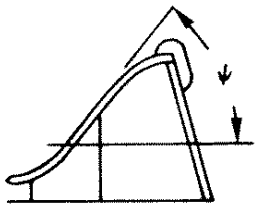


TABLE 2

ψ=Maximum slide-slope angle	Runway side-rail height inches (centimeters)
<60°	2 (5.08)
60–70°	3 (7.62)
70–75°	3½ (8.89)

FIG. H
MAXIMUM SLIDE SLOPE ANGLE ''ψ''



(5) *Slide geometry.* Swimming pool slide runways shall have a smooth transition section and have geometry such that the path of the center of gravity of the slider is not more than ±10° from the horizontal at the center of gravity's exit off the slide and such that the slider's angle of attack (α), shown in figure I and defined below, shall be at least +15° when the slider's feet leave the slide. (See figure I.)

(i) *Performance tests.* Measurement of the 50th-percentile adult male (71±2 inches and 162±5 pounds, 180.34±5.08 cm and 73.5±2.3 kg)[1] slider's angle of attack shall be made using any of the following methods or their equivalent:

(A) Motion picture cameras (36 frames per second or more).

(B) Still cameras with strobe lights and reflectors on the head and hip of the slider.

(C) Still cameras with rotating shutters and lights on the head and hip of the slider.

(D) Video tape recorder.

(ii) Measurements shall be made from the still water level as the horizontal. The path angle shall be determined by measuring the angle between a tangent to the path of the center of gravity (line X) and the horizontal taken through the center of gravity (line Y). At least five consecutive runs with the same subject shall be made in order that an average may be computed.[2] Angle of attack shall be taken as the angle between the slider's longitudinal axis (*Z*) and the tangent to the path of his center of gravity (*X*). The slider's longitudinal axis shall be located by the vertical line that passes through his center of gravity when he stands erect. The slider shall wear usual swimming attire. The angle-of-attack measurement shall be made after the

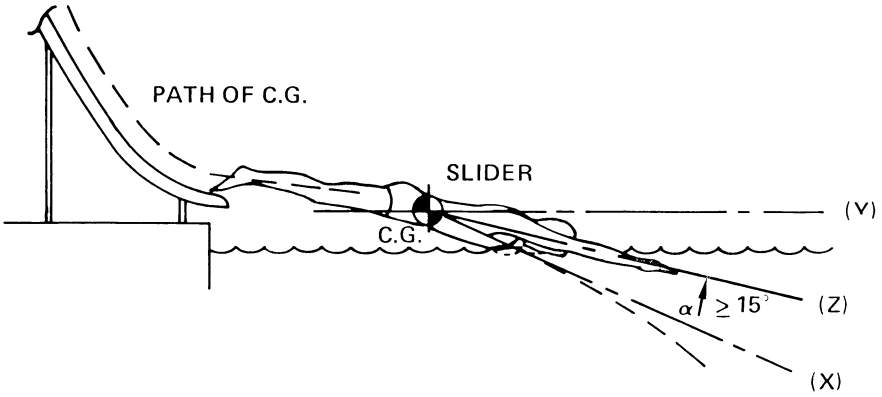
[1] See reference (f) of §1207.11 for full discussion.

[2] Maximum measurement variation of ±15 percent.

slider's feet have cleared the slide, the distance between the end of the slide and his feet being less than 8 inches (20.3 cm). The slider's descent must be headfirst, prone, belly-down, and with arms extended in front. Except when starting, the slider shall not augment the slide trip by forcibly reacting with the slide through the use of his hands, arms, feet and/or legs. The slider's starting reactions with the slide shall be only as strong as necessary to start him moving. If the average angle of attack measured and computed in the above manner is equal to or greater than +15°, the slide passes this performance test.

FIG. I

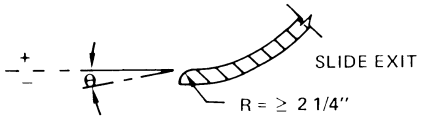
MEASUREMENT OF ANGLE OF ATTACK



(6) *Runway exit lips.* All runway exit lips of swimming pool slides shall be smoothly faired into the runway surface with a radius of curvature at the exit lip of the slide of at least 2¼ inches (5.72 cm) (see figure J).

FIG. J

RUNWAY EXIT ANGLE θ



$-11^{\circ} < \theta < -3^{\circ}$

(7) *Runway exit vertical angle.* The angle of the runway at exit of the slide () shall be −3 to −11 degrees from the horizontal as shown in figure J.

(8)(i) *Runway exit ramp lateral curvature and exit lip horizontal angle.* No net lateral forces on the slider shall exist in that portion of the runway exit ramp beyond the forward support points of the slide. All slides shall be designed and constructed so that the exit lip of the slide is level at all points along the width of the runway at the runway exit lip line drawn at the point where the lip curvature shown in figure J is tangent to the runway. The slide shall be designed so that any side forces on the user induced by prior lateral curvature will be reduced to zero upon exit from the slide runway.

(ii) *Performance tests.* Those tests described in paragraph (f)(2)(ii) of this section are also applicable to paragraph (f)(8) of this section, and the path of the test fixture must be parallel to the centerline of the slide at the exit lip (within 5°) and not touching the side rails of the runway.

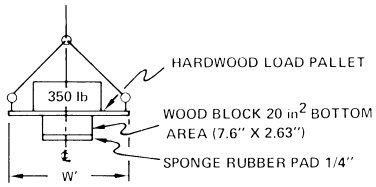
(9) *Strength of slide runways and supports*—(i) *Static loads.* A properly assembled and installed slide runway shall be

capable of supporting a static load of at least 350 pounds (1,557 newtons) applied normal to the runway over an area of no more than 20 square inches (129.03 square cm) at any point along its length or width.

(ii) *Dynamic loading.* Properly assembled and installed slide runways shall be capable of supporting, without structural failure except as defined in paragraph (f)(9)(iii)(B)(*3*) of this section, a dynamic load of at least 450 foot-pounds (610.2 newton-meters) dropped on an area of 20 square inches (129.03 square cm) at the midpoints of the upper runway platform and the lower runway exit ramp.

(iii) *Performance tests*—(A) *Static loads.* Assemble and install a slide according to the manufacturer's instructions. Prepare a 20-square-inch (129.03 square cm) load-bearing pallet according to figure K. Place the loaded pallet on the upper slide platform, positioned between the runway rails, until the scale on the hoist line reads between 0 and 10 pounds (0 and 44.48 newtons). Keep the pallet in this position for 10 minutes. Remove the loaded pallet and observe the runway for any significant structural failure such as permanent deformations or cracks. If there are none, the slide passes the test. Repeat the same test on the lower runway exit ramp.

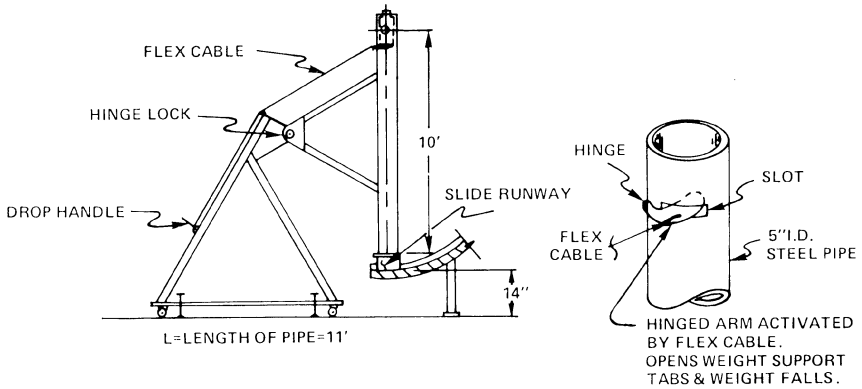
FIG. K
STATIC LOAD TEST FOR
SLIDE BED



w' = WIDTH OF SLIDE RUNWAY MINUS 1/4"

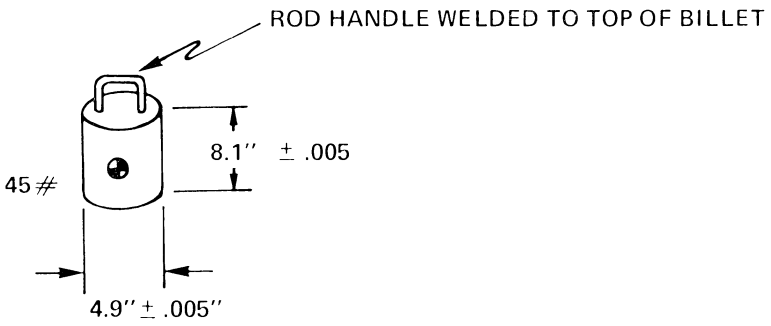
(B) *Dynamic loads.* (*1*) Assemble and install a slide according to the manufacturer's instructions. Use the hardwood load pallet shown in figure K and set it up under dynamic load guides fabricated as shown in figure L, or an equivalent impact-testing machine.

FIG. L
DYNAMIC LOAD TEST



(*2*) Fabricate a 45-pound (20.4–kg) billet of 4.900±0.005-inch (12.45±.01 cm) steel rod as shown in figure M, or equivalent, and load into the pipe above the trigger slot. The length of the pipe from the trigger slot to the impact pallet shall be 10.0±0.1 feet (3.05 meters±3.05 cm).

FIG. M
TYPICAL BILLET FOR IMPACT TESTING



(*3*) Drop the billet onto the pallet and observe the slide for any permanent deformations or cracks. If the slide runway can still support a static load of 350 pounds (1,557 newtons) on the pallet without further crack propagation, it passes this test.

(*4*) Perform the test on the entrance and exit platforms of the slide runway.

[41 FR 2751, Jan. 19, 1976; 41 FR 9307, Mar. 4, 1976; 41 FR 10062, Mar. 9, 1976, as amended at 41 FR 12638, Mar. 26, 1976; 41 FR 13911, Apr. 1, 1976]

§§ 1207.6–1207.8 [Reserved]

§ 1207.9 Product certification.

(a) Certification shall be in accordance with section 14(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2063(a)(1)).

(b) A certificate shall accompany the swimming pool slide (in the form of a permanent label on the shipping container(s) or in the form of a separate certificate) to all distributors and retailers to whom the material is delivered certifying that the slide conforms to this part 1207. The certificate or permanent label issued under this section shall be based upon either a test of each product or a reasonable testing program, shall state the name of the manufacturer or private labeler issuing the certificate, and shall include the date and place of manufacture.

(c) Any certificate shall be based upon the test procedures and requirements specified in this part 1207.

§ 1207.10 Handling, storage, and marking.

(a) *Marking.* The manufacturer's or private labeler's identification shall appear on the slide and shipping container. Such identification shall include the identity and address of the manufacturer or private labeler. If a private labeler's name is used, the marking shall include a code mark that will permit an identification of the manufacturer.

(b) *Shipping, handling, and storage.* The slide shall be designed, constructed, or packaged so that reasonably foreseeable shipping, handling, and storage will not cause defects in the slide that will prevent the slide from complying with the requirements of this part 1207.

§ 1207.11 References.

(a) ''Statistical Abstract of the United States 1973,'' U.S. Dept. of Commerce, pp. 181–185, 192.

(b) ''Human Engineering Guide for Equipment Designers,'' Woodson and Conover, pp. 2–166 through 2–169 published by the University of California Press, 2223 Fulton St., Berkeley, California 94720.

(c) ''Human Engineering Guide to Equipment Design,'' Van Cott and KinKade, published by U.S. Dept. of

Defense, 1972, Library of Congress Card No. 72–600054, pp. 457–465.

(d) ''The Measure of Man—Human Factors in Design,'' by Henry Dreyfuss, published by Watson-Guptill Publications, Inc., 1 Astor Plaza, New York, New York, 10036.

(e) ''Medical Tribune'', Wed., 8/15/73, p. 21.

(f) ''Technical Rationale in Support of A Safety Standard for Swimming Pool Slides,'' 5/30/75. National Swimming Pool Institute, 2000 K Street NW., Washington, D.C. 20006.

§ 1207.12 Stockpiling.

(a) *Definitions.* As used in this section:

(1) *Stockpiling* means manufacturing or importing swimming pool slides between the date of promulgation of part 1207 in the FEDERAL REGISTER and its effective date at a rate greater than five percent more than the rate at which the slides were manufactured or imported during the base period.

(2) *Base period* means, at the option of the manufacturer or importer concerned, any period of 180 consecutive days beginning on or after January 2, 1974, and ending on or before December 31, 1974.

(3) *Rate of production (or importation)* means the total number of swimming pool slides manufactured (or imported) during a stated time period. In determining whether a slide was manufactured (or imported) during a stated time period, the later of the date on which the slide runway was manufactured (or imported) or the date on which the accompanying ladder and other support parts were manufactured (or imported) shall be used.

(b) *Prohibited acts.* Manufacturers and importers of swimming pool slides, as these products are defined in § 1207.3(a)(28) shall not manufacture or import slides that do not comply with the requirements of this part 1207 between January 19, 1976, and July 17, 1976, at a rate which is greater than the rate of production or importation during the base period plus five percent of that rate.

(c) Manufacturers and importers shall maintain appropriate documentation to be able to substantiate to the Commission that they are in compliance with the provisions of this section.

[41 FR 2751, Jan. 19, 1976, as amended at 41 FR 15003, Apr. 9, 1976]

PART 1209—INTERIM SAFETY STANDARD FOR CELLULOSE INSULATION

Subpart A—The Standard

Sec.

Subpart B—Certification

SOURCE: 44 FR 39966, July 6, 1979, unless otherwise noted.

Subpart A—The Standard

AUTHORITY: Sec. 35(c)(2), Pub. L. 95–319, 92 Stat. 388–389 (15 U.S.C. 2082).

§ 1209.1 Scope and application.

(a) *Scope.* This part 1209, an interim consumer product safety standard, prescribes flame resistance and corrosiveness requirements for cellulose insulation that is a consumer product. These requirements are intended to reduce or eliminate an unreasonable risk of injury to consumers from flammable and corrosive cellulose insulation. The requirements are based upon the flame resistance and corrosiveness requirements of General Services Administration Specification HH-I-515D.

(b) *Application.* This part 1209 shall apply to cellulose insulation that is a consumer product, that is, cellulose insulation produced or distributed for sale to, or for the personal use, consumption, or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise. The interim standard applies to cellulose insulation that is produced or distributed for sale to consumers for their direct installation or use, as well as cellulose insulation that is produced or distributed for installation by professionals. This part 1209 applies only to cellulose insulation manufactured after October 15, 1979.

§ 1209.2 Definitions and measurements.

(a) As used in this part 1209, *Cellulose insulation* means cellulosic fiber, loose fill, thermal insulation that is suitable for blowing or pouring applications.

(b) The definitions given in section 3 of the Consumer Product Safety Act are applicable to this part 1209.

(c) For the purposes of conformance with the technical requirements of this standard, the figures are given in the metric system of measurement. The inch-pound system approximations of these figures are provided in parentheses for convenience and information only. For numerical quantities for which no specific tolerances are given, the tolerance shall be one half of the unit value of the last significant digit given in the dimension. Where numerical quantities are given without tolerances in both the metric and inch-pound system of measurements, the tolerance shall be one half of the last significant digit of the metric equivalent of the numerical quantity.

(d) The specifications and dimensions in the test methods below are given in metric units, with the English equivalents in parentheses. For enforcement purposes the Commission will use metric units.

§ 1209.3 General requirements.

(a) All cellulose insulation to which this interim standard applies, as described in § 1209.1, shall be noncorrosive when tested in accordance with the test procedures at § 1209.5 and evaluated using the criteria at § 1209.5(c). This means that after the product is tested, the six metal coupons used in the test shall not have any perforations (excluding notches extending into the coupon 3 mm or less from any edge) when the coupons are observed over a 40–W appliance light bulb.

(b) All cellulose insulation to which this interim standard applies, as described in § 1209.1, shall have a critical radiant flux equal to or greater than 0.12 W/cm^2 for each of the three specimens when tested in accordance with the test procedures at § 1209.6.

(c) All cellulose insulation to which this interim standard applies, as described in § 1209.1, shall have no evidence of flaming combustion and shall also have weight loss of 15 percent or less of the initial weight, for each of the three specimens, when tested in accordance with the test procedures at § 1209.7.

(d) All containers of cellulose insulation to which this interim standard applies, as described in § 1209.1, shall have a labeling statement in accordance with the labeling requirements at § 1209.9.

§ 1209.4 Test procedures for determining settled density.

The settled density of lose fill insulation must be determined before the

corrosiveness test (§1209.5) and the smoldering combustion test (§1209.7) can be performed. This section describes the procedure for determining the settled density of loose fill insulation.

(a) *Apparatus and materials.* (1) An insulation specimen container with a flat bottom and an inside diameter of 15.0±1 cm, straight sides [without a flared lip or spout, (Apparatus #1)]. The height of the beaker shall be such that the distance between the bottom of the cyclone and the top edge of the beaker is 8.5 cm±1.0 cm. (3.39 in±.39 in).

(2) A flat-rigid disc with a total weight of 75±5 g (2.65±0.18 oz) and of a suitable diameter to fit loosely into the specimen container. Weight may be added to the center of the disc to bring the total weight to the required 75±5 g (Apparatus #2).

(3) A balance of 2 kg (4.4 lbs) capacity accurate at least to 0.2 g (0.007 oz) (Apparatus #3).

(4) Blower apparatus, two units (supply and overflow) meeting the following specifications: (The Commission staff has found that a Breuer Electric Manufacturing Co., Model 98805 blower is suitable for this purpose, although other blowers may be suitable.) (Apparatus #4).

(i) Each blower apparatus shall be capable of blowing an average of 272.2 kg (600 lbs.) of insulation per hour.

(ii) Each blower apparatus shall have a nominal air flow of 2.1 cm^3/min. (75 ft^3/min.)

(iii) Each blower apparatus shall have a nominal motor speed of 16,450 revolutions per minute at 115 VAC.

(5) A shaker unit capable of shaking 4.5 kg (10 lb) of weight with a vertical motion of 0.5 g Root Mean Square (RMS) acceleration at an approximate frequency of 9 Hertz (Hz) and displacement of approximately 1.17 cm ($^{15}/_{32}$±$^{1}/_{32}$ in.) ±.08 cm peak to peak. (The Commission staff has found that a Tyler Industries, Portable Sieve Shaker Model Rx–24 is suitable for this purpose, although other shakers may be suitable.) (Apparatus #5).

(6) Fill chamber with inside dimensions of 45.7 cm (18 in) high × 38.1 cm (15 in) wide × 38.1 cm (15 in) deep, with covered openings that will allow a radiant panel tray to be slid through the chamber, (see Figure 1 for details) (Apparatus #6).

(7) A cyclone receiver (see Figure 2 for complete details). (Apparatus #7).

(8) Various lengths of nominally 2-inch diameter hose (see Figure 1 for details), as follows:

(i) A supply source hose, 274.3±5.1 cm (9 ft±2 in) (Apparatus #8(i)).

(ii) A cyclone receiver hose, 182.9±5.1 cm (6 ft±2 in) (Apparatus #8(ii)).

(iii) A fill chamber exit hose, 91,.4±5.1 cm (3 ft±2 in) (Apparatus #8(iii)).

(iv) An overflow exhaust hose, length as needed (Apparatus #8(iv)).

(9) Blower Control(s) capable of operating the two blowers at 40 volts RMS. As an example, a variac for each of the two blowers with sufficient rating to operate at 40 volts and 12 amperes RMS would be acceptable (Apparatus #9).

(10) An insulation holding container to hold a sufficient quantity of insulation to fill the specimen container four times.

(11) A garden rake, 50.8 cm (20 in) wide (Apparatus #11).

(12) A shovel (Apparatus #12).

(b) *Conditioning.* Specimens shall be conditioned to equilibrium at 21±5 °C (69.8±9 °F) and 50±5 % relative humidity. A less than 1% change in net weight of the specimen in two consecutive weighings with two hours between each weighing constitutes equilibrium.

(c) *Test specimen preparation*—(1) *Insulation intended for pneumatic applications.* If the insulation is intended for pneumatic applications, the test specimens shall be prepared in the following manner:

(i) If ambient laboratory conditions are different from the conditioning requirements specified in (b) above, begin testing the specimen for settled density within 10 minutes after it has been removed from the conditioned area.

(ii) Pour the conditioned insulation into the holding box (Apparatus #10) in sufficient quantity to fill the specimen container (Apparatus #1 shown in Figure 1) four times. Manually break up any large clumps of material that might cause feeding problems.

(2) *Insulation intended for pouring applications.* If the insulation is intended for pouring applications, the test specimens shall be prepared in the following manner:

(i) If ambient laboratory conditions are different from the conditioning requirements specified in (b) above, begin testing 10 minutes after it has been removed from the conditioned area.

(ii) Pour loose fill insulation into a simulated attic space until full. The attic space shall be formed by two nominal 2 × 6 (243 cm) (8 ft) long joists placed 40.6 cm (16 in) on center with 1.27 cm (½ in) plywood nailed to the ends and bottom. Fluff the material with a garden rake (Apparatus #11), applying a series of small amplitude strokes while moving the rake slowly along the joist. Repeat the fluffing process six times.

(d) *Procedures*—(1) *Procedures for insulation intended for pneumatic applications.* If the insulation is intended for pneumatic applications, conduct the following procedures:

(i) The test shall be conducted in an area conditioned to the requirements of §1209.4(b).

(ii) The apparatus shall be set up as shown in Figure 1. (Apparatus #9 and #10 are not shown in Figure 1, but are described at §1209.4(a)). Connect one end of the supply source hose (Apparatus #8.i) to the intake of the supply blower (Apparatus #4). The other end will be used to pick up insulation from the holding container (Apparatus #10). Connect one end of the cyclone receiver hose (Apparatus #8.ii) to the outlet of the supply blower and the other end to the cyclone receiver (Apparatus #7). Connect one end of the fill chamber exit hose (Apparatus #8.iii) to the intake of the overflow blower (Apparatus #4) and the other end to the fill chamber (Apparatus #6). The fill chamber shall be placed on a flat and level surface. Connect one end of the variable length overflow exhaust hose (Apparatus #8.iv) to the outlet of the overflow blower. The other end should be conveniently placed to reduce insulation dust in the test area.

(iii) Weigh the empty insulation specimen container and record its weight.

(iv) Place the empty insulation specimen container in the fill chamber (Apparatus #6) centered under the cyclone receiver (Apparatus #7), and close the front cover.

(v) Adjust the blower control(s) (Apparatus #9) such that the supply and overflow blowers will operate at a no load voltage of 40 volts RMS.

(vi) Turn on the blowers simultaneously and proceed to fill the insulation specimen container by picking up material from the holding container using the supply source hose.

(vii) The container may fill unevenly, i.e. a void may tend to form off center in the container. If this occurs, stop the blowing process and rotate the container 180 degrees and continue the blowing process until the container just begins to overflow. If, for any reason, the filling process is interrupted for more than one minute or for more than the one time allowed to rotate the container, begin the process again.

(viii) Gently screed the excess material using a straight edge so as to leave a uniform surface of the insulation flush with the top of the container.

(ix) Weigh the filled and leveled container and record the weight. Take care not to bump or jar the container so as not to introduce any extraneous settling of the insulation.

(x) Cover the container to prevent spilling and secure the container to the shaker. Operate the shaker for a period of 5 minutes±15 seconds.

(xi) Remove the container from the shaker and uncover, taking care not to bump or jar it. Lower the disc (Apparatus #2) very slowly into the container until it starts to contact the insulation. At this point, release the disc and allow it to settle onto the insulation under its own weight.

(xii) Measure the volume of the space occupied by the settled insulation using the bottom edge of the disc as the upper datum point. If the disc is not level, measure the high and low points of the bottom of the disc and average the readings and use this as the height measurement in calculating the volume (V_s). This settled insulation volume and insulation weight (w) shall be used to calculate the settled density.

(xiii) Repeat this procedure [steps (i through xi)] using another specimen of the insulation until four settled densities are obtained for a given material. Then average these figures to arrive at a final settled density.

(2) *Procedures for insulation intended for pouring applications.* If the insulation is intended for pouring applications, conduct the following procedures:

(i) Weigh the empty insulation specimen container and record its weight.

(ii) Using a shovel (Apparatus #12) remove insulation from the simulated attic space and place it into the specimen container until the container just begins to overflow.

(iii) Follow steps (vi) through (xii) as specified under *Procedures for insulation intended for pneumatic applications.*

(iv) Repeat this procedure (steps (i) through (iii)) using another specimen of the insulation until four settled densities are obtained for a given material. Then average these figures to arrive at a final settled density.

(e) *Insulation intended for pouring and pneumatic applications.* If the insulation is intended for both pouring and pneumatic applications, or if it is uncertain whether the insulation will be poured or installed pneumatically, the insulation shall be tested for settled density using the test specimen preparation and test procedures at §1209.4 (c) and (d) for each of the applications. The larger of the two settled density values shall be used in performing the corrosiveness test at §1209.5 and the smoldering combustion test at §1209.7.

(f) *Calculations.* Calculate the settled density of each specimen using the following formula:

Settled Density in $kg/m^3 = W/V_s$, where

W=combined weight of the container and insulation in grams, minus the weight of the container in grams.

V_s=volume of insulation in liters after shaking.

§ 1209.5 Test procedures for corrosiveness.

This section prescribes the procedures for determining the corrosiveness of cellulose insulation. Cellulose insulation shall be tested for corrosiveness using the measured settled density, obtained by following the test procedure at §1209.4, to calculate the amount of distilled or deionized water to add to the test specimens. Determination of corrosiveness shall be in accordance with the following test procedure:

(a) *Apparatus and materials*—(1) *Humidity chamber.* A forced-air humidity chamber capable of maintaining 48.9±1.7 °C (120±3 °F) and 97 ±1.5 percent relative humidity.

(2) *Crystallizing dishes.* Six glass crystallizing dishes, 90 mm (3.54 in) diameter by 50 mm (1.9 in) height.

(3) *Test coupons.* (i) Two aluminum coupons. 3003 bare aluminum, zero temper.

(ii) Two copper coupons. ASTM B 152, type ETP, Cabra No. 110 soft copper.

(iii) Two steel coupons. Low carbon, commercial quality, cold rolled, less than 30 carbon content, shim steel.

Each coupon shall be 50.8 by 50.8 mm (2 by 2 in) by 0.076 mm (0.003 in) thick metal free of tears, punctures, or crimps.

(4) Test specimens: Six test specimens of insulation shall be used for one test. Each specimen shall weigh 20g (0.7 oz).

(b) *Procedure*—(1) *General procedures for cleaning all metal coupons.* The metal coupons shall be cleaned by the following method:

(i) At no time during the fabrication, cleaning or testing shall the metal coupons be touched by ungloved hands.

(ii) Gloves shall be clean and in good condition.

(iii) All chemicals used shall be of American Chemical Society reagent grade or better, free from oily residues and other contaminants.

(iv) Water shall be distilled or deionized water.

(v) Handle cleaned coupons only with clean forceps.

(vi) In order to avoid exposing laboratory personnel to toxic fumes, the commission recommends that all cleaning procedures be performed in a fume hood.

(vii) Clean the coupons by vapor degreasing with 1,1,1-trichloroethane for ten minutes. Following vapor degreasing, subject the coupons to caustic and/or detergent washing as appropriate. Following caustic or detergent washing, rinse the coupons in flowing water to remove residues. Inspect each coupon for a water-break free surface. (A water-break is a break, separation, beading or retraction of the water film as the coupon is held vertically after wetting. As the coupons are cleaned, the water film should become gradually thinner at the top

and heavier at the bottom.) Hot air dry the coupons at 105 °C (221 °F).

(2) Specimens of cellulose insulation submitted for testing shall be blown, combed, or otherwise mixed to reasonably assure homogeneity in the cellulose insulation test specimens.

(3) Before presaturating each 20g (0.7 oz) test specimen, subdivide it into two 10g (0.35 oz) portions. The quantity of distilled or deionized water to be used for each 10g (0.35 oz) portion shall be determined using the following formula:

ml distilled water = 46 / (settled density, Kg/m^3) × 75

or

ml distilled water = 2.9 / (settled density, lb/ft^3) × 75

(4) Presaturate each 10g (0.35 oz) portion with the determined amount of water. Place one presaturated 10g (0.35 oz) portion into a crystallizing dish, tamp level using the bottom of a clean suitably sized glass beaker. Place a metal coupon onto the presaturated insulation portion and center it in a horizontal plane. Place the other presaturated 10g (0.35 oz) portion into the crystallizing dish on the metal coupon and tamp the composite specimen (metal coupon plus saturated insulation in the crystallizing dish) to assure an even distribution of this material and to assure good contact of the insulation with the metal. Exercise care in preparing the composite specimens to eliminate air pockets from forming next to the metal coupons.

(5) Do not cover the crystallizing dish. (Care should be taken to avoid evaporation from the composite specimen while it is being prepared until it is placed in the humidity chamber.) If dripping occurs in the chamber, position a drip guard in the chamber to divert condensation to the chamber floor. Repeat the above for the other metal coupons. Place all six composite specimens into the humidity chamber. The chamber shall be preconditioned to 48.9 ±1.7 °C (120 ±3 °F) and 97 ±1.5 percent relative humidity. The specimens shall remain in the chamber for 336 ±4 hours. (Keep the chamber door open a minimum of time while placing composite specimens in and removing them from the chamber.)

(6) Upon completion of the test disassemble the composite specimens. Thoroughly wash the metal coupons under running water and lightly brush them using a soft nylon bristle brush or equivalent to remove loose corrosion products. Remove the remaining corrosion products from the metal coupons by cleaning them in accordance with the following practices:[1]

(i) Technique #1—Electrolytic Cleaning. This technique can be used for post-cleaning the tested copper, steel and aluminum coupons.

Description: Electrolyze the coupons as follows: Make a solution containing 28 ml of sulfuric acid (specific gravity 1.84), 2 ml of organic inhibitor, e.g. aobut 0.5 g/liter of such inhibitors as diorthotolyl thiourea, quinoline ethiodide, or betanaphthol quinoline may be used, and 970 ml of water. The solution shall be at 75 °C (167 °F). The anode shall be carbon or lead, and the cathode shall be one metal coupon. The electrolyzing shall run for 3 minutes at a current density of 20 A/dm^2. *Caution:* If lead anodes are used, lead may deposit on the coupon. If the coupon is resistant to nitric acid, the lead may be removed by a flash dip in 1 + 1 nitric acid (plus water). To avoid injury in this and subsequent techniques when mixing acid and water, gradually pour the acid into the water with continuous stirring, provide cooling if necessary.

(ii) Technique #2—Copper. This technique or Technique #1 can be used for post-cleaning the tested copper coupons only.

Description: Make a solution containing 500 ml of hydrochloric acid (specific gravity 1.19), 100 ml of sulfuric acid (specific gravity 1.84), and 400 ml of water. To avoid injury, prepare the solution by slowly adding the sulfuric acid to the water with continuous stirring. Cool, then add the hydrochloric

[1] These practices are the recommended practices in ''ASTM G1—Standard Recommended Practice for Preparing, Cleaning, and Evaluating Corrosion Test Specimens,'' published by American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103.

acid slowly with continuous stirring. The solution shall be at room temperature. Dip the coupons in the solution for 1 to 3 minutes.

(iii) Technique #3—Steel. This technique or technique #1 can be used for post-cleaning the tested steel coupons only.

Description: Use one of the following two solutions:

Solution #1. Add 100 ml of sulfuric acid (specific gravity 1.84), 1.5 ml organic inhibitor, and water to make a l liter solution. The solution shall be 50 °C (120 °F). Dip the coupons in this solution.

Solution #2 (also referred to as Clarke's solution). Add 20 g of antimony trioxide and 50 g of stannous chloride to 1 liter of hydrochloric acid (specific gravity 1.19). The solution shall be stirred and be used at room temperature. Dip the coupons in this solution stirring the solution at a rate such that deformation of the coupons does not occur. This dipping shall last for up to 25 minutes.

(iv) Technique #4—Aluminum. This technique or technique #1 can be used for post-cleaning the tested aluminum coupons only.

Description: Make a 1 liter solution by adding 20g of chromic acid, and 50 ml of phosphoric acid (specific gravity 1.69), to water. The solution shall be 80 °C (176 °F). Dip the coupons in this solution for 5–10 minutes. If a film remains, dip the coupons in nitric acid (specific gravity 1.42) for 1 minute. Repeat the chromic acid dip. Nitric acid alone may be used if there are no deposits.

(7) After cleaning, examine the metal coupons over a 40–W appliance light bulb for perforation.

(c) *Noncorrosiveness*. Noncorrosiveness shall be determined by the absence of any perforations (excluding notches which extend into the coupon 3 mm or less from any edge) on each of the six test coupons when the coupons are observed over a 40–W appliance light bulb.

§ 1209.6 Test procedures for critical radiant flux.

This section provides the test procedure for determining the critical radiant flux of exposed attic floor insulation using a radiant heat energy source.

(a) *Apparatus and description of test procedure*. Test chamber (Figures 3 and 4 paragraph (b) of this section). An air-gas fueled radiant heat energy panel or equivalent panel inclined at 30° above and directed at a horizontally-mounted attic floor insulation specimen. The radiant panel generates a radiant energy flux distribution ranging along the approximately 100-cm length of the test specimen from a nominal maximum of 1.0 W/cm.^{2} to a minimum of 0.1 W/cm^2. The test is initiated by open flame ignition from a pilot burner. The distance burned to flame-out is converted to W/cm^2 from the flux profile graph (Figure 8) and reported as critical radiant flux, W/cm^2. Section 1209.8 provides a procedure for calibrating the radiation pyrometer used to standardize the thermal output of the panel.

(b) *Construction and instrumentation of the radiant panel test chamber*. The radiant panel test chamber shall be constructed and instrumented as follows:

(1) The radiant panel test chamber employed for this test shall be located in a draft protected area maintained at 21±3 °C (69.8±9 °F) and relative humidity of 50±20%. The radiant panel test chamber, (Figures 3 and 4) shall consist of an enclosure 140 cm (55 in) long by 50 cm (19½ in) deep by 71 cm (28 in) above the test specimen. The sides, ends, and top shall be of 1.3 cm nominal (½ in) calcium silicate board, such as Marinite I, 0.74 g/cm^3 (46 lb/ft^3) nominal density, with a thermal conductivity at 177 °C (350 °F) of 1.11 cal (g)/hr cm^2 °C/cm [0.89 Btu/(hr) (ft^2) (°F/in)]. One side shall be provided with an approximately 10 cm × 110 cm (4 × 44 inches) draft tight fire resistant glass window so that the entire length of the test specimen may be observed from ourside the fire test chamber. On the same side and below the observation window is a door which, when open, allows the specimen platform to be moved out for mounting or removal of test specimens. A draft tight, fire resistant observation window may be installed at the low flux end of the chamber.

(2) The bottom of the test chamber shall consist of a sliding steel platform which has provisions for rigidly securing the test specimen holder in a fixed and level position. The free, or air access, area around the platform shall be

in the range of 1935–3225 cm^2 (300–500 square in). The top of the chamber shall have an exhaust stack with interior dimensions of 10.2 cm (4 in) wide by 38 cm (15 in) deep by 31.8 cm (12.5 in) high at the opposite end of the chamber from the radiant energy source. The radiant heat energy source shall be a panel of porous refractory material mounted in a cast iron frame, with a radiation surface of 30.5×45.7 cm nominal (12 by 18 in). The panel fuel system shall consist of a venturi-type aspirator or equivalent system for mixing gas and air at approximately atmospheric pressure, a clean dry air supply capable of providing 28.3 NTP (Normal Temperature and Pressure m^3 per hr (1000 standard cubic feet per hour) at 7.6 cm (3.0 in) of water, and suitable instrumentation for monitoring and controlling the flow of fuel to the panel.

(3) The radiant heat energy panel shall be mounted in the chamber 30±0.5° to the horizontal specimen plane. The horizontal distance from the 0 mark on the specimen fixture to the bottom edge (projected) of the radiating surface of the panel is 8.9 cm±0.1 (3½±1/32 in). The panel to specimen vertical distance is 14.0 cm±0.1 (5½±1/32 in) (see Figure 5). The angle and dimensions given above are critical in order to obtain the required radiant flux. The radiation pyrometer for standardizing the thermal output of the panel shall be suitable for viewing a circular area 25.0 cm (10 in) in diameter at a range of about 1.37 m (54 in). It shall be calibrated over the black body temperature range of 490–510 °C (914–950 °F) in accordance with the procedure described in §1209.8. A high impedance voltmeter with a suitable millivolt range shall be used to monitor the output of the radiation pyrometer described. The dummy holder (see Figure 6), shall be constructed from 14 gauge heat-resistant stainless steel (AISI Type 300 (UNA-N08330)) or equivalent thickness 0.198 cm (0.078 in), having overall dimension of 114 cm (45 in) by 32 cm (12¾ in) with a specimen opening of 20 cm (7.9 inches) by 100 cm (39.4 in). Six slots are cut in the flange on either side of the holder to reduce warping. The holder is fastened to the platform with two stud bolts at each end.

(4) The specimen tray (see Figure 7) shall be constructed from 14 gauge heat-resistant stainless steel (AISI Type 300 (UNA-N08330)) or equivalent, thickness 0.198 cm (0.078 in). The depth of the tray is 5.0±0.2 cm (2±5/64 in). The flanges of the specimen tray are drilled to accommodate two stud bolts at each end; the bottom surface of the flange is 2.1±0.1 cm (0.83±0.04 in) below the top edge of the specimen tray. The overall dimensions of the tray and the width of the flanges are not critical and should be chosen so that the tray essentially fills the open space in the sliding platform. Tray must be adequate to contain a specimen at least 100 cm long and 25 cm wide. It is important to note that the zero reference point on the dummy specimen coincides with the pilot burner flame impingement point (see Figure 5).

(5) The pilot burner used to ignite the specimen shall be a propane venturi torch with an axially sysmmetric burner tip having a propane supply tube with an orifice diameter of 0.0076±0.0013 cm (0.003±0.0005 in). In operation, the propane flow is adjusted to give a pencil flame blue inner cone length of 1.3 cm (½ in). The pilot burner is positioned so that the flame generated will impinge on the centerline of the specimen at the zero reference point and at right angles to the specimen length (see Figures 3 and 4). The burner shall be capable of being swung out of the ignition position so that the flame is horizontal and at least 5 cm (2 in) above the specimen plane.

(6) Two 3.2 mm nominal (⅛ in) diameter stainless steel sheathed, grounded junction chromel alumel thermocouples are located in the flooring radiant panel test chamber (see Figures 3 and 4). Thermocouples shall be kept clean to ensure accuracy of readout. The chamber thermocouple is located in the longitudinal central vertical plane of the chamber 2.5 cm±0.1 (1±1/32 in) down from the top and 10.2 cm±0.1 (4 in±1/32) back from the inside of the exhaust stack. The exhaust stack thermocouple is centrally located 15.2±0.1 cm (6±1/32 in) from the top. A temperature indicating device with a range of 100–500 °C (212–932 °F) may be used to determine the chamber temperatures prior to a test.

(7) An exhaust duct with a capacity of 28.3–85 NTP m^3 per minute (1000–3000 standard cubic feet per minute) decoupled from the chamber stack by at least 7.6 cm (3 in) on all sides and with an effective area of the canopy slightly larger than the plane area of the chamber with the specimen platform in the out position shall be used to remove combustion products from the chamber. With the panel turned on and dummy specimen in place, there shall be no measurable difference in air flow through the chamber stack with the exhaust on or off.

(8) The dummy specimen which is used in the flux profile determination shall be made of 1.9±0.1 cm (¾±1⁄32 in) 0.74 g/cm^3 (46 lb/ft^3) nominal density calcium silicate board, such as Marinite I (see Figure 6). It is 25 cm (10 in) wide by 107 cm (42 in) long with 2.7±0.1 cm (1 1⁄16±1⁄32 in) diameter holes centered on and along the centerline at the 10, 20, 30, 40, 50, 60, 70, 80, 90 cm locations (within ±0.1 cm), measured from the zero reference point at the maximum flux end of the specimen. The total heat flux transducer used to determine the flux profile of the chamber in conjunction with the dummy specimen should be of the Schmidt-Boelter type, having a range of 0–1.5 W/cm^2 (0–1.32 Btu/ft^2 s), and shall be calibrated over the operating flux level range of .10 to 1.5 W/cm^2 in accordance with the procedure outlined in §1209.8. The incoming cooling water flowing through the instrument shall be 15–25 °C (59–77 °F). A high impedance voltmeter with a resolution of at least 0.01 mV shall be used to measure the output of the total heat flux transducer during the flux profile determination. A timer shall be used for measuring preheat and pilot contact time.

(c) *Safety procedures.* The possibility of a gas-air fuel explosion in the test chamber should be recognized. Suitable safeguards consistent with sound engineering practice should be installed in the panel fuel supply system. These may include one or more of the following:

(1) A gas feed cut-off activated when the air supply fails,

(2) A fire sensor directed at the panel surface that stops fuel flow when the panel flame goes out,

(3) A commercial gas water heater or gas-fired furnace pilot burner control thermostatic shut-off, which is activated when the gas supply fails, or other suitable and approved device.

Manual reset is considered a desirable feature of any safeguard system used. In view of the potential hazard from products of combustion, the exhaust system must be so designed and operated that the laboratory environment is protected from smoke and gas. The operator should be instructed to minimize exposure to combustion products by following sound safety practices, such as ensuring that the exhaust system is working properly and wearing appropriate clothing, including gloves.

(d) *Test specimens*—(1) *Specimens of insulation intended for pneumatic applications.* (i) Insulation shall be installed into the specimen tray using the blower/cyclone apparatus described in §1209.4(a).

(ii) Insulation shall be conditioned as described in §1209.4(b).

(iii) Apparatus #4, 6, 7, 8, 9 and 10 shall be used as described in §1209.4(d)(1)(i) with the following additional requirements.

(iv) The fill chamber (apparatus #6) shall be equipped with openings in the front and back so that a radiant panel specimen tray can be slid through the fill chamber.

(v) Adjust the blower control(s) (apparatus #9) such that the supply and overflow blowers will operate at a no load voltage of 40 volts RMS.

(vi) Turn on the blowers simultaneously and proceed to fill the fill chamber by picking up material from the box using the supply source hose. Large clumps of insulation shall be broken by hand before feeding them into the hose. Continue filling the chamber until large amounts of insulation are being drawn into the overflow hose.

(vii) Slowly slide the specimen tray through the fill chamber so that the low flux end of the tray is parallel with the back of the fill chamber filling the tray by sliding the tray forward to allow an excess of insulation to build up in the tray.

(viii) Shut off the blowers and remove the specimen tray and gently screed the insulation so that the insulation is level across the top of the tray. Take care not to compact the insulation or to leave large voids in the material. The tray may now be inserted into the radiant panel.

(2) *Specimens of insulation intended for pouring applications.* Insulation intended for pouring applications shall be poured into the tray until the tray is overfilled and then carefully screeded to the top of the tray taking care not to compact the insulation or leave large voids in the surface of the material.

(3) *Specimens of insulation intended for pouring and pneumatic applications.* If the insulation is intended for both pouring and pneumatic applications, or if it is uncertain whether the insulation will be poured or blown, the insulation shall be tested using the test procedures at paragraphs (d) (1) and (2) of this section for each of the applications. Three specimens shall be tested under the test procedure for each application. All of the specimens shall meet the criteria at §1209.3(b) for passing the attic floor radiant panel test.

(e) *Radiant heat energy flux profile standardization.* In a continuing program of tests, determine the flux profile at least once a week. Where the time interval between tests is greater than one week, determine the flux profile at the start of the test series.

(1) Mount the dummy specimen in the mounting frame and attach the assembly to the sliding platform. With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for 1 hour. The pilot burner is off during this determination. Adjust the fuel mixture to give an air-rich flame. Make fuel flow settings to bring the panel to an apparent black body temperature as measured by the radiation pyrometer, of approximately 500 °C (932 °F), and bring the chamber to a temperature of approximately 180 °C (356 °F). When equilibrium has been established, move the specimen platform into the chamber. Allow 0.5 hour for the closed chamber to reach equilibrium.

(2) Measure the radiant heat energy flux level at the 40 cm point with the total flux meter instrumentation. This is done by inserting the flux meter in the opening so that its detecting plane is 0.16–0.32 cm (1/16-1/8 inch) above and parallel to the plane of the dummy specimen and reading its output after 30±10 seconds. If the level is within the limits specified, the flux profile determination is started. If it is not, make the necessary adjustments in the panel fuel flow. A suggested flux profile data log format is shown in Figure 9.

(3) The test shall be run under chamber operating conditions which give a flux profile as shown in Figure 8. The radiant heat energy incident on the dummy specimen shall be between 0.87 and .95 W/cm^2 (0.77 and .83 Btu/ft^2 sec) at the 20 cm point, between 0.48 and 0.52 W/cm^2 (0.42 and 0.46 Btu/ft^2 sec) at the 40 cm point, and between 0.22 and 0.26 W/cm^2 (0.19 and 0.23 Btu/ft^2 sec) at the 60 cm point. Insert the flux meter in the 10 cm opening, following the procedure given above. Read the millivolt output at 30±10 seconds and proceed to the 20 cm point. Repeat the 10 cm procedure. The 30 to 90 cm flux levels are determined in the same manner. Following the 90 cm measurement, make a check reading at 40 cm. If this is within the limits set forth, the test chamber is in calibration, and the profile determination is completed. If not, carefully adjust fuel flow, allow 0.5 hour for equilibrium and repeat the procedure. Plot the radiant heat energy flux data as a function of distance along the specimen plane on rectangular coordinate graph paper. Carefully draw the best smooth curve through the data points. This curve will hereafter be referred to as the flux profile curve.

(4) Determine the open chamber apparent black body and chamber temperatures that are identified with the standard flux profile by opening the door and moving the specimen platform out. Allow 0.5 hour for the chamber to reach equilibrium. Read the radiation pyrometer output and record the apparent black body temperature. This is the temperature setting that can be used in subsequent test work in lieu of measuring the radiant flux at 20 cm, 40 cm, and 60 cm using the dummy specimen. The chamber temperature also shall be determined again after 0.5

hour and is an added check on operating conditions.

(f) *Conditioning.* Test specimens shall be conditioned to equilibrium at 21±3 °C (69.8±5.4 °F) and a relative humidity of 50±5 percent immediately prior to testing. A less than 1% change in net weight of the specimen in two consecutive weighings with two hours between each weighing constitutes equilibrium. The maximum cumulative time a conditioned sample may be exposed to conditions different from 21±3 °C (69.8±5.4 °F) and relative humidity of 50±5% before insertion in to the radiant panel chamber for testing is 10 minutes.

(g) *Test Procedure.* (1) With the sliding platform out of the chamber, ignite the radiant panel. Allow the unit to heat for 1 hour. It is recommended that a sheet of inorganic millboard be used to cover the opening when the hinged portion of the front panel is open and the specimen platform is moved out of the chamber. The millboard is used to prevent heating of the specimen and to protect the operator. Read the panel apparent black body temperature and the chamber temperature. When these temperatures are in agreement to within ±5 °C (±9 °F) with those determined previously, during the flux profile standardization procedure, the chamber is ready for use.

(2) Mount the specimen tray with insulation on the sliding platform and position with stud bolts (see Figure 9). Ignite the pilot burner, move the specimen into the chamber, and close the door. Start the timer. After 2 minutes ±5 seconds preheat, with the pilot burner on and set so that the flame is horizontal and about 5 cm above the specimen, bring the pilot burner flame into contact with the center of the specimen at the 0 mark. Leave the pilot burner flame in contact with the specimen for 2 minutes ±5 seconds, or until all flaming other than in the area of the pilot burner has ceased, then remove to a position of at least 5 cm above the specimen and leave burning until the test is terminated.

(3) If the specimen does not ignite within 2 minutes following pilot burner flame application, the test is terminated by extinguishing the pilot burner flame. For specimens that do ignite, the test is continued until the flame goes out. When the test is completed, the door is opened, and the specimen platform is pulled out.

(4) Measure the distance burned, (the point of farthest advance of the flame front) to the nearest 0.1 cm (.03 in). From the flux profile curve, convert the distance to W/cm^2 (Btu/ft2sec) critical radiant heat flux at flame out. Read to two significant figures. A suggested data log format is shown in Figure 10.

(5) Remove the specimen tray from the moveable platform. The succeeding test can begin as soon as the panel apparent black body temperature and chamber temperature are verified. The specimen tray should be at room temperature before the next specimen is inserted.

§ 1209.7 Test procedures for smoldering combustion.

This section provides the test method for determining smoldering combustion characteristics of materials used for thermal insulation. This test shall be conducted on materials at the measured settled density as provided in § 1209.4.

(a) *Apparatus.* (1) The specimen holder shall be an open-top 20±0.2 cm (7.87±.08 in) square box, 10±0.2 cm (3.94±.08 in) in height, fabricated from a single piece of 0.61±0.08 mm thick (24 U.S. Standard gauge) stainless steel sheet with the vertical edges of the box overlapped, not to exeed 7 mm (.28 in) in seam width, and soldered so as to be watertight. A removable extension top extending 8±.5 cm. above the top of the smolder box shall also be provided. The specimen holder during test use shall rest upon a pad of unfaced glass fiberboard or equivalent having dimensions equal to or greater than those of the bottom of the specimen holder. The unfaced glass fiberboard shall be approximately 2.5 cm (1 in) thick with a thermal conductivity of 0.30±0.05 cal(g)/hr cm^2 °C/cm (0.24±0.04 Btu/hr ft^2 °F/in) at 23.9 °C (75 °F).

(2) Ignition source. The ignition source shall be a cigarette without filter tip made from natural tobacco, 85±2 mm (3.35±.08 in) long with a tobacco packing density of 0.270±0.020 g/cm^3 (16.9±1.25 lb/ft^3) and a total weight of 1.1±0.1 gm (0.039±0.004 oz).

(3) Balance. A balance of 1 kg (2.2 lb) capacity, accurate at least to 0.1 g (0.004 oz), is required.

(4) Test area. The test area shall be draft-protected and equipped with a suitable system for exhausting smoke and/or noxious gases produced by testing. Air velocities as measured by a hot wire anemometer in the vicinity of the surface of the specimen shall not exceed 0.5 m/sec (1.64 ft/sec). The test area shall be at 21±3 °C (69.8±5.4 °F) and 50±5 percent relative humidity at the time the test begins.

(b) *Test procedure.* (1) Specimens and cigarettes shall be conditioned in air at a temperature of 21±3 °C (69.8±5.4 °F) and a relative humidity of 50±5 percent to equilibrium prior to test. A change of less than 1% in net weight of the specimen in two consecutive weighings with two hours between each weighing constitutes equilibrium. Cigarettes shall be removed from any packaging and exposed in a suitable manner to permit free movement of air around them during conditioning. Calculate the weight of material necessary to fill the holder (volume 4,000 cm^3or 0.14 ft^3) at the settled density as determined in §1209.4(e). The material shall be blown, combed, or otherwise mixed to remove lumps and shall be loaded uniformly into each specimen holder, level and flush to the top of the holder. The weight of each specimen shall be measured to the nearest 0.2 g (0.007 oz) or less by weighing the holder before and after filling. If the weight of the specimen is less than that calculated, a removable extension top shall be placed on top of the holder, the necessary amount of insulation is placed inside the extension and the loaded holder shall be dropped from a height no greater than 7.6 cm. (3 in) onto a hard flat surface. This process shall be repeated until the calculated weight of material completely fills the holder. The extension top is then removed. With the specimen in the holder and placed on the insulated pad, a rod of 8 mm (.31 in) diameter with a pointed end shall be inserted vertically into the approximate center of the material being tested and withdrawn to form an appropriate cavity for the ignition source, such that the cigarette fits snugly and maintains uniform contact with the specimen. A well lit cigarette, burned not more than 8 mm (0.31 in), shall be inserted in the formed cavity, with the lit end upward and flush with the specimen surface. Burning of the cigarette and specimen shall be allowed to proceed undisturbed in the test area for at least 2 hours or until the smoldering is no longer progressing, whichever period is longer.

(2) After completion of burning and after the holder has cooled down to approximately room temperature, the specimen holder with its material residue shall be weighed, at least to the nearest 0.1 g (0.003 oz), and the percent weight loss of the original specimen calculated. The weight of the cigarette residue is ignored in this calculation. (That is, the weight of the cigarette residue is not subtracted from the net weight of the specimen holder's contends at the conclusion of the test.)

(3) Three specimens per sample shall be tested.

§ 1209.8 Procedure for calibration of radiation instrumentation.

This procedure is used to calibrate the radiation instruments used in the test procedures for measuring critical radiant flux.

(a) *Radition pyrometer.* Calibrate the radiation pyrometer by means of a conventional black body enclosure placed within a furnace and maintained at uniform temperatures of 490, 500, and 510 °C (914, 932, and 950 °F). The black body enclosure may consist of a closed chromel metal cylinder with a small sight hole in one end. Sight the radiation pyrometer upon the opposite end of the cylinder where a thermocouple indicates the black body temperature. Place the thermocouple within a drilled hole and in good thermal contact with the black body. When the black body enclosure has reached the appropriate temperature equilibrium, read the output of the radiation pyrometer. Repeat for each temperature.

(b) *Total heat flux meter.* The total flux meter shall be calibrated by the National Bureau of Standards, (direct request for such calibration services to the: Radiometric Physics Division, 534, National Bureau of Standards (NBS),

Washington, DC 20234.), or, alternatively, its calibration shall be developed by transfer calibration methods with an NBS calibrated flux meter. This latter calibration shall make use of the radiant panel tester as the heat source. Measurements shall be made at each of the nine dummy specimen positions and the mean value of these results shall constitute the final calibration.

(c) *Recommendation.* It is recommended that each laboratory maintain a dedicated calibrated reference flux meter against which one or more working flux meters can be compared as needed. The working flux meters should be calibrated according to this procedure at least once per year.

§ 1209.9 Labeling requirement.

(a) Manufacturers, importers, and private labelers of cellulose insulation shall place on all containers of cellulose insulation the following statement:

> This product meets the amended CPSC standard for flame resistance and corrosiveness of cellulose insulation.

To meet this requirement manufacturers, importers, and private labelers may use any type of label, including one which is pressure sensitive or glued on, provided the label is made in such a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

(b) This label shall appear prominently and conspicuously on the container in letters which are at least one-fourth inch in height. The labeling statement shall be printed with legible type in a color which contrasts with the background on which the statement is printed.

§ 1209.10 Certification and enforcement.

(a) While this part 1209 prescribes test methods to determine whether cellulose insulation subject to this interim standard meets its requirements, the interim standard itself does not require that a manufacturer or private labeler test any cellulose insulation. However, section 14 of the Consumer Product Safety Act (15 U.S.C. 2063) requires manufacturers and private labelers of products subject to safety standards to certify that the product conforms to the standard based on either a test of each product or a reasonable testing program. (Elsewhere in this issue of the FEDERAL REGISTER, 44 FR 39983, the Commission has issued a certification rule that prescribes requirements that manufacturers and private labelers shall follow to certify that their cellulose insulation complies with the requirements of the amended standard.)

(b) The Commission intends to use the test procedures set forth in this part 1209 to determine whether insulation subject to the interim standard meets the requirements of the interim standard.

§ 1209.11 Effective date.

All cellulose insulation that is a consumer product and that is manufactured after October 15, 1979 shall meet the requirements of this standard, including the labeling requirement of § 1209.9.

FIGURE 1 TO SUBPART A OF PART 1209—PARTIAL INSULATION PREPARATION APPARATUS

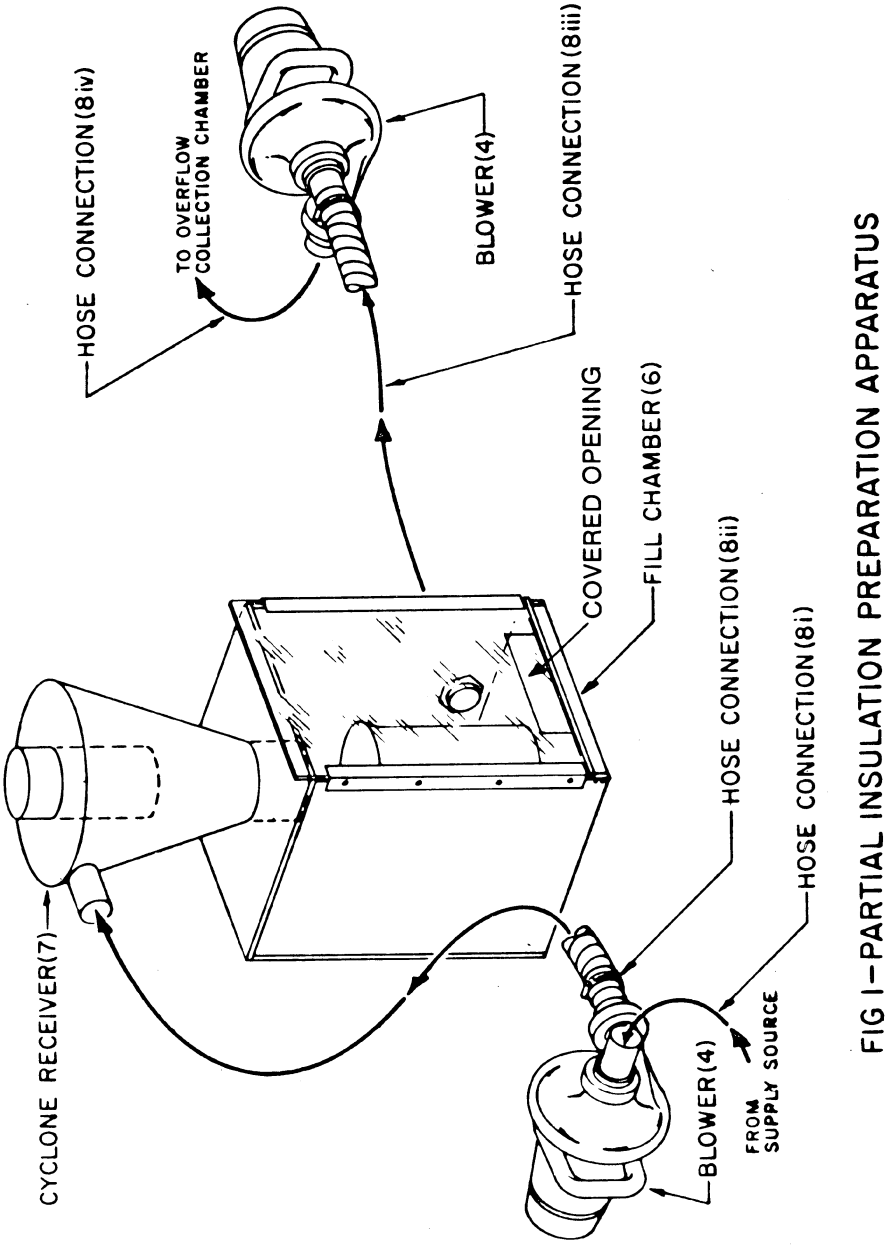


FIG 1—PARTIAL INSULATION PREPARATION APPARATUS

FIGURE 2 TO SUBPART A OF PART 1209—CYCLONE RECEIVER WELDMENT

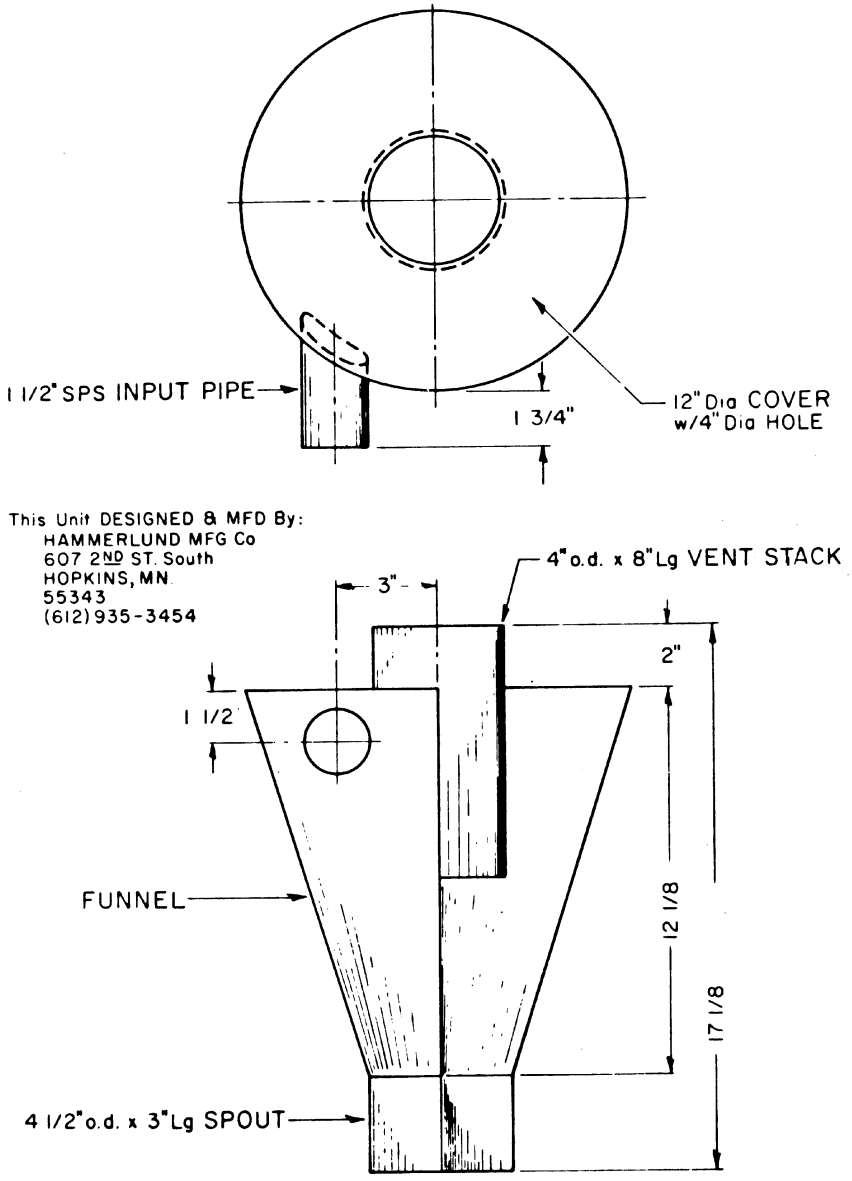


FIG 2—CYCLONE RECEIVER WELDMENT

FIGURE 3 TO SUBPART A OF PART 1209—FLOORING RADIANT TESTER SCHEMATIC SIDE ELEVATION

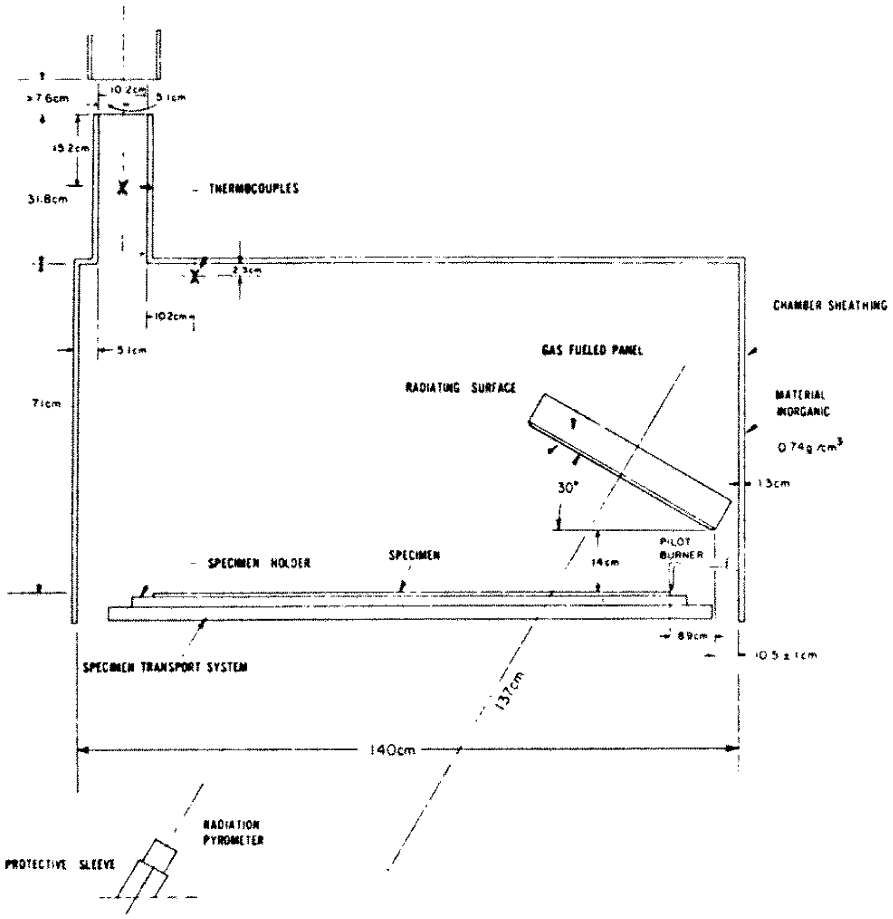


FIG 3 — FLOORING RADIANT TESTER SCHEMATIC
SIDE ELEVATION

FIGURE 4 TO SUBPART A OF PART 1209—FLOORING RADIANT PANEL TESTER SCHEMATIC LOW FLUX END, ELEVATION

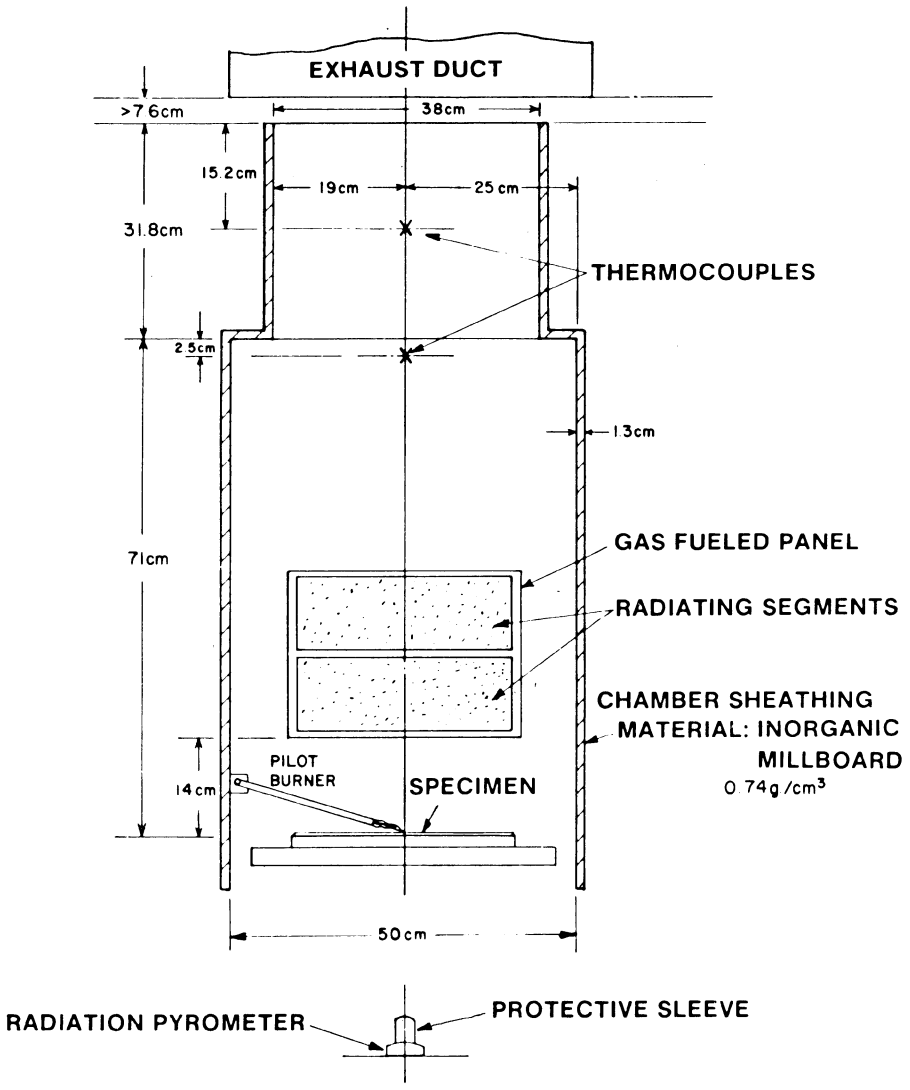


FIG 4 — **FLOORING RADIANT PANEL TESTER SCHEMATIC LOW FLUX END, ELEVATION**

FIGURE 5 TO SUBPART A OF PART 1209—ZERO REFERENCE POINT RELATED TO DETECTING PLANE

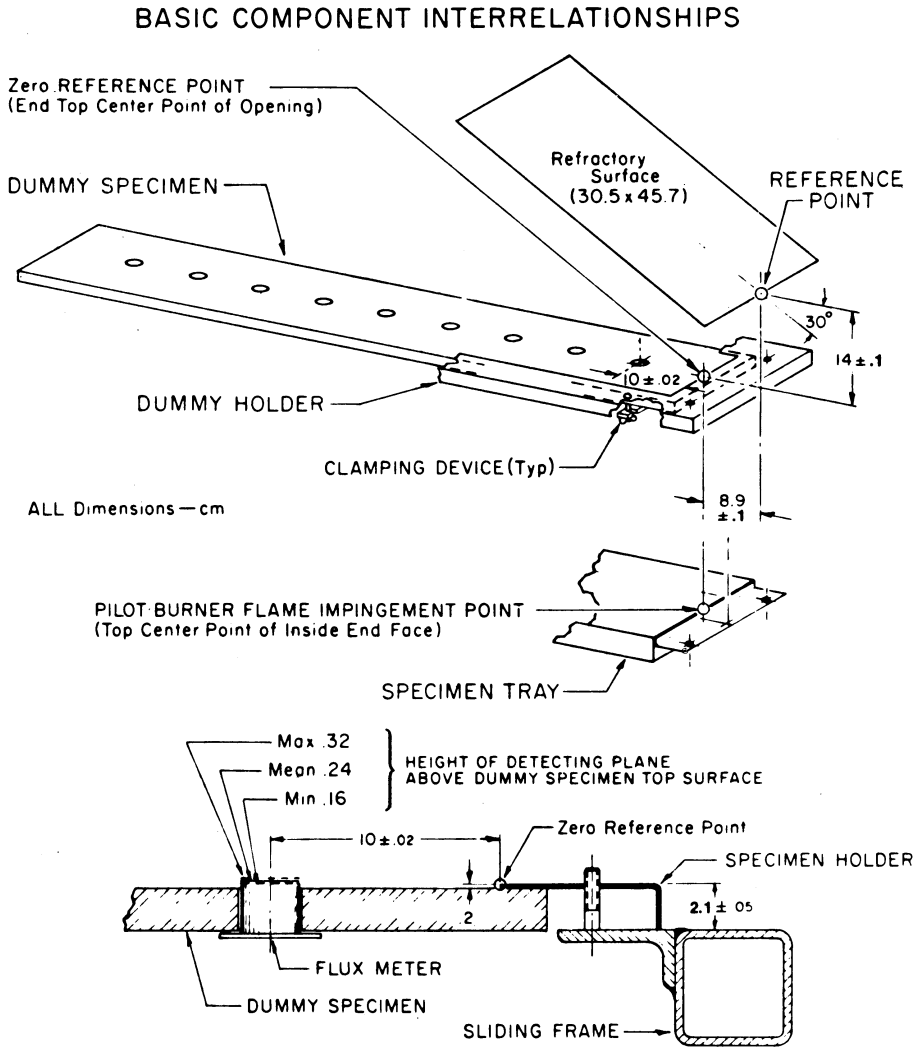


FIG 5 — ZERO REFERENCE POINT RELATED TO DETECTING PLANE

FIGURE 6 TO SUBPART A OF PART 1209—DUMMY SPECIMEN IN SPECIMEN HOLDER

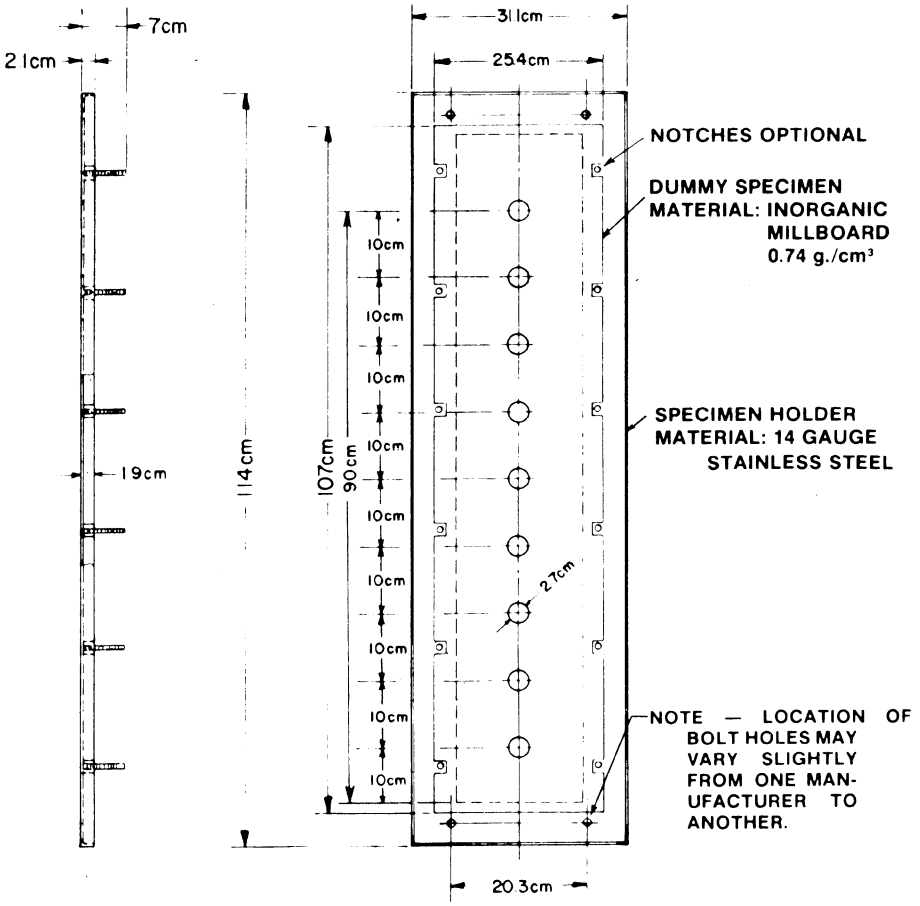


FIG 6 — **DUMMY SPECIMEN IN SPECIMEN HOLDER**

FIGURE 7 TO SUBPART A OF PART 1209—SPECIMEN TRAY

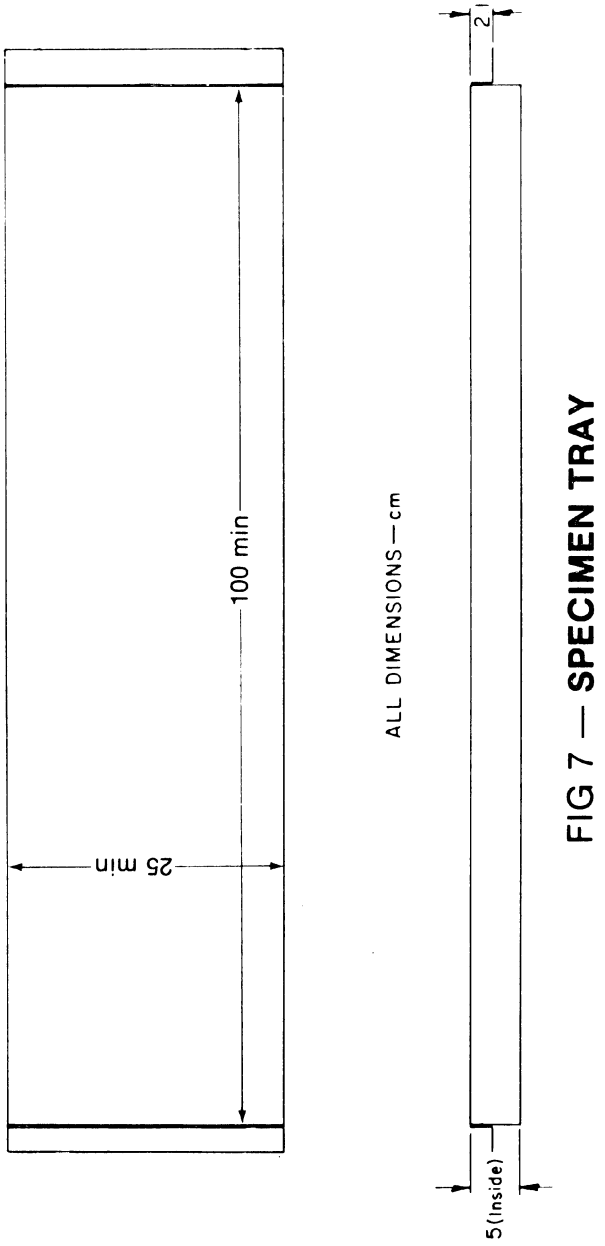


FIG 7 — SPECIMEN TRAY

FIGURE 8 TO SUBPART A OF PART 1209—STANDARD RADIANT HEAT ENERGY FLUX PROFILE

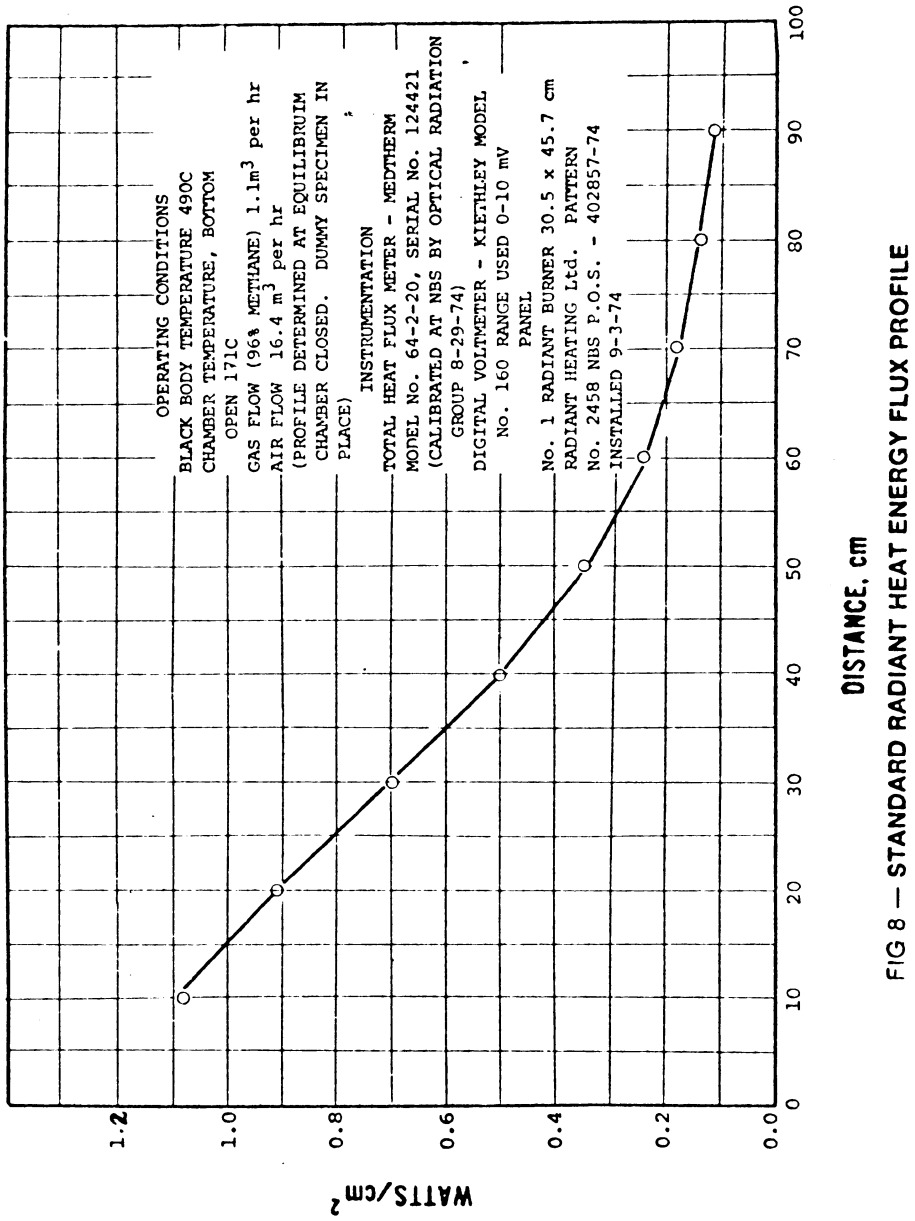


FIG 8 — STANDARD RADIANT HEAT ENERGY FLUX PROFILE

FIGURE 9 TO SUBPART A OF PART 1209—FLUX PROFILE DATA LOG FORMAT

RADIANT FLUX PROFILE

Date _____

Black Body Temperature _____m.v. _____°C (°F)

Gas Flow _____$NTPm^3H$ (SCFH) Air Flow _____$NTPm^3H$ (SCFH)

Room Temperature _____°C(°F)

Air Pressure _____ Gas _____ cm (in) of H_2O

Flux Meter _____ Conversion Factor _____

Radiometer No. _____ From Calibration on _____

Distance (cm)	MV	Watts/cm^2
10	_____	_____
20	_____	_____
30	_____	_____
40	_____	_____
50	_____	_____
60	_____	_____
70	_____	_____
80	_____	_____
90	_____	_____

Signed _____

FIG. 9 Flux Profile Data Log Format

FIGURE 10 TO SUBPART A OF PART 1209—INSULATION RADIANT PANEL TEST DATA LOG FORMAT

Test Number _____ Date _____ Time _____

Laboratory _____

Specimen Identification/Code No. _____

Test Assembly: _____

Panel: Temperature _____°C (°F)

Flow: Gas _____$NTPm^3H$ (SCFH) Air _____ $NTPm^3H$

Pressure, cm (in) H_2O: Initial, Air _____ Gas _____

Chamber Temperature (Initial) _____°C (°F)

Room: Temperature _____°C (°F) Hood Draft ____cm (in) water

Total Burn Length _____cm (in)

Critical Radiant Flux watts/cm^2 _____

Flux Profile Reference _____

Observations:

Signed _____

FIG. 10 - Insulation Radiant Panel Test Data Log Format

Subpart B—Certification

AUTHORITY: Secs. 14, 16; 86 Stat. 1220, 1222; (15 U.S.C. 2063, 2065).

§ 1209.31 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart B of part 1209 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Amended Interim Standard for Cellulose Insulation (16 CFR part 1209, subpart A). This subpart B includes requirements for conducting a reasonable testing program, certifying with labels and separate certificates, and recordkeeping.

(b) *Applicability.* (1) Cellulose insulation which is subject to the standard includes all cellulose insulation, manufactured after the effective date (as described in § 1209.41), produced or distributed for sale to, or for the personal use, consumption, or enjoyment of, consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. The standard applies to cellulose insulation

that is produced or distributed for sale to consumers, for their direct installation or use, as well as cellulose insulation that is produced or distributed for installation by professionals.

(2) The term *cellulose insulation* is defined in §1209.2(a) of the standard to mean cellulosic fiber, loose fill, thermal insulation that is suitable for blowing or pouring applications.

§ 1209.32 Definitions.

In addition to the definitions set forth in section 3 of the act and in §1209.2 of the standard, the following definitions shall apply to this subpart:

Private labeler means an owner of a brand or trademark which is used on the label of cellulose insulation subject to the standard which bears a private label as defined in section 3(a)(7) of the act (15 U.S.C. 2052(a)(7)).

Production interval means a time span determined by the manufacturer, private labeler, or importer to be appropriate for conducting a test or series of tests on samples of the cellulose insulation being produced to demonstrate that the product meets the requirements of the standard. An appropriate production interval may vary from test to test. The time period for a production interval shall be short enough to ensure that if the samples selected for testing comply with the standard or a portion of the standard, the insulation produced during the period will meet the standard or the appropriate portion of the standard.

§ 1209.33 Reasonable testing program.

(a) *General.* Section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) requires each manufacturer, importer, or private labeler of a product which is subject to a consumer product safety standard to issue a certificate of compliance with the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. Because it is not practical to test each item subject to the standard, a reasonable testing program shall be used to support certificates of compliance for cellulose insulation.

(b) *Requirements of testing program.* A reasonable testing program for cellulose insulation is one which demonstrates with reasonable certainty that insulation certified to comply with the standard will meet all requirements of the standard. Manufacturers, private labelers, and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program may include either the tests prescribed by the standard, or any other reasonable test procedures. However, a reasonable testing program cannot consist of tests which the party issuing the certificate of compliance knows (or through the exercise of reasonable diligence should know) will pass or accept insulation which will yield failing results when subjected to any of the tests in the standard. All reasonable testing programs shall consist of four elements:

(1) Qualification tests which must be performed on samples of the manufacturer's cellulose insulation to demonstrate that the product is capable of passing the tests prescribed by the standard.

(2) A description of the cellulose insulation which passed the qualification testing. This description is known as the ''product specification.''

(3) Production tests, which must be performed at appropriate production intervals as long as the cellulose insulation is being manufactured.

(4) Corrective action, which must be taken whenever samples of the cellulose insulation yield unacceptable or failing test results.

(c) *Commission testing.* The Commission will test for compliance with the standard by using the test procedures contained in the standard, and will base enforcement actions for violation of the standard on the results of such testing.

(d) *Testing by third parties.* At the option of the manufacturer, importer, or private labeler, some or all of the testing for the reasonable testing program may be performed by a commercial testing laboratory. However, the manufacturer, importer, or private labeler is responsible for ensuring that all testing used to support the certificate of compliance has been properly performed with passing or acceptable results and for maintaining all records of

such tests in accordance with §1209.38 below.

§ 1209.34 Qualification testing.

(a) *Requirement.* Before any manufacturer, importer, or private labeler begins distribution in commerce of cellulose insulation which is subject to the standard, samples of the insulation shall be tested for compliance with the standard. Manufacturers, importers, and private labelers shall determine the types of tests for qualification testing.

(b) *Timing, Sampling.* Any or all of the qualification testing required by this §1209.34 may be performed before the effective date of the standard. Manufacturers, private labelers, or importers may select samples for qualification testing of a product in any manner they desire.

§ 1209.35 Product specification.

(a) *Requirement.* Before any manufacturer, importer, or private labeler distributes in commerce cellulose insulation which is subject to the standard, it shall ensure that the insulation is described in a written product specification.

(b) *Contents of Specification.* The product specification shall include the following information:

(1) A description of the equipment used to manufacture the insulation, including the model number and names of the equipment manufacturers, and details of any modification made to any item of equipment.

(2) A description of the cellulosic stock material used to manufacture the insulation, identifying the extent of impurities allowed.

(3) The formulation of the fire-retardant chemicals added, including their chemical constituents and their form (for example, granulated, powdered, or liquid); the amount of fire-retardant chemicals present in the finished insulation, expressed as a percentage of the total weight of chemicals and cellulosic stock; the average weight of chemicals per bag; and the name and address of each chemical supplier. Where the chemical composition or formula of a commercially premixed fire retardant is not known to the insulation manufacturer, the premixed fire retardant may be described simply by the name and address of the supplier and its brand or trade name.

(4) A description of the tests which were used to qualify the product as well as the dates of performance and results and actual values, where applicable, of the tests.

(5) Any other information necessary to describe the insulation.

(c) *Distribution in Commerce.* After the qualification testing required by §1209.34 has been completed with acceptable results and the product specification required by this §1209.35 has been recorded, the cellulose insulation may be manufactured and distributed in commerce, subject to the provisions of §1209.36.

(d) *New Product.* Whenever a manufacturer, private labeler, or importer makes any change to any item of equipment, cellulosic stock material, or formulation of a fire-retardant chemical, or any other factor which is likely to affect the ability of the cellulose insulation to meet the standard, that change will result in a new cellulose insulation product, requiring the preparation of a new product specification. The new product must be subjected to qualification tests and must yield passing or acceptable results.

§ 1209.36 Production testing.

(a) *General.* Manufacturers, private labelers, and importers shall test the cellulose insulation periodically as it is manufactured to demonstrate that the product being manufactured is substantially similar to the product which passed the qualification testing and to demonstrate that the product being manufactured meets the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to ensure that if the samples selected for testing meet the standard or a portion of the standard, the insulation produced during the interval will also meet the standard or the appropriate portion of the standard.

(c) *Test failure.* If any test yields failing results, production must cease and

the faulty manufacturing process must be corrected (see §1209.37). In addition, the material from which the samples were taken may not be distributed in commerce unless the material can be corrected (see §1209.37) so as to yield passing results and meet the standard. Cellulose insulation that does not comply with the standard cannot be sold or offered for sale.

§1209.37 Corrective actions.

(a) *Test failure.* When any test required by §1209.36 yields failing or unacceptable results, corrective action must be taken. Corrective action includes changes to the manufacturing process as well as reworking the insulation product itself. Corrective action may consist of equipment adjustment, equipment repair, equipment replacement, change in chemical formulation, change in chemical quantity, change in cellulosic stock, or other action deemed appropriate by the manufacturer, private labeler or importer to achieve passing or acceptable test results.

(b) *New product.* If any corrective action required by this §1209.37 results in a change in the product specification and a new cellulose insulation product (see §1209.34(b)), the product specification for the new product must be recorded in accordance with §1209.35, and qualification tests must be performed with passing or acceptable results in accordance with §1209.34, before the new product is distributed in commerce.

§1209.38 Records.

(a) *Establishment and maintenance.* Each manufacturer, importer, and private labeler of cellulose insulation subject to the standard shall establish and maintain the following records which shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the act (15 U.S.C. 2965(b)):

(1) A record of each product specification containing all information required by §1209.35. (This includes information concerning the types of qualification tests as well as the results from these tests.)

(2) Records to demonstrate compliance with the requirements for production testing in §1209.36, including a description of the types of production tests conducted and the production interval selected for performance of each production test.

(3) Records of all corrective actions taken in accordance with §1209.37, including the specific action taken, the date the action was taken, and the test failure which necessitated the action. Records of corrective action must relate the corrective action taken to the product specification of the insulation product which was the subject of that corrective action, and the product specification of any new product which results from any corrective action.

(4) Records indicating exactly which insulation material is covered by each certificate of compliance issued.

(b) *Retention*—(1) *Product specification.* The records of each product specification shall be retained for as long as the cellulose insulation covered by that specification is manufactured and for a period of two (2) years thereafter.

(2) *Other records.* Records of production testing, corrective actions taken, and certificates issued shall be maintained for a period of two (2) years.

(c) *Confidentiality.* Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)), the Freedom of Information Act as amended (5 U.S.C. 552), and the Commission's regulations under that act (16 CFR part 1015, February 22, 1977).

§1209.39 Certification of compliance.

(a)(1) *Responsibilities of manufacturer for insulation sold in bags.* Manufacturers of cellulose insulation subject to the standard which is sold in bags or other containers shall certify compliance with the standard by marking each bag or container with the following information:

(i) The statement ''This product meets the amended CPSC standard for flame resistance and corrosiveness of cellulose insulation.'' (This statement is the same statement provided in §1209.9 of the standard; it need not appear twice on the bag or container.)

(ii) The name of the manufacturer, private labeler, or importer issuing the

certificate of compliance. See paragraphs (b) and (c), below.

(iii) The date of manufacture by day, month, and year.

(iv) The place of manufacture, by city, state, and zip code, or in the case of products manufactured outside the United States, by city and country.

The information required by this §1209.39(a) may appear anywhere on the bag or container. The information required need not appear at the same place on the bag or container. The information shall be permanent until the bag or container is opened and used. The information shall be conspicuous and must appear in letters and figures at least ¼ inch in height. The date and place of manufacture may be in code, provided the person or firm issuing the certificate maintains a written record of the meaning of the code that can be made available to consumers, persons in the chain of distribution, and the Commission upon request.

(2) *Insulation not sold in bags or containers.* The manufacturer of cellulose insulation subject to the standard which is not sold in bags or other containers shall certify compliance with the standard by accompanying each shipment or delivery of the product, with a document such as an invoice, bill, statement, or separate document, which states the following: ''This product meets the amended CPSC standard for flame resistance and corrosiveness of cellulose insulation. This material was manufactured on (insert day, month, and year of manufacture) at (insert city, state, and zip code, or in the case of insulation manufactured outside the United States, city and country).'' The certificate of compliance must also contain the name of the manufacturer, private labeler, or importer issuing the certificate. See paragraphs (b) and (c), below. The certificate of compliance must appear in letters and figures which are conspicuous and legible. The date and place of manufacture may be in code, provided the person or firm issuing the certificate maintains a written record of the meaning of the code that can be made available to consumers, persons in the chain of distribution, and the Commission upon request.

(b) *Responsibilities of private labelers.* A private labeler who distributes a product subject to the standard which is manufactured by another person or firm but which is sold under the private labeler's name, brand, or trademark must issue the certificate of compliance required by section 14 of the Consumer Product Safety Act and this section. If the testing required by this subpart has been performed by or for the manufacturer of the product, the private labeler may rely on any such tests to support the certificate of compliance if the records of such tests are maintained in accordance with §1209.38, above. The private labeler is responsible for ensuring that all testing used to support the certificate of compliance has been performed properly with passing or acceptable results, and that all records of such tests are accurate and complete.

(c) *Responsibilities of importers.* The importer of any product subject to the standard must issue the certificate of compliance required by section 14(a) of the act and this §1209.39. If the testing required by this subpart B of part 1209 has been performed by or for the foreign manufacturer of the product, the importer may rely on any such tests to support the certificate of compliance if the importer is a resident of the U.S. or has a resident agent in the U.S. and the records are maintained in the U.S. in accordance with §1209.38 above. The importer is responsible for ensuring that all testing used to support the certificate of compliance has been performed properly with passing or acceptable results, and that all records of such tests are accurate and complete.

§1209.40 Certification responsibility, multiple parties.

If there is more than one party (i.e., manufacturer, private labeler, or importer) otherwise subject to the requirements of this subpart B of part 1209 for certain cellulose insulation, only the party closest to the consumer in the distribution chain is required to issue a certificate.

§1209.41 Effective date.

The requirements of this subpart B of part 1209 shall become effective on October 16, 1979. Any cellulose insulation

manufactured after October 15, 1979 must be certified as complying with the standard. Cellulose insulation which is sold in bags or other containers is ''manufactured'' when the insulation is packaged in the bag or other container in which it will be sold. Insulation which is not sold in bags or containers is ''manufactured'' when the insulation leaves the manufacturing site to be sold.

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

Subpart A—Requirements for Child Resistance

Subpart B—Certification Requirements

Subpart C—Stockpiling

SOURCE: 58 FR 37584, July 12, 1993, unless otherwise noted.

Subpart A—Requirements for Child Resistance

AUTHORITY: 15 U.S.C. 2056, 2058, 2079(d).

§ 1210.1 Scope, application, and effective date.

This part 1210, a consumer product safety standard, prescribes requirements for disposable and novelty lighters. These requirements are intended to make the lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all disposable and novelty lighters, as defined in §1210.2, that are manufactured or imported after July 12, 1994.

§ 1210.2 Definitions.

As used in this part 1210:

(a) *Cigarette lighter*. See *Lighter*.

(b) *Disposable lighter*—means a lighter that either is:

(1) Not refillable with fuel or

(2)(i) Its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 °F (24 °C) exceeds a gage pressure of 15 psi (103 kPa), and

(ii) It has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the appropriate monthly Producer Price Index (Producer Price Index for Miscellaneous Fabricated Products) from June 1993. The adjusted figure, based on the change in that Index since June 1993, as finalized July 2013, is $2.50.

(c) *Lighter*, also referred to as *cigarette lighter*, means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes, although they may be used to ignite other materials. This term does not include matches or any other lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this part 1210, the term *lighter* includes only the disposable and novelty lighters to which this regulation applies.

(d) *Novelty lighter* means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

(e) *Successful operation* means one signal of any duration from a surrogate lighter within either of the two 5-minute test periods specified in §1210.4(f).

(f) *Surrogate lighter* means a device that: approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a lighter intended for use by consumers; has no fuel; does not produce a flame; and produces an audible or visual signal that will be clearly discernible when the surrogate lighter is activated in each manner that would normally produce a flame in a production lighter. (This definition does not require a lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a lighter without fuel as a surrogate lighter if a distinct signal such as a ''click'' can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production lighter without the signal. *But see* § 1210.4(f)(1).)

(g) *Model* means one or more cigarette lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child-resistance. Lighter characteristics that may affect child-resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

[58 FR 37584, July 12, 1993, as amended at 69 FR 19763, Apr. 14, 2004; 78 FR 52679, Aug. 26, 2013]

§ 1210.3 Requirements for cigarette lighters.

(a) A lighter subject to this part 1210 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1210.4.

(b) The mechanism or system of a lighter subject to this part 1210 that makes the product resist successful operation by children must:

(1) Reset itself automatically after each operation of the ignition mechanism of the lighter,

(2) Not impair safe operation of the lighter when used in a normal and convenient manner,

(3) Be effective for the reasonably expected life of the lighter, and

(4) Not be easily overriden or deactivated.

§ 1210.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a lighter is resistant to successful operation by children uses a panel of children to test a surrogate lighter representing the production lighter intended for use. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1210.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 42 through 44 months old;

(ii) 40 +or- 2 children (26 +or- 1 males; 14 +or- 1 females) 45 through 48 months old;

(iii) 30 +or- 2 children (20 +or- 1 males; 10 +or- 1 females) 49 through 51 months old.

Note: To calculate a child's age in months:

1. Subtract the child's birth date from the test date.

	Month	Day	Year
Test Date	8	3	94
Birth Date	6	23	90
Difference	2	-20	4

2. Multiply the difference in years by 12 months.

4 years × 12 months = 48 months.

3. Add the difference in months.

48 months + 2 months = 50 months.

4. If the difference in days is greater than 15 (e.g. 16, 17), add 1 month.

If the difference in days is less than -15 (e.g., -16, -17) subtract 1 month.

50 months - 1 month = 49 months.

If the difference in days is between -15 and 15 (e.g., -15, -14, ... 14, 15), do *not* add or subtract 1 month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate lighter. No child shall participate in both child-resistant package testing and surrogate lighter testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of locations within the geographical area.

(2) Testing of surrogate lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be ''child-size.''

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from a 100-child test panel (20 +or- 2 children each for 5 testers and 17 +or- 2 children each for 6 testers).

NOTE: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate lighters.* (1) Six surrogate lighters shall be used for each 100-child panel. The six lighters shall represent the range of forces required for operation of lighters intended for use. All surrogate lighters shall be the same color. The surrogate lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate lighters shall be used for the entire 100-child panel. The surrogate lighters may be used in more than one 100-child panel test. The surrogate lighters shall not be damaged or jarred during storage or transportation. The surrogate lighters shall not be exposed to extreme heat or cold. The surrogate lighters shall be tested at room temperature. No surrogate lighter shall be left unattended.

(2) Each surrogate lighter shall be tested by an approximately equal number of children in a 100-child test panel (17 +or- 2 children).

NOTE: If a surrogate lighter is permanently damaged, testing shall continue with the remaining lighters. When a lighter is dropped out, the requirement that each lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for a production lighter intended for use.

(5) Before and after testing surrogate lighters with each child, each surrogate lighter shall be operated outside the presence of any child participating in the test to verify that the lighters produce a signal. If the surrogate lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate lighter does not produce a signal when it is operated after the test, the results for the preceding test with that lighter shall be eliminated. The lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate lighter at any time unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate lighter for a period of approximately one minute, the tester shall encourage the child to try by saying ''keep trying for just a little longer.''

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say ''that's right — never touch a real lighter — but your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you.''

(6) The children in a pair being tested may encourage each other to operate the surrogate lighter and may tell or show each other how to operate it. (This interaction is *not* considered to be disruption as described in paragraph (e)(2) below.) However, neither child shall be allowed to operate the other child's lighter. If one child takes the other child's surrogate lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say ''No. He(she) has to try to do it himself(herself).''

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than one minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say ''I have a special lighter that will not make a flame. It makes a noise like this.'' Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate lighter, so that the surrogate lighter cannot be seen by the child, and shall operate the surrogate lighter once to produce its signal. The tester shall say ''Your parents [or other guardian, if applicable] said it is OK for you to try to make that noise with your lighter.'' The tester shall place a surrogate lighter in each child's hand and say ''now *you* try to make a noise with your lighter. Keep trying until I tell you to stop.''

(2) The adult tester shall observe the children for 5 minutes to determine if

either or both of the children can successfully operate the surrogate lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say ''that's a spark — it won't hurt you — try to make the noise with your lighter.'' If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate lighter during the 5-minute period specified in §1210.4(f)(2), the adult tester shall demonstrate the operation of the surrogate lighter. To conduct the demonstration, secure the children's full attention by saying ''Okay, give me your lighters now.'' Take the lighters and place them on the table in front of you out of the children's reach. Then say, ''I'll show you how to make the noise with your lighters. First I'll show you with (child's name)'s lighter and then I'll show you with (child's name)'s lighter.'' Pick up the first child's lighter. Hold the lighter approximately two feet in front of the children at their eye level. Hold the lighter in a vertical position in one hand with the child-resistant feature exposed (not covered by fingers, thumb, etc.) Orient the child-resistant mechanism on the lighter toward the children. (This may require a change in your orientation to the children such as sitting sideways in the chair to allow a normal hand position for holding the lighter while assuring that both children have a clear view of the mechanism. You may also need to reposition your chair so your hand is centered between the children.) Say ''now watch the lighter.'' Look at each child to verify that they are looking at the lighter. Operate the lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, ''Okay, now watch this lighter.'' Repeat the demonstration as described above using the second child's lighter.

NOTE: Testers shall be trained to conduct the demonstration in a uniform manner, including the words spoken to the children, the way the lighter is held and operated, and how the tester's hand and body is oriented to the children. All testers must be able to operate the surrogate lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate lighter in the first 5 minutes is then given another 5 minutes in which to attempt the successful operation of the surrogate lighter. After the demonstrations give their original lighters back to the children by placing a lighter in each child's hand. Say ''Okay, now you try to make the noise with your lighters - keep trying until I tell you to stop.'' If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(5) At the end of the second 5-minute test period, take the surrogate lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: ''These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that you'll never try to work a real lighter?'' Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to the parents or

guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child resistant or not, out of the reach of children. For children who operated the surrogate lighter, the notification shall state that the child was able to operate the child-resistant lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the lighters, so that the tester's full attention is on the children during the test period. If actual testing is videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken *after* actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month, as specified in §1210.4(a)(4)).

(4) The number of the lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, country, and the name of the site or an unique number or letter code that identifies the test site).

(7) The name of the tester who conducted the test.

(8) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time (to the nearest second) at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered to be resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate lighter, the test results are inconclusive, and the surrogate lighter shall be tested with a second 100-child test panel in accordance with this §1210.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate lighter is required by §1210.4(h)(1), conduct the test specified by this §1210.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate lighter, the lighter represented by the surrogate lighter shall be considered not resistant to successful operation by 85 percent of the child test panel, and no further testing is conducted.

TABLE 1—EVALUATION OF TEST RESULTS—§ 1210.4(e)

Test panel	Cumulative Number of Children	Successful Lighter Operations		
		Pass	Continue	Fail
1	100	0-10	11-18	19 or more
1	200	11-30	—	31 or more

§ 1210.5 Findings.

Section 9(f) of the Consumer Product Safety Act, 15 U.S.C. 2058(f), requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with lighters. From 1988 to 1990, an estimated 160 deaths per year resulted from such fires. About 150 of these deaths, plus nearly 1,100 injuries and nearly $70 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns — many of high severity — as well as anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $385 million (in 1990 dollars). Fires started by young children (under age 5) are those which the standard would be most effective at reducing.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as lighters, which are primarily intended for use in lighting cigarettes and other smoking materials. Lighters may be gas- or liquid-fueled, mechanical or electric, and of various physical configurations. Over 600 million lighters are sold annually to consumers in the U.S.; over 100 million are estimated to be in use at any given time. Over 95 percent of all lighters sold are pocket-sized disposable butane models; of the remaining 5 percent, most are pocket refillable butane models. A small proportion of refillables is comprised of pocket liquid-fuel models; still smaller proportions are represented by table lighters and by ''novelty'' lighters, that is, those having the physical appearance of other specific objects. Approximately 600 million pocket butane disposables (nonrefillable), 15-20 million pocket butane refillables, 5-10 million pocket liquid-fuel refillables, and 1-3 million novelty and other lighters were sold to consumers in 1991. The standard covers disposable lighters, including inexpensive butane refillables, and novelty lighters. Roughly 30 million households have at least one lighter; ownership of more than one lighter is typical, especially among smoking households.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use lighters primarily to light smoking materials. Most other lighting needs that could be filled by matches may also be filled by lighters. Disposable butane lighters are, chiefly by virtue of their low price and convenience, the closest available substitutes for matches. Although matches are found in far more households, lighters have steadily replaced matches since the 1960's as the primary light source among American consumers. The standard generally requires that lighters not be operable by most children under 52 months of age. This would likely be achieved by modifying products to incorporate additional-action switches, levers, or buttons, thereby increasing the difficulty of product activation. Depending on the method of compliance chosen by manufacturers, there could be some adverse effect on the utility of lighters. This may occur to the extent that operation of the products by adult users is made more difficult by the incorporation of child-resistant features. This may lead some consumers to switch to matches, at least temporarily, which could reduce the expected level of safety provided by the standard. In addition, some ''novelty'' lighters will probably be discontinued, due to the technical difficulty of incorporating child-resistant features or designs. Some loss of utility derived from those products by collectors or other users

may result, though many novelty models will probably remain on the market. The cost of producing lighters subject to the standard is expected to increase due to manufacturers' and importers' expenditures in the areas of research and development, product redesign, tooling and assembly process changes, certification and testing, and other administrative activities. Total per-unit production costs for the various lighter types may increase by 10-40 percent, with an average of less than 20 percent. Cost increases will likely be passed on to consumers in the form of higher retail prices. Disposable lighters may increase in price by 10-40 cents per unit; prices of other lighters may increase by as much as $1-3. The estimated average per-unit price increase for all lighters subject to the standard is about 20 cents. The total annual cost of the standard to consumers is estimated at about $90 million. The estimated cost of the standard per life saved is well under $1 million after considering the benefits of reduced injuries and property damage; this is well below the consensus of estimates of the statistical value of life. A wide range of lighter types and models will continue to be available to consumers. As noted above, some models of novelty lighters — all of which account for less than 1 percent of lighters sold — will likely be discontinued; this should not have a significant impact on the overall availability of lighters to consumers.

(d) *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The Commission considered the potential effects on competition and business practices of various aspects of the standard, and, as noted below, incorporated some burden-reducing elements into the proposal. The Commission also encouraged and participated in the development of a draft voluntary standard addressing the risk of child-play fires. A draft voluntary safety standard was developed by members of an ASTM task group (now a subcommittee) to address much of the risk addressed by the proposed CPSC rule. This draft voluntary standard contained performance requirements similar, but not identical, to those in the CPSC proposal. Development work on the voluntary standard ceased in 1991; industry representatives requested that the Commission issue the draft ASTM provisions in a mandatory rule. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to this draft standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however; although some of the largest firms may market some child-resistant lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the draft ASTM standard would not adequately reduce the unreasonable risk associated with lighters.

(e) *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk.* The Commission's hazard data and regulatory analysis demonstrate that lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective will provide manufacturers and importers of most products adequate time to design, produce, and market safer lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with lighters. The cost of these accidents, which is estimated to be about $385 million

annually, will also be greatly reduced. Estimated annual benefits of the standard are $205-$270 million; estimated annual costs to the public are about $90 million. Expected annual net benefits would therefore be $115-$180 million. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* (1) In the final rule, the Commission incorporated a number of changes from the proposed rule in order to minimize the potential burden of the rule on industry and consumers. The Commission also considered and rejected several alternatives during the development of the standard to reduce the potential burden on industry (especially small importers) and on consumers. These alternatives involve different performance and test requirements and different definitions determining the scope of coverage among products. Other alternatives generally would be more burdensome to industry and would have higher costs to consumers. Some less burdensome alternatives would have lower risk-reduction benefits to consumers; none has been identified that would have higher expected net benefits than the standard.

(2) The scope of this mandatory standard is limited to disposable lighters and novelty lighters; it does not apply to ''luxury'' lighters (including most higher priced refillable butane and liquid-fuel models). This is similar but not identical to the scope of a draft voluntary industry standard developed in response to the Commission's advance notice of proposed rulemaking of March 3, 1988 (53 FR 6833). This exclusion significantly reduces the potential cost of the standard without significantly affecting potential benefits.

(3) The Commission narrowed the scope of the final rule with respect to novelty lighters, and considered limiting the scope further to exclude all nondisposable novelty lighters. Though further limiting the scope would ease the potential burden of the standard on manufacturers and importers slightly, inherently less safe non-child-resistant lighters that are considered to be especially appealing to children would remain on the market, thereby reducing the potential safety benefits to the public. The Commission finds that it would not be in the public interest to exclude novelty lighters.

(4) The Commission considered the potential effect of alternate performance requirements during the development of the standard. A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. This higher performance level is not commercially or technically feasible for many firms, however; the Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

(5) The Commission believes that the standard should become effective as soon as reasonably possible. The standard will become effective 12 months from its date of publication in the FEDERAL REGISTER. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most lighters sold in the U.S. could probably be made child resistant within 6 months, some disruptive effects on the supply of some imported lighters would result; this could have a temporary adverse impact on the competitive positions of some U.S. importers. The 12-month period in the standard would tend to minimize this potential effect, and would allow more time for firms to design, produce, and import complying lighters. The Commission estimates that there would be no significant adverse impact

on the overall supply of lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. While certain alternatives to the final rule are estimated to have net benefits to consumers, the adopted rule maximizes these net benefits. Thus, the Commission finds that the standard, if promulgated on a final basis, would be in the public interest.

Subpart B—Certification Requirements

AUTHORITY: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1210.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 1263(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1210 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Cigarette Lighters. This subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1210.12 Certificate of compliance.

(a) *General requirements*—(1) *Manufacturers (including importers).* Manufacturers of any lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1210.13-1210.14 and 1210.16. Manufacturers must also label each lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1210.15 and 1210.17. For purposes of this requirement, an importer of lighters shall be considered the ''manufacturer.''

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that the importer is a resident of the United States or has a resident agent in the United States, the records are in English, and the records and the surrogate lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1210.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1210.17(a)(3). The importer is responsible for ensuring that the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1210.14-1210.16), the records provide a reasonable assurance that all lighters imported comply with the standard (§ 1210.13(b)(1)), the records exist in English (§ 1210.17(a)), (4) the importer knows where the required records and lighters are located and that records required to be located in the United States are located there, arrangements have been made so that any records required to be kept in the United States will be provided to the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days

(§ 1210.17(a)), and the information required by § 1210.17(b) to be provided to the Commission's Division of Regulatory Management has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product ''complies with the Consumer Product Safety Standard for Cigarette Lighters (16 CFR 1210),''

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (b)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the lighter was manufactured.

(2) An identification of the manufacturer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

[58 FR 37584, July 12, 1993, as amended at 59 FR 67621, Dec. 30, 1994]

§ 1210.13 Certification tests.

(a) *General.* As explained in § 1210.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA must be based on a reasonable testing program.

(b) *Reasonable testing programs*—(1) *Requirements.* (i) A reasonable testing program for lighters is one that demonstrates with a high degree of assurance that all lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1210.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on surrogates of each model of lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1210.14), and production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1210.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each lighter or lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1210.17 of this subpart.

§ 1210.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of lighters distributes lighters in commerce in the United States, surrogate lighters of each model shall be tested in accordance with § 1210.4, above, to ensure that all such lighters comply with the standard. However, if a manufacturer has tested one model of lighter, and then wishes to distribute another model of lighter that differs from the first model only by differences that would not have an *adverse* effect on child resistance, the second model need not be tested in accordance with § 1210.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the

standard, additional qualification tests must be made on surrogates for the changed product before the changed lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a lighter design after it has been in production, this may be done by following the testing procedures at § 1210.4.

§ 1210.15 Specifications.

(a) *Requirement.* Before any lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate lighters used for qualification testing under § 1210.14 are described in a written product specification. (Section 1210.4(c) requires that six surrogate lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the lighters and any child-resistant features.

§ 1210.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of lighters subject to the standard as they are manufactured, to demonstrate that the lighters meet the specifications, required under § 1210.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other lighters produced during the interval will meet the standard.

(c) *Test failure*—(1) *Sale of lighters.* If any test yields results which indicate that any lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the lighters or perform additional tests to ensure that only complying lighters are distributed in commerce. Lighters from other production intervals having test results showing that lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could adversely affect its child resistance, the lighter must undergo new qualification tests in accordance with § 1210.14, above.

§ 1210.17 Recordkeeping and reporting.

(a) *Records.* Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as

provided in paragraph (b)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by §1210.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept until 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with §1210.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept until 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by paragraph (a)(3) of this section outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under §1210.15 shall be kept until 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested, the specification of the surrogate lighter required by §1210.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the

CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1210.18 Refusal of importation.

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1210. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard and for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

AUTHORITY: 15 U.S.C. 2058(g)(2), 2079(d).

§ 1210.20 Stockpiling.

(a) *Definition. Stockpiling* means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, *base period* means, at the option of the manufacturer or importer, any 1-year period during the 5-year period prior to July 12, 1993.

(c) *Prohibited act.* Manufacturers and importers of disposable and novelty cigarette lighters shall not manufacture or import lighters that do not comply with the requirements of this part between July 12, 1993 and July 12, 1994, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

PART 1211—SAFETY STANDARD FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

Subpart A—The Standard

Subpart B—Certification

Subpart C—Recordkeeping

AUTHORITY: Sec. 203 of Pub. L. 101–608, 104 Stat. 3110; 15 U.S.C. 2063 and 2065.

Subpart A—The Standard

SOURCE: 57 FR 60455, Dec. 21, 1992, unless otherwise noted.

§ 1211.1 Effective date.

This standard applies to all residential garage door operators manufactured on or after January 1, 1993 for sale in the United States.

§ 1211.2 Definition.

As used in this part 1211: *Residential garage door operator* means a vehicular door operator which:

(a) Serves a residential building of one to four single family units;

(b) Is rated 600 volts or less; and

(c) Is intended to be employed in ordinary locations in accordance with the National Electrical Code, NFPA 70, 1999 edition. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Mass. 02269–9101, tel. 1–800–344–3555. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[57 FR 60455, Dec. 21, 1992, as amended at 62 FR 46667, Sept. 4, 1997; 65 FR 70657, Nov. 27, 2000]

§ 1211.3 Units of measurement.

If a value for measurement is followed by a value in other units, in parentheses, the second value may be only approximate. The first stated value is the requirement.

[57 FR 60455, Dec. 21, 1992, as amended at 65 FR 70657, Nov. 27, 2000]

§ 1211.4 General requirements for protection against risk of injury.

(a) If an automatically reset protective device is employed, automatic restarting of a motor shall not result in a risk of injury to persons.

(b) A residential garage door operator is considered to comply with the requirement in paragraph (a) of this section if some means is provided to prevent the motor from restarting when the protector closes.

(c) An electronic or solid-state circuit that performs a back-up, limiting, or other function intended to reduce the risk of fire, electric shock, or injury to persons, including entrapment protection circuits, shall comply with the requirements in the Standard for Safety for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, second edition, dated June 23, 1995, including environmental and stress tests appropriate to the intended usage of the end-product. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Telephone (800) 854–7179 or Global Engineering Documents, 7730 Carondelet Ave., Suite 470, Clayton, MO 63105, Telephone (800) 854–7179. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[57 FR 60455, Dec. 21, 1992, as amended at 62 FR 46667, Sept. 4, 1997; 65 FR 70657, Nov. 27, 2000]

§ 1211.5 General testing parameters.

(a) The following test parameters are to be used in the investigation of the circuit covered by § 1211.4(c) for compliance with the Standard for Safety for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, second edition, dated June 23, 1995, as incorporated by reference in paragraph (b)(3) of this section:

(1) With regard to electrical supervision of critical components, an operator being inoperative with respect to

downward movement of the door meets the criteria for trouble indication.

(2) A field strength of 3 volts per meter is to be used for the Radiated EMI Test.

(3) The Composite Operational and Cycling Test is to be used for 14 days at temperature extremes of minus 35 °Celsius (minus 31 °F) and 70 °C (158 °F).

(4) Exposure Class H5 is to be used for the Humidity Test.

(5) A vibration level of 5g is to be used for the Vibration Test.

(6) When a Computational Investigation is conducted, λ_p shall not be greater than 6 failures/10^6 hours for the entire system. For external secondary entrapment protection devices that are sold separately, λ_p shall not be greater than 0 failures/10^6 hours. For internal secondary entrapment protection devices whether or not they are sold separately, λ_p shall not be greater than 0 failures/10^6 hours. The operational test is conducted for 14 days. An external secondary entrapment protection device that is sold separately, and that has a λ_p greater than 0 failures/10^6 hours meets the intent of the requirement when for the combination of the operator and the specified external secondary entrapment protection device λ_p does not exceed 6 failures/10^6 hours. See § 1211.15(i) and (k).

(7) When the Demonstrated Method Test is conducted, the multiplier is to be based on the continuous usage level, and a minimum of 24 units for a minimum of 24 hours per unit are to be tested.

(8) The Endurance test is to be conducted concurrently with the Operational test. The control shall perform its intended function while being conditioned for fourteen days in an ambient air temperature of 60 °C (140 °F), or 10 °C (18 °F) greater than the operating temperature of the control, whichever is higher. During the test, the control is to be operated in a manner representing the opening and closing of the door at a rate of one open-close operation per minute.

(9) For the Electrical Fast Transient Burst Test, test level 3 is to be used for residential garage door operators.

(b) In the evaluation of entrapment protection circuits used in residential garage door operators, the critical condition flow chart shown in figure 1 shall be used:

(1) To conduct a failure-mode and effect analysis (FMEA);

(2) In investigating the performance during the Environmental Stress Tests; and

(3) During the Power Cycling Safety for Tests in accordance with the Standard for Safety for Tests for Safety-Related Controls Employing Solid-State Devices, UL 991, second edition, dated June 23, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Telephone (800) 854–7179 or Global Engineering Documents, 7730 Carondelet Ave., Suite 470, Clayton, MO 63105, Telephone (800) 854–7179. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

[57 FR 60455, Dec. 21, 1992, as amended at 62 FR 46667, Sept. 4, 1997; 65 FR 70657, Nov. 27, 2000]

§ 1211.6 General entrapment protection requirements.

(a) A residential garage door operator system shall be provided with primary inherent entrapment protection that complies with the requirements as specified in § 1211.7.

(b) In addition to the primary inherent entrapment protection as required by paragraph (a) of this section, a residential garage door operator shall comply with one of the following:

(1) Shall be constructed to:

(i) Require constant pressure on a control to lower the door,

(ii) Reverse direction and open the door to the upmost position when constant pressure on a control is removed prior to operator reaching its lower limit, and

(iii) Limit a portable transmitter, when supplied, to function only to cause the operator to open the door;

(2) Shall be provided with a means for connection of an external secondary entrapment protection device as described in §§1211.8, 1211.10, and 1211.11; or

(3) Shall be provided with an inherent secondary entrapment protection device as described in §§1211.8, 1211.10, and 1211.12.

(c) A mechanical switch or a relay used in an entrapment protection circuit of an operator shall withstand 100,000 cycles of operation controlling a load no less severe (voltage, current, power factor, inrush and similar ratings) than it controls in the operator, and shall function normally upon completion of the test.

(d) In the event malfunction of a switch or relay (open or short) described in paragraph (c) of this section results in loss of any entrapment protection required by §§1211.7(a), 1211.7(f), or 1211.8(a), the door operator shall become inoperative at the end of the opening or closing operation, the door operator shall move the door to, and stay within, 1 foot (305 mm) of the uppermost position.

[57 FR 60455, Dec. 21, 1992, as amended at 65 FR 70657, Nov. 27, 2000]

§ 1211.7 Inherent entrapment protection requirements.

(a)(1) Other than for the first 1 foot (305mm) of door travel from the full upmost position both with and without any external entrapment protection device functional, the operator of a downward moving residential garage door shall initiate reversal of the door within 2 seconds of contact with the obstruction as specified in paragraph (b) of this section. After reversing the door, the operator shall return the door to, and stop at, the full upmost position. Compliance shall be determined in accordance with paragraphs (b) through (i) of this section.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when the operator senses a second obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(b)(1) A solid object is to be placed on the floor of the test installation and at various heights under the edge of the door and located in line with the driving point of the operator. When tested on the floor, the object shall be 1 inch (25.4 mm) high. In the test installation, the bottom edge of the door under the driving force of the operator is to be against the floor when the door is fully closed.

(2) For operators other than those attached to the door, a solid object is not required to be located in line with the driving point of the operator. The solid object is to be located at points at the center, and within 1 foot of each end of the door.

(3) To test operators for compliance with requirements in paragraphs (a)(3), (f)(3), and (g)(3) of this section, §1211.10(a)(6)(iii), and §1211.13(c), a solid rectangular object measuring 4 inches (102 mm) high by 6 inches (152 mm) wide by a minimum of 6 inches (152 mm)long is to be placed on the floor of the test installation to provide a 4-inch (102 mm) high obstruction when operated from a partially open position.

(c) An operator is to be tested for compliance with paragraph (a) of this section for 50 open-and-close cycles of operation while the operator is connected to the type of residential garage door with which it is intended to be used or with the doors specified in paragragh (e) of this section. For an operator having a force adjustment on the operator, the force is to be adjusted to the maximum setting or at the setting that represents the most severe operating condition. Any accessories having an effect on the intended operation of entrapment protection functions that are intended for use with the operator, are to be attached and the test is to be repeated for one additional cycle.

(d) For an operator that is to be adjusted (limit and force) according to instructions supplied with the operator, the operator is to be tested for 10 additional obstruction cycles using the

solid object described in paragraph (b) of this section at the maximum setting or at the setting that represents the most severe operating condition.

(e) For an operator that is intended to be used with more than one type of door, one sample of the operator is to be tested on a sectional door with a curved track and one sample is to be tested on a one-piece door with jamb hardware and no track. For an operator that is not intended for use on either or both types of doors, a one-piece door with track hardware or a one-piece door with pivot hardware shall be used for the tests. For an operator that is intended for use with a specifically dedicated door or doors, a representative door or doors shall be used for the tests. See the marking requirements at §1211.16.

(f)(1) An operator, using an inherent entrapment protection system that monitors the actual position of the door, shall initiate reversal of the door and shall return the door to, and stop the door at, the full upmost position in the event the inherent door operating ''profile'' of the door differs from the originally set parameters. The entrapment protection system shall monitor the position of the door at increments not greater than 1 inch (25.4 mm).

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(g)(1) An operator, using an inherent entrapment protection system that does not monitor the actual position of the door, shall initiate reversal of the door and shall return the door to and stop the door at the full upmost position, when the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel. When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm). When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

(h) To determine compliance with paragraph (f) or (g) of this section, an operator is to be subjected to 10 open-and-close cycles of operation while connected to the door or doors specified in paragraphs (c) and (e) of this section. The cycles are not required to be consecutive. Motor cooling-off periods during the test meet the intent of the requirement. The means supplied to comply with the requirement in paragraph (a) of this section and §1211.8(a) are to be defeated during the test. An obstructing object is to be used so that the door is not capable of activating a lower limiting device.

(i) During the closing cycle, the system providing compliance with §§1211.7(a) and 1211.7(f) or 1211.7(a) and 1211.7(g) shall function regardless of a short- or open-circuit anywhere in any low-voltage external wiring, any external entrapment devices, or any other external component.

[65 FR 70657, Nov. 27, 2000, as amended at 72 FR 54817, Sept. 27, 2007]

§1211.8 Secondary entrapment protection requirements.

(a) A secondary entrapment protection device supplied with, or as an accessory to, an operator shall consist of:

(1) An external photoelectric sensor that when activated results in an operator that is closing a door to reverse direction of the door and the sensor prevents an operator from closing an open door,

(2) An external edge sensor installed on the edge of the door that, when activated results in an operator that is closing a door to reverse direction of

the door and the sensor prevents an operator from closing an open door,

(3) An inherent door sensor independent of the system used to comply with §1211.7 that, when activated, results in an operator that is closing a door to reverse direction of the door and the sensor prevents an operator from closing an open door, or

(4) Any other external or internal device that provides entrapment protection equivalent to paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(b) With respect to paragraph (a) of this section, the operator shall monitor for the presence and correct operation of the device, including the wiring to it, at least once during each close cycle. In the event the device is not present or a fault condition occurs which precludes the sensing of an obstruction, including an open or short circuit in the wiring that connects an external entrapment protection device to the operator and device's supply source, the operator shall be constructed such that:

(1) A closing door shall open and an open door shall not close more than 1 foot (305 mm) below the upmost position, or

(2) The operator shall function as required by §1211.6(b)(1).

(c) An external entrapment protection device shall comply with the applicable requirements in §§1211.10, 1211.11 and 1211.12.

(d) An inherent secondary entrapment protection device shall comply with the applicable requirements in §1211.13. Software used in an inherent entrapment protection device shall comply with the Standard for Safety for Software in Programmable Components, UL 1998, Second Edition, May 29, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Telephone (800) 854–7179 or Global Engineering Documents, 7730 Carondelet Ave., Suite 470, Clayton, MO 63105, Telephone (800) 854–7179. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

[65 FR 70658, Nov. 27, 2000]

§1211.9 Additional entrapment protection requirements.

(a) A means to manually detach the door operator from the door shall be supplied. The gripping surface (handle) shall be colored red and shall be easily distinguishable from the rest of the operator. It shall be capable of being adjusted to a height of 6 feet (1.8 m) above the garage floor when the operator is installed according to the instructions specified in §1211.14(a)(2). The means shall be constructed so that a hand firmly gripping it and applying a maximum of 50 pounds (223 N) of force shall detach the operator with the door obstructed in the down position. The obstructing object, as described in §1211.7(b), is to be located in several different positions. A marking with instructions for detaching the operator shall be provided as required by §1211.15(i).

(b) A means to manually detach the door operator from the door is not required for a door operator that is not directly attached to the door and that controls movement of the door so that:

(1) The door is capable of being moved open from any position other than the last (closing) 2 inches (50.8 mm) of travel, and

(2) The door is capable of being moved to the 2-inch point from any position between closed and the 2-inch point.

(c) Actuation of a control that initiates movement of a door shall stop and may reverse the door on the down cycle. On the up cycle, actuation of a control shall stop the door but not reverse it.

(d) An operator shall be constructed so that adjustment of limit, force or other user controls and connection of external entrapment protection devices

can be accomplished without exposing normally enclosed live parts or wiring.

[57 FR 60455, Dec. 21, 1992, as amended at 65 FR 70658, Nov. 27, 2000]

§ 1211.10 Requirements for all entrapment protection devices.

(a) General requirements. (1) An external entrapment protection device shall perform its intended function when tested in accordance with paragraphs (a)(2) through (4) and (6) of this section.

(2) The device is to be installed in the intended manner and its terminals connected to circuits of the door operator as indicated by the installation instructions.

(3) The device is to be installed and tested at minimum and maximum heights and widths representative of recommended ranges specified in the installation instructions. For doors, if not specified, devices are to be tested on a minimum 7 foot (2.1 m) wide door and maximum 20 foot (6.1 m) wide door.

(4) If powered by a separate source of power, the power-input supply terminals are to be connected to supply circuits of rated voltage and frequency.

(5) An external entrapment protection device requiring alignment, such as a photoelectric sensor, shall be provided with a means, such as a visual indicator, to show proper alignment and operation of the device.

(6)(i) An operator using an external entrapment protection device, upon detecting a fault or an obstruction in the path of a downward moving door, shall initiate reversal and shall return the door to, and stop the door at, the full upmost position.

(ii) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(iii) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator has reversed the door a minimum of 2 inches (50.8 mm).

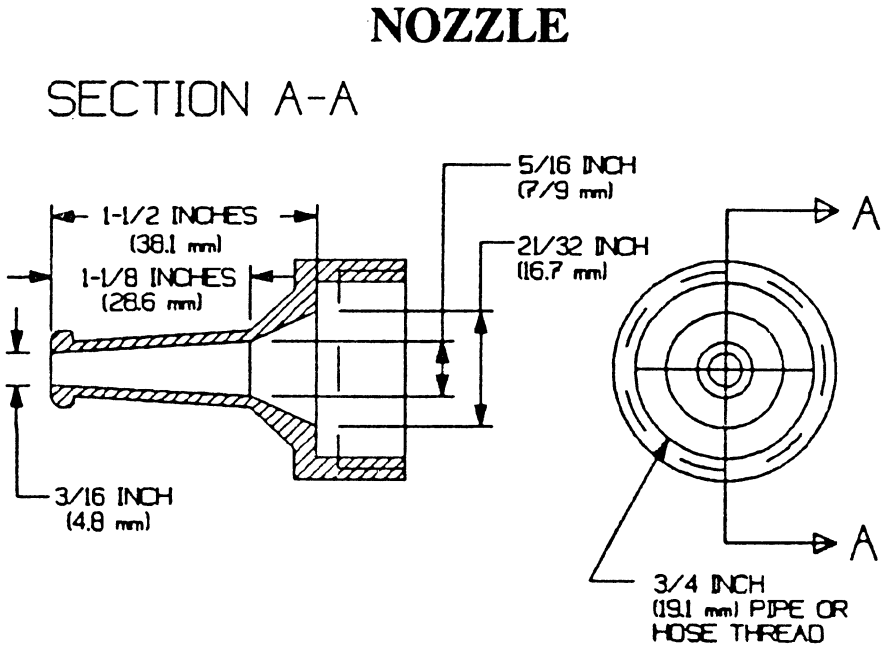
(b) *Current protection test.* (1) There shall be no damage to the entrapment protection circuitry if low voltage field-wiring terminals or leads are shortened or miswired to adjacent terminals.

(2) To determine compliance with paragraph (b)(1) of this section, an external entrapment protection device is to be connected to a door operator or other source of power in the intended manner, after which all connections to low voltage terminals or leads are to be reversed as pairs, reversed individually, or connected to any low voltage lead or adjacent terminal.

(c) *Splash test.* (1) An external entrapment protection device intended to be installed inside a garage 3 feet or less above the floor shall withstand a water exposure as described in paragraph (c)(2) of this section without resulting in a risk of electric shock and shall function as intended. After exposure, the external surface of the device may be dried before determining its functionality.

(2) External entrapment protection devices are to be indirectly sprayed using a hose having the free end fitted with a nozzle as illustrated in figure 2 and connected to a water supply capable of maintaining a flow rate of 5 gallons (19 liters) per minute as measured at the outlet orifice of the nozzle. The water from the hose is to be played, from all sides and at any angle against the floor under the device in such a manner most likely to cause water to splash the enclosure of electric components. However, the nozzle is not to be brought closer than 10 feet (3.05 m) horizontally to the device. The water is to be sprayed for 1 minute.

Figure 2



(d) *Ultraviolet light exposure test.* A polymeric material used as a functional part of a device that is exposed to outdoor weather conditions shall comply with the Ultraviolet Light Exposure Test described in the Standard for Safety for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 4th ed., dated December 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Telephone (800) 854–7179 or Global Engineering Documents, 7730 Carondelet Ave., Suite 470, Clayton, MO 63105, Telephone (800) 854–7179. Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) *Resistance to impact test.* (1) An external entrapment protection device employing a polymeric or elastomeric material as a functional part shall be subjected to the impact test specified in paragraph (e)(2) of this section. As a result of the test:

(i) There shall be no cracking or breaking of the part, and

(ii) The part shall operate as intended or, if dislodged after the test, is capable of being restored to its original condition.

(2) Samples of the external entrapment protection device are to be subjected to the Impact Test described in the Standard for Polymeric Materials—

Use in Electrical Equipment Evaluations, UL 746C, 4th ed., dated December 27, 1995, as incorporated by reference in paragraph (d) of this section. The external entrapment protection device is to be subjected to 5 foot-pound (6.8 J) impacts. Three samples are to be tested, each sample being subjected to three impacts at different points.

(3) Each of three additional samples of a device exposed to outdoor weather when the door is the closed position are to be cooled to a temperature of minus 31.0±3.6 °F (minus 35.0±2.0 °C) and maintained at this temperature for 3 hours. Three samples of a device employed inside the garage are to be cooled to a temperature of 32.0 °F (0.0 °C) and maintained at this temperature for 3 hours. While the sample is still cold, the samples are to be subjected to the impact test described in paragraph (e)(1) of this section.

[57 FR 60455, Dec. 21, 1992, as amended at 62 FR 46667, Sept. 4, 1997; 65 FR 70659, Nov. 27, 2000; 72 FR 54817, Sept. 27, 2007]

§ 1211.11 Requirements for photoelectric sensors.

(a) *Normal operation test.* (1) When installed as described in § 1211.10(a) (1)–(4), a photoelectric sensor shall sense an obstruction as described in paragraph (a)(2) of this section that is to be placed on the floor at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(2) The obstruction noted in paragraph (a)(1) of this section shall consist of a white vertical surface 6 inches (152 mm) high by 12 inches (305 mm) long. The obstruction is to be centered under the door perpendicular to the plane of the door when in the closed position. See figure 3.

Figure 3

STATIONARY OBSTRUCTION

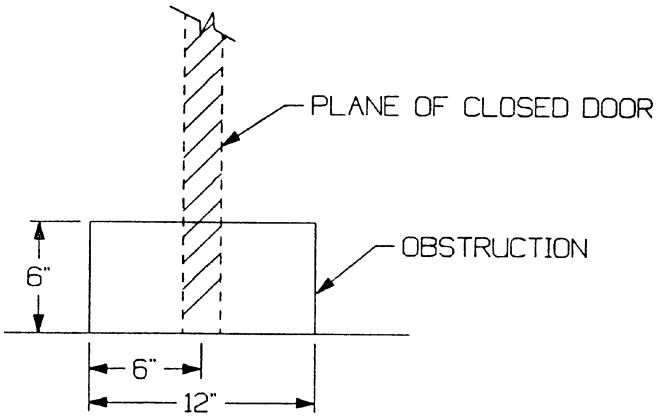
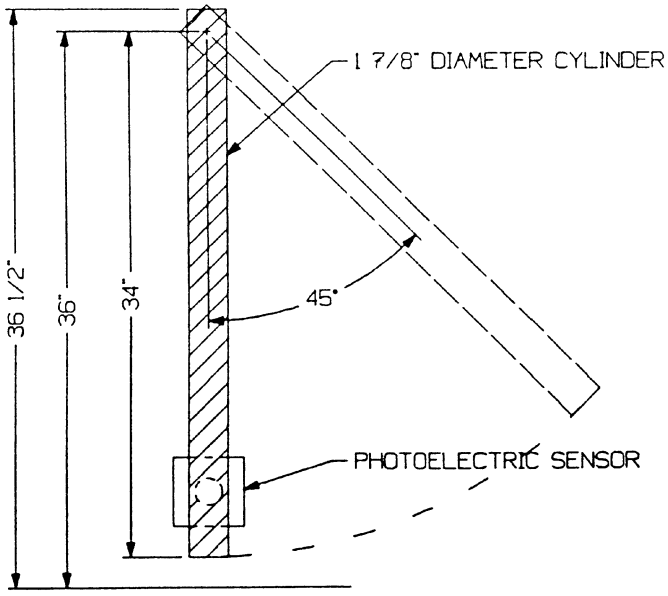


Figure 4

MOVING OBSTRUCTION



(b) *Sensitivity test.* (1) When installed as described in § 1211.10(a)(1)–(4), a photoelectric sensor shall sense the presence of a moving object when tested according to paragraph (b)(2) of this section.

(2) The moving object is to consist of a 1⅞ inch (47.6 mm) diameter cylindrical rod, 34½ inches (876 mm) long, with the axis point being 34 inches (864 mm) from the end. The axis point is to be fixed at a point centered directly above the beam of the photoelectric sensor 36 inches (914 mm) above the floor. The photoelectric sensor is to be mounted at the highest position as recommended by the manufacturer. The rod is to be swung as a pendulum through the photoelectric sensor's beam from a position 45 degrees from the plane of the door when in the closed position. See figure 4.

(3) The test described in paragraph (b)(2) of this section is to be conducted at three points over the width of the door opening, at distances of 1 foot (305 mm) from each end and the midpoint.

(c) *Ambient light test.* (1) A photoelectric sensor shall operate as specified in §1211.8 (a) and (b) when subjected to ambient light impinging at an angle of 15 to 20 degrees from the axis of the beam when tested according to paragraph (c)(2) and, if appropriate, paragraph (c)(3) of this section.

(2) To determine compliance with paragraph (c)(1) of this section, a 500 watt, 3600K Photo Floodlamp, type DXC RFL–2, is to be energized from a 120-volt, 60-hertz source.

Figure 5

AMBIENT LIGHT TEST

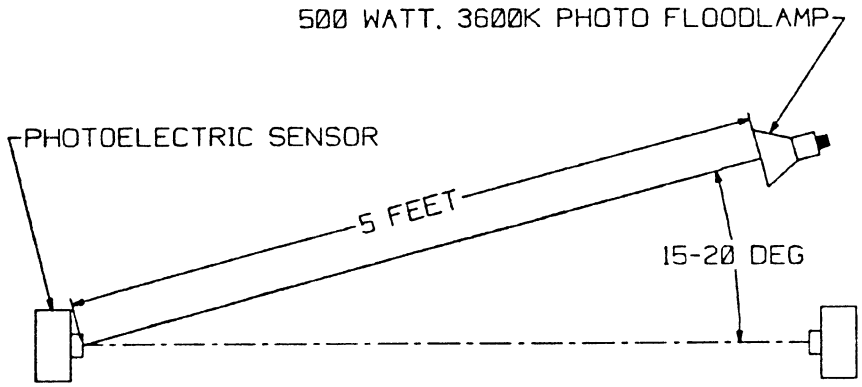
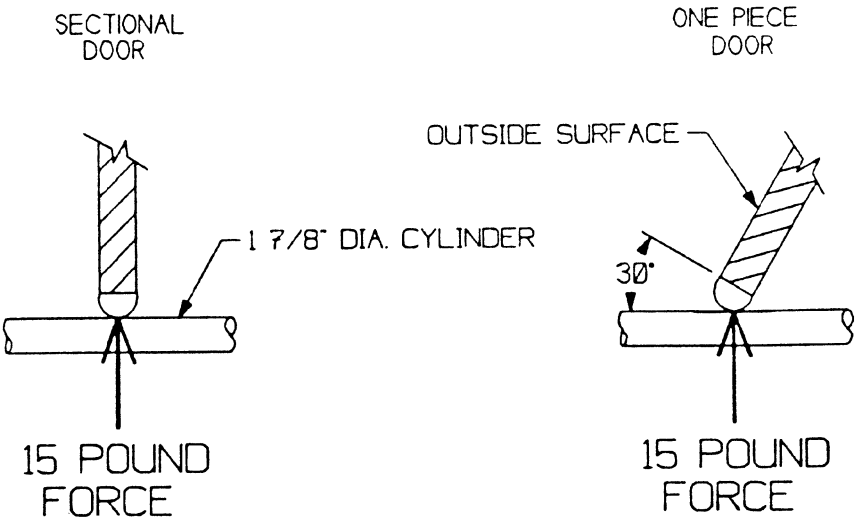


Figure 6

EDGE SENSOR NORMAL OPERATION TEST



The lamp is to be positioned 5 feet from the front of the receiver and aimed directly at the sensor at an angle of 15 to 20 degrees from the axis of the beam. See figure 5.

(3) If the photoelectric sensor uses a reflector, this test is to be repeated with the lamp aimed at the reflector.

§ 1211.12 Requirements for edge sensors.

(a) *Normal operation test.* (1) When installed on a representative door edge, an edge sensor shall actuate upon the application of a 15 pounds (66.7 N) or less force in the direction of the application. For an edge sensor intended to be used on a sectional door, the force is to be applied by the longitudinal edge of a 1⅞ inch (47.6 mm) diameter cylinder placed across the switch so that the axis is perpendicular to the plane of the door. For an edge sensor intended to be used on a one piece door, the force is to be applied so that the axis is at an angle 30 degrees from the direction perpendicular to the plane of the door. See figure 6.

(2) With respect to the test of paragraph (a)(1) of this section, the test is to be repeated at various representative points of the edge sensor across the width of the door.

(3) Exception: The edge sensor need not be sensitive to actuation two inches (50.4 mm) or less from each end of the intended width of the door opening.

(b) *Endurance test.* An edge sensor system and associated components shall withstand 30,000 cycles of mechanical operation without failure. For this test, the edge sensor is to be cycled by the repetitive application of the force as described in paragraph (a)(1) of this section. The force is to be applied to the same location for the entire test. For an edge sensor system employing integral electric contact strips, this test shall be conducted with the contacts connected to a load no less severe than it controls in the operator. For the last 50 cycles of operation, the sensor shall function as intended when connected to an operator.

(c) *Elastomeric material conditioning test.* (1) An elastomeric material used as a functional part of an edge sensor shall function as intended when subjected to:

(i) Accelerated Aging Test of Gaskets, stated in paragraph (c)(3) of this section, and

(ii) Puncture Resistance Test, stated in paragraph (d) of this section.

(2) An elastomeric material used for a functional part that is exposed to outdoor weather conditions when the door is in the closed position shall have physical properties as specified in table 1 after being conditioned in accordance with the Ultraviolet Light Exposure Test described in the Standard for Safety for Polymeric Materials—Use in Electrical Equipment Evaluations, UL 746C, 4th ed., dated December 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, Telephone (800) 854–7179 or Global Engineering Documents, 7730 Carondelet Ave., Suite 470, Clayton, MO 63105, Telephone (800) 854–7179.

Table 1

PHYSICAL PROPERTIES OF GASKET-ACCELERATED AGING TEST

	Before Accelerated Aging	After Accelerated Aging
Recovery -- Maximum set when 2-inch (50.8-mm) gauge marks are stretched to 5 inches (127 mm), held for 2 minutes, and measured 2 minutes after release	1/2 inch (12.7 mm)	--
Elongation -- Minimum increase in distance between 2-inch gauge marks at break	250 percent [2 to 7 inches (50.8—178.8 mm)]	65 percent of original
Tensile Strength -- Minimum force at breaking point	850 pounds per square inch (59 mPa)	75 percent of original

Copies may be inspected at the Consumer Product Safety Commission, Office of the Secretary, 4330 East West Highway, Bethesda, Maryland or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) Rubber compounds forming gaskets that are depended upon for protection from rain shall have physical properties as specified in table 1, before and after conditioning for 168 hours in an air-circulating oven at 70 °C (158 °F).

(d) *Puncture resistance test.* (1) After being subjected to the test described in paragraph (d)(2) of this section, an elastomeric material that is a functional part of an edge sensor shall:

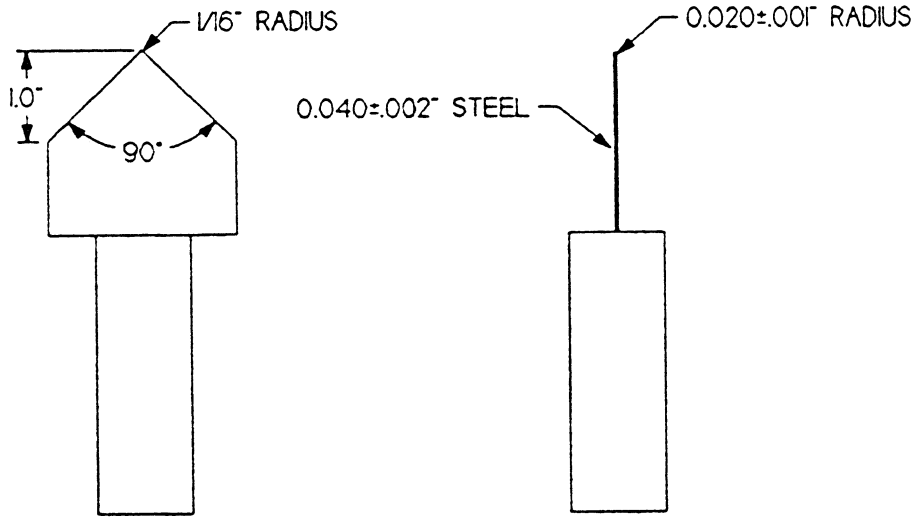
(i) Not be damaged in a manner that would adversely affect the intended operation of the edge sensor, and

(ii) Maintain enclosure integrity if it serves to reduce the likelihood of contamination of electrical contacts.

(2) A sample of the edge sensor is to be installed in the intended manner on a representative door edge. The probe described in figure 7 is to be applied with a 20 pound-force (89N) to any point on the sensor that is 3 inches or less above the floor is to be applied in the direction specified in the Edge Sensor Normal Operation Test, figure 6. The test is to be repeated on three locations on each surface of the sensor being tested.

Figure 7

PUNCTURE PROBE



[57 FR 60455, Dec. 21, 1992, as amended at 62 FR 46667, Sept. 4, 1997; 65 FR 70659, Nov. 27, 2000]

§ 1211.13 Inherent force activated secondary door sensors.

(a) *Normal operation test.* (1) A force activated door sensor of a door system installed according to the installation instructions shall actuate when the door applies a 15 pound (66.7 N) or less force in the down or closing direction and when the door applies a 25 pound (111.2 N) or less force in the up or opening direction. For a force activated door sensor intended to be used in an operator intended for use only on a sectional door, the force is to be applied by the door against the longitudinal edge of a 1⅞ (47.6 mm) diameter cylinder placed across the door so that the axis is perpendicular to the plane of the door. See Figure 6 of this part. The weight of the door is to be equal to the

maximum weight rating of the operator.

(2) The test described in paragraph (a)(1) of this section is to be repeated and measurements made at various representative points across the width and height of the door. For this test, a door sensor system and associated components shall withstand a total of 9 cycles of mechanical operation without failure with the force applied as follows:

(i) At the center at points one, three, and five feet from the floor,

(ii) Within 1 foot of the end of the door, at points one, three, and five feet from the floor,

(iii) Within 1 foot of the other end of the door at points one, three, and five feet from the floor.

(3) The cycles are not required to be consecutive. Continuous operation of the motor without cooling is not required.

(b) *Adjustment of door weight.* (1) With the door at the point and at the weight determined by the tests of paragraphs (a)(2) and (b)(2) of this section to be the most severe, the door sensor and associated components shall withstand 50 cycles of operation without failure.

(2) At the point determined by the test in paragraphs (a)(1) and (a)(2) of this section to be the most severe, weight is to be added to the door in 5.0 pound (2.26 Kg) increments and the test repeated until a total of 15.0 pounds (66.72 N) has been added to the door. Before performing each test cycle, the door is to be cycled 2 times to update the profile. Similarly, starting from normal weight plus 15.0 pounds, the test is to be repeated by subtracting weight in 5.0 pound increments until a total of 15.0 pounds has been subtracted from the door.

(c) Obstruction test. For a door traveling in the downward direction, when an inherent secondary entrapment protection device senses an obstruction and initiates a reversal, a control activation shall not move the door downward until the operator reverses the door a minimum of 2 inches (50.8 mm). The test is to be performed as described in § 1211.7(b)(3).

[65 FR 70659, Nov. 27, 2000, as amended at 72 FR 54817, Sept. 27, 2007]

§ 1211.14 Instruction manual.

(a) *General.* (1) A residential garage door operator shall be provided with an instruction manual. The instruction manual shall give complete instructions for the installation, operation, and user maintenance of the operator.

(2) Instructions that clearly detail installation and adjustment procedures required to effect proper operation of the safety means provided shall be provided with each door operator.

(3) A residential garage door or door operator shall be provided with complete and specific instructions for the correct adjustment of the control mechanism and the need for periodic checking and, if needed, adjustment of the control mechanism so as to maintain satisfactory operation of the door.

(4) The instruction manual shall include the important instructions specified in paragraphs (b)(1) and (2) of this section. All required text shall be legible and contrast with the background. Upper case letters of required text shall be no less than 5/64 inch (2.0 mm) high and lower case letters shall be no less than 1/16 inch (1.6 mm) high. Heading such as ''Important Installation Instructions,'' ''Important Safety Instructions,'' ''Save These Instructions'' and the words ''Warning—To reduce the risk of severe injury or death to persons:'' shall be in letters no less than 3/16 inch (4.8 mm) high.

(5) The instructions listed in paragraphs 1211.13(b)(1) and (2) shall be in the exact words specified or shall be in equally definitive terminology to those specified. No substitutes shall be used for the word ''Warning.'' The items may be numbered. The first and last items specified in paragraph (b)(2) of this section shall be first and last respectively. Other important and precautionary items considered appropriate by the manufacturer may be inserted.

(6) The instructions listed in paragraph (b)(1) of this section shall be located immediately prior to the installation instructions. The instructions listed in paragraph (b)(2) of this section shall be located immediately prior to user operation and maintenance instructions. In each case, the instructions shall be separate in format from other detailed instructions related to

installation, operation and maintenance of the operator. All instructions, except installation instructions, shall be a permanent part of the manual(s).

(b) *Specific required instructions.* (1) The Installation Instructions shall include the following instructions:

Important Installation Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and follow all Installation Instructions.

2. Install only a properly balanced garage door. An improperly balanced door could cause severe injury. Have a qualified service person make repairs to cables, spring assemblies and other hardware before installing opener.

3. Remove all ropes and remove or make inoperative all locks connected to the garage door before installing opener.

4. Where possible, install door opener 7 feet or more above the floor. For products requiring an emergency release, mount the emergency release 6 feet above the floor.

5. Do not connect opener to source of power until instructed to do so.

6. Locate control button: (a) within sight of door, (b) at a minimum height of 5 feet so small children cannot reach it, and (c) away from all moving parts of the door.

7. Install Entrapment Warning Label next to the control button in a prominent location. Install the Emergency Release Marking. Attach the marking on or next to the emergency release.

8. After installing opener, the door must reverse when it contacts a 1½ inch high object (or a 2 by 4 board laid flat) on the floor.

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and follow all instructions.

2. Never let children operate, or play with door controls. Keep the remote control away from children.

3. Always keep the moving door in sight and away from people and objects until it is completely closed. No one should cross the path of the moving door.

4. NEVER GO UNDER A STOPPED PARTIALLY OPEN DOOR.

5. Test door opener monthly. The garage door MUST reverse on contact with a 1½ inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.

6. For products requiring an emergency release, if possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.

7. Keep garage door properly balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.

8. Save these Instructions.

[57 FR 60455, Dec. 21, 1992. Redesignated and amended at 65 FR 70659, Nov. 27, 2000; 72 FR 54818, Sept. 27, 2007]

§ 1211.15 Field-installed labels.

(a) A residential garage door operator shall be provided with labels for field installation and constructed as specified in paragraphs (c) through (i) of this section. The labels shall be acceptable for permanent installation. The instruction manual shall specify where the labels are to be located.

(b) If labels secured by adhesive are used, the instruction shall specify that an additional mechanical means shall be used to secure the labels to surfaces to which the adhesive will not adhere.

(c) A residential garage door operator shall be provided with a cautionary label intended for permanent installation to identify the possible risk of entrapment. The instruction manual shall direct that the label be affixed near the wall-mounted control button.

(d) The label required in accordance with paragraph (c) of this section shall be in a vertical layout with three panels:

(1) A signal word panel,

(2) A pictorial panel, and

(3) A message panel, with adjacent panels delineated from each other by a horizontal black line. The entire label shall be surrounded by a black border and shall measure at least 5 inches (127 mm) wide by 6¼ inches (159 mm) long overall.

(e) The signal word panel as specified in paragraph (d) of this section shall contain the word ''WARNING,'' in uppercase letters, preceded by a safety alert symbol consisting of an orange exclamation mark on a black solid equilateral triangle background with the point of the triangle oriented upward. The word ''WARNING'' and the safety alert symbol shall be centered on one line and shall be in black letters

at least 7/16 inch (11.1 mm) high on an orange background.

(f) The pictorial panel as specified in paragraph (d) of this section shall be positioned between the signal word panel and the message panel. The pictorial shall be black on a white background and shall clearly depict a child running toward or under a garage door. A red prohibition symbol (slash, oriented from the upper left to the lower right, through a circle) shall be superimposed over, and totally surround, the pictorial. The pictorial shall have an overall diameter of 1-7⅛ inch (47.6 mm) minimum.

(g) The message panel as specified in paragraph (d) of this section shall include the following text or an equivalent wording:

(1) Possible Risk and Consequence Statement—''There is a risk of a child becoming trapped under an automatic garage door resulting in severe injury or death.''

(2) Avoidance Statements—

(i) ''Do not allow children to walk or run under a closing door.''

(ii) ''Do not allow children to operate door operator controls.''

(iii) ''Always keep a closing door within sight.''

(iv) ''In the event a person is trapped under the door, push the control button or use the emergency release.'' For products not having an emergency release use instead ''In the event a person is trapped under the door, push the control button.''

(3) Instructions—

(i) ''Test Door Operator Monthly: Use a 1½ inch thick object placed on the floor under the closing door. In the event the door does not reverse upon contact, adjust, repair, or replace the operator.''

(ii) Additional instructions on not removing or painting over the label, mounting the label adjacent to the wall control, and mounting the wall control out of children's reach shall be provided. These additional instruction shall be in less prominent lettering than those in paragraph (g)(3)(i) of this section.

(h) The lettering of the message panel described in paragraph (g) of this section shall be black on a white background and shall be sans serif letters in combinations of upper case and lower case letters. The upper case letters of the Possible Risk and Consequence Statements and Avoidance Statements shall be ⅛ inch (3.18 mm) high minimum. The lettering of the Possible Risk and Consequence Statement shall be in italics, underlined, bold, or the like, and shall be double spaced from the Avoidance Statements. All other instructions shall be in letters less prominent than the Possible Risk and Consequence Statements and shall be separated with at least a single space between individual instructions.

(i) Except for door operators complying with §1211.9(b), a residential garage door operator shall be provided with a cautionary marking attached to or adjacent at all times to the means provided to detach the operator from the garage door. The marking shall include the following statement or the equivalent: ''If the door becomes obstructed, detach door from operator as follows: (The method to detach the operator shall be shown on the marking.)''

[57 FR 60455, Dec. 21, 1992. Redesignated and amended at 65 FR 70659, Nov. 27, 2000]

§ 1211.16 UL marking requirements.

(a) Unless specifically excepted, marking required in this standard shall be permanent. Ink-printed and stenciled markings, decalcomania labels, and pressure sensitive labels are among the types of marking that are considered acceptable if they are acceptably applied and are of good quality.

(b) Except as provided below, a garage door operator shall be plainly marked, at a location where the marking will be readily visible—after installation, in the case of a permanently connected appliance—with:

(1) The manufacturer's name, trademark, or other descriptive marking by which the organization responsible for the product may be identified—hereinafter referred to as the manufacturer's name;

(2) The catalog number or the equivalent;

(3) The voltage, frequency, and input in amperes or watts; and

(4) The date or other dating period of manufacture not exceeding any three consecutive months.

(c) The ampere rating shall be included unless the full-load power factor is 80 percent or more, or, for a cord-connected operator, unless the rating is 50 watts or less. The number of phases shall be indicated if an operator is for use on a polyphase circuit. The date code repetition cycle shall not be less than 20 years.

(d) Exception No. 1: The manufacturer's identification may be in a traceable code if the operator is identified by the brand or trademark owned by a private labeler.

(e) Exception No. 2: The date of manufacture may be abbreviated or in an established or otherwise accepted code.

(f) If a manufacturer produces or assembles operators at more than one factory, each finished operator shall have a distinctive marking, which may be in code, to identify it as the product of a particular factory.

(g) The carton and the instruction manual for an operator shall be marked with the word ''WARNING'' and the following or the equivalent: ''To reduce the risk of injury to persons—Use this operator only with (a) _____ door(s).''

(h) A residential garage door operator shall be marked with the word ''WARNING'' and the following or equivalent, ''Risk of entrapment. After adjusting either the force or limits of travel adjustments, insure that the door reverses on a 1½ inch (or a 2 by 4 board laid flat) high obstruction on the floor.''

(i) A separately supplied accessory, including external entrapment protection device, intended for installation with an appliance or appliances shall be marked with the manufacturer's name and catalog or model number and the type of appliance or appliances with which it is intended to be used—such as a residential garage door operator. Additionally, installation instructions, accompanying specifications sheet, or packaging of the accessory shall identify the appliance or appliances with which it is intended to be used by specifying the manufacturer's name and catalog or model number or by any other positive means to serve the identification purpose.

(j) An appliance provided with terminals or connectors for connection of a separately supplied accessory, such as an external entrapment protection device, shall be marked to identify the accessory intended to be connected to the terminals or connectors. The accessory identification shall be by manufacturer's name and catalog or model number or other means to allow for the identification of accessories intended for use with the appliance.

(k) With reference to paragraph (k) of this section, instructions for installing a separately supplied accessory shall be provided. A statement shall be included in the instructions warning the user that the appliance must be disconnected from the source of supply before attempting the installation of the accessory.

[57 FR 60455, Dec. 21, 1992. Redesignated at 65 FR 70659, Nov. 27, 2000]

§ 1211.17 Statutory labeling requirement.

(a) A manufacturer selling or offering for sale in the United States an automatic residential garage door operator manufactured on or after January 1, 1991, shall clearly identify on any container of the system and on the system the month or week and year the system was manufactured and its conformance with the requirements of this part.

(b) The display of the UL logo or listing mark, and compliance with the date marking requirements of UL–325 now stated in § 1211.5 of this subpart, on both the container and the system, shall satisfy the requirements of this subpart.

[57 FR 60455, Dec. 21, 1992. Redesignated at 65 FR 70659, Nov. 27, 2000]

Subpart B—Certification

SOURCE: 57 FR 60468, Dec. 21, 1992, unless otherwise noted.

§ 1211.20 Purpose, scope, and application.

(a) *Purpose.* Section 14(a) of the Consumer Product Safety Act, 15 U.S.C. 2063(a), requires every manufacturer (including importers) and private labeler of a product which is subject to a consumer product safety standard to issue a certificate that the product

conforms to the applicable standard, and to base that certificate either on a test of each product or on a ''reasonable testing program.'' The purpose of this subpart is to establish requirements that manufacturers and importers of automatic residential garage door operators subject to the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211, subpart A), shall issue certificates of compliance in the form specified.

(b) *Scope and application.* The provisions of this subpart apply to all residential garage door operators which are subject to the requirements of the Safety Standard for Automatic Residential Garage Door Operators that take effect on January 1, 1993 or later.

§ 1211.21 Effective date.

Under the Consumer Product Safety Act, automatic residential garage door operators must certify that they comply with requirements of subpart A of this part. This certification requirement is currently in effect. The specific labeling requirement of the certification rule in this subpart will become effective for any automatic residential garage door operator manufactured on or after January 21, 1993.

§ 1211.22 Definitions.

The following definitions shall apply to this subpart:

(a) *Private labeler* means an owner of a brand or trademark which is used on an operator subject to the standard and which is not the brand or trademark of the manufacturer of the operator, provided the owner of the brand or trademark caused or authorized the operator to be so labeled and the brand or trademark of the manufacturer of such operator does not appear on the label.

(b) *Production lot* means a quantity of garage door operators from which certain operators are selected for testing prior to certifying the lot. All garage door operators in a lot must be essentially identical in those design, construction, and material features which relate to the ability of an operator to comply with the standard.

(c) *Reasonable testing program* means any test or series of tests which are identical or equivalent to, or more stringent than, the tests defined in the standard and which are performed on one or more garage door operators of the production lot for the purpose of determining whether there is reasonable assurance that the operators in that lot comply with the requirements of the standard.

§ 1211.23 Certification testing.

(a) *General.* Manufacturers and importers shall either test each individual garage door operator (or have it tested) or shall rely upon a reasonable testing program to demonstrate compliance with the requirements of the standard.

(b) *Reasonable testing program.* This paragraph provides guidance for establishing a reasonable testing program.

(1) A reasonable testing program for automatic residential garage door operators is one that provides reasonable assurance that the operators comply with the standard. Manufacturers and importers may define their own testing programs. Such reasonable testing programs may, at the option of manufacturers and importers, be conducted by an independent third party qualified to perform such testing programs.

(2) To conduct a reasonable testing program, the garage door operators should be divided into production lots. Sample operators from each production lot should be tested in accordance with the reasonable testing program so that there is a reasonable assurance that if the operators selected for testing meet the standard, all operators in the lot will meet the standard. Where there is a change in parts, suppliers of parts, or production methods that could affect the ability of the operator to comply with the requirements of the standard, the manufacturer should establish a new production lot for testing.

(3) The Commission will test for compliance with the standard by using the test procedures contained in the standard. However, a manufacturer's reasonable testing program may include either tests prescribed in the standard or any other reasonable test procedures.

(4) If the reasonable testing program shows that an operator does not comply with one or more requirements of

the standard, no operator in the production lot can be certified as complying until all non-complying operators in the lot have been identified and destroyed or altered by repair, redesign, or use of a different material or components to the extent necessary to make them conform to the standard. The sale or offering for sale of garage door operators that do not comply with the standard is a prohibited act and a violation of section 19(a) of the CPSA (15 U.S.C. 2068(a)), regardless of whether the operator has been validly certified.

§ 1211.24 Product certification and labeling by manufacturers.

(a) *Form of permanent label of certification.* Manufacturers (including importers) shall issue certificates of compliance for automatic residential garage door operators manufactured after the effective date of the standard in the form of a permanent label which can reasonable be expected to remain on the operator during the entire period the operator is capable of being used. Such labeling shall be deemed to be a ''certificate'' of compliance as that term is used in section 14 of the CPSA, 15 U.S.C. 2063.

(b) *Exception for UL listed operators.* The certification labeling requirement of paragraph (a) of this section shall be satisfied by display of the Underwriters Laboratories, Inc. (UL) logo or listing mark, and compliance with the date marking requirements of UL Standard for Safety 325, on both the operator system and its container. Operators displaying the UL logo or listing mark and complying with the UL standard are exempt from the requirements of paragraphs (c) and (d) of this section.

(c) *Contents of certification label.* The certification labels required by this section shall clearly and legibly contain the following information:

(1) The statement ''Meets CPSC _____ (insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements.''

(2) An identification of the production lot.

(d) *Placement of the label.* The label required by this section must be affixed to the operator. If the label is not immediately visible to the ultimate purchaser of the garage door operator prior to purchase because of packaging or other marketing practices, a second label that states: ''Meets CPSC _____ (insert 1993 or later date of applicable standard) garage door operator entrapment protection requirements,'' along with the month or week and year of manufacture must appear on the container or, if the container is not visible, on the promotional material used with the sale of the operator.

§ 1211.25 Product certification and labeling by importers.

(a) *General.* The importer of any automatic residential garage door operator subject to the standard in subpart A of this part must issue the certificate of compliance required by section 14(a) of the CPSA and §1211.24 of this subpart. If testing of each operator, or a reasonable testing program, meeting the requirements of this subpart has been performed by or for the foreign manufacturer of the product, the importer may rely in good faith on such tests to support the certificate of compliance provided the importer is a resident of the United States or has a resident agent in the United States and the records of such tests required by §1211.31 of subpart C of this part are maintained in the United States.

(b) *Responsibility of importer.* If the importer relies on tests by the foreign manufacturer to support the certificate of compliance, the importer bears the responsibility for examining the records supplied by the manufacturer to determine that the records of such tests appear to comply with §1211.31 of subpart C of this part.

Subpart C—Recordkeeping

SOURCE: 57 FR 60468, Dec. 21, 1992, unless otherwise noted.

§ 1211.30 Effective date.

The recordkeeping requirements in this subpart shall become effective on January 21, 1993, and shall apply to automatic residential garage door operators manufactured on or after that date.

§ 1211.31 Recordkeeping requirements.

(a) *General.* Every person issuing certificates of compliance for automatic residential garage door operators subject to the standard set forth in subpart A of this part shall maintain written records which show that the certificates are based on a test of each operator or on a reasonable testing program. The records shall be maintained for a period of at least three years from the date of certification of each operator or the last operator in each production lot. These records shall be available to any designated officer or employee of the Commission upon request in accordance with section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(b) *Content of records.* Records shall identify the operators tested and the production lot and describe the tests the operators were subjected to in sufficient detail so the tests may be replicated. Records shall also provide the results of the tests including the precise nature of any failures, and specific actions taken to address any failures.

(c) *Format for records.* The records required to be maintained by this section may be in any appropriate form or format that clearly provides the required information.

PART 1212—SAFETY STANDARD FOR MULTI-PURPOSE LIGHTERS

Subpart A—Requirements for Child-Resistance

Subpart B—Certification Requirements

Subpart C—Stockpiling

SOURCE: 64 FR 71872, Dec. 22, 1999, unless otherwise noted.

Subpart A—Requirements for Child-Resistance

AUTHORITY: 15 U.S.C. 2056, 2058, 2079(d).

§ 1212.1 Scope, application, and effective date.

This part 1212, a consumer product safety standard, prescribes requirements for multi-purpose lighters. These requirements are intended to make the multi-purpose lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all multi-purpose lighters, as defined in § 1212.2, that are manufactured in the United States, or imported, on or after December 22, 2000.

§ 1212.2 Definitions.

As used in this part 1212:

(a)(1) Multi-purpose lighter, (also known as grill lighter, fireplace lighter, utility lighter, micro-torch, or gas match, etc.) means: A hand-held, flame-producing product that operates on fuel, incorporates an ignition mechanism, and is used by consumers to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, fuel-fired appliances or devices, or pilot lights, or for uses such as soldering or brazing. Some multi-purpose lighters have a feature that allows for hands-free operation.

(2) The following products are not multi-purpose lighters:

(i) Devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210).

(ii) Devices containing more than 10 oz. of fuel.

(iii) Matches.

(b) *Successful operation* means one signal of any duration from a surrogate multi-purpose lighter within either of the two 5-minute test periods specified in § 1212.4(f).

(c)(1) *Surrogate multi-purpose lighter* means a device that

(i) Approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child resistance (including operation and the force(s) required for operation), within reasonable manufacturing tolerances, to, a multi-purpose lighter intended for use by consumers,

(ii) Has no fuel,

(iii) Does not produce a flame, and

(iv) produces an audible, or audible and visual, signal that will be clearly discernible when the surrogate multi-purpose lighter is activated in each manner that would produce a flame in a fueled production multi-purpose lighter.

(2) This definition does not require a multi-purpose lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a multi-purpose lighter without fuel as a surrogate multi-purpose lighter if a distinct audible signal, such as a ''click,'' can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production multi-purpose lighter without the signal. But see §1212.4(f)(1).

(d) *Child-resistant mechanism* means the mechanism of a multi-purpose lighter that makes the lighter resist successful operation by young children, as specified in §1212.3.

(e) *Model* means one or more multi-purpose lighters from the same manufacturer or importer that do not differ in design or other characteristics in any manner that may affect child resistance. Lighter characteristics that may affect child resistance include, but are not limited to, size, shape, case material, and ignition mechanism (including child-resistant features).

§1212.3 Requirements for multi-purpose lighters.

(a) A multi-purpose lighter subject to this part 1212 shall be resistant to successful operation by at least 85% of the child-test panel when tested in the manner prescribed by §1212.4.

(b) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 must:

(1) Operate safely when used in a normal and convenient manner,

(2) Comply with this §1212.3 for the reasonably expected life of the lighter,

(3) Not be easy to deactivate or prevent from complying with this §1212.3.

(4) Except as provided in paragraph (b)(5) of this section, automatically reset when or before the user lets go of the lighter.

(5) The child-resistant mechanism of a multi-purpose lighter subject to this part 1212 that allows hands-free operation must:

(i) Require operation of an additional feature (e.g., lock, switch, etc.) after a flame is achieved before hands-free operation can occur;

(ii) Have a manual mechanism for turning off the flame when the hands-free function is used; and either

(iii) Automatically reset when or before the user lets go of the lighter when the hands-free function is not used; or

(iv) Automatically reset when or before the user lets go of the lighter after turning off the flame when the hands-free feature is used.

§1212.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a multi-purpose lighter is resistant to successful operation by children uses a panel of children to test a surrogate multi-purpose lighter representing the production multi-purpose lighter. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of §1212.4(f).

(3) The children for the test panel shall live within the United States.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30±2 children (20 ±1 males; 10±1 females) 42 through 44 months old;

(ii) 40±2 children (26±1 males; 14±1 females) 45 through 48 months old;

(iii) 30±2 children (20±1 males; 10±1 females) 49 through 51 months old.

NOTE TO PARAGRAPH (a)(4): To calculate a child's age in months: Subtract the child's birth date from the test date. The following calculation shows how to determine the age of the child at the time of the test. Both

dates are expressed numerically as Month-Day-Year.

Example: Test Date (*e.g.*, 8/3/94) minus Birth Date—(*e.g.*, 6/23/90). Subtract the number for the year of birth from the number for the year of the test (*i.e.*, 94 minus 90 = 4). Multiply the difference in years by 12 months (*i.e.*, 4 years × 12 months = 48 months). Subtract the number for the month of the birth date from the number of the month of the test date (*i.e.*, 8 minus 6 = 2 months). Add the difference in months obtained above to the number of months represented by the difference in years described above (48 months + 2 months = 50 months). If the difference in days is greater than 15 (*e.g.*, 16, 17 . . .), add 1 month. If the difference in days is less than −15 (*e.g.*, −16, −17), subtract 1 month (*e.g.*, 50 months−1 month = 49 months). If the difference in days is between −15 and 15 (*e.g.*, −15, −14, . . . 14, 15), do not add or subtract a month.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate multi-purpose lighter shall participate.

(6) Two children at a time shall participate in testing of surrogate multi-purpose lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate multi-purpose lighter. No child shall participate in both surrogate multi-purpose lighter testing and either surrogate cigarette lighter testing or child-resistant package testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate multi-purpose lighters shall be tested within the United States at 5 or more test sites throughout the geographical area for each 100-child panel if the sites are the customary nursery schools or day care centers of the participating children. No more than 20 children shall be tested at each site. In the alternative, surrogate multi-purpose lighters may be tested within the United States at one or more central locations, provided the participating children are drawn from a variety of geographical locations.

(2) Testing of surrogate multi-purpose lighters shall be conducted in a room that is familiar to the children on the test panel (for example, a room the children frequent at their customary nursery school or day care center). If the testing is conducted in a room that initially is unfamiliar to the children (for example, a room at a central location), the tester shall allow at least 5 minutes for the children to become accustomed to the new environment before starting the test. The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate multi-purpose lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate multi-purpose lighters. The children shall be seated side by side in chairs approximately 6 inches apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be ''child size.''

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from the 100-child test panel (20±2 children each for 5 testers and 17±2 children each for 6 testers).

NOTE: When a test is initiated with five testers and one tester drops out, a sixth tester may be added to complete the testing. When a test is initiated with six testers and one tester drops out, the test shall be completed using the five remaining testers. When a tester drops out, the requirement for each tester to test an approximately equal number of children does not apply to that tester. When testing is initiated with five testers, no tester shall test more than 19 children until it is certain that the test can be completed with five testers.

(c) *Surrogate multi-purpose lighters.* (1) Six surrogate multi-purpose lighters shall be used for each 100-child panel. The six multi-purpose lighters shall represent the range of forces required for operation of multi-purpose lighters intended for use. All of these surrogate

multi-purpose lighters shall have the same visual appearance, including color. The surrogate multi-purpose lighters shall be labeled with sequential numbers beginning with the number one. The same six surrogate multi-purpose lighters shall be used for the entire 100-child panel. The surrogate multi-purpose lighters may be used in more than one 100-child panel test. The surrogate multi-purpose lighters shall not be damaged or jarred during storage or transportation. The surrogate multi-purpose lighters shall not be exposed to extreme heat or cold. The surrogate multi-purpose lighters shall be tested at room temperature. No surrogate multi-purpose lighter shall be left unattended.

(2) Each surrogate multi-purpose lighter shall be tested by an approximately equal number of children in a 100-child test panel (17±2 children).

NOTE: If a surrogate multi-purpose lighter is permanently damaged, testing shall continue with the remaining multi-purpose lighters. When a multi-purpose lighter is dropped out, the requirement that each multi-purpose lighter be tested by an approximately equal number of children does not apply to that lighter.

(3) Before each 100-child panel is tested, each surrogate multi-purpose lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production multi-purpose lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child resistance to verify that they are within reasonable operating tolerances for the corresponding production multi-purpose lighter.

(5) Before and after testing surrogate multi-purpose lighters with each child, each surrogate multi-purpose lighter shall be operated outside the presence of any child participating in the test to verify that it produces a signal. If the surrogate multi-purpose lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate multi-purpose lighter does not produce a signal when it is operated after the test, the results for the preceding test with that multi-purpose lighter shall be eliminated. An explanation shall be recorded on the data collection record. The multi-purpose lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate multi-purpose lighter at any time (either verbally or with body language such as facial expressions), unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of multi-purpose lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate multi-purpose lighter for a period of approximately one minute, the tester shall encourage the child to try by saying ''keep trying for just a little longer.''

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say ''that's right—never touch a real lighter—but your [parent, etc.] said it was OK for you to try to make a noise with this special lighter because it can't hurt you.''

(6) The children in a pair being tested may encourage each other to operate the surrogate multi-purpose lighter and may tell or show each other how to operate it. (This interaction is not considered to be disruption as described in paragraph (e)(2) of this section.) However, neither child shall be allowed to touch or operate the other child's multi-purpose lighter. If one child takes the other child's surrogate multi-purpose lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the

tester shall say ''No. He (she) has to try to do it himself (herself).''

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than 1 minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate multi-purpose lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say ''I have a special lighter that will not make a flame. It makes a noise like this.'' Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate multi-purpose lighter, so that the surrogate multi-purpose lighter cannot be seen by the child, and shall operate the surrogate multi-purpose lighter once to produce its signal. The tester shall say ''Your parents said it is OK for you to try to make that noise with your lighter.'' The tester shall place a surrogate multi-purpose lighter in each child's hand and say ''now you try to make a noise with your lighter. Keep trying until I tell you to stop.''

NOTE: For multi-purpose lighters with an ''off/on'' switch, the surrogate lighter shall be given to the child with the switch in the ''on,'' or unlocked, position.

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate multi-purpose lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say ''that's a spark—it won't hurt you—try to make a noise with your lighter.'' If any child successfully operates the surrogate multi-purpose lighter during this first 5-minute period, the lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate multi-purpose lighter during the 5-minute period specified in §1212.4(f) (3), the adult tester shall demonstrate the operation of the surrogate multi-purpose lighter. To conduct the demonstration, secure the children's full attention by saying ''Okay, give me your lighter(s) now.'' Take the surrogate multi-purpose lighters and place them on the table in front of you out of the children's reach. Then say, ''I'll show you how to make the noise with your lighters. First I'll show you with (child's name) lighter and then I'll show you with (child's name) lighter.'' Pick up the first child's surrogate multi-purpose lighter. Hold the lighter approximately 2 feet in front of the children at their eye level. Hold the surrogate multi-purpose lighter in a comfortable operating position in one hand so both children can see the operation of the child-resistant mechanism and the ignition mechanism during each demonstration. Say ''now watch the lighter.'' Look at each child to verify that they are both looking at the lighter. Operate the multi-purpose lighter one time in a normal manner according to the manufacturer's instructions. Do not exaggerate operating movements. Do not verbally describe the lighter's operation. Place the first child's lighter back on the table in front of you and pick up the second child's lighter. Say, ''Okay, now watch this lighter.'' Repeat the demonstration as described above using the second child's multi-purpose lighter.

NOTE TO PARAGRAPH (f)(3): The demonstration is conducted with each child's lighter, even if one child has successfully operated the lighter. Testers shall conduct the demonstration in a uniform manner, including the words spoken to the children, the way the multi-purpose lighter is held and operated, and how the tester's hand and body is

oriented to the children. All testers must be able to operate the surrogate multi-purpose lighters using only appropriate operating movements in accordance with the manufacturer's instructions. If any of these requirements are not met during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate multi-purpose lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate multi-purpose lighter. After the demonstrations, give the same surrogate multi-purpose lighter back to each child who did not successfully operate the surrogate multi-purpose lighter in the first 5 minutes by placing the multi-purpose lighter in the child's hand. Say ''Okay, now you try to make the noise with your lighter(s)—keep trying until I tell you to stop.'' If any child successfully operates the surrogate multi-purpose lighter during this period, the surrogate multi-purpose lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. If the other child has not yet successfully operated the surrogate multi-purpose lighter, the tester shall ask the successful child to remain until the other child is finished.

NOTE: Multi-purpose lighters with an on/off switch shall have the switch returned to the position the child left it at the end of the first 5-minute test period before returning the lighter to the child.

(5) At the end of the second 5-minute test period, take the surrogate multi-purpose lighter from any child who has not successfully operated it.

(6) After the test is over, ask the children to stand next to you. Look at the children's faces and say: ''These are special lighters that don't make fire. Real lighters can burn you. Will you both promise me that if you find a real lighter you won't touch it and that you'll tell a grownup right away?'' Wait for an affirmative response from each child; then thank the children for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate multi-purpose lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to a parent or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters or matches, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate multi-purpose lighter, the notification shall state that the child was able to operate the child-resistant multi-purpose lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the multi-purpose lighters, so that the tester's full attention is on the children during the test period. If actual testing is videotaped, the camera shall be stationary and shall be operated remotely in order to avoid distracting the children. Any photographs shall be taken after actual testing and shall simulate actual test procedure(s) (for example, the demonstration). The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month).

(4) The number of the multi-purpose lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, and the name of the site).

(7) The name of the tester who conducted the test.

(8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(10) For a single pair of children from each 100-child test panel, photograph(s) or video tape to show how the multi-purpose lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration.

(h) *Evaluation of test results and acceptance criterion*. To determine whether a surrogate multi-purpose lighter resists operation by at least 85% of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered to be resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate multi-purpose lighter, the test results are inconclusive, and the surrogate multi-purpose lighter shall be tested with a second 100-child test panel in accordance with this §1212.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate multi-purpose lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85% of the child test panel, and no further testing is conducted. (2)(i) If additional testing of the surrogate multi-purpose lighter is required by paragraph (h)(1) of this section, conduct the test specified by this §1212.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate multi-purpose lighter shall be considered resistant to successful operation by at least 85% of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate multi-purpose lighter, the multi-purpose lighter represented by the surrogate shall be considered not resistant to successful operation by 85% of the child test panel, and no further testing is conducted.

(ii) Thus, for the first panel of 100 children, the surrogate passes if there are 0–10 successful operations by the children; the surrogate fails if there are 19 or greater successful operations; and testing is continued if there are 11–18 successes. If testing is continued with a second panel of children, the surrogate passes if the combined total of the successful operations of the two panels is 30 or less, and it fails if there are 31 or more.

§ 1212.5 Findings.

(a) Before issuing a final rule, the Consumer Product Safety Act (CPSA), 15 U.S.C. 2058(f)(1), requires the Commission to consider and make appropriate findings for inclusion in the rule with respect to:

(1) The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(2) The approximate number of consumer products, or types or classes thereof, subject to such rule;

(3) The need of the public for the consumer products subject to such rule, and the probable effect of such rule, upon the utility, cost, or availability of such products to meet such need; and

(4) Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety

(b) The CPSA, 15 U.S.C. 2058(f)(3), also requires the Commission to make the following findings before it promulgates a rule, and to include such findings in the rule:

(1) That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(2) That the promulgation of the rule is in the public interest;

(3) That the benefits expected from the rule bear a reasonable relationship to its costs; and

(4) That the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

(c) The required findings are included as appendix A to this part 1212.

Subpart B—Certification Requirements

AUTHORITY: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

§ 1212.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1212 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Multi-purpose lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1212.12 Certificate of compliance.

(a) *General requirements*—(1) *Manufacturers (including importers).* Manufacturers of any multi-purpose lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1212.13, 1212.14, and 1212.16. Manufacturers must also label each multi-purpose lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1212.15 and 1212.17. For purposes of this requirement, an importer of multi-purpose lighters shall be considered the ''manufacturer.''

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the multi-purpose lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of multi-purpose lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* (i) If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that:

(A) The importer is a resident of the United States or has a resident agent in the United States and

(B) The records are in English and the records and the surrogate multi-purpose lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1212.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1212.17(a)(3).

(ii) The importer is responsible for ensuring that:

(A) The foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1212.14–1212.16),

(B) The records provide a reasonable assurance that all multi-purpose lighters imported comply with the standard (§ 1212.13(b)(1)),

(C) The records exist in English (§ 1212.17(a)),

(D) The importer knows where the required records and multi-purpose lighters are located and that records required to be located in the United States are located there,

(E) Arrangements have been made so that any records required to be kept in the United States will be provided to

the Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1212.17(a)), and

(F) The information required by § 1212.17(b) to be provided to the Commission's Office of Compliance has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product ''complies with the Consumer Product Safety Standard for Multi-purpose lighters (16 CFR part 1212)'',

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (b)(2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each multi-purpose lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 31 days, during which the multi-purpose lighter was manufactured.

(2) An identification of the manufacturer of the multi-purpose lighter, unless the multi-purpose lighter bears a private label. If the multi-purpose lighter bears a private label, it shall bear a code mark or other label that will permit the seller of the multi-purpose lighter to identify the manufacturer to the purchaser upon request.

§ 1212.13 Certification tests.

(a) *General.* As explained in § 1212.11 of this subpart, certificates of compliance required by section 14(a) of the CPSA, 15 U.S.C. 2063(a), must be based on a reasonable testing program.

(b) *Reasonable testing programs*—(1) *Requirements.* (i) A reasonable testing program for multi-purpose lighters is one that demonstrates with a high degree of assurance that all multi-purpose lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1212.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any multi-purpose lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include:

(A) Qualification tests, which must be performed on surrogates of each model of multi-purpose lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1212.14) and

(B) Production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1212.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all multi-purpose lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each multi-purpose lighter or multi-purpose lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1212.17 of this subpart.

§ 1212.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of multi-purpose lighters distributes multi-purpose lighters in commerce in the United States, surrogate multi-purpose lighters of each model shall be tested in accordance with § 1212.4 to ensure that all such multi-purpose lighters comply with the standard. However, if a manufacturer has tested one model of multi-purpose

lighter, and then wishes to distribute another model of multi-purpose lighter that differs from the first model only by differences that would not have an adverse effect on child resistance, the second model need not be tested in accordance with §1212.4.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could adversely affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed multi-purpose lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a multi-purpose lighter design after it has been in production, this may be done by following the testing procedures at §1212.4.

§1212.15 Specifications.

(a) *Requirement.* Before any multi-purpose lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate multi-purpose lighters used for qualification testing under §1212.14 are described in a written product specification. (Section 1212.4(c) requires that six surrogate multi-purpose lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the multi-purpose lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the multi-purpose lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information, including, but not limited to, model names or numbers, necessary to adequately describe the multi-purpose lighters and any child-resistant features.

§1212.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of multi-purpose lighters subject to the standard as they are manufactured, to demonstrate that the multi-purpose lighters meet the specifications, required under §1212.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other multi-purpose lighters produced during the interval will meet the standard.

(c) *Test failure*—(1) *Sale of multi-purpose lighters.* If any test yields results which indicate that any multi-purpose lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of multi-purpose lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the multi-purpose lighters or perform additional tests to ensure that only complying multi-purpose lighters are distributed in commerce. Multi-purpose lighters from other production intervals having test results showing that multi-purpose lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all multi-purpose lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all multi-purpose lighters produced after the corrective action will comply with the standard. If the corrective action changes the

product from the surrogate used for qualification testing in a manner that could adversely affect its child-resistance, the multi-purpose lighter must undergo new qualification tests in accordance with § 1212.14.

§ 1212.17 Recordkeeping and reporting.

(a) Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (a)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, photograph(s) or a video tape for a single pair of children from each 100-child test panel to show how the lighter was held in the tester's hand, and the orientation of the tester's body and hand to the children, during the demonstration, the dates of the tests, the data required by § 1212.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1212.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualifications tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1212.15 shall be kept for 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Office of Compliance, Consumer Product Safety Commission, 4330 East-West Highway, Room 610, Bethesda, Maryland 20814–4408. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested (including a

description of the point in the operation at which the surrogate will signal operation—e.g., the distance by which a trigger must be moved), the specification of the surrogate lighter required by §1212.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) of this section are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1212.18 Refusal of importation.

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1212. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart, or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard or for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product either fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

AUTHORITY: 15 U.S.C. 2058(g)(2), 2065(b), 2079(d)

§ 1212.20 Stockpiling.

(a) *Definition.* ''Stockpiling'' means to manufacture or import a product that is subject to a consumer product safety rule between the date of issuance of the rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base period.* For purposes of this rule, ''base period'' means the 1-year period ending December 21, 1999.

(c) *Prohibited act.* Manufacturers and importers of multi-purpose lighters shall not manufacture or import such lighters that do not comply with the requirements of this part between December 22, 1999 and December 22, 2000, at a rate that is greater than the rate of production or importation during the base period plus 20 per cent of that rate.

(d) *Reporting and recordkeeping requirements.* All firms and persons who make or import multi-purpose lighters, after the date of publication of this rule, that do not meet the requirements of this standard, shall supply the Commission's Office of Compliance with:

(1) Supporting information to establish the number of multi-purpose lighters made or imported during the base period. This information shall be submitted by January 21, 2000.

(2) Supporting information to establish the number of lighters made or imported during the year following publication of the final rule. This information shall be submitted within 10 days

of the end of each calendar month, for lighters shipped within that month.

(3) Supporting information shall be sufficient to identify the manufacturer or importer, the party to which the lighters were sold, the destination of the lighters, and shall include copies of relevant invoices and importation documents.

APPENDIX A TO PART 1212—FINDINGS UNDER THE CONSUMER PRODUCT SAFETY ACT

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule. Because the findings are required to be published in the rule, they reflect the information that was available to the Consumer Product Safety Commission (''CPSC'' or ''Commission'') when the standard was issued on December 22, 1999.

A. *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with multi-purpose lighters. The Commission has identified 196 fires that occurred from 1995 through 1998 that were started by children under age 5 playing with multi-purpose lighters. These fires resulted in a total of 35 deaths and 81 injuries. Fire-related injuries include thermal burns—many of high severity—as well as anoxia and other, less serious injuries. The societal costs of these fires is estimated to include $175 million in deaths, $13.7 million in injuries, and over $5 million in property damage. Because these data are from known fires rather than national estimates, the extent of the total problem may be greater. Fires started by children under age 5 are those which the standard would most effectively reduce.

B. *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as multi-purpose lighters, that are defined in §1212.2(a) of 16 CFR part 1212. This definition includes products that are referred to as micro-torches. Multi-purpose lighters may use any fuel and may be refillable or non-refillable. Approximately 21 million multi-purpose lighters are expected to be sold to consumers in the U.S. during 1999. Multi-purpose lighters manufactured in the United States, or imported, on or after December 22, 2000 will be required to meet child-resistance requirements. The following products are not multi-purpose lighters: devices intended primarily for igniting cigarettes, cigars, and pipes, whether or not such devices are subject to the requirements of the Safety Standard for Cigarette Lighters (16 CFR part 1210); devices that contain more than 10 oz. of fuel; and matches.

C. *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use multi-purpose lighters primarily to ignite items such as candles, fuel for fireplaces, charcoal or gas-fired grills, camp fires, camp stoves, lanterns, or fuel-fired appliances or devices or their pilot lights.

1. There will be several types of costs associated with the rule. Manufacturers would have to devote some resources to the development or modification of technology to produce child-resistant multi-purpose lighters. Before being marketed, the lighters must be tested and certified to the new standard. It is also possible that manufacturing child-resistant lighters may require more labor or material than non-child-resistant lighters.

2. Manufacturers will have to modify their existing multi-purpose lighters to comply with the rule. In general, costs that manufacturers would incur in developing, producing, and selling new complying lighters include the following:

• Research and development toward finding the most promising approaches to improving child resistance, including building prototypes and surrogate lighters for preliminary child panel testing;

• Retooling and other production equipment changes required to produce more child-resistant multi-purpose lighters, beyond normal periodic changes made to the plant and equipment;

• Labor and material costs of the additional assembly steps, or modification of assembly steps, in the manufacturing process;

• The additional labeling, recordkeeping, certification, testing, and reporting that will be required for each new model;

• Various administrative costs of compliance, such as legal support and executive time spent at related meetings and activities; and

• Lost revenue if sales are adversely affected.

3. Industry sources have not been able to provide firm estimates of these costs. One major manufacturer has introduced a child-resistant multi-purpose lighter. However, because that company did not previously manufacture a non-child-resistant lighter, it was unable to estimate the incremental cost of developing and manufacturing child-resistant multi-purpose lighters.

4. Assuming that there are 20 manufacturers and that each invests an average of $2 million to develop and market complying lighters, the total industry cost for research development, retooling, and compliance testing would be approximately $40 million. If

amortized over a period of 10 years, and assuming a modest 1% sales growth each year, the average of these costs would be about $0.23 per unit. For a manufacturer with a large market share (i.e., selling several million units or more a year) the cost per unit of the development costs could be lower than the estimated $0.23 per unit, even at the high end of the estimates. On the other hand, for manufacturers with a small market share, the per-unit development costs would be greater. Some manufacturers with small market shares may even drop out of the market (at least temporarily) or delay entering the market.

5. In addition to the research, development, retooling, and testing costs, material and labor costs are likely to increase. For example, additional labor will be required to add the child-resistant mechanism to the lighter during assembly. Additional materials may also be needed to produce the child-resistant mechanism. While CPSC was unable to obtain reliable estimates, some industry sources indicated that they believed that these costs would be relatively low, probably less than $0.25 per unit.

6. Multi-purpose lighters will also be required to have a label that identifies the manufacturer and the approximate date of manufacture. However, virtually all products are already labeled in some way. Since the requirement in the rule allows substantial flexibility to the manufacturer in terms of things such as color, size, and location, this requirement is not expected to increase the costs significantly.

7. Certification and testing costs include costs of producing surrogate lighters; conducting child panel tests; and issuing and maintaining records for each model. The largest component of these costs is believed to be building surrogates and conducting child panel tests, which, based on CPSC experience, may cost about $25,000 per lighter model. Administrative expenses associated with the compliance and related activities are difficult to quantify, since many such activities associated with the rule would probably be carried out anyway and the marginal impact of the recommended rule is probably slight.

8. Multi-purpose lighters are sold in countries other than the United States. Some manufacturers may develop lighters that meet the requirements of the rule for distribution in the United States, but continue to distribute the current, non-child-resistant models in other countries. Thus, some manufacturers may incur the incremental costs associated with producing multiple lines of similar products. These costs could include extra administrative costs required to maintain different lines and the incremental costs of producing different lines of similar products, such as using different molds or different assembly steps. These costs would, however, be mitigated if similar or identical standards were adopted by other countries. In total, the rule will likely increase the cost of manufacturing multi-purpose lighters by about $0.48 per unit.

9. At the present time, one manufacturer has about 80–90% of the market for multi-purpose lighters. The other manufacturers, importers, and private labelers divide up the remaining 10–20% of the market. Thus, there is already a very high degree of concentration in the market. Even so, at least two manufacturers have already entered the market with models that are believed to meet the requirements of the rule and at least one other firm is believed to be actively developing a child-resistant lighter. Therefore, the rule is not expected to have any significant impact on competition. Moreover, other firms are expected to enter the market for multi-purpose lighters, and thereby increase competition, as the market expands. Firms that market child-resistant multi-purpose lighters before the standard's effective date may gain an initial competitive advantage. However, any differential impact is likely to be slight and short-lived. Other manufacturers can be expected to have child-resistant multi-purpose lighters developed and ready to market before or soon after the rule goes into effect.

D. *Impact on consumers.* Aside from increased safety, the rule is likely to affect consumers in two ways. First, the increased cost for producing the child-resistant models will likely result in higher retail prices for multi-purpose lighters. Second, the utility derived from child-resistant lighters may be decreased if complying lighters are less easy to operate.

1. Assuming a 100% markup over the incremental cost to manufacturers (estimated at $0.48/unit), the rule may be expected to increase the retail price of multi-purpose lighters by $0.96 per unit. The per-unit price increase for micro-torches and other high-end multi-purpose lighters may be higher due to the smaller numbers of such lighters produced.

2. The utility that consumers receive from multi-purpose lighters may be reduced if the rule makes the lighters more difficult to operate. This could result in some consumers switching to substitute products, such as matches. However, as with child-resistant cigarette lighters, the increased difficulty of operating child-resistant multi-purpose lighters is expected to be slight. Moreover, even if some consumers do switch to other products, the risk of fire is not expected to increase significantly. Most cigarette lighters (one possible substitute) must already meet the same child-resistant standard as those applicable to multi-purpose lighters. Although consumers that switch to matches may increase the risk of child-play fires somewhat, matches seem to be inherently

more child resistant than are non-child-resistant multi-purpose lighters. Previously, the CPSC determined that non-child-resistant cigarette lighters were 1.4 times as likely as matches to be involved in child-play fires and 3.9 times as likely to be involved in a child-play death. Thus, even if some consumers did switch to using matches, the risk of child-play fires would still likely be less than if they continued to use non-child-resistant multi-purpose lighters.

3. The total societal costs of fires known to have been started during 1995 through 1998 by children under age 5 playing with multi-purpose lighters was approximately $194.2 million, or $48.6 million per year. This is probably an underestimate, since it only includes the cases of which CPSC is aware. During the same period, an estimated 20 million multi-purpose lighters were available for use each year. The societal costs of the fires started by young children attempting to operate multi-purpose lighters is, therefore, about $2.43 per lighter ($48.6 million ÷ 20 million lighters) per year. The rule is expected to reduce this cost by 75 to 84%. Therefore, the expected societal benefit of the rule in terms of reduced fires, deaths, injuries, and property damage is expected to be at least $1.82 per complying lighter sold.

4. As discussed above, the rule may increase the cost of manufacturing multi-purpose lighters by $0.48 and may increase the retail prices by as much as $0.96. Therefore, assuming that sales of multi-purpose lighters remain the same, the net benefit (benefits minus costs) of the rule to consumers is expected to be at least $0.86 per unit ($1.82—$0.96). Based on annual sales of approximately 20 million units per year, the rule would result in an annual net benefit to consumers at least $17.2 million (20 million × $0.86) annually.

5. The actual level of benefits observed could be higher if some multi-purpose lighters are stored with the on/off switch in the ''on'' position. If a significant number of consumers commonly store multi-purpose lighters with the switch on, the effective level of child resistance of multi-purpose lighters currently in use may be lower than indicated by CPSC's baseline testing. This would increase the effectiveness of the rule and the value of the net benefits.

E. *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety*. 1. The performance requirements of this part 1212 are based on the Commission's Safety Standard for Cigarette Lighters, 16 CFR part 1210. In developing that standard, the Commission considered the potential effects on competition and business practices of various aspects of the standard, and incorporated some burden-reducing elements into the standard.

2. One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to the requirements of the standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however. Although some of the largest firms may market some child-resistant multi-purpose lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the provisions of this part 1212 would not adequately reduce the unreasonable risk associated with multi-purpose lighters.

F. *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury*. The Commission's hazard data and regulatory analysis demonstrate that multi-purpose lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective (one year after publication of the final rule) will provide manufacturers and importers of most products adequate time to design, produce, and market safer multi-purpose lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with multi-purpose lighters.

G. *The benefits expected from the rule bear a reasonable relationship to its costs*. The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with multi-purpose lighters. The cost of these accidents, which is estimated to be greater than $48.6 million annually, will also be greatly reduced. The rule is expected to reduce this societal cost by 75–84%, or by greater than $36.5 million. The estimated annual costs to the public are expected to be less than $20 million. Therefore, substantial net benefits will accrue to consumers. Thus, the Commission finds that a reasonable relationship exists between the expected benefits and the expected costs of the standard.

H. *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated*. 1. The Commission incorporated a number of features from the cigarette lighter standard, 16 CFR part 1210, in order to minimize the potential burden of the rule on industry and consumers. The Commission

also considered alternatives involving different performance and test requirements and different definitions determining the scope of coverage among products. Alternatives that would be more burdensome to industry would have higher costs to consumers. Less burdensome alternatives would have lowered the risk-reduction benefits to consumers. No alternative has been identified that would result in a higher level of net benefits to consumers.

2. A less stringent acceptance criterion of 80% (rather than the standard's 85%) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90%) acceptance criterion was also considered. This higher performance level may not be commercially or technically feasible for many firms, however. The Commission believes that this more stringent alternative would have substantial adverse effects on manufacturing and competition, and would increase costs disproportionate to benefits. The Commission believes that the requirement that complying multi-purpose lighters not be operable by at least 85% of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

3. The standard becomes effective 12 months after it is issued December 22, 2000. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. Although most multi-purpose lighters sold in the U.S. could probably be made child-resistant within 6 months, the supply of some imported multi-purpose lighters would be disrupted. The 12-month period in the standard would minimize this potential effect, and would allow more time for firms to design, produce, and import complying multi-purpose lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of multi-purpose lighters for the U.S. market. A longer effective date was deemed unsuitable because it would unduly delay the lifesaving benefits of the standard and would penalize firms that have already begun to develop child-resistant multi-purpose lighters.

I. *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the potential benefits and costs of the standard and various alternatives. The standard provides substantial net benefits to society. Although certain alternatives to the final rule were estimated to also have net benefits to consumers, they would decrease the level of safety. Therefore, the Commission finds that the standard is in the public interest.

PART 1213—SAFETY STANDARD FOR ENTRAPMENT HAZARDS IN BUNK BEDS

Sec.

AUTHORITY: 15 U.S.C. 2056, 2058.

SOURCE: 64 FR 71899, Dec. 22, 1999, unless otherwise noted.

§1213.1 Scope, application, and effective date.

(a) *Scope, basis, and purpose.* This part 1213, a consumer product safety standard, prescribes requirements for bunk beds to reduce or eliminate the risk that children will die or be injured from being trapped between the upper bunk and the wall, in openings below guardrails, or in other structures in the bed.

(b) *Application and effective date.* The standard in this part applies to all bunk beds, except those manufactured only for institutional use, that are manufactured in the United States, or imported, on or after June 19, 2000. (Facilities intended for use by children under age 6 are not considered to be institutions.) Bunk beds intended for use by children are subject to the requirements in 16 CFR 1500.18(a)(18) and 16 CFR part 1513, and not to this part 1213. However, those regulations are substantively identical to the requirements in this part 1213.

§1213.2 Definitions.

As used in this part 1213:

Bed. See *Bunk bed.*

Bed end structure means an upright unit at the head and foot of the bed to which the side rails attach.

Bunk bed means a bed in which the underside of any foundation is over 30 inches (760 mm) from the floor.

Foundation means the base or support on which a mattress rests.

Guardrail means a rail or guard on a side of the upper bunk to prevent a sleeping occupant from falling or rolling out.

§ 1213.3 Requirements.

(a) *Guardrails.* (1) Any bunk bed shall provide at least two guardrails, at least one on each side of the bed, for each bed having the underside of its foundation more than 30 inches (760 mm) from the floor.

(2) One guardrail shall be continuous between each of the bed's end structures. ''Continuous'' means that any gap between the guardrail and end structure shall not exceed 0.22 inches (5.6 mm) (so as to not cause a finger entrapment hazard for a child).

(3) The other guardrail may terminate before reaching the bed's end structures, providing there is no more than 15 inches (380 mm) between either end of the guardrail and the nearest bed end structures.

(4) For bunk beds designed to have a ladder attached to one side of the bed, the continuous guardrail shall be on the other side of the bed.

(5) Guardrails shall be attached so that they cannot be removed without either intentionally releasing a fastening device or applying forces sequentially in different directions.

(6) The upper edge of the guardrails shall be no less than 5 inches (130 mm) above the top surface of the mattress when a mattress of the maximum thickness specified by the bed manufacturer's instructions is on the bed. This requirement does not prohibit a wall-side guardrail that terminates in a quarter-circle bend and attaches to the side rail of the upper bunk foundation.

(7) With no mattress on the bed, there shall be no openings in the structure between the lower edge of the uppermost member of the guardrail and the underside of the upper bunk's foundation that would permit passage of the wedge block shown in Figure 1 of this part when tested in accordance with the procedure at § 1213.4(a).

(b) *Bed end structures.* (1) The upper edge of the upper bunk end structures shall be at least 5 inches (130 mm) above the top surface of the mattress for at least 50 percent of the distance between the two posts at the head and foot of the upper bunk when a mattress and foundation of the maximum thickness specified by the manufacturer's instructions is on the bed.

(2) With no mattress on the bed, there shall be no openings in the end structures above the foundation of the upper bunk that will permit the free passage of the wedge block shown in Figure 1 when tested in accordance with the procedure at § 1213.4(b).

(3) When tested in accordance with § 1213.4(c), there shall be no openings in the end structures between the underside of the foundation of the upper bunk and upper side of the foundation of the lower bunk that will permit the free passage of the wedge block shown in Figure 1, unless the openings are also large enough to permit the free passage of a 9-inch (230-mm) diameter rigid sphere.

(4) All portions of the boundary of any opening required by §§ 1213.4(c)(1) and (2) to be probed by the wedge block of Figure 1, and that permits free passage of a 9-inch diameter sphere, must conform to the neck entrapment requirements of § 1213.4(c)(3).

§ 1213.4 Test methods.

(a) *Guardrails* (see § 1213.3(a)(6)). With no mattress on the bed, place the wedge block shown in Figure 1, tapered side first, into each opening in the bed structure below the lower edge of the uppermost member of the guardrail and above the underside of the upper bunk's foundation. Orient the block so that it is most likely to pass through the opening (*e.g.*, the major axis of the block parallel to the major axis of the opening) (''most adverse orientation''). Then gradually apply a 33-lbf (147–N) force in a direction perpendicular to the plane of the large end of the block. Sustain the force for 1 minute.

(b) *Upper bunk end structure* (see § 1213.3(b)(2)). Without a mattress or foundation on the upper bunk, place

the wedge block shown in Figure 1 into each opening, tapered side first, and in the most adverse orientation. Determine if the wedge block can pass freely through the opening.

(c) *Lower bunk end structure* (see §1213.3(b)(3)). (1) Without a mattress or foundation on the lower bunk, place the wedge block shown in Figure 1, tapered side first, into each opening in the lower bunk end structure in the most adverse orientation. Determine whether the wedge block can pass freely through the opening. If the wedge block passes freely through the opening, determine whether a 9-inch (230-mm) diameter rigid sphere can pass freely through the opening.

(2) With the manufacturer's recommended maximum thickness mattress and foundation in place, repeat the test in paragraph (c)(1) of this section.

(3) All portions of the boundary of any opening that is required to be probed by the wedge block of Figure 1 by paragraphs (c)(1) and (c)(2) of this section, and that permits free passage of a 9-inch diameter sphere, must satisfy the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this section addressing neck entrapment.

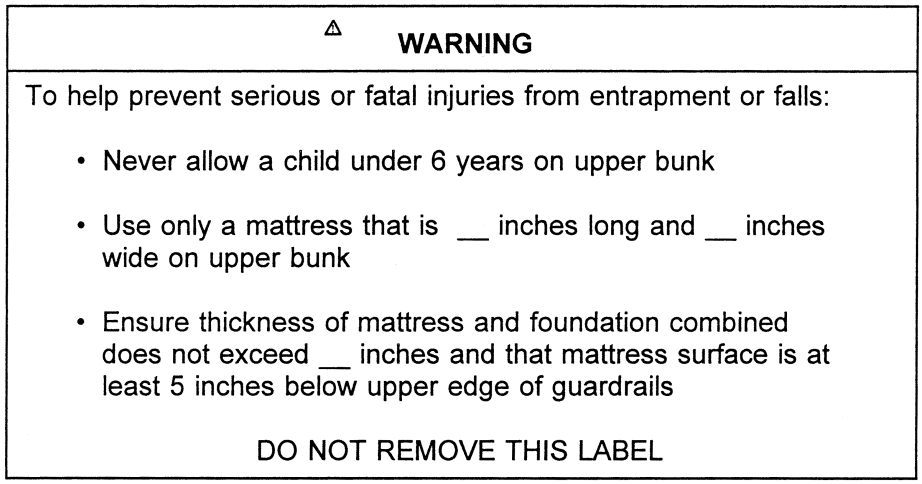
(i) Insert the ''A'' section of the test template shown in Figure 2 of this part into the portion of the boundary of the opening to be tested, with the plane of the template in the plane of the opening and with the centerline of the top of the template (as shown in Figure 2) aligned parallel to the centerline of the opening, until motion is stopped by contact between the test template and the boundaries of the opening (see Figure 3 of this part). By visual inspection, determine if there is simultaneous contact between the boundary of the opening and both sides of the ''A'' section of the template. If simultaneous contact occurs, mark the contact points on the boundary of the opening and conduct the additional test described in paragraph (c)(3)(ii) of this section.

(ii) To check the potential for neck entrapment, place the neck portion of the ''B'' section of the template into the opening, with its plane perpendicular to both the plane of the opening and the centerline of the opening (see Figure 4 of this part). If the neck portion of the ''B'' section of the template completely enters the opening (passes 0.75 inch or more beyond the points previously contacted by the ''A'' section of the template), the opening is considered to present a neck entrapment hazard and fails the test, unless its lower boundary slopes downward at 45° or more for the whole distance from the narrowest part of the opening the neck can reach to the part of the opening that will freely pass a 9-inch diameter sphere.

§1213.5 Marking and labeling.

(a) There shall be a permanent label or marking on each bed stating the name and address (city, state, and zip code) of the manufacturer, distributor, or retailer; the model number; and the month and year of manufacture.

(b) The following warning label shall be permanently attached to the inside of an upper bunk bed end structure in a location that cannot be covered by the bedding but that may be covered by the placement of a pillow.



§ 1213.6 Instructions.

Instructions shall accompany each bunk bed set, and shall include the following information.

(a) *Size of mattress and foundation.* The length and width of the intended mattress and foundation shall be clearly stated, either numerically or in conventional terms such as twin size, twin extra-long, etc. In addition, the maximum thickness of the mattress and foundation required for compliance with §1213.3(a)(5) and (b)(1) shall be stated.

(b) *Safety warnings.* The instructions shall provide the following safety warnings:

(1) Do not allow children under 6 years of age to use the upper bunk.

(2) Use guardrails on both sides of the upper bunk.

(3) Prohibit horseplay on or under beds.

(4) Prohibit more than one person on upper bunk.

(5) Use ladder for entering or leaving upper bunk.

(6) If the bunk bed will be placed next to a wall, the guardrail that runs the full length of the bed should be placed against the wall to prevent entrapment between the bed and the wall. (This applies only to bunk beds without two full-length guardrails.)

§ 1213.7 Findings.

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). These findings are contained in the appendix to this part 1213.

(a) The rule in this part (including its effective date of June 19, 2000 is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

[These findings are contained in the appendix to this part 1213.]

(b) Promulgation of the rule is in the public interest.

(c) Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.

(d) The benefits expected from the rule bear a reasonable relationship to its costs.

(e) The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

FIGURE 1 TO PART 1213—WEDGE BLOCK FOR TESTS IN §1213.4(a), (b) AND (c)

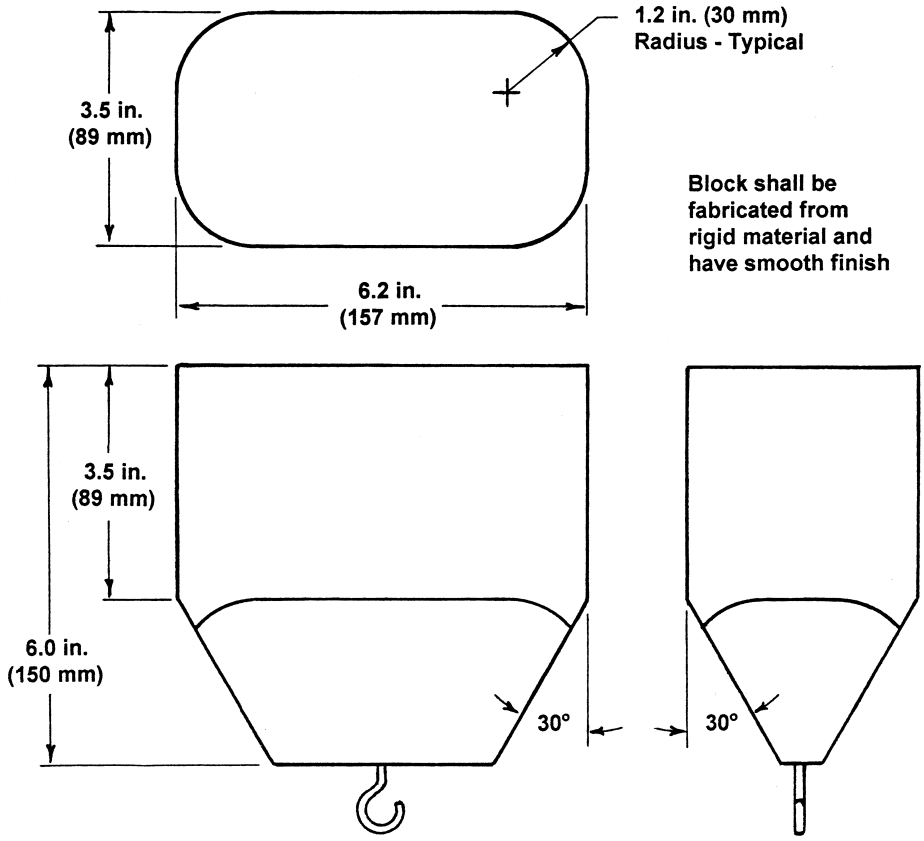
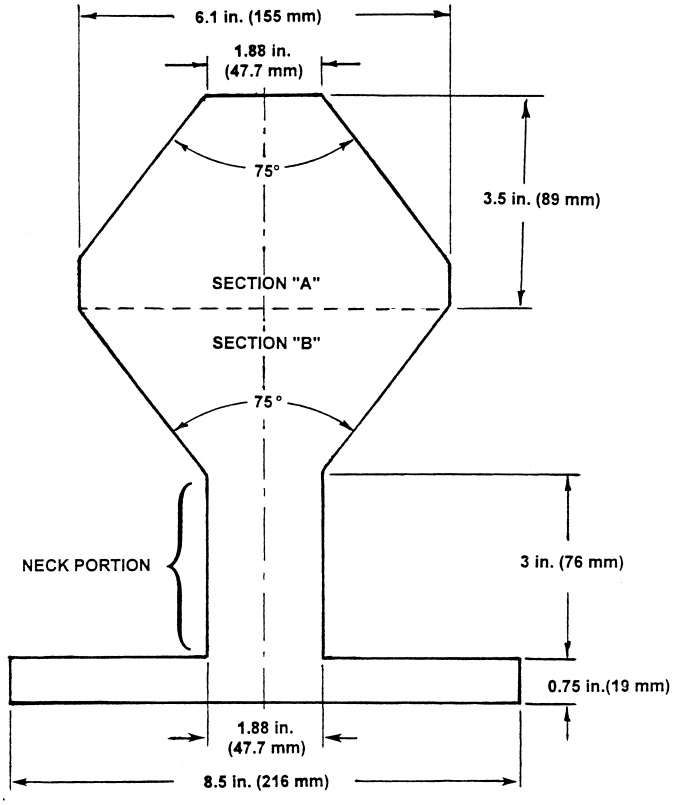


Figure 1 to Part 1213 - Wedge Block for Tests in § 1213.4(a), (b) and (c)

FIGURE 2 TO PART 1213—TEST TEMPLATE FOR NECK ENTRAPMENT



NOTE – Probe to be constructed from any rigid material 0.75 in. (19 mm) thick

Fig. 2 – Test Probe for Neck Entrapment

FIGURE 3 TO PART 1213—MOTION OF TEST TEMPLATE ARRESTED BY SIMULTANEOUS CONTACT WITH BOTH SIDES OF ''A'' SECTION AND BOUNDARIES OF OPENING

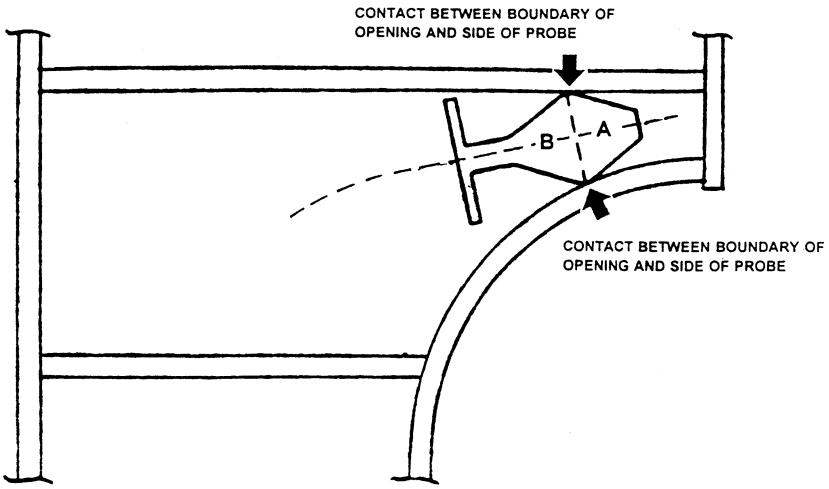


Fig. 3 – Motion of Test Probe Arrested by Simultaneous Contact With Both Sides of "A" Section of Probe and Boundaries of Opening

FIGURE 4 TO PART 1213—NECK PORTION OF ''B'' SECTION OF TEMPLATE ENTERS COMPLETELY INTO OPENING

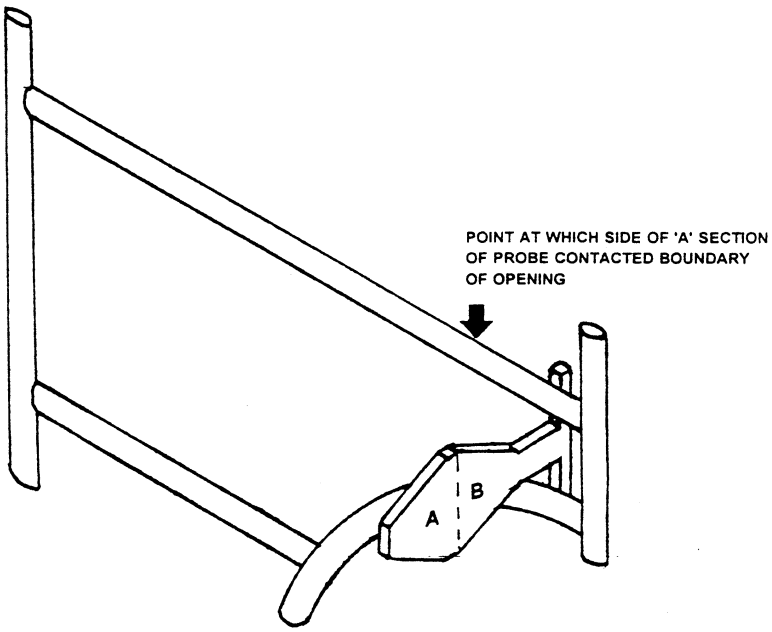


Fig 4 – Neck Portion of "B" Section of Probe Enters Completely into Opening

APPENDIX TO PART 1213—FINDINGS UNDER THE CONSUMER PRODUCT SAFETY ACT

The Consumer Product Safety Act requires that the Commission, in order to issue a standard, make the following findings and include them in the rule. 15 U.S.C. 2058(f)(3). Because of this, the facts and determinations in these findings apply as of the date the rule was issued, December 22, 1999.

A. *The rule in this part* (including its effective date of June 19, 2000) *is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.*

1. For a recent 9.6-year period, the CPSC received reports of 57 deaths of children under age 15 who died when they were trapped between the upper bunk of a bunk bed and the wall or when they were trapped in openings in the bed's structure. Over 96% of those who died in entrapment incidents were age 3 or younger. On average, averting these deaths is expected to produce a benefit to society with a present value of about $175 to $350 for each bed that otherwise would not have complied with one or more of the rule's requirements.

2. This increased safety will be achieved in two ways. First, all bunk beds will be required to have a guardrail on both sides of the bed. If the bed is placed against a wall, the guardrail on that side is expected to prevent a child from being entrapped between the bed and the wall. The guardrail on the wall side of the bed must extend continuously from one end to the other. Second, the end structures of the bed must be constructed so that, if an opening in the end structure is large enough so a child can slip his or her body through it, it must be large enough that the child's head also can pass through.

3. For the reasons discussed in paragraph D. of this appendix, the benefits of the

changes to bunk beds caused by this rule will have a reasonable relationship to the changes' costs. The rule addresses a risk of death, and applies primarily to a vulnerable population, children under age 3. The lifesaving features required by the rule are cost-effective and can be implemented without adversely affecting the performance and availability of the product. The effective date provides enough time so that production of bunk beds that do not already comply with the standard can easily be changed so that the beds comply. Accordingly, the Commission finds that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

B. *Promulgation of the rule is in the public interest.* For the reasons given in paragraph A. of this appendix, the Commission finds that promulgation of the rule is in the public interest.

C. *Where a voluntary standard has been adopted and implemented by the affected industry, that compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of the risk of injury; or it is unlikely that there will be substantial compliance with such voluntary standard.*

1. *Adequacy of the voluntary standard.* i. In this instance, there is a voluntary standard addressing the risk of entrapment in bunk beds. However, the rule goes beyond the provisions of the voluntary standard. First, it eliminates the voluntary standard's option to have an opening of up to 15 inches at each end of the wall-side guardrail. Second, it requires more of the lower bunk end structures to have entrapment protection. The voluntary standard protects against entrapment only within the 9-inch space immediately above the upper surface of the lower bunk's mattress. The mandatory standard extends this area of protection upward to the level of the underside of the upper bunk foundation. Both of these provisions, which are in the rule but not in the voluntary standard, address fatalities and, as noted in paragraph D of this appendix, have benefits that bear a reasonable relationship to their costs.

ii. Therefore, the Commission finds that compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk of entrapment injury or death.

2. *Substantial compliance.* i. Neither the CPSA nor the FHSA define ''substantial compliance.'' The March 3, 1999 Notice of Proposed Rulemaking summarized an interpretation of ''substantial compliance'' that the Office of General Counsel provided to the Commission. 64 Fed. Reg. 10245, 10248–49 (March 3, 1999). The Commission specifically invited public comment on that interpretation from ''all persons who would be affected by such an interpretation.'' *Id.* at 10249. The Commission received more than 20 comments on the interpretation.

ii. Having now considered all the evidence that the staff has presented, the comments from the public, and the legal advice from the Office of General Counsel, the Commission concludes that there is not ''substantial compliance'' with the ASTM voluntary standard for bunk beds within the meaning of the Consumer Product Safety Act and the Federal Hazardous Substances Act. See, *e.g.*, 15 U.S.C. 2058(f)(3)(D)(ii); 15 U.S.C. 1262(i)(2)(A)(ii). However, the Commission does not adopt a general interpretation of ''substantial compliance'' focusing on whether the level of compliance with a voluntary standard could be improved under a mandatory standard. Rather, the grounds for the Commission's decision focus on the specific facts of this rulemaking and are stated below.

iii. The legislative history regarding the meaning of ''substantial compliance'' indicates that the Commission should consider whether compliance is sufficient to eliminate or adequately reduce the risk of injury in a timely fashion and that, generally, compliance should be measured in terms of the number of complying products, rather than the number of manufacturers who are in compliance. *E.g.*, Senate Report No. 97–102, p. 14 (May 15, 1981); House Report No. 97–158, p. 11 (June 19, 1981); H. Conf. Rep. No. 97–208, 97th Cong., 1st Sess. 871, reprinted in 1981 U.S. Code Cong. & Admin. News 1010, 1233.

iv. Given this Congressional guidance, the Commission believes it appropriate to examine the number of conforming products as the starting point for analysis. However, the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define ''substantial compliance.'' Instead, the percentage must be viewed in the context of the hazard the product presents. Thus, the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

v. There are certain factors the agency considers before it initiates regulatory action, such as the severity of the potential injury, whether there is a vulnerable population at risk, and the risk of injury. See 16 CFR 1009.8. These and other factors also appropriately inform the Commission's decision regarding whether a certain level of conformance with a voluntary standard is substantial. In the light of these factors, industry's compliance rate with the voluntary standard for bunk beds is not substantial.

vi. In this case, the Commission deals with the most severe risk—death—to one of the most vulnerable segments of our population—infants and young children. While

the risk of death is not high, it exists whenever a young child is in a residence with a nonconforming bunk bed.

vii. Additionally, some products, such as hairdryers without shock protection devices, require some intervening action (dropping the hair dryer into water) to create the hazard. By contrast, deaths in bunk beds occur during the intended use of the product—a child rolling over in bed or climbing in or out of it—without any intervening action.

viii. The Commission must also consider that bunk beds have a very long product life, frequently being passed on to several families before being discarded. Thus, a number of children may be exposed to a bed during its useful life. Every noncomplying bed that poses an entrapment hazard presents the potential risk of death to any young child in the house. It is a risk that is hard for a parent to protect against, as children find their way onto these beds even if they are not put to sleep in them.

ix. Bunk beds are products that can be made relatively easily by very small companies, or even by a single individual. The Office of Compliance believes smaller entities will always present a compliance problem, because new manufacturers can enter the marketplace relatively easily and need little expertise to make a wooden bunk bed. The evidence seems to support the view that there will always be an irreducible number of new, smaller bunk bed manufacturers who will not follow the voluntary standard.

x. What constitutes substantial compliance is also a function of what point in time the issue is examined. In 1989, the Commission denied a petition for a mandatory bunk bed rule. At that time, industry was predicting that by April of 1989, 90% of all beds being manufactured would comply with the voluntary guidelines. But that was in the context of years of steadily increasing conformance and the hope that conformance would continue to grow and that deaths and near-misses would begin to decline. But the conformance level never grew beyond the projection for 1989 and deaths and near-misses have not dropped.

xi. Even with the existing compliance rate, the Commission is contemplating the prospect of perhaps 50,000 nonconforming beds a year (or more) entering the marketplace, with many beds remaining in use for perhaps 20 years or longer. Under these circumstances, a 10% rate of noncompliance is too high.

xii. It is now clear that the bunk bed voluntary standard has not achieved an adequate reduction of the unreasonable risk of death to infants and children in a timely fashion, and it is unlikely to do so. Accordingly, the Commission finds that substantial compliance with the voluntary standard for bunk beds is unlikely.

xiii. Products that present some or all of the following factors might not be held to as strict a substantial compliance analysis. Those which:

—Rarely or never cause death;
—Cause only less severe injuries;
—Do not cause deaths or injuries principally to a vulnerable segment of the population;
—Are not intended for children and which have no special attraction for children;
—Have a relatively short life span;
—Are made by a few stable manufacturers or which can only be made by specialized manufacturers needing a significant manufacturing investment to produce the product;
—Are covered by a voluntary standard which continues to capture an increasing amount of noncomplying products; or
—Require some additional intervening action to be hazardous.

xiv. And, in analyzing some other product, there could be other factors that would have to be taken into consideration in determining what level of compliance is adequate to protect the public. The tolerance for nonconformance levels has to bear some relationship to the magnitude and manageability of the hazard addressed.

xv. The Commission emphasizes that its decision is not based on the argument that a mandatory rule provides more powerful enforcement tools. If this were sufficient rationale, mandatory rules could always displace voluntary standards, and this clearly was not Congress's intent. But, with a mandatory standard, the necessity of complying with a mandatory federal regulation will be understandable to small manufacturers. State and local governments will have no doubt about their ability to help us in our efforts to locate these manufacturers.

D. *The benefits expected from the rule bear a reasonable relationship to its costs.*

1. *Bunk beds that do not comply with ASTM's requirements for guardrails.* The cost of providing a second guardrail for bunk beds that do not have one is expected to be from $15–40 per otherwise noncomplying bed. If, as expected, the standard prevents virtually all of the deaths it addresses, the present value of the benefits of this modification are estimated to be from $175–350 per otherwise noncomplying bed. Thus, the benefit of this provision is about 4–23 times its cost.

2. *Bunk beds that comply with ASTM's requirements for guardrails.* The voluntary standard allows up to a 15-inch gap in the coverage of the guardrail on the wall side of the upper bunk. Additional entrapment deaths are addressed by requiring that the wall-side guardrail be continuous from one end of the bed to the other. The estimated present value of the benefits of this requirement is $2.40 to $3.50 per otherwise noncomplying bed. The Commission estimates that

the materials cost to extend one guardrail an additional 30 inches (760 mm) will be less than the present value of the benefits of making the change. Further, the costs of any design changes can be amortized over the number the bunk beds manufactured after the design change is made. Thus, the costs of any design change will be nominal.

3. *Lower bunk end structures.* The Commission is aware of a death, involving entrapment in the end structures of the lower bunk, occurring in a scenario not currently addressed by the voluntary standard. This death would be addressed by extending the voluntary standard's lower bunk end structures entrapment provisions from 9 inches above the lower bunk's sleeping surface to the bottom of the upper bunk and by also including a test for neck entrapment in this area. The Commission expects the costs of this requirement to be design-related only, and small. Indeed, for some bunk beds, materials costs may decrease since less material may be required to comply with these requirements than is currently being used. Again, the design costs for these modifications to the end structures can be amortized over the subsequent production run of the bed.

4. *Effect on market.* The small additional costs from any wall-side guardrails and end-structure modifications are not expected to affect the market for bunk beds, either alone or added to the costs of compliance to ASTM's provisions.

5. *Conclusion.* The Commission has no reason to conclude that any of the standard's requirements will have costs that exceed the requirement's expected benefits. Further, the total effect of the rule is that the benefits of the rule will exceed its costs by about 4–23 times. Accordingly, the Commission concludes that the benefits expected from the rule bear a reasonable relationship to its costs.

E. *The rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.* 1. The Commission considered relying on the voluntary standard, either alone or combined with a third-party certification program. However, the Commission concluded that a mandatory program will be more effective in reducing these deaths, each of which is caused by an unreasonable risk of entrapment. Accordingly, these alternatives would not prevent or adequately reduce the risk of injury for which the rule is being promulgated.

2. The Commission also considered a suggestion that bunk beds that conformed to the voluntary standard be so labeled. Consumers could then compare conforming and nonconforming beds at the point of purchase and make their purchase decisions with this safety information in mind. This, however, would not necessarily reduce injuries, because consumers likely would not know there is a voluntary standard and thus would not see any risk in purchasing a bed that was not labeled as conforming to the standard.

3. For the reasons stated in this appendix, no alternatives to a mandatory rule have been suggested that would adequately reduce the deaths caused by entrapment of children in bunk beds. Accordingly, the Commission finds that this rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury for which the rule is being promulgated.

PART 1215—SAFETY STANDARD FOR INFANT BATH SEATS

Sec.

AUTHORITY: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 75 FR 31698, June 4, 2010, unless otherwise noted.

§ 1215.1 Scope.

This part 1215 establishes a consumer product safety standard for infant bath seats manufactured or imported on or after December 6, 2010.

§ 1215.2 Requirements for infant bath seats.

Each infant bath seat shall comply with all applicable provisions of ASTM F1967–13, Standard Consumer Safety Specification for Infant Bath Seats, approved on August 1, 2013. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/*

federal__register/code__of__federal regulations/ibr__locations.html.

[79 FR 73696, Dec. 9, 2013]

PART 1216—SAFETY STANDARD FOR INFANT WALKERS

Sec.
1216.1 Scope.
1216.2 Requirements for infant walkers.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 75 FR 35273, June 21, 2010, unless otherwise noted.

§ 1216.1 Scope.

This part 1216 establishes a consumer product safety standard for infant walkers manufactured or imported on or after December 21, 2010.

§ 1216.2 Requirements for infant walkers.

Each infant walker shall comply with all applicable provisions of ASTM F977–12, Standard Consumer Safety Specification for Infant Walkers, approved on May 1, 2012. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, telephone: 610–832–9585; *http://www.astm.org/.* You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

[78 FR 37709, June 24, 2013]

PART 1217—SAFETY STANDARD FOR TODDLER BEDS

Sec.
1217.1 Scope, application, and effective date.
1217.2 Requirements for toddler beds.

AUTHORITY: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 76 FR 22028, Apr. 20, 2011, unless otherwise noted.

§ 1217.1 Scope, application, and effective date.

This part 1217 establishes a consumer product safety standard for toddler beds manufactured or imported on or after October 20, 2011.

§ 1217.2 Requirements for toddler beds.

Each toddler bed shall comply with all applicable provisions of ASTM F1821–13, Standard Consumer Safety Specification for Toddler Beds, approved on June 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

[79 FR 73696, Dec. 9, 2013]

PART 1218—SAFETY STANDARD FOR BASSINETS AND CRADLES

Sec.
1218.1 Scope.
1218.2 Requirements for bassinets and cradles.

AUTHORITY: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 78 FR 63034, Oct. 23, 2013, unless otherwise noted.

§ 1218.1 Scope.

This part establishes a consumer product safety standard for bassinets and cradles manufactured or imported on or after April 23, 2014, except for the removable bassinet bed attachment requirements at §1218.2(b)(3)(i) through (iv), (b)(5), and (b)(7), which are effective April 23, 2015.

§ 1218.2 Requirements for bassinets and cradles.

(a) Except as provided in paragraph (b) of this section, each bassinet and cradle must comply with all applicable provisions of ASTM F2194–13, Standard Consumer Safety Specification for Bassinets and Cradles, approved on April 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) Comply with ASTM F2194–13 standard with the following additions or exclusions:

(1) Instead of complying with Note 1 of section 1.3.1 of ASTM F2194–13, comply with the following:

(i) NOTE 1—Cradle swings with an incline less than or equal to 10° from horizontal while in the rest (non-rocking) position are covered under the scope of this standard. A sleep product that only has inclined sleeping surfaces (intended to be greater than 10° from horizontal while in the rest (non-rocking) position) does not fall under the scope of this standard. If a product can be converted to a bassinet/cradle use mode and meets the definition of a bassinet/cradle found in 3.1.1 while in that mode, the product shall be included in the scope of this standard, when it is in the bassinet/cradle use mode. For example, strollers that have a carriage/bassinet feature are covered by the stroller/carriage standard when in the stroller use mode. Carriage baskets/bassinets that are removable from the stroller base are covered under the scope of this standard when the carriage basket/bassinet meets the definition of a bassinet/cradle found in 3.1.1. In addition, bassinet/cradle attachments to cribs or play yards, as defined in 3.1.2 or 3.1.13, are included in the scope of the standard when in the bassinet/cradle use mode.

(ii) [Reserved]

(2) Add ''CAMI Newborn Dummy (see Figure 1A). Drawing numbers 126–0000 through 126–0015 (sheets 1 through 3), 126–0017 through 126–0027, a parts list entitled ''Parts List for CAMI Newborn Dummy,'' and a construction manual entitled ''Construction of the Newborn Infant Dummy'' (July 1992). Copies of the materials may be inspected at NHTSA's Docket Section, 400 Seventh Street SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capital Street NW., Suite 700, Washington, DC.'' to ''2.3 Other References'' and use the following figure:

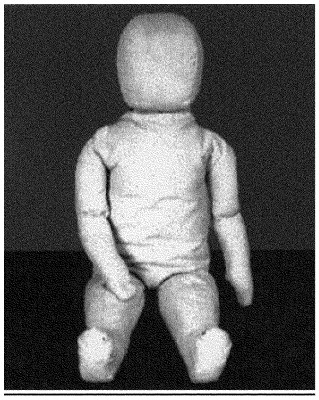


FIG. 1a CAMI Newborn Dummy

(3) In addition to complying with section 3.1.17 of ASTM F2194–13, comply with the following:

(i) 3.1.18. *bassinet bed, n*—the sleeping area of the bassinet/cradle, containing the sleep surface and side walls.

(ii) 3.1.19. *removable bassinet bed, n*—A bassinet bed that is designed to separate from the base/stand without the use of tools. Play yard bassinets, as defined in 3.1.13, are excluded from this definition.

(iii) 3.1.20. *false lock/latch visual indicator, n*—a warning system, using contrasting colors, lights, or other similar means designed to visually alert caregivers when a removable bassinet bed is not properly locked onto its base/stand.

(iv) 3.1.21. *intended use orientation, n*—The bassinet bed orientation (*i.e.,* the position where the head and foot ends of the bassinet bed are located), with respect to the base/stand, as recommended by the manufacturer for intended use.

(4) Instead of complying with section 6.7 of ASTM F2194–13, comply with the following:

(i) 6.7. *Bassinets with Segmented Mattresses: Flatness Test*—If the bassinet or bassinet accessory has a folding or segmented mattress, or both, any angle when measured in 7.8 less than or equal to 10° is an immediate pass. Any angle when measured in 7.8 greater than 10° is an immediate failure. Segmented bassinet mattresses that have seams (located between segments or where the mattress folds) that are less than 15 inches in length are excluded from this requirement.

(ii) [Reserved]

(5) In addition to complying with section 6.9.2 of ASTM F2194–13, comply with the following:

(i) 6.10. *Removable Bassinet Bed Attachment*—Any product containing a removable bassinet bed with a latching or locking device intended to secure the bassinet bed to the base/stand, shall comply with at least one of the following 6.10.1, 6.10.2, 6.10.3, 6.10.4 or 6.10.5 when tested in accordance with 7.12.

(ii) 6.10.1. The base/stand shall not support the bassinet bed (i.e., the bassinet bed falls from the stand and contacts the floor or the base/stand collapses when the bassinet bed is not locked on the base/stand).

(iii) 6.10.2. The lock/latch shall automatically engage under the weight of the bassinet bed (without any other force or action) in all lateral positions (Figure 24).

(iv) 6.10.3. The sleep surface of the bassinet bed shall be at an angle of at least 20° from a horizontal plane when the bassinet bed is in an unlocked position.

(v) 6.10.4. The bassinet/cradle shall provide a false latch/lock visual indicator(s). At a minimum, an indicator

shall be visible to a person standing near both of the two longest sides of the product.

(vi) 6.10.5. The bassinet bed shall not tip over and shall retain the CAMI newborn dummy when tested in accordance with 7.12.4.3.

(6) Instead of complying with section 7.4.4 of ASTM F2194–13, comply with the following:

(i) 7.4.4. Place the CAMI Newborn Dummy, Mark II, on the sleeping pad in the center of the product face up with the arms and legs straightened.

(A) *Rationale.* The newborn CAMI dummy represents a 50th percentile newborn infant, which is a more appropriate user of a bassinet than the CAMI infant dummy, which represents a 50th percentile 6-month-old infant.

(B) [Reserved]

(ii) [Reserved]

(7) In addition to complying with section 7.11.4 of ASTM F2194–13, comply with the following:

(i) 7.12. *Removable Bassinet Bed Attachment Tests*

(ii) 7.12.1. Assemble the bassinet/cradle base/stand only, in accordance with manufacturer's instructions in one of the manufacturer's recommended use positions. If the base/stand does not remain in the use position when the bassinet bed is not locked onto it, the product meets the requirements of 6.10.1.

(iii) 7.12.2. Place the base/stand and the inclinometer on a flat level horizontal surface ($0 \pm -0.5°$) to establish a test plane. Zero the inclinometer.

(iv) 7.12.3. Remove the mattress pad from the bassinet bed.

NOTE TO PARAGRAPH (b)(7)(iv): For mattresses that are integral with the mattress support, do not remove the mattress and perform all angle measurements for 7.12 on a 6 by 6 by ⅜-in. nominal aluminum block placed on the center of the mattress.

(v) 7.12.4. Place the bassinet bed on the base/stand in the intended use orientation without engaging any latch or lock mechanism between the base/stand and the bassinet bed. If the bed automatically engages to the base/stand do not disengage the lock/latch. If the bassinet bed can rest on the base/stand in its intended use orientation in one or more lateral unlocked position (Figure 24), the unit shall be evaluated in the lateral position most likely to fail the requirements specified in 6.10.

(vi) Figure 24: Bassinet Bed Resting on Stand, Showing Possible Alternate Lateral Positions.

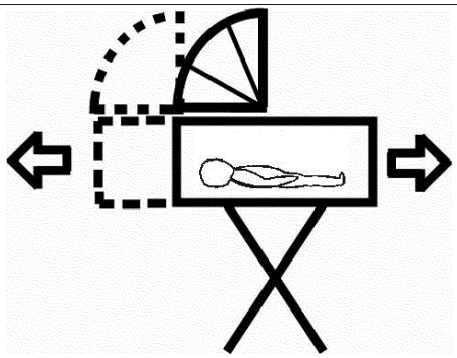


Figure 24: Bassinet Bed Resting on Stand, Showing Possible Alternate Lateral Positions

(vii) 7.12.4.1. If the base/stand supports the bassinet bed in any unlocked position, place the inclinometer on the mattress support at the approximate center of the mattress support. Care should be taken to avoid seams, snap fasteners, or other items that may affect the measurement reading. Record the angle measurement.

(viii) 7.12.4.2. If the base/stand supports the bassinet bed and the angle of the mattress support surface measured in 7.12.4.1 is less than 20 degrees from a horizontal plane, evaluate whether the bassinet has a false latch/lock visual indicator per 6.10.4.

(ix) 7.12.4.3. If the base/stand supports the bassinet bed, and the angle of the mattress support surface measured in 7.12.4.1 is less than 20 degrees from a horizontal plane, and the bassinet does not contain a false latch/lock visual indicator, test the unit in accordance with sections 7.4.2 through 7.4.7.

(x) 7.12.5. Repeat 7.12.2 through 7.12.4 for all of the manufacturer's base/stand recommended positions and use modes.

(xi) 7.12.6. Repeat 7.12.4 through 7.12.5 with the bassinet bed rotated 180 degrees from the manufacturers recommended use orientation, if the base/stand supports the bassinet bed in this orientation.

(A) *Rationale.* (*1*) This test requirement addresses fatal and nonfatal incidents involving bassinet beds that tipped over or fell off their base/stand when they were not properly locked/latched to their base/stand or the latch failed to engage as intended. Products that appear to be in an intended use position when the lock or latch is not properly engaged can create a false sense of security by appearing to be stable. Unsecured or misaligned lock/latch systems are a hidden hazard because they are not easily seen by consumers due to being located beneath the bassinet or covered by decorative skirts. In addition, consumers will avoid activating lock/latch mechanisms for numerous reasons if a bassinet bed appears stable when placed on a stand/base. Because of these foreseeable use conditions, this requirement has been added to ensure that bassinets with a removable bassinet bed feature will be inherently stable or it is obvious that they are not properly secured.

(*2*) 6.10 allows bassinet bed designs that:

(*i*) Cannot be supported by the base/stand in an unlocked configuration,

(*ii*) Automatically lock and cannot be placed in an unlocked position on the base/stand,

(*iii*) Are clearly and obviously unstable when the lock/latch is misaligned or unused,

(*iv*) Provide a visual warning to consumers when the product is not properly locked onto the base/stand, or

(*v*) Have lock/latch mechanisms that are not necessary to provide needed stability.

(B) [Reserved]

[78 FR 63034, Oct. 23, 2013; 78 FR 77574, Dec. 24, 2013]

EFFECTIVE DATE NOTE: At 78 FR 63034, Oct. 23, 2013, §1218.2 was added, effective Apr. 23, 2014 with the exception of §1218.2(b)(3)(i) through (iv) (b)(5) and (b)(7) which will become effective on Apr. 23, 2015.

PART 1219—SAFETY STANDARD FOR FULL-SIZE BABY CRIBS

Sec.

AUTHORITY: Sec. 104, Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 75 FR 81786, Dec. 28, 2010, unless otherwise noted.

§ 1219.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1219 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in the home, in a child care facility, a family child care home, or place of public accommodation affecting commerce; and

(iii) Within a range of ±5.1 cm (±2 in.) of the following interior dimensions: The interior dimensions shall be 71 ±1.6 cm (28 ±5⁄8 in.) wide as measured between the innermost surfaces of the crib sides and 133 ±1.6 cm (52⅜ ±⅝ in.) long as measured between the innermost surfaces of the crib end panels, slats, rods, or spindles. Both measurements are to be made at the level of the mattress support spring in each of its adjustable positions and no more than 5 cm (2 in.) from the crib corner posts or from the first spindle to the corresponding point of the first spindle at the other end of the crib. If a crib has contoured or decorative spindles, in either or both of the sides or ends, the measurement shall be determined from the largest diameter of the first turned spindle within a range of 10 cm (4 in.) above the mattress support spring in each of its adjustable positions, to a corresponding point on the first spindle or innermost surface of the opposite side of the crib.

(2) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

§ 1219.2 Requirements for full-size baby cribs.

Each full-size baby crib shall comply with all applicable provisions of ASTM F1169–13, Standard Consumer Safety Specification for Full-Size Baby Cribs, approved May 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

[79 FR 73696, Dec. 9, 2013]

PART 1220—SAFETY STANDARD FOR NON-FULL-SIZE BABY CRIBS

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008).

SOURCE: 75 FR 81787, Dec. 28, 2010, unless otherwise noted.

§ 1220.1 Scope, compliance dates, and definitions.

(a) *Scope.* This part establishes a consumer product safety standard for new and used non-full-size baby cribs.

(b) *Compliance dates.* (1) Except as provided in paragraph (b)(2) of this section, compliance with this part 1220 shall be required on June 28, 2011, and applies to the manufacture, sale, contract for sale or resale, lease, sublet, offer, provision for use, or other placement in the stream of commerce of a new or used non-full-size baby crib on or after that date.

(2) Child care facilities, family child care homes, and places of public accommodation affecting commerce shall be required to comply with this part on December 28, 2012, but this provision applies only to the offer or provision for use of cribs by child care facilities, family child care homes, and places of public accommodation affecting commerce and not the sale, resale, or other placement in the stream of commerce of cribs by these entities.

(c) *Definitions.* (1) *Non-full-size baby crib* means a bed that is:

(i) Designed to provide sleeping accommodations for an infant;

(ii) Intended for use in or around the home, for travel, in a child care facility, in a family child care home, in a place of public accommodation affecting commerce and other purposes;

(iii) Has an interior length dimension either greater than 139.7 cm (55 in.) or smaller than 126.3 cm (49 ¾ in.), or, an interior width dimension either greater than 77.7 cm (30⅝ in.) or smaller than 64.3 cm (25⅜ in.), or both;

(iv) Includes, but is not limited to, the following:

(A) *Portable crib*—a non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume it occupies when it is used.

(B) *Crib pen*—a non-full-size baby crib with rigid sides the legs of which may be removed or adjusted to provide a play pen or play yard for a child.

(C) *Specialty crib*—an unconventionally shaped (circular, hexagonal, etc.) non-full-size baby crib incorporating a special mattress or other unconventional components.

(D) *Undersize crib*—a non-full-size baby crib with an interior length dimension smaller than 126.3 cm (49¾ in.), or an interior width dimension smaller than 64.3 cm (25⅜ in.), or both.

(E) *Oversize crib*—a non-full-size baby crib with an interior length dimension greater than 139.7 cm (55 in.), or an interior width dimension greater than 77.7 cm (30⅝ in.), or both.

(v) Does not include mesh/net/screen cribs, nonrigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets, and bassinets (also known as junior cribs).

(2) *Play yard* means a framed enclosure that includes a floor and has mesh or fabric sided panels primarily intended to provide a play or sleeping environment for children. It may fold for storage or travel.

(3) *Place of public accommodation affecting commerce* means any inn, hotel, or other establishment that provides lodging to transient guests, except that such term does not include an establishment treated as an apartment building for purposes of any State or local law or regulation or an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

§ 1220.2 Requirements for non-full-size baby cribs.

(a) Except as provided in paragraph (b) of this section, each non-full-size baby crib shall comply with all applicable provisions of ASTM F 406–10a, Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards, approved October 15, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *http://www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) Comply with the ASTM F 406–10a standard with the following additions or exclusions:

(1) Do not comply with sections 5.6.2 through 5.6.2.4 of ASTM F 406–10a.

(2) Do not comply with section 5.16.2 of ASTM F 406–10a.

(3) Do not comply with section 6.10 of ASTM F 406–10a.

(4) Do not comply with section 7, *Performance Requirements for Mesh/Fabric Products*, of ASTM F 406–10a.

(5) Instead of complying with section 8.10.1 of ASTM F 406–10a, comply with the following:

(i) The spindle/slat static force test shall be performed with the spindle/slat assemblies removed from the crib and rigidly supported within 3 in. of each end of the upper and lower horizontal

rails in a manner that shall not interfere with a spindle/slat deflecting under the applied force. For cribs incorporating foldable or moveable sides for purposes of easier access to the occupant, storage and/or transport, each side segment (portion of side separated by hinges for folding) shall be tested separately.

(ii) [Reserved]

(6) Do not comply with sections 8.11 through 8.11.2.4 of ASTM F 406–10a.

(7) Do not comply with sections 8.12 through 8.12.2.2 of ASTM F 406–10a.

(8) Do not comply with section 8.14 through 8.14.2 of ASTM F 406–10a.

(9) Do not comply with sections 8.15 through 8.15.3.3 of ASTM F 406–10a.

(10) Do not comply with sections 8.16 through 8.16.3 of ASTM F 406–10a.

(11) Do not comply with section 9.3.2 through 9.3.2.4 of ASTM F 406–10a.

(12) Instead of complying with section 9.4.2.6 of ASTM F 406–10a, comply with the following warning requirement:

(i) Child can become entrapped and die when improvised netting or covers are placed on top of product. Never add such items to confine child in product.

(ii) [Reserved]

PART 1221—SAFETY STANDARD FOR PLAY YARDS

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, section 104, 122 Stat. 3016 (August 14, 2008).

SOURCE: 77 FR 52228, Aug, 29, 2012, unless otherwise noted.

§ 1221.1 Scope.

This part establishes a consumer product safety standard for play yards manufactured or imported on or after February 19, 2014.

[78 FR 50335, Aug. 19, 2013]

§ 1221.2 Requirements for play yards.

(a) Except as provided in paragraph (b) of this section, each play yard must comply with all applicable provisions of ASTM F406–13, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards,* approved on May 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:*http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html*.

(b) Comply with the ASTM F406–13 standard with the following exclusions:

(1) Do not comply with section 5.17 of ASTM F406–13.

(2) Do not comply with section 5.20 of ASTM F406–13.

(3) Do not comply with section 6, Performance Requirements for Rigid-Sided Products, of ASTM F406–13, in its entirety.

(4) Do not comply with sections 8.1 through 8.10.5 of ASTM F406–13.

(5) Instead of complying with section 9.4.2.10 of ASTM F406–13, comply only with the following:

(i) 9.4.2.10 For products that have a separate mattress that is not permanently fixed in place: Use ONLY mattress/pad provided by manufacturer.

(ii) [Reserved]

(6) Do not comply with section 10.1.1.1 of ASTM F406–13.

[78 FR 50335, Aug. 19, 2013]

PART 1222—SAFETY STANDARD FOR BEDSIDE SLEEPERS

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 79 FR 2589, Jan. 15, 2014, unless otherwise noted.

§ 1222.1 Scope.

This part establishes a consumer product safety standard for bedside sleepers.

§ 1222.2 Requirements for bedside sleepers.

(a) Except as provided in paragraph (b) of this section, each bedside sleeper must comply with all applicable provisions of ASTM F2906–13, Standard Consumer Safety Specification for Bedside Sleepers, approved on July 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:*http://www.archives.gov/federal__register/code__of__federal regulations/ibr__locations.html*.

(b) Comply with ASTM F2906–13 with the following changes:

(1) Instead of complying with section 5.1 of ASTM F2906–13, comply with the following:

(i) Prior to or immediately after testing to this consumer safety specification, the bedside sleeper must be tested to 16 CFR part 1218. Multimode products must also be tested to each applicable standard. When testing to 16 CFR part 1218 the unit shall be freestanding, and not be secured to the test platform as dictated elsewhere in this standard.

(ii) 5.1.1 The bassinet minimum side height shall be as required in 16 CFR part 1218, with the exception of a lowered side rail as permitted in 5.4.

(2) Instead of complying with section 7.1 of ASTM F2906–13, comply with the following:

(i) All bedside sleeper products shall comply with the marking and labeling requirements of 16 CFR part 1218.

(ii) [Reserved]

(3) Instead of complying with section 8.1 of ASTM F2906–13, comply with the following:

(i) All bedside sleeper products shall comply with the instructional literature requirements of 16 CFR part 1218.

(ii) [Reserved]

PART 1223—SAFETY STANDARD FOR INFANT SWINGS

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, Sec. 104, 122 Stat. 3016 (August 14, 2008); section 3 of Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 77 FR 66713, Nov. 7, 2012, unless otherwise noted.

§ 1223.1 Scope.

This part establishes a consumer product safety standard for infant swings.

§ 1223.2 Requirements for infant swings.

Each infant swing shall comply with all applicable provisions of ASTM F2088–13, Standard Consumer Safety Specification for Infant Swings, approved on January 15, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html*.

[78 FR 37709, June 24, 2013]

PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS

Sec.

AUTHORITY: Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008).

SOURCE: 77 FR 12197, Feb. 29, 2012, unless otherwise noted.

§ 1224.1 Scope, application, and effective date.

This part establishes a consumer product safety standard for portable bed rails manufactured or imported on or after August 29, 2012.

§ 1224.2 Requirements for portable bed rails.

(a) Each portable bed rail as defined in ASTM F2085–12, *Standard Consumer Safety Specification for Portable Bed Rails*, approved January 1, 2012, must comply with all applicable provisions of ASTM F2085–12. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/*. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) [Reserved]

PART 1225—SAFETY STANDARD FOR HAND-HELD INFANT CARRIERS

Sec.

AUTHORITY: Pub. L. 110–314, sec. 104, 122 Stat. 3016 (August 14, 2008).

SOURCE: 78 FR 73424, Dec. 6, 2013, unless otherwise noted.

§ 1225.1 Scope.

This part establishes a consumer product safety standard for hand-held infant carriers.

§ 1225.2 Requirements for hand-held infant carriers.

(a) Except as provided in paragraph (b) of this section, each hand-held infant carrier must comply with all applicable provisions of ASTM F 2050–13a, Standard Consumer Safety Specification for Hand-Held Infant Carriers, approved on September 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) Instead of complying with section 3.1.3 of ASTM F2050–13a, comply with the following:

(1) 3.1.3 *hand-held infant carrier, n*—a freestanding, rigid- or semirigid-sided product intended to carry an occupant whose torso is completely supported by the product to facilitate transportation by a caregiver by means of hand-holds or handles.

(2) [Reserved]

PART 1226—SAFETY STANDARD FOR SOFT INFANT AND TODDLER CARRIERS

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314,

Sec. 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 79 FR 17433, Mar. 28, 2014, unless otherwise noted.

§ 1226.1 Scope.

This part establishes a consumer product safety standard for soft infant and toddler carriers.

§ 1226.2 Requirements for soft infant and toddler carriers.

(a) Each soft infant and toddler carrier must comply with all applicable provisions of ASTM F2236–14, Standard Consumer Safety Specification for Soft Infant and Toddler Carriers, approved on January 1, 2014. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal regulations/ibr__locations.html*.

(b) [Reserved]

PART 1227—SAFETY STANDARD FOR CARRIAGES AND STROLLERS (Eff. 9-10-15)

Sec.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

SOURCE: 79 FR 13216, Mar. 10, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 79 FR 13216, Mar. 10, 2014, part 1227 was added, effective Sept. 10, 2015.

§ 1227.1 Scope.

This part establishes a consumer product safety standard for carriages and strollers.

§ 1227.2 Requirements for carriages and strollers.

(a) Except as provided in paragraph (b) of this section, each carriage and stroller must comply with all applicable provisions of ASTM F833–13b, *Standard Consumer Safety Performance Specification for Carriages and Strollers*, approved on November 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal regulations/ibr__locations.html*.

(b) Comply with ASTM F833–13b standard with the following changes:

(1) Instead of complying with section 7.12.1 of ASTM F833–13b, comply with the following:

(i) 7.12.1 Secure the front wheels of the unit in their normal standing position so that the unit cannot move forward. Attach the tray(s) or grab bar(s) in the position that creates the bounded opening(s). Position any adjustable features (that is, grab bar, calf supports, foot rests, etc.) that may affect the bounded opening(s) to create an opening(s) size that is most likely to cause failure.

(ii) [Reserved]

(2) Instead of complying with section 7.12.3 of ASTM F833–13b, comply with the following:

(i) 7.12.3 If necessary, reattach/reposition tray(s) grab bar(s), then perform the torso probe test per 7.12.4. Position any adjustable features (that is, grab bar, calf supports, foot rests, etc.) that

may affect the bounded opening(s), to create the opening(s) size that is most likely to cause failure.

(ii) [Reserved]

PART 1240—SAFETY STANDARD FOR MAGNET SETS (Eff. 4-1-15)

Sec.

AUTHORITY: 15 U.S.C. 2056 and 2058.

SOURCE: 79 FR 59986, Oct. 3, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 79 FR 59986, Oct. 3, 2014, part 1240 was added, effective April 1, 2015.

§ 1240.1 Scope, purpose, and effective date.

This part 1240, a consumer product safety standard, prescribes requirements for magnet sets, as defined in § 1240.2, and for individual magnets that are marketed or intended for use with or as magnet sets. These requirements are intended to reduce or eliminate an unreasonable risk of injury to consumers who ingest magnets that are part of magnet sets. This standard takes effect on April 1, 2015 and applies to all magnet sets and individual magnets, as defined in § 1240.2, that are manufactured or imported on or after that date.

§ 1240.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1240.

(b) *Magnet set* means: Any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Relevant factors in determining intended uses of a magnet set include, but are not limited to: The manufacturer's stated intent (such as on a label or Web site), if reasonable under the circumstances; the content and nature of advertising, promotion, marketing, packaging, or display relating to the product; and the uses for which the product is commonly recognized by consumers.

(c) *Individual magnet* means: An individual magnetic object intended or marketed for use with or as a magnet set as defined in paragraph (b) of this section.

§ 1240.3 Requirements.

Each magnet in a magnet set, and any individual magnet, that fits completely within the cylinder described in 16 CFR 1501.4 must have a flux index of 50 kG^2 mm^2 or less when tested in accordance with the method described in § 1240.4.

§ 1240.4 Test procedure for determining flux index.

(a) Select at least one magnet of each shape and size in the magnet set.

(b) Measure the flux index of each selected magnet in accordance with the procedure in sections 8.24.1 through 8.24.3 of ASTM F963–11, *Standard Consumer Safety Specification for Toy Safety*, approved on December 1, 2011. The Director of the FEDERAL REGISTER approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box 0700, West Conshohocken, PA 19428; telephone 610–832–9585; *www.astm.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

§ 1240.5 Findings.

(a) *Degree and nature of the risk of injury*. (1) Based on a review of National Electronic Injury Surveillance System (NEISS) data, we have determined that an estimated 2,900 ingestions of magnets from magnet sets were treated in emergency departments during the

period from January 1, 2009 to December 31, 2013, an average of about 580 ingestion incidents per year. From review of databases other than NEISS, we are aware of 109 reported incidents occurring from January 1, 2009 through June 24, 2014, involving the ingestion of magnets by children between the ages of 1 and 15. Of those 109 incidents, 83 involved the ingestion of high-powered, ball-shaped magnets that were contained in products that meet the above definition of ''magnet set,'' and 17 of those 109 incidents possibly involved ingestion of this type of magnet. Thus, 100 reported incidents of ingestions involved or possibly involved magnets from magnet sets. Hospitalization was required to treat 61 of the 100 incidents. In 81 of the 100 incidents, the magnets were ingested by children younger than four years old, or between the ages of four and 12 years.

(2) Once ingested, these strong magnets begin to interact in the gastrointestinal tract, which can lead to tissue death, perforations, and/or fistulas, and possibly intestinal twisting and obstruction. If left untreated, these injuries can lead to infection of the peritoneal cavity and other life-threatening conditions. The number of magnets swallowed increases the risk of attraction and injury; but as few as two magnets can cause serious internal damage in a very short time. The fact that many medical professionals do not appreciate the health consequences of magnet ingestion increases the severity of the risk because a doctor who is unfamiliar with these strong magnets may send a child home and expect the magnets to pass naturally. There are also health consequences to the treatment and surgery for removal of ingested magnets. There may be a risk of gastrointestinal bleeding; leakage of holes that were repaired; rupturing of resectioned bowels; temporary paralysis of the bowels; use of a colostomy bag; IV feeding initially, or for some longer time period; and compromise of nutrition and digestive function. Long-term health consequences can be severe, as well: loss of intestinal tissue; compromised nutrition absorption; adhesions and scarring of intestines; need for a bowel transplant; and possible impediments to fertility for girls. Even children who pass the magnets naturally and do not require surgery still need close observation by doctors and may undergo sequential x-rays, thus, exposing children to repeated dosages of radiation.

(b) *Number of consumer products subject to this part.* The market for magnet sets increased substantially from the time magnet sets were first introduced, through mid-2012. We estimate that the number of magnet sets that have been sold to U.S. consumers since 2009, the first year of significant sales, may have totaled about 2.7 million sets, representing a value of roughly $50 million. Because of CPSC enforcement activity and actions taken by firms since mid-2012, most firms have ceased selling the magnet sets. Actual sales since the end of 2012 by the firms remaining in the market are unknown but believed to be small. The remaining major importing firm that continues to sell the products is estimated to hold a market share of less than 2 percent of pre-enforcement action sales. The approximate number of products subject to this part (in terms of unit sales) could be fewer 25,000 sets per year.

(c) *The need of the public for magnet sets and the effects of this part on their utility, cost, and availability.* (1) We cannot estimate precisely the use value that consumers receive from magnet sets. In general, use value would be the amount of money that consumers expend on the product, plus the consumer surplus (*i.e.*, the difference between the market price and the maximum amount consumers would have been willing to pay for the product). Magnet sets of the type that have been involved in incidents would not comply with this part. Therefore, consumers will no longer be able to obtain utility from these magnet sets. Although magnet sets clearly provide utility to purchasers, magnet sets are not necessities. Products that meet the requirements of this part might be developed that would serve some of the purposes of magnet sets. This part would continue to allow strong magnets for other uses, such as commercial or industrial uses.

(2) Individual magnets that are intended or marketed for use with or as magnet sets also must comply with the

requirements of this part. The Commission is aware that firms selling magnet sets have offered individual magnets. To avoid firms circumventing the rule by selling individual magnets that are nevertheless intended or marketed to be used as magnet sets, this part covers such individual magnets. Individual magnets sold for other uses are not subject to this part. Thus, this part does not affect the need for, utility, or availability of individual magnets that are sold for uses other than as magnet sets.

(d) *Other means to achieve the objective of this part, while minimizing the impact on competition and manufacturing.* (1) The Commission considered various alternatives to the requirements specified in this part. This part requires that if a magnet set contains a magnet that fits within the small parts cylinder that CPSC uses for testing toys, all magnets from that set must have a flux index of 50 kG^2 mm^2 or less. In addition, individual magnets intended or marketed for use with or as magnet sets must meet these requirements. We do not believe that options other than a rule establishing these requirements would sufficiently reduce the number and severity of injuries resulting from the ingestion of magnets from these magnet sets. The circumstances associated with this product limit the likely effectiveness of warning labels. Despite existing warning labels and market restrictions, ingestion incidents have continued to occur. Parents and caregivers may not appreciate the hazard associated with magnet sets. Accordingly, parents and caregivers will continue to allow children access to the product. Children may not appreciate the hazard and will continue to mouth the items, swallow them, or in the case of young adolescents and teens, use the magnets to mimic body piercings. Once the magnets are removed from their carrying case, the magnets bear no warnings to guard against ingestion or aspiration; the small size of the individual magnets precludes the addition of any warning. Because individual magnets from magnet sets are shared easily among children, many end users of the product are likely to have had no exposure to any warning.

(2) The Commission has considered other alternatives to reduce the risk from magnet sets: alternative performance requirements, such as setting a different flux limit or requiring bittering agents; safer packaging requirements, such as requiring a specific design for storage containers or requiring child resistant packaging; sales restrictions; continued corrective actions; and taking no action. Some of these alternatives may not be within the Commission's authority. Although each of the alternative actions would have lower costs and less impact on small business, none is likely to significantly reduce the injuries associated with ingestion of magnets from magnet sets.

(e) *Unreasonable risk.* (1) As stated in paragraph (a) of this section, according to NEISS, an estimated 2,900 ingestions of magnets from magnet sets were treated in emergency departments during the period from January 1, 2009 to December 31, 2013, an average of about 580 ingestion incidents per year. From sources other than NEISS, CPSC has reports of 100 incidents of ingestions that involved or possibly involved magnets from magnet sets, including one fatality.

(2) For the regulatory analysis, we considered the period of time, 2009 through June 2012, before CPSC's compliance activities affected the market. We identified 86 ingestions of high-powered and/or ball-shaped magnets, which occurred from 2009 through June 2012 reported through NEISS. These incidents were determined to involve, or possibly involve, magnet sets. Based on these 86 incidents, we have determined that an estimated 2,138 ingestions of magnets from magnet sets were treated in emergency departments from January 1, 2009 to June 2012. About 11 percent of the victims of these ingestion incidents required hospitalization, as opposed to victims who were treated and released. The 2009 through June 2012 NEISS estimates suggest an estimated *annual* average of about 610 emergency department-treated injuries, including 544 injuries that were treated and released and 66 injuries that required hospitalization. About 60

percent of these emergency department-treated ingestions involved children ages 4 through 12 years. Additionally, based on estimates from the Commission's injury cost model (ICM), there were another 319 injuries treated annually in locations other than hospital emergency departments (such as doctors' offices, clinics, ambulatory surgery centers, or direct hospital admissions).

(3) After including the injuries treated outside of hospital emergency departments, there was an annual average of about 929 medically attended injuries involving ingestions of magnets that were defined as at least ''possibly of interest'' during the period from 2009 through June 2012. Injuries resulting from such ingestions of magnets can be severe and life threatening. The risk posed by these magnets may not be appreciated by children or caregivers, who may assume, mistakenly, that the consequences of ingesting magnets would be similar to ingesting any other small object. However, once ingested, these strong magnets do not pass naturally. Rather, these magnets are mutually attracted to each other and exert compression forces on the trapped gastrointestinal tissue.

(4) We estimate that these injuries resulted in annual societal costs of about $28.6 million (in 2012 dollars) during the 2009 through June 2012 time period. The average estimated societal costs per injury was about $27,000 for injuries treated in locations other than emergency departments (such as physicians' offices, clinics, ambulatory surgery centers, or direct hospital admissions); about $21,000 for injuries that were treated and released from emergency departments; and about $130,000 for injuries that required admission to the hospital for treatment. Preventing these injuries would be the expected benefit resulting from the rule.

(5) The costs of the rule would consist of the lost producer surplus to firms that produce and sell magnet sets, plus the lost use value that consumers would experience when magnet sets that do not comply with the rule are no longer available. Sales of magnet sets averaged roughly 800,000 sets annually during the 2009 through mid-2012 time period, with an average retail price of about $25 per set in 2012. Thus, total industry revenues averaged about $20 million annually (*i.e.*, 800,000 sets × $25 per set) in 2012 dollars. The average import cost of the magnet sets to U.S. importers, a major variable cost, may have amounted to about $10 per set, or an average of about $8 million annually (*i.e.*, 800,000 sets × $10 import cost per set). We estimate other variable costs associated with the production, packaging, marketing, and distribution of the magnet sets would constitute a significant proportion of the remaining difference between revenues ($20 million) and import costs ($8 million). If we assume that variable costs amount to about half of the difference, lost producer surplus would amount to about $6 million.

(6) Thus, we estimate costs of the rule to be about $6 million in lost producer surplus and some unknown quantity of lost utility. Considering the injuries associated with magnet sets—and the resulting societal costs, balanced against the likely impact that the rule would have on firms producing and selling the product, and on consumers who would lose the utility of the product—we conclude that magnet sets pose an unreasonable risk of injury and that the rule is reasonably necessary to reduce that risk.

(f) *Public interest.* The regulations in this part are in the public interest because they would reduce deaths and injuries associated with magnet sets in the future. A rule establishing requirements that would eliminate magnet sets of the type that have been involved in incidents will mean that children will have less access to this product, thereby reducing the number of incidents of children swallowing the magnets and the resulting cost to society of treating these injuries.

(g) *Voluntary standards.* Currently, there is no voluntary standard for magnet sets, nor any activity to develop a voluntary standard for magnet sets.

(h) *Relationship of benefits to costs.* (1) Based on reports to the CPSC, ingestions of small magnets contained in magnet sets have caused multiple, high-severity injuries that require surgery to remove the magnets and repair internal damage. Based on the information discussed in paragraph (e) of this

section, we estimate that the benefits of this part might amount to about $28.6 million annually.

(2) The costs of the rule, in terms of reduced profits for firms and lost utility by consumers, also are uncertain. However, based on annual sales estimates available for the 2009 through June, 2012, study period, these costs could amount to about $6 million in lost producer surplus and some unknown quantity of lost utility.

(i) *Least burdensome requirement.* We have considered several alternatives to this part. We conclude that none of these alternatives would adequately reduce the risk of injury. Alternative performance requirements might allow a different flux index for magnets contained in magnetic sets or require the addition of an aversive (bittering) agent to the magnets. Theoretically, these alternatives might allow continued production of some current products. However, it is unclear whether a different flux index would succeed in making products that have the desired physical qualities that make them sufficiently enjoyable to adults, and at the same time eliminate the characteristics that make these strong magnets hazardous to children. Furthermore, the effectiveness of aversive agents in reducing magnet ingestions is questionable. We have considered the possibility of requiring rigorous warnings on the products or in the instructions for the products. However, magnet sets currently and formerly on the market provide warnings concerning the potential hazard to children. Accordingly, it is unlikely that even strengthened warnings would substantially reduce the incidence of magnet ingestions. This is particularly true for incidents involving older children and adolescents. Moreover, children who are old enough to understand the warnings may still not abide by them. Some type of sales restriction, limiting the location where magnet sets could be sold, might be possible. However, even with restrictions on sales, ingestions are still likely to occur as children encounter these magnets in the home, at school, or other locations where adults have brought them and made them available to children. The Commission could continue to address the hazard from magnet sets through corrective actions, *i.e.*, recalls of the product. However, these actions would not prevent additional companies from entering the market and importing magnet sets into the country in the future. The Commission also has the option of taking no regulatory action. Although it is possible that, with increased awareness of the hazard over time, some reduction in ingestions could occur, the magnitude of any such reduction in incidents is uncertain and would likely be smaller than those resulting from the requirements of this part.

PART 1301—BAN OF UNSTABLE REFUSE BINS

Sec.

AUTHORITY: Secs. 8, 9, 86 Stat. 1215–1217, as amended, 90 Stat. 506; 15 U.S.C. 2057, 2058.

SOURCE: 42 FR 30300, June 13, 1977, unless otherwise noted.

§ 1301.1 Scope and application.

(a) In this part 1301 the Consumer Product Safety Commission (Commission) declares that certain unstable refuse bins are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058).

(b) This ban applies to those refuse bins of metal construction that are being distributed in commerce on or after the effective date of this rule, which do not meet the criteria of §1301.5 and which are produced or distributed for sale to, or for the personal use, consumption or enjoyment of consumers, in or around a permanent or temporary household or residence, a school, in recreation or otherwise. The Commission has found that (1) these refuse bins are being, or will be distributed in commerce; (2) they present an unreasonable risk of injury; and (3) no feasible consumer product safety

standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with these products. The ban is applicable to those refuse bins having an internal volume one cubic yard or greater by actual measurement, which will tip over when subjected to either of the forces described in §1301.7 and which are in commerce or being distributed in commerce on or after the effective date of the ban.

(c) When such refuse bins are the subject of rental or lease transactions between owners of refuse bins or between refuse collection agencies and persons who make such refuse bins available for use by the public, such transactions are considered to be distributions in commerce and therefore come within the scope of this ban. Refuse collection agencies or owners of refuse bins who rent or lease refuse bins to persons who make them available for use by consumers are considered to be distributors; the persons to whom refuse bins are rented or leased are not considered to be distributors.

(d) On or after the effective date of this rule it shall be unlawful to manufacture for sale, offer for sale, or distribute in commerce, the unstable refuse bins described in this rule.

(e) This rule, effective November 13, 1981, is partially revoked and therefore does not apply to front-loading, straight-sided refuse bins without trunnion bars having an internal volume capacity of 1, 1½, or 2 cubic yards, of the following external dimensions:

Internal volume	Length (inches)	Width (inches)	Height [1]		Weight (lbs)
			High side (inches)	Low side (inches)	
1 cubic yard ...	70–72	21–23	29–31	29–31	313–347
1½ cubic yards	70–72	29–31	33–36	29–32	346–382
2 cubic yards	70–72	32–35	39–43	31–36	409–453

[1] Does not include height of wheels.

(Sec. 9(h), Pub. L. 97–35, Pub. L. 92–573, 86 Stat. 1215, 15 U.S.C. 2058(h))

[42 FR 30300, June 13, 1977, as amended at 46 FR 55925, Nov. 13, 1981]

§ 1301.2 Purpose.

The purpose of this rule is to ban those refuse bins which come under the scope of this ban because they present an unreasonable risk of injury due to tip-over that can result in serious injury or death from crushing.

§ 1301.3 Findings.

(a) *Risk of injury.* The Commission has studied 19 in-depth investigation reports of accidents associated with tip-over of unstable refuse bins. The 19 accidents, which involved 21 victims, resulted in 13 deaths. Of the 21 victims, 20 were children 10 years of age and under. Additionally, Commission records show three death certificates for victims, under 5 years of age, who were killed by refuse bins tipping over. Therefore, the Commission finds that unreasonable risks of injury or death from crushing due to tip-over are associated with certain unstable refuse bins having an internal volume one cubic yard or greater, which unreasonable risk this banning rule is designed to eliminate or reduce.

(b) *Products subject to this ban.* (1) The Commission finds that the types of products subject to this ban are those manufactured metal receptacles known in the solid waste collection trade as containers, refuse bins, buckets, boxes or hoppers, with actual internal volumes of one cubic yard or greater, used for the storage and transportation of solid waste. They are fabricated in numerous sizes and configurations for use with rear, side, front, hoist and roll-off loaded trash collection trucks and are used by private firms and public agencies.

(2) Although unstable refuse bins subject to this ban may be in various forms and shapes, the Commission's in-depth investigations into accidents associated with metal refuse containers indicate that most accidents have occurred with slant-sided metal refuse bins which are used by rear and side-loaded trucks. Therefore, the Commission bases its economic analysis of the potential impact of the ban upon the population of these bins. Certain refuse bins such as front loaded, roll-off, box and other types of large or broad based bins, because of their configuration,

bulk and weight are likely to be inherently stable and are therefore not included in the population of potentially unstable bins studied in this economic analysis.

(3) The Commission estimates that there may be approximately 638,000–716,000 slant-sided, metal refuse bins with an internal volume one cubic yard or greater, which may be unstable. The population of potentially unstable bins owned by some 10,000–15,000 private solid waste collection firms in all parts of the United States and its territories is estimated to be 359,000–371,000. These figures are discussed in the Commission's *Economic Impact Statement* of April 22, 1977, which is available for review from the Commission's Office of the Secretary, Washington, D.C. 20207.

(c) *Need of the public for the product and effects on utility, cost, and availability.* (1) The public need for refuse bins is substantial since these products are used for the containment of solid waste and thus contribute to public hygiene. The U.S. Environmental Protection Agency estimates that 135,000,000 tons of solid waste were collected in 1976 from residential, commercial and industrial sources. Approximately 101,250,000 tons (75%) were collected by private firms and the remainder by public agencies.

(2) The Commission finds that the ban will not affect the utility that consumers derive from the general use of refuse bins. The interest of the public is in continuity, availability and price of solid waste collection. The ban could result in a shift from bins which are subject to the ban to other types of storage containers. Such a shift would not affect solid waste collection and would entail a small price increase for individual consumers. To the extent that injuries and deaths associated with the use of unstable bins are reduced or eliminated as a result of the ban, the public utility derived from the use of the product will be increased.

(3)(i) The Commission finds that, based on its analysis of industrial estimates, newly produced complying refuse bins will cost approximately 1–10% more than currently produced noncomplying bins and that existing inventories of unstable bins can be modified (depending upon size) for about $45–$75 each. This modification cost estimate includes the cost of material, shop labor, retrieval and return to service, and the substitution of one bin for another for on-site service.

(ii) The Commission estimates that the ban will not result in any significant price increases for the delivery of solid waste collection service to the general public because of the competitive structure of the solid waste collection industry.

(4) The Commission finds that the ban will have no effect on the availability of solid waste collection service to the general public. Solid waste collection haulers who use products subject to this ban can modify these refuse bins so that these products can continue to be used for solid waste collection.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of this ban, but has found none that it believes would have fewer adverse effects on competition or that would cause less disruption or dislocation of manufacturing, servicing or other commercial practices consistent with public health and safety. The Commission estimates that this ban may, because of capital and testing costs and maintenance capacity limitations, have an adverse effect on individual firms within some markets.

(2) The Commission estimates that the ban will not have an adverse effect on the competitive structure of the solid waste collection industry. The competitive nature of solid waste collection firms is fostered because of low starting costs, particularly if a firm is owner-operated. The rate of entry and exit into and out of the industry for small operators tends to be high relative to larger firms in the industry. The ban will most likely not increase the degree of market concentration among the larger firms nor affect the rate of entry into or exit out of the industry by relatively smaller firms.

(3) Table 3 of the Economic Impact Statement indicates that about 85 percent of the private sector trash haulers are those with a fleet size of about 10 trucks and have annual revenues under $1 million. These might be classified as small business firms. All firms in the trash hauling business would have two

possible problems associated with the ban: cost and time to retrofit, and access to capital for retrofitting. The problem of raising capital to retrofit should not be a burden to small firms unless they are denied credit for factors not associated with this ban. The revised effective date from 9 to 12 months will extend both the time to retrofit and the time to search for capital sources, if necessary. We conclude that the small firms in the trash hauling industry will not experience undue hardship relative to their larger competitors.

(e) *Conclusion.* (1) The Commission finds that this rule is reasonably necessary to eliminate or reduce the unreasonable risks of injury associated with refuse bins, as they are defined in §1301.4, and which fail to meet the criteria specified in §1301.5

(2) Based on all of the above findings, the Commission finds that the issuance of this rule is in the public interest.

(3) The Commission is aware of the fact that refuse bins are used for many years before being discarded. Estimates of their useful life range from 10 to 15 years. Although other products which may be hazardous may also have a long life in the hands of individual consumers, a substantial number of unstable refuse bins remain in commerce because they are rented or leased and are constantly available for use by large numbers of consumers. The combination of the long life of refuse bins plus the fact that unstable refuse bins could remain in commerce and be available for use by many people, persuaded the Commission to make this finding that no feasible consumer product safety standard under the CPSA could adequately protect the public from the unreasonable risk of injury associated with those unstable refuse bins coming under the coverage of this ban.

§1301.4 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1301.

(b) *Refuse bin* means a metal receptacle having an internal volume one cubic yard or greater, by actual measurement, which temporarily receives and holds refuse for ultimate disposal either by unloading into the body or loading hopper of a refuse collection vehicle or by other means.

(c) *Internal volume* means the actual volumetric capacity of the container. This may not necessarily correspond to the nominal size rating used by industry.

(d) *Tip over* means that during the application of either test force described in §1301.7(a), the refuse bin begins to rotate forward about its forwardmost ground supports.

§1301.5 Banning criteria.

(a) Any refuse bin of metal construction produced or distributed, for sale to, or for the personal use, consumption or enjoyment of consumers, in or around a permanent or temporary household or residence, a school, in recreation or otherwise, which is in commerce or being distributed in commerce on or after the effective date of this ban and which has an actual internal volume one cubic yard or greater and tips over when tested under the conditions of §1301.6 and using the procedures described in §1301.7, is a banned hazardous product.

(b) The Commission considers a refuse bin to tip over when it begins to rotate forward about its forwardmost ground supports.

§1301.6 Test conditions.

(a) The refuse bin shall be empty and have its lids or covers in a position which would most adversely affect the stability of the bin when tested.

(b) The refuse bin shall be tested on a hard, flat surface. During testing, the bin shall not be tilted from level in such a way as to increase its stability.

(c) Those refuse bins equipped with casters or wheels shall have the casters or wheels positioned in a position which would most adversely affect the stability of the bin and shall be chocked to prevent movement.

(d) The stability of the refuse bin shall be tested without dependence upon non-permanent attachments or restraints such as chains or guys.

(e) For purposes of enforcement, bins will be tested by the Commission in that position which most adversely affects their stability.

§ 1301.7 Test procedures.

(a) The refuse bin shall be tested by applying forces as described in paragraphs (a) (1) and (2) of this section one after the other.

(1) A horizontal force of 70 pounds (311 N) shall be applied at a point and in a direction most likely to cause tipping, and

(2) A vertically downward force of 191 pounds (850 N) shall be applied to a point most likely to cause tipping. (See Figure 1.)

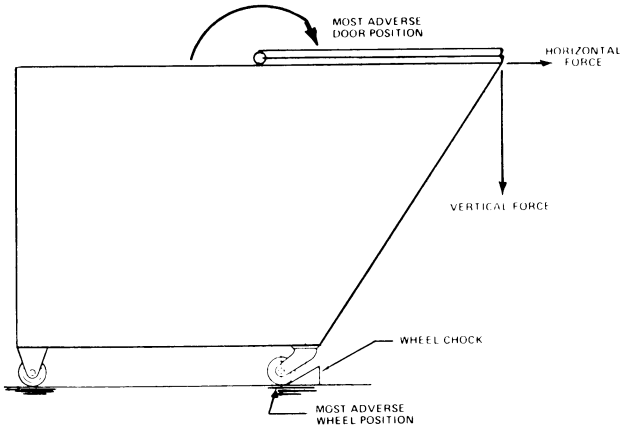


FIGURE 1

(b) These forces shall be applied separately and the bin shall not tip over under the application of either action cited above in paragraph (a)(1) or (a)(2).

§ 1301.8 Effective date.

The effective date of this ban shall be June 13, 1978.

PART 1302—BAN OF EXTREMELY FLAMMABLE CONTACT ADHESIVES

Sec.
1302.1 Scope and application.
1302.2 Purpose.
1302.3 Definitions.
1302.4 Banned hazardous products.
1302.5 Findings.
1302.6 Effective date.

AUTHORITY: Secs. 8, 9; 86 Stat. 1215–1217 as amended; 90 Stat. 506; (15 U.S.C. 2057, 2058).

SOURCE: 42 FR 63731, Dec. 19, 1977, unless otherwise noted.

§ 1302.1 Scope and application.

(a) In this part 1302 the Consumer Product Safety Commission (Commission) declares extremely flammable contact adhesives and similar liquid or semiliquid consumer products to be banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). This ban applies to those extremely flammable contact adhesives and similar liquid or semiliquid consumer products, as defined in §1302.3(b), which are in commerce or are being distributed in commerce on or after the effective date of this regulation, and which are consumer products (as defined in section 3(a) of the Act (15 U.S.C. 2052) customarily produced or distributed for sale to, or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

(b) An extremely flammable contact adhesive as defined in §1302.3(b) is a banned hazardous product if the manufacturer, distributor, or retailer customarily produces or distributes the

product for sale to, or use by consumers, or if the manufacturer, distributor, or retailer fosters or facilitates the product's sale to, or use by, consumers. For example, contact adhesives available in retail stores, such as lumber yards or hardware stores, for sale to consumers would be included in the scope of the ban even though such outlets may sell such products primarily to industrial or professional users. The manufacturer who markets an extremely flammable contact adhesive which would be subject to the ban if sold to consumers has the responsibility for determining the distribution and use patterns of its product and for taking all reasonable steps to ensure that the product is not made available for sale to consumers. The test of whether a contact adhesive is banned shall be whether the product, under any customary or reasonably foreseeable condition of distribution, or sale, is made available for purchase by consumers.

(c) Contact adhesives that are labeled as, marketed, and sold solely for industrial or professional use are not within the scope of this ban. However, merely labeling a contact adhesive for industrial or professional use only would not exclude such products from this ban. In addition, packaging a contact adhesive in a large size container would not in itself exclude the product from this ban.

(d) The Commission has found that the contact adhesives covered by this ban are being, or will be distributed in commerce; and present an unreasonable risk of injury; and that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with these products.

§ 1302.2 Purpose.

The purpose of this rule is to ban extremely flammable contact adhesives which have been found to present an unreasonable risk of injury to consumers of burns resulting from explosive and flashback fire.

§ 1302.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1302.

(b) The term *extremely flammable contact adhesive and similar liquid or semiliquid consumer products* means consumer products that have each of the following product characteristics:

(1) Show a flash point at or below 20 degrees Farenheit as determined by the Tagliabue open-cup test method prescribed by 16 CFR 1500.43; and

(2) Are intended to be applied to two surfaces to be bonded together and allowed to dry partially until there is little residual tack, and adhere to themselves instantaneously when the coated surfaces are joined under low or moderate pressure; and

(3) Are composed of a high percentage (70–90 percent by weight) of solvents and a low percentage of solids (10–30 percent by weight); and

(4) Are substances that are non-aerosols and are free-flowing, having a wet viscosity within the range of 300–6,000 centipoise at 70 degrees Fahrenheit when measured by an RVF Brookfield viscometer; and

(5) Are packaged in containers of more than one-half pint.

(c) The term *flash point* means the lowest temperature corrected to a pressure of 101.3 RPa (1013 millibars) of a substance at which application of an ignition source causes the vapor above the substance to ignite under specified conditions of test. A blue light (blue halo) or other colored light which sometimes surrounds the test flame should not be confused with the true ignition of the vapors (flash point).

(d) *Initial introduction into commerce* occurs when the manufacturer ships a product covered by this regulation from a facility of the manufacturer to a distributor, retailer, or consumer.

§ 1302.4 Banned hazardous products.

Any extremely flammable contact adhesive and similar liquid or semiliquid consumer product as defined in § 1302.3 (b), which has been manufactured or initially introduced into commerce after January 17, 1978, is a banned hazardous product. In addition, any other extremely flammable contact adhesive and similar liquid or

semiliquid consumer product, as defined in §1302.3(b), no matter when manufactured or initially introduced into commerce, is a banned hazardous product after June 13, 1978.

§ 1302.5 Findings.

(a) *The degree and nature of the risk of injury.* The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is the risk of injury of burns from explosive vapor ignition and flashback fire associated with extremely flammable contact adhesives as defined in this rule.

(1) *Degree of the risk of injury presented by extremely flammable contact adhesives.* (i) In October 1976, the Commission's staff prepared a report entitled Hazard Analysis on Contact Adhesive Fires. According to the Hazard Analysis, three factors that measure burn severity are percent of body burned, days hospitalized, and whether clothing ignition occurs. Injury data sources summarized in the Hazard Analysis reveal that contact adhesive fires often result in a high percent of body burned, result in many days hospitalized, and usually involve clothing ignition burns.

(ii) The American Burn Association (ABA) participated in a special survey with the Commission to obtain an estimate of the incidence and severity of burns associated with the use of contact adhesive cements. In January 1976, the President of the ABA sent a letter to the 1,300 ABA members asking the members to record any thermal injuries or deaths that have occurred between January 1975 and March 1976 associated with contact adhesives. In November 1976, the Chairman of the ABA Committee on Burn Prevention submitted a statement to the Commission estimating that between 45 and 125 contact adhesive related injuries are treated annually in hospital emergency rooms. Although ABA members reported an annual rate of 20 severe burn injuries for the January 1975 to March 1976 period, the actual rate of severe burn injuries may be higher, since only approximately 400 hospitals, less than 10 percent of the country's short-term hospitals, are represented in ABA membership. The results of the ABA survey, as reported by the ABA Chairman, showed that the injuries treated by members resulted in an average hospitalization of 42 days, almost double the length of stay for all burn victims in special facilities for burns. According to the ABA Chairman, when a burn victim experiences such a lengthy stay, it is an indication of very severe injury and predicts a lengthy period of recuperation and potentially permanent physical and psychological consequences.

(iii) The Hazard Analysis prepared by the Commission's staff also contains a summary of the results of the ABA survey. According to the Commission's staff, the ABA survey revealed 33 incidents with sufficient details for analysis. Nine of the victims died from their burns and 21 were hospitalized. The average body area burned was 40 percent. In addition, the victims' clothing ignited on all except three of the 33 victims.

(iv) The Hazard Analysis also contains a summary of contact adhesive related fires in the National Fire Protection Association's (NFPA) Fire Incident Data Organization (FIDO), a computerized file of fire experience that includes data collected from 1971 to 1975. The NFPA files contained reports of 38 fires from 1971 to 1975, seven of which occurred in residences. These seven fires resulted in injuries to fifteen persons and deaths to three persons.

(v) In addition to the above injury information, the Hazard Analysis also indicates that the Commission has received three death certificates specifying the involvement of an adhesive.

(vi) According to the hazard analysis, after cases from the various data sources were verified as being mutually exclusive, at least 130 persons have been injured in contact adhesive fires since 1970. Fifteen of these persons subsequently died from the injuries they sustained in these accidents.

(vii) Technical analysis of extremely flammable contact adhesives by the Commission's staff indicates that the degree of the hazard associated with these products is such that as little as one pint of extremely flammable contact adhesive may produce a substantial explosion hazard.

(2) *Nature of the risk of injury presented by flammable contact adhesives.* (i)

Technical analysis of these substances by the Commission's staff indicates that extremely flammable contact adhesives have a low flash point (20 °F or below), a rapid evaporation rate (as a result of a high percentage of solvents, 70–90 percent by weight), a low percentage of solids, 10–30 percent by weight, and a low wet-viscosity (300–6,000 centipoise when measured by an RVF Brookfield viscometer).

(ii) Flash point, viscosity, low solid to high solvent ratio, evaporation rate, size of the application area, and rate of application are factors which determine the potential for creating an ignitable vapor situation. The rapid rate of evaporation of extremely volatile, low flash point solvents from extremely flammable contact adhesives is capable of creating a highly explosive atmosphere. The flammable nature of these contact adhesives is such that the vaporized solvents from these products can be ignited by a sparking electric motor or an overlooked pilot light in an area remote from the site of use. Analysis of actual injury reports by the Commission's staff reveals that extremely flammable contact adhesives have, in fact, been ignited by many ignition sources including oven and stove pilot lights, water heater and furnace pilot lights, electric space heaters (without any visible flame), sparks from a refrigerator motor and a wall receptacle, and friction. Analysis of available injury reports has shown that these ignition sources are frequently located in areas of the house remote from the room in which the contact adhesive is being used.

(iii) The possibility of ignition from a source in another room or another part of the house may well be overlooked by the public, in spite of warnings on the label of the product. Ignition of the vapors may result in a sudden, flash back fire from the source of vapor ignition to the container of adhesive with little or no warning to the consumer and with the potential for serious or fatal injury to the user or bystanders. The injury information available to the Commission shows that the vast majority of accidents occur while the product is being used for its intended purpose. The potential for serious injury, therefore, appears to be present during normal use of the product.

(iv) Although the Commission has in the past required the extremely flammable contact adhesives now subject to this ban to bear minimum cautionary labeling for the hazard caused by the extreme flammability of the mixture, the Commission finds that this cautionary labeling is inadequate to protect the public. An analysis prepared by the Commission staff of the available injury data indicates that in spite of the cautionary labeling, accidents have continued to occur, inflicting serious injuries in much the same manner as those accidents that occurred prior to the issuance of the 1970 labeling regulation. The cautionary labeling presently required could be revised to include more explicit and graphic warnings. However, as a result of the degree and nature of the risk of injury presented by the product, this labeling would also provide inadequate protection to the public. The degree and nature of the risk of injury is such that a bystander or visitor could present an ignition source resulting in an accident. Since the bystander or visitor would not normally have an opportunity to read the warning label on the product, additional labeling would not benefit these potential victims. The possibility of ignition from a source in another room or another part of the house may well be overlooked by the public, in spite of warnings on the label of the product.

(b) *Products subject to this ban.* (1) The products banned by this rule are listed in § 1302.1.

(2) The Commission finds that the types of products subject to this ban are those contact adhesives that are extremely flammable and are packaged in containers of more than one-half pint. The average annual consumption of all types of contact adhesives in the United States is estimated at approximately 25 million gallons. Of this, it is estimated that 4–5 million gallons are sold in containers of 1 gallon or less, the sizes consumers generally buy. Professional users are estimated to purchase about half of the contact adhesives in this size range with most purchases probably of gallon containers.

Therefore, consumers probably purchase 2–2.5 million gallon of all contact adhesives, most of which is estimated to be in quart containers, and a smaller amount in containers of one pint or less.

(3) In early 1976, contact adhesive sales were estimated as 80 percent extremely flammable, 10 percent chlorinated-solvent based, and 10 percent water-based. Since that time, a flammable petroleum solvent based contact adhesive has been developed and there has been a trend away from extremely flammable to flammable and nonflammable for consumer use. Although this trend is evident, reliable estimates of current market shares are not available. A rough estimate would be that perhaps 50 percent of contact adhesives in container sizes of more than one-half pint to 1 gallon are extremely flammable.

(c) Need of the public for the products and effects of the rule on their utility, cost, and availability.

(1) *The need for contact adhesives.* Contact adhesives are used primarily for bonding plastic laminates to counter and table tops, for applying tile board to walls, and for applying some types of flooring. Other uses include bonding metals, wood, leather, linoleum, tiles, rubber and plastics. Contact adhesives may also be used in furniture construction and repairs. There are contact adhesives available other than the extremely flammable type and other alternatives to contact adhesives that consumers can use.

(2) *Probable effects of the ban on the utility of contact adhesives.* Of the three general types of contact adhesive other than extremely flammable contact adhesives, flammable and non-flammable (chlorinated) contact adhesives have about the same general performance characteristics as extremely flammable contact adhesives. Therefore, because these two products are available to the public, the Commission believes the ban will have little impact on the utility of contact adhesives. In terms of performance characteristics, there is little difference between flammable and extremely flammable contact adhesives. Although the extremely flammable product requires approximately 10 minutes of drying time before the item can be bonded, the flammable product requires about 20 minutes. This difference in time is not likely to be significant for most consumers who do ordinary home improvement or repair work. The performance characteristics of non-flammable chlorinated based contact adhesives are similar to those of the extremely flammable type for most applications. Non-flammable chlorinated based contact adhesives may be unacceptable for applications involving leather. Water based contact adhesives may not be as satisfactory, in terms of performance characteristics, as the other contact adhesives. The drying time for water-based contact adhesives varies with humidity. Although manufacturers of water-based neoprene contact adhesives claim that their products will dry in 30 minutes, for most of the country a drying time from one to four hours is probably more realistic. It is possible that the adhesive will never dry in some areas of the country with very high humidity. The time needed for the adhesive to adhere after joining (open time) will also vary with the humidity. Water-based acrylic contact adhesives are similar to neoprene type adhesives in terms of the effect of humidity on drying time. The neoprene and acrylic based adhesives are not completely satisfactory for binding some substances with non-porous surfaces, such as metals. In addition, the water in these adhesives might have an adverse effect on leather. Neoprene water-based adhesives may become unstable if frozen and thawed several times. This may occur during shipping or storage in some areas of the country during deaths associated with the extreme winter. To the extent that injuries and flammable contact adhesives are reduced or eliminated as a result of the ban, the utility of contact adhesives will be increased.

(3) *Probable effects of the ban upon the cost of contact adhesives.* For gallon containers, the Commission estimates that the contact adhesives available as substitutes for the extremely flammable type may cost in the range of $1–$6 more than the extremely flammable type. Although a gallon of extremely flammable contact adhesive may cost

$7.50–$10.50, a gallon of flammable contact adhesive may cost from $8–$11, a gallon of nonflammable chlorinated base contact adhesive may cost from $12–$15, a gallon of water-based neoprene contact adhesive may cost from $11–$16, and a gallon of water-based acrylic contact adhesive may cost from $10–$15.

(4) *Probable effect of the ban on the availability of contact adhesives to meet the need of the public.* The Commission estimates that the ban will not have any effect on the availability or use of contact adhesives. Manufacturers are most likely to switch production to flammable petroleum-based and to 1,1,1,-trichloroethane (1,1,1,-TCE) based or water-based contact adhesives.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of this rule, such as labeling, but has found none that would achieve the objective of this ban, consistent with the public health and safety.

(2) The Commission believes that any adverse effects of the ban should be minimal and would be expected to be confined to some shift in distribution patterns to accommodate professional users, including methods of distinguishing between professional users and consumers.

(3) The Commission finds that competition should not be significantly affected by this rule.

(e) *Conclusion.* The Commission finds that this rule, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risk of injury of burns from explosive vapor ignition and flashback fire that is associated with the banned products described in §1302.3(b). The Commission also finds that issuance of the rule is in the public interest. The Commission also finds that no feasible consumer product safety standard under the act would adequately protect the public from the unreasonable risk of injury associated with the product.

§1302.6 Effective date.

This rule becomes effective January 18, 1978.

PART 1303—BAN OF LEAD-CONTAINING PAINT AND CERTAIN CONSUMER PRODUCTS BEARING LEAD-CONTAINING PAINT

Sec.

AUTHORITY: Secs. 8, 9, 86 Stat. 1215–1217, as amended 90 Stat. 506, 122 Stat. 3016, (15 U.S.C. 2057, 2058), Sec. 101, 122 Stat. 3016.

SOURCE: 42 FR 44199, Sept. 1, 1977, unless otherwise noted.

§1303.1 Scope and application.

(a) In this part 1303, the Consumer Product Safety Commission declares that paint and similar surface-coating materials for consumer use that contain lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent (0.06 percent is reduced to 0.009 percent effective August 14, 2009 as mandated by Congress in section 101(f) of the Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film (which paint and similar surface-coating materials are referred to hereafter as ''lead-containing paint'') are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057, 2058. The following consumer products are also declared to be banned hazardous products:

(1) Toys and other articles intended for use by children that bear ''lead-containing paint''.

(2) Furniture articles for consumer use that bear ''lead-containing paint''.

(b) This ban applies to the products in the categories described in paragraph (a) of this section that are manufactured after February 27, 1978, and which are ''consumer products'' as that term is defined in section 3(a)(1) of the Consumer Product Safety Act. Accordingly, those of the products described above that are customarily produced or distributed for sale to or for use, consumption, or enjoyment of consumers in or around a household, in schools, in recreation, or otherwise are covered by

the regulation. Paints and coatings for motor vehicles and boats are not included within the scope of the ban because they are outside the statutory definition of ''consumer product''. In addition to those products which are sold directly to consumers, the ban applies to products which are used or enjoyed by consumers after sale, such as paints used in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface.

(c) The Commission has issued the ban because it has found that there is an unreasonable risk of lead poisoning in children associated with lead content of over 0.06 percent in paints and coatings to which children have access and that no feasible consumer product safety standard under the CPSA would adequately protect the public from this risk. The 0.06 percent is reduced to 0.009 percent effective August 14, 2009 as mandated by Congress in section 101(f) of the Consumer Product Safety Improvement Act of 2008, Public Law 110–314.

(d) Any ban or rule promulgated under 16 CFR 1303.1 shall be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).

[42 FR 44199, Sept. 1, 1977, as amended at 73 FR 77493, Dec. 19, 2008]

§ 1303.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1303.

(b) For purposes of this part:

(1) *Paint and other similar surface-coating materials* means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

(2) *Lead-containing paint* means paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent (0.06 percent is reduced to 0.009 percent effective August 14, 2009) by weight of the total nonvolatile content of the paint or the weight of the dried paint film.

(3) *Toys and other articles intended for use by children* means those toys and other articles which are intended to be entrusted to or for use by children. This would not include all articles to which children might have access simply because they are present in a household.

(4) *Furniture article* means those movable articles: (i) Used to support people or things; (ii) other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console televisions, and sofas. The term ''furniture article'' does not include appliances, such as ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers; fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.

[42 FR 44199, Sept. 1, 1977, as amended at 73 FR 77493, Dec. 19, 2008]

§ 1303.3 Exemptions.

(a) The categories of products listed in paragraph (b) of this section are exempted from the scope of the ban established by this part 1303, provided:

(1) That these products bear on the main panel of their label, in addition to any labeling that may be otherwise required, the signal word ''Warning'' (unless some other signal word is required) and the following statement: ''Contains Lead. Dried Film of This Paint May Be Harmful If Eaten or Chewed.''

(2)(i) That these products also bear on their label the following additional statement or its practical equivalent:

Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children.

Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

Keep out of reach of children.

(ii) If the statement required by the preceding paragraph (a)(2)(i) is placed on a label panel other than the main panel, the label statement required to be on the main panel by paragraph (a)(1) of this section shall contain the following additional statement: ''See other cautions on _____ (insert 'side' or 'back', as appropriate) panel.''

(3) That the placement, conspicuousness, and contrast of the label statements required by this section (a) comply with the requirements of the Federal Hazardous Substances Act at 16 CFR 1500.121.

(b) The following products are exempt from the scope of the ban established by this part 1303, provided they comply with the requirements of paragraph (a) of this section:

(1) Agricultural and industrial equipment refinish coatings.

(2) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

(3) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).

(4) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.

(5) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

(c) The following products are exempt from the scope of the ban established by part 1303 (no cautionary labeling is required):

(1) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.

(2) Artists' paints and related materials.

(3) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

[42 FR 44199, Sept. 1, 1977, as amended at 43 FR 8515, Mar. 2, 1978]

§ 1303.4 Banned hazardous products.

The following consumer products, manufactured after February 27, 1978, unless exempted by § 1303.3, are banned hazardous products (see definitions in § 1303.2):

(a) Paint and other similar surface-coating materials which are ''lead-containing paint.''

(b) Toys and other articles intended for use by children that bear ''lead-containing paint.''

(c) Furniture articles that bear ''lead-containing paint.''

§ 1303.5 Findings.

(a) *The degree and nature of the risk of injury.* (1) The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is lead poisoning in children. The adverse effects of this poisoning in children can cause a range of disorders such as hyperactivity, slowed learning ability, withdrawal, blindness, and even death. The final Environmental Impact Statement on Lead in Paint which is on file with the President's Council on Environmental Quality (and available for inspection in the Office of the Secretary) contains in appendix A a detailed discussion of the health effects of lead in paint. These effects will only be summarized here.

(2) Lead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems. Newer concepts indicate that there are three stages to childhood lead poisoning. The adverse health effects in the first stage are not clinically present but metabolic changes can be observed. During the second stage or symptomatic stage such symptoms as loss of appetite, vomiting, apathy, drowsiness, and inability to coordinate voluntary muscle movements occur. The after effects of this stage include seizure disorders as well as various behavioral and functional disorders which are often included under the heading of minimal brain dysfunction. Studies suggest that this syndrome may include hyperactivity, impulsive behavior, prolonged reaction time, perceptual disorders and slowed learning ability. The adverse health effects of the third stage may be permanent and can include blindness,

mental retardation, behavior disorders, and death.

(3) The Commission notes that children with pica are of special concern with regard to lead poisoning. Pica, the repetitive ingestion of nonfood substances, occurs in 50 percent of children between the ages of one and three, and studies indicate that at this age lead is absorbed more rapidly than lead is absorbed in adults. Pica for paint is believed to be episodic and can occur 2 to 3 times a week.

(4) The Commission also notes that there are no reports of injuries caused by lead paint poisoning in the Commission's National Electronic Injury Surveillance System (NEISS) data, which reflect hospital emergency room treatment. Lead paint poisonings result from a chronic hazard rather than from an acute hazard of the type generally treated in emergency rooms; and NEISS reporting, therefore, does not reflect this type of chronic hazard or injuries.

(5) Former U.S. Surgeon-General Jesse L. Steinfeld, however, estimated in 1971 that 400,000 pre-school American children have elevated body lead burdens. The National Bureau of Standards in 1972 estimated that 600,000 young children have unduly high lead blood content.

(b) *Products subject to this ban.* (1) The products banned by this rule are listed in §1303.4.

(2) The term *paint* comprises a variety of coating materials such as interior and exterior household paints, varnishes, lacquers, stains, enamels, primers, and similar coatings formulated for use on various surfaces. Based on 1976 data, the Commission estimates that over 400 million gallons of paint a year valued at approximately $2.5 billion could potentially be subject to this rule.

(3) All products commonly known as toys and other articles intended for the use of children are subject to this rule. The categories of products within this classification are numerous and include items and equipment for play, amusement, education, physical fitness, and care of children. Retail sales in 1976 of products considered to be toys or other articles intended for use of children are estimated at around $4 billion.

(4) For the purposes of this rule, furniture articles are certain movable articles used to support people or things or other functional or decorative furniture articles such as couches, beds, tables, chairs, chests, and the like. Appliances and similar equipment, household fixtures, and certain other household items such as window shades, blinds, wall hangings, and the like are not included within the definition of furniture. The regulation applies to furniture for use in households, schools, in recreation, or otherwise. In 1972, the value of shipments of items of furniture such as those named above was as follows: wood household furniture $2,716 million; metal household furniture $859 million; wood television and radio cabinets $293 million; and $190 million for other household furniture made of plastic, reed and rattan. (Not included in the above are some $2 billion worth of upholstered furniture and $300 million in convertible sofas, chair beds and studio couches.)

(c) *Need of the public for the products and effects of the rule on their utility, cost, and availability.* (1) The public need for paints of various types and for furniture and other articles is substantial and well established. The Commission finds that the need of the public for paint containing more than 0.06 percent lead or for the affected products that are coated with materials containing more than 0.06 percent lead is limited. The Commission has determined that there are products containing more than the 0.06 percent level of lead which meet a public need and for which substitutes are either not available or are not sufficiently effective and to which access by children to the coatings or the surfaces to which they are applied is unlikely. Accordingly, these products have been specifically exempted from the scope of the regulation in §1303.3.

(2) The Commission finds that the effects of this rule on the cost, utility, and availability of paints and painted articles will be small. The Commission notes that over 95 percent of latex-based and nearly 70 percent of oil-based paints have lead levels at or below the level set by part 1303.

(i) *Costs.* The Commission estimates that the added costs to the consumer for paints affected by this rule will not exceed 5 to 10 cents per gallon. Costs to consumers for furniture and for toys and other articles intended for the use of children are not expected to increase as the result of compliance with the regulation.

(ii) *Utility.* The Commission finds that for water-based or latex paints and coatings subject to this rule, reducing the amount of allowable lead to 0.06 percent will not have adverse effects on their utility. For certain solvent-thinned coatings, however, lead driers will have to be replaced by nonlead driers such as zirconium to comply with the 0.06 percent level (Driers are not used in latex paints). An impact on the paint industry may result because current nonlead driers may not dry satisfactorily in low temperatures or high humidity conditions, and so the painting industry in some areas at certain times of the year may suffer a reduction of effective painting time.

(iii) *Availability.* Substitutes at comparable prices are available for paints and for products banned by this rule. The Commission believes that the reduction of lead to a level of 0.06 percent will not affect the availabilty of water-based or latex paints. Sales of such coatings currently exceed sales of solvent-based coatings, and because of the drying problem mentioned above, the trend toward increased use of water-based paints may be accelerated somewhat by the effects of the ban.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of this rule, but has found none that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with public health and safety.

(2) The Commission estimates that this ban may, because of testing costs and the necessity for improved housekeeping practices in the manufacture of paint and similar surface-coating materials to prevent lead contaimination, have some relatively minor adverse effect on individual firms within some markets.

(3) The Commission, however, finds that competition will not be adversely affected by this rule. Although costs of reformulation and testing may be relatively higher for small manufacturers than large manufacturers, these costs are not so onerous as to lead to greater concentration in the industry. The period of time before the effective date is sufficient to minimize problems of compliance with the rule.

(4) The reduction of the permissible level of lead in paint will affect paint manufacturers, raw materials suppliers, professional and non-professional painters, and manufacturers of furniture and children's articles. For those producers of paint which are already subject to the regulations under the Federal Hazardous Substances Act (FHSA), the impact of this CPSA ban will involve only a change to non-lead driers since lead pigments are precluded from practical use under the 0.5 percent lead restriction now in effect under the FHSA (16 CFR 1500.17(a)(6)). The manufacturers of some painted furniture who were not affected by the 0.5 percent limit under the FHSA may now be, if they use lead pigments or driers. Producers of children's articles who were subject to the 0.5 percent FHSA limit will have to ensure that the paint they use conforms to the 0.06 percent level.

(e) *Conclusion.* The Commission finds that this rule, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risk of lead poisoning of young children that is associated with the banned products which are described in §1303.4 and that promulgation of the rule is in the public interest.

PART 1304—BAN OF CONSUMER PATCHING COMPOUNDS CONTAINING RESPIRABLE FREE-FORM ASBESTOS

Sec.

AUTHORITY: Secs. 8, 9, 86 Stat. 1215–1217, as amended 90 Stat. 506, 15 U.S.C. 2057, 2058.

SOURCE: 42 FR 63362, Dec. 15, 1977, unless otherwise noted.

§ 1304.1 Scope and application.

(a) In this part 1304 the Consumer Product Safety Commission declares that consumer patching compounds containing intentionally-added respirable freeform asbestos in such a manner that the asbestos fibers can become airborne under reasonably foreseeable conditions of use, are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). This ban applies to patching compounds which are (1) used to cover, seal or mask cracks, joints, holes and similar openings in the trim, walls, ceiling, etc. of building interiors, which after drying are sanded to a smooth finish and (2) are produced and distributed for sale to or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation or otherwise.

(b) The Commission has found that (1) these patching compounds are being or will be distributed in commerce; (2) that they present an unreasonable risk of injury; and (3) that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with these products. This rule applies to the banned hazardous products defined in §1304.3 and described further in §1304.4.

(c) Only consumer products are subject to this regulation. Patching compounds which are consumer products include those which a consumer can purchase. Merely labeling a patching compound for industrial use would not exclude such articles from the ban. If the sale or use of the product by consumers is facilitated, it is subject to the ban. Patching compounds which are labeled as, marketed, and sold solely for industrial use in non-consumer environments are not subject to the ban. In addition to those products which can be sold directly to consumers, the ban applies to patching compounds containing respirable freeform asbestos which are used in residences, schools, hospitals, public buildings or other areas where consumers have customary access.

§ 1304.2 Purpose.

The purpose of this rule is to ban consumer patching compounds containing intentionally added respirable, free-form asbestos. These products present an unreasonable risk of injury due to inhalation of fibers which increase the risk of developing cancer, including lung cancer and mesothelioma, diseases which have been demonstrated to be caused by exposure to asbestos fibers.

§ 1304.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1304.

(b) *Asbestos* means a group of mineral fibers composed of hydrated silicates, oxygen, hydrogen, and other elements such as sodium, iron, magnesium, and calcium in diverse combinations and are: Amosite, chrysotile, crocidolite, anthophyllite asbestos, actinolite asbestos, and tremolite asbestos.

(c) *Free-form asbestos* is that which is not bound, or otherwise ''locked-in'' to a product by resins or other bonding agents, or which can readily become airborne with any reasonably foreseeable use.

(d) *Patching compounds* are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials and a binding material such as asbestos which are sold in a dry form ready to be mixed with water, or such combinations in ready-mix paste form.

(e) *Consumer patching compounds* are those that are customarily produced or distributed for sale to or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. The Commission considers that patching compounds for application in these consumer environments are either distributed for sale to or are for the personal use or enjoyment of consumers.

(f) *Intentionally-added asbestos* is asbestos which is (1) added deliberately as an ingredient intended to impart specific characteristics; or, (2) contained in the final product as the result

of knowingly using a raw material containing asbestos. Whenever a manufacturer finds out that the finished product contains asbestos, the manufacturer will be considered as knowingly using a raw material containing asbestos, unless the manufacturer takes steps to reduce the asbestos to the maximum extent feasible.

(g) *Initial introduction into commerce* occurs when the manufacturer ships a product covered by this regulation from a facility of the manufacturer to a distributor, retailer, or user.

§ 1304.4 Consumer patching compounds as banned hazardous products.

On the basis that airborne asbestos fibers present the hazards of cancer, including lung cancer and mesothelioma to the public, consumer patching compounds containing intentionally-added, respirable free-form asbestos, which have been manufactured or initially introduced into commerce after January 16, 1978, are banned hazardous products. In addition, all other consumer patching compounds containing intentionally-added, respirable free-form asbestos, no matter when manufactured or initially introduced into commerce, are banned hazardous products after June 11, 1978.

§ 1304.5 Findings.

(a) *The degree and nature of the risk of injury.* The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is from cancer, including lung cancer and mesothelioma. In assessing the degree and nature of the risk of injury to consumers, the Commission has reviewed experimental data and human experience information. The Commission noted that in the scientific literature, there is general agreement that there is no known threshold level below which exposure to respirable free-form asbestos would be considered safe. Further, on the basis of such scientific opinion, it appears to the Commission that children are particularly vulnerable to carcinogens because of their longer potential lifetime and their rapid rate of growth. In areas of the country where asbestos may not be prevalent in the environment, the major risk of exposure for children and others may occur in the household. In areas of the country where more asbestos fibers are present in the environment, the public is exposed to additional risks from the presence of asbestos fibers in households and other consumer environments. The Commission concluded on the basis of these factors that consumer patching compounds containing respirable free-form asbestos present an unreasonable risk of injury to the public. In addition, a risk assessment was made. For purposes of this assessment, the Commission considered the use of patching compounds by the consumer, for six hours a day four times a year, to be a high yet reasonably foreseeable exposure. The increased risk of death from respiratory cancer induced by this exposure is estimated at between 10 and 2,000 per million. For five years of exposure at these levels, the risk increases geometrically and is estimated at between 1,000 and 12,000 per million. The lower estimate of 10 per million is closer to the actual risk for a one-year exposure. Nevertheless, in view of the seriousness of the injury and the cumulative effects of asbestos exposure, even this minimum figure represents an unacceptable risk. The Commission believes that reducing exposure to respirable free-form asbestos in the home represents a substantial decrease in risk to consumers, since, for many people, the major exposure to inhalable asbestos is in the home.

(b) *Products subject to the ban.* Consumer patching compounds as defined in § 1034.3 (d), (e), (f) includes such products as drywall spackling compounds and tape joint compounds (commonly known as ''joint cement'' or ''tape joint mud''). The Commission estimates annual shipments of patching compounds subject to the ban at approximately 30–50 million ''units,'' or individual packages, of various sizes from 0.5 to 25 pounds (dry) or 0.5 to 5 gallons (wet). The Commission believes that about half the patching compounds sold in 1977, and intended for sale to or use or enjoyment by consumers, were formulated with asbestos. Many others containing significant levels of asbestos contamination will also be affected by the ban.

(c) *Need of the public for the products and effects of the rule on their utility, cost and availability.* Patching compounds, though used primarily by commercial construction workers, are also used by consumers, and are used for the patching and sealing of cracks and joints in and around the household and in other consumer environments either by consumers or professional applicators. The compounds are used to cover areas on gypsum drywall which might otherwise be aesthetically undesirable or which might lead to structural damage, energy loss or lower property value. The asbestos in these compounds acts as a structural reinforcing agent which helps to reduce cracking and shrinkage of the compound over time, and which renders the compound more pliable or ''workable'' upon application.

(1) *Utility.* The elimination of asbestos from these products may result in the increased use or new development of substitutes which have similar properties to those of asbestos, or which impart similar qualities to the product. In current reformulations, asbestos is replaced by a combination of substances, of which the most common is attapulgite, a fibrous clay. Some nonasbestos formulations are reportedly not as effective as those containing asbestos in controlling shrinkage and cracking over time. The workability of some compounds may be diminished as well. This may adversely affect the utility derived from the product by consumers, and by professional contractors until such time as improved formulations are developed and available to end-users.

(2) *Cost.* Asbestos-free patching compound formulations may require more time to use. This would tend to increase the direct labor costs of residential and other construction and renovation. The expected increase is between 10 and 25 percent. The Commission estimates that the annual labor cost of drywall finishing in these consumer environments is on the order of $1 billion. The use of nonasbestos patching compound formulations in all applications may increase this cost by $50–$125 million, assuming that roughly half the current labor costs (i.e., that portion now associated with the use of asbestos formulations) are affected by the 10–25 percent increase. The burden of this cost is expected to fall directly on owners of existing homes who may engage in some renovation, and on purchasers of newly-renovated or newly-constructed homes. These increased costs are expected to diminish over time as formulations improve and as applicators become more accustomed to using nonasbestos formulations. The use of asbestos substitutes may also lead to cost increases in the manufacture of patching compounds. The Commission estimates this cost, which may vary widely from firm to firm, at an average of 5–15 percent. This is made up primarily of increased costs of raw materials and of formulation research and development. It is expected that the price of many patching compounds may rise as a result. Producers, distributors, and retailers of patching compounds may also have to incur costs associated with the disposal of products in inventory. The Commission estimates that the wholesale value of manufacturers' and distributors' inventories at the time the ban becomes effective will be approximately $15 million. These costs may be reflected in the prices charged for asbestos-free patching compound formulations, and in the prices of other drywall and paint products. It appears that, because of competitive pressure from asbestos-containing compounds, producers of asbestos-free formulations have not yet passed on to purchasers their increased costs. If the increased production costs of asbestos-free formulations can be passed on completely as a result of the ban, the total annual price effect for the year following the issuance of the ban may be $10–$60 million. The magnitude of this effect may be reduced significantly in successive years following the issuance of the ban as producers' development costs are amortized, as raw materials become more widely available, and as price competition is strengthened because of market pressure and economies of sale associated with production.

(3) *Availability.* The supply of asbestos substitutes, particularly attapulgite clay and relatively uncontaminated talc, for use in the manufacture of

patching compounds may be insufficient to meet the short-run demand which is expected to be stimulated by the promulgation of the ban. Further, many small producers probably lack the technical capability to reformulate their products, and may be forced to cease production, at least until formulations of satisfactory cost and performance are developed. This may affect some professional contractors. In the short run, consumers may be indirectly affected by delays in drywall finishing and building completion.

(d) *Any means of achieving the objective of the ban while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety*. The adverse effects of the ban on patching compounds containing asbestos is reduced by limiting the ban to intentionally added asbestos. Other alternatives such as limiting the scope of the ban only to products purchased and used by consumers or to issuing a ban with a later effective date, were considered by the Commission. However, none was found that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with public health and safety.

PART 1305—BAN OF ARTIFICIAL EMBERIZING MATERIALS (ASH AND EMBERS) CONTAINING RESPIRABLE FREE-FORM ASBESTOS

Sec.

AUTHORITY: Secs. 8, 9, 30(d), Pub. L. 92–573, as amended, Pub. L. 94–284; 86 Stat. 1215–17, as amended, 90 Stat. 506 (15 U.S.C. 2057, 2058).

SOURCE: 42 FR 63364, Dec. 15, 1977, unless otherwise noted.

§ 1305.1 Scope and application.

In this part 1305 the Consumer Product Safety Commission declares that artificial emberizing materials (ash and embers) containing respirable free-form asbestos generally packaged in an emberizing kit for use in fireplaces, and designed for use in such a manner that the asbestos fibers can become airborne under reasonably foreseeable conditions of use are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). This ban applies to artificial emberizing materials available in separate kits or with artificial fireplace logs for use in fireplaces and sprinkled or coated by consumers on the artificial logs to simulate live embers and ashes and give a glowing appearance when subjected to high temperatures. Bags of material containing asbestos that are sold separately to be sprinkled on and under artificial logs to simulate burning and glowing ashes also come within the scope of this ban.

§ 1305.2 Purpose.

The purpose of this rule is to ban artificial emberizing materials containing respirable free-form asbestos. These products present an unreasonable risk of injury due to inhalation of fibers which increase the risk of developing cancers such as lung cancer and mesothelioma, diseases which have been demonstrated to be caused by exposure to asbestos fibers.

§ 1305.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1305.

(b) *Asbestos* means a group of mineral fibers composed of hydrated silicates, oxygen, hydrogen and other elements such as sodium, iron, magnesium and calcium in diverse combinations and are: Amosite, chrysotile, crocidolite, anthophyllite asbestos, actinolite asbestos, and tremolite asbestos.

(c) *Free-form asbestos* is that which is not bound, woven, or otherwise ''locked-in'' to a product by resins or other bonding agents, or those from which fibers can readily become airborne with any reasonably foreseeable use.

(d) *Emberizing materials* means an asbestos-containing material generally packed in an ''emberizing'' kit to be placed under artificial logs in gas-burning fireplace systems or in artificial fireplaces for decorative purposes. The product is also glued to artificial logs,

either at a factory or by a consumer using an emberizing kit. (Synthetic logs manufactured of cellulostic products which are consumed by flames are not included in this definition. Electric artificial logs and artificial ash beds used in electric fireplaces, which do not contain respirable free-form asbestos are not included in this definition.)

§ 1305.4 Artificial fireplace ash and embers as banned hazardous products.

On the basis that airborne asbestos fibers present the hazards of cancer such as lung cancer and mesothelioma to the public, artificial fireplace ash and embers containings respirable free-form asbestos are banned hazardous products.

§ 1305.5 Findings.

(a) *The degree and nature of the risk of injury*. The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is from cancer, including lung cancer and mesothelioma. Measurements are not available of the amounts of asbestos in the air from asbestos-containing emberizing materials in homes. However, it appears that the amount of airborne asbestos in such homes would increase when air currents in the home are created by downdrafts from a fireplace chimney or other activities that stir air in any room. Since emberizing materials may contain up to 50 percent asbestos, which if not permanently bound into artificial fireplace logs would be in respirable form, the risk associated with emberizing materials is considerable, especially since it continues to exist 24 hours a day.

(b) *Products subject to the ban*. Artificial emberizing materials are decorative simulated ashes or embers, used in certain gas-buring fireplace systems, which glow to give the appearance of real burning embers. The material is sprinkled on or glued to gas logs, or sprinkled on fireplace floors.

(c) *Need of the public for the products and effects of the rule on their utility, cost, and availability*. Artificial fireplace emberizing material serves a strictly decorative purpose and does not materially affect the actual performance of the fireplace gas system in terms of its ability to provide heat. A certain degree of aesthetic desirability exists, however, since the product ''system'' itself (the gas log, ashes, and embers) is intended to simulate burning wooden logs. Gas logs may be sold with artificial emberizing material attached at the factory (the log commonly referred to as being ''frosted''), or with the ''embers'' in a separate kit, often mixed with simulated ''ashes.'' Virtually all gas logs are either frosted or packaged with an emberizing kit; however, the majority of gas logs produced in 1977 were packaged with non-asbestos-containing emberizing kits. The Commission estimates annual sales of artificial gas logs at approximately 100,000 units. Some 25,000–30,000 of these would be subject to the ban. Approximately 100,000 gas logs frosted or treated by consumers with asbestos are estimated to be in existence. The Commission believes that the majority of gas logs are sold with emberizing kits; this gives the consumer a choice as to whether or not to use the artificial embers and ashes.

(1) *Utility*. Manufacturers of artificial gas log emberizing material are currently using four substitutes for asbestos in their products: vermiculite, rock wool, mica, and a synthetic fiber. None of the four is claimed to be as aesthetically effective as asbestos. Thus, the utility derived by consumers from some gas-burning fireplace systems may be adversely affected.

(2) *Cost*. No effect on the overall price level of gas logs is anticipated as a result of the ban. The average price of emberizing kits may rise somewhat; the Commission estimates the total price effect of the ban on consumers at under $25,000.

(3) *Availability*. The Commission believes that all producers of artificial emberizing material will have eliminated asbestos from their products by the time the ban becomes effective. No significant impact on the availability of asbestos substitutes to producers nor on the availability of gas logs or emberizing kits to retail dealers and consumers is expected as a result of the ban.

(d) *Any means of achieving the objective of the ban while minimizing adverse*

effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety. The Commission believes that there will be minimal disruption to the market for artificial emberizing materials as a consequence of the ban and that no further reduction in adverse effects is feasible.

PART 1306—BAN OF HAZARDOUS LAWN DARTS

Sec.
1306.1 Scope and application.
1306.2 Purpose.
1306.3 Banned hazardous products.
1306.4 Findings.
1306.5 Effective date.

AUTHORITY: 15 U.S.C. 2058–2060.

SOURCE: 53 FR 46839, Nov. 18, 1988, unless otherwise noted.

§ 1306.1 Scope and application.

(a) In this part 1306, the Commission declares lawn darts, described in §1306.3, to be banned hazardous products.

(b) Lawn darts and similar products that are articles intended for use by children are not covered by this ban, but are banned under the Federal Hazardous Substances Act at 16 CFR 1500.18(a)(4).

§ 1306.2 Purpose.

The purpose of this rule is to prohibit the sale of lawn darts, which have been found to present an unreasonable risk of skull puncture injuries to children.

§ 1306.3 Banned hazardous products.

Any lawn dart is a banned hazardous product.

§ 1306.4 Findings.

(a) The Commission has found that lawn darts are being distributed in commerce and present an unreasonable risk of injury.

(b) *The degree and nature of the risk of injury*. (1) The risk that the Commission intends to address in this proceeding is that of puncture of the skulls of children caused by lawn darts being used by children. The potential for these devices to cause these types of injuries is not necessarily obvious to parents or other adults who might buy these items or allow their children to play with them, much less to the children themselves. This is because the tips do not appear sharp enough to present an obvious danger of puncture. The combined factors of weight, the narrow elongated shaft, the speed that the dart is traveling at the time of impact, and the thickness of the child's skull at the point of impact present the risk. The Commission has concluded that all lawn darts have the potential for skull puncture during reasonably foreseeable use or misuse.

(2) Because all lawn darts are being banned, the elimination of lawn darts that can cause skull puncture injuries will also eliminate the punctures of other parts of the body, as well as the lacerations, fractures, and other injuries that have been associated with lawn darts in the past. The Commission's staff estimates that about 670 injuries from lawn darts are treated in U.S. hospital emergency rooms per year. About 40 percent of these are puncture wounds. Approximately 57 percent of the injuries involved the head, face, eye, or ear. Approximately 4 percent of the injured victims were hospitalized (on the average, approximately 25 per year), including all of the injuries reported as fractures. Over 75 percent of the victims were under age 15; about 50 percent of the victims were under age 10. In addition, Commission records dating back to 1970 show that at least three children have been killed by injuries associated with lawn darts. These children were 4, 7, and 13 years old. In the 25 lawn dart injury reports for which information about the user of the lawn darts was available, the reports indicated that children were playing with the lawn darts, despite the ban and exemption which were developed to keep the product out of the hands of children.

(c) *Products subject to this ban*. (1) Lawn darts are devices with elongated tips that are intended to be used outdoors and that are designed so that when they are thrown into the air they will contact the ground tip first. Often, lawn darts are used in a game where the darts are thrown at a target or other feature on the ground. The types of lawn darts that have generally been available in the past and that have

demonstrated their ability to cause skull puncture injuries typically have a metal or weighted plastic body, on the front of which is an elongated metal shaft about ¼ inch in diameter. These darts have a shaft on the rear of the body containing plastic fins. These darts are about a foot in length and weigh about one quarter to one half pound. These darts are intended to stick in the ground when thrown. Prior to this rule, annual sales of these lawn darts were estimated at 1–1.5 million units.

(2) The definition for lawn darts in this rule is not intended to include arrows or horseshoes, nor is it intended to apply to indoor dart games that use a vertically-placed target, such as ''English darts'' or ''American darts.''

(d) *The need of the public for lawn darts, and the effects of the rule on their utility, cost, and availability.* The need of the public for lawn darts is for recreational enjoyment. Substitute recreational enjoyment can be obtained from other products. Lawn darts will not be available through commercial channels after the effective date of the ban.

(e) *Alternatives.* (1) The Commission considered various labeling requirements and limitations on the marketing of lawn darts that would be intended to discourage the marketing of the product to children and the use of the product by children. The Commission concluded, however, that these types of requirements would not preclude substantial use of the product by children and would not reduce adequately the risk of injury addressed by this rule.

(2) The Commission also considered the possibility of performance requirements for lawn darts to determine which lawn darts present an unreasonable risk of injury of skull penetration to children, but such requirements were determined not to be feasible.

(f) *Conclusion.* The Commission finds:

(1) That this rule, including its effective date, is reasonably necessary to eliminate or adequately reduce the unreasonable risk of skull puncture wounds to children associated with lawn darts and will also eliminate or reduce the other injuries, including puncture wounds, that have been associated with this product.

(2) That issuance of the rule is in the public interest.

(3) That no feasible consumer product safety standard would adequately protect the public from the unreasonable risk associated with lawn darts.

(4) That the benefits expected from this rule bear a reasonable relationship to its costs.

(5) That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

§ 1306.5 Effective date.

This rule is effective December 19, 1988 and applies to all lawn darts in the chain of distribution on or after that date.

PART 1401—SELF PRESSURIZED CONSUMER PRODUCTS CONTAINING CHLOROFLUOROCARBONS: REQUIREMENTS TO PROVIDE THE COMMISSION WITH PERFORMANCE AND TECHNICAL DATA; REQUIREMENTS TO NOTIFY CONSUMERS AT POINT OF PURCHASE OF PERFORMANCE AND TECHNICAL DATA

Sec.

AUTHORITY: Secs. 2(b), 27(e), Pub. L. 92–573, 86 Stat. 1208, 1228 (15 U.S.C. 2051(b), 2076(e)).

SOURCE: 42 FR 42783, Aug. 24, 1977, unless otherwise noted.

§ 1401.1 Scope.

This part 1401 establishes requirements under section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e)) for marketers and importers of self-pressurized consumer products that contain chlorofluorocarbons as propellants to provide notification of certain performance and technical data

to prospective purchasers of such products at the time of original purchase and to the first purchaser of such products for purposes other than resale. The notification shall consist of a label on the product stating that it contains a chlorofluorocarbon that may harm the public health and environment by reducing the ozone in the upper atmosphere. Also, manufacturers and importers must provide the commission with reports identifying which of the self-pressurized consumer products sold by them contain chlorofluorocarbon propellants.

§ 1401.2 Purpose.

Chlorofluorocarbons are used as propellants in self-pressurized containers of a variety of products subject to the Commission's jurisdiction. Scientific research has indicated that chlorofluorocarbons may pose a risk of depletion of ozone in the stratosphere. The stratospheric ozone shield is of great importance in protecting life on earth from shortwave ultra-violet rays of the sun. Ozone depletion allows more of these rays to reach the earth, and the consequences include a possibility of a significant increase in human skin cancer and other effects of unknown magnitude on man, animals, and plants. Chlorofluorocarbon release may also cause climatic change, both by reducing stratospheric ozone and by increasing infrared absorption in the atmosphere. The Commission believes that the requirements of this part 1401 will enable consumers to make a conscious choice of whether to use products that contain chlorofluorocarbon propellants. The Commission also believes that these requirements are necessary in order to carry out the purposes of the Consumer Product Safety Act of (a) helping to protect the public against unreasonable risks of injury associated with consumer products and (b) assisting consumers in evaluating the comparative safety of consumer products.

§ 1401.3 Definitions.

For the purposes of this part 1401:

(a) *Chlorofluorocarbon* means any fully halogenated chlorofluoroalkane.

(b) *Finished product* means a product which has been completely manufactured, packaged, and labeled.

(c) *Initially introduced into interstate commerce* means the first shipment of the product into interstate commerce by the firm marketing the product. There must be both physical movement in interstate commerce and passage of title to the product. Thus, mere shipment of a product across state lines from a contract filler to the marketer of the product would not constitute initial introduction into interstate commerce. All products initially introduced into interstate commerce before the effective date may continue to be distributed and sold even though they do not bear the warning statement.

(d) *Manufacturer* means any person who manufactures or imports a consumer product. The term includes both a person who manufactures the product at the direction of another (such as a contract filler of aerosol products) and the person at whose direction the product is manufactured (such as the marketer of the brand).

(e) *Propellent* means a liquefied or compressed gas in a container, where a purpose of the liquefied or compressed gas is to expel material from the container. The material to be expelled may be the propellant itself and/or a material different from the propellent.

(f) The definitions given in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall, where applicable, apply to this part 1401.

§ 1401.4 [Reserved]

§ 1401.5 Providing performance and technical data to purchasers by labeling.

(a) Manufacturers of self-pressurized consumer products containing a chlorofluorocarbon propellant shall provide performance and technical data concerning such products that they import or initially introduce into interstate commerce after February 19, 1978, to prospective purchasers at the time of original purchase and to the first purchaser for purposes other than resale. The data shall consist of the following identification and warning statement: ''WARNING—Contains a chlorofluorocarbon that may harm the

public health and environment by reducing ozone in the upper atmosphere.''

(b) The identification and warning statement required by paragraph (a) of this section shall be in addition to any other required labeling and shall be sufficiently prominent and conspicuous as to be likely to be read and understood by ordinary individuals under normal conditions of purchase. This identification and warning statement shall appear on the immediate container of the product and also on any outside container or wrapper in which the product is normally offered for sale at retail. The identification and warning statement may appear on a firmly affixed tag, tape, card, or sticker or similar overlabeling attached to the package.

[42 FR 42783, Aug. 24, 1977; 42 FR 46285, Sept. 15, 1977]

§ 1401.6 Effective date.

This part becomes effective February 20, 1978.

PART 1402—CB BASE STATION ANTENNAS, TV ANTENNAS, AND SUPPORTING STRUCTURES

Sec.

AUTHORITY: 15 U.S.C. 2051, 2076.

SOURCE: 43 FR 28392, June 29, 1978, unless otherwise noted.

§ 1402.1 Scope.

(a) This part 1402 requires manufacturers (including importers) of Citizens Band (CB) base station antennas, outdoor television (TV) antennas, and their supporting structures to provide notification of ways to avoid the hazard of electrocution which exists when these products are allowed to come near powerlines while the antennas are being put up or taken down. The notification must be provided to (1) prospective purchasers of such products at the time of original purchase and (2) the first purchaser of such products for purposes other than resale. The notification consists of instructions to accompany the products, warning labels on the products, and warning statements on the packaging or parts container. Samples of the instructions, labels, and warning statements must also be provided to the Consumer Product Safety Commission.

(b) This part 1402 applies to any of the following that are ''consumer products'' as defined in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) and that are manufactured or imported, or packaged or sold by the manufacturer or importer, after September 26, 1978.

(1) Antennas designed or intended to be used as outdoor CB base station antennas (referred to in this rule as ''CB base station antennas'').

(2) Antennas designed or intended to be used as outdoor TV receiving antennas (referred to in this rule as ''TV antennas'').

(3) Antenna supporting structures, which are elements over 5 feet in length that are intended to support these types of antennas at a higher elevation. These structures include towers, tripods, and masts. Devices which merely secure the antenna in place are not included.

[43 FR 28392, June 29, 1978, as amended at 43 FR 47722, Oct. 17, 1978]

§ 1402.2 Background.

As a result of numerous electrocutions which have occurred when consumers contacted powerlines with CB base station and outside TV antennas while putting these antennas up or taking them down, the Consumer Product Safety Commission has determined that it is necessary to require that warnings and instructions be furnished with these antennas and their supporting structures so that consumers can be made aware of the hazards involved and of safe ways to put up and take down these antennas. The Commission anticipates that this regulation will help protect the public against the unreasonable risk of injury

associated with CB base station antennas, outside TV antennas, and supporting structures due to contact with overhead powerlines.

§ 1402.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1402.

(b) *Antenna supporting structures, CB base station antennas,* and *TV antennas* are defined in §1402.1(b)(1) through (3).

§ 1402.4 Requirements to provide performance and technical data by labeling and instructions.

(a) *Notice to purchasers.* Manufacturers of CB base station antennas, TV antennas, and antenna supporting structures shall give notification of performance and technical data related to performance and safety to prospective purchasers of such products at the time of original purchase and to the first purchaser of such product for purposes other than resale, in the manner set forth below.

(1) *Antennas.* CB base station antennas and TV antennas shall be provided with the following:

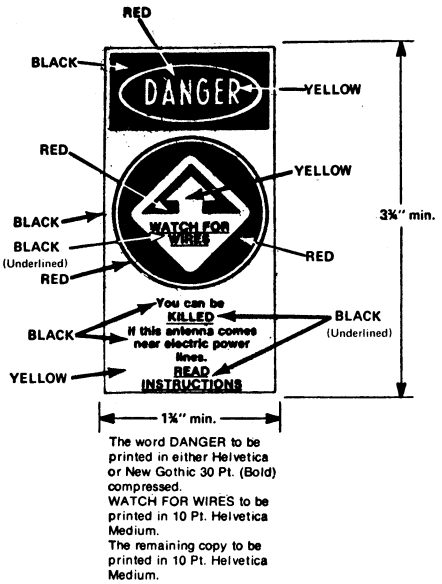


FIGURE 1

(i) *Label.* (A) The antenna shall bear the label shown in fig. 1 so that the label will be conspicuous to the installer during installation.

(B) If pipe or tubular nontelescoping masts are a suitable supporting structure for the antenna, a separate label as shown in fig. 1 shall accompany the antenna. The label shall be suitable for mounting by the consumer on such a mast.

(C) The label in figure 1 shall be made and attached in such a manner that it will be legible for an average expected life of at least 3 years.

(D) The word ''product'' may be substituted for ''antenna'' in the label of fig. 1.

(E)(*1*) The colors in figure 1 shall conform to ANSI Standard Z53.1–1971, ''Safety Color Code for Marking Physical Hazards,'' published in 1971 by the American National Standards Institute, which is incorporated by reference. Copies of this document are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. This standard is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.* This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist in the edition which has been approved by the Director of the Federal Register and which has been filed with the Office of the Federal Register. Alternatively, the colors ''red'' and ''yellow'' in figure 1 may conform to Color Tolerance Charts, published by the Department of Transportation. Copies of the Color Tolerance Charts are available from the Office of Hazardous Materials, Department of Transportation, Washington, DC 20590. These materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal__register/code__of__federal__regulations/ibr__locations.html.*

(*2*) Color limit values shall be determined by ASTM D 1535–68, ''Specifying

Color by the Munsell System,'' published in 1968 by the American Society for Testing and Materials. Copies of ASTM D 1535–68 are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. These materials are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist in the edition which has been approved by the Director of the Federal Register and which has been filed with the Office of the Federal Register. Alternatively, color limit values for red or yellow may be determined by the Department of Transportation Color Tolerance Charts, which display the desired color within the tolerance limits.

(ii) *Instructions.* CB base station antennas and TV antennas shall be accompanied by instructions that include the following:

(A) The following warning statement, placed on the first page of the document(s) containing the instructions and at the beginning of the body of the instructions: ''WARNING: INSTALLATION OF THIS PRODUCT NEAR POWERLINES IS DANGEROUS. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS''. This statement shall be legible and conspicuous and shall be in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, or similar designations, and that is preferably no smaller than 10 point type.

(B) The information set forth below, which shall be in a part of the instructions that is conspicuously identified as containing information concerning the risk of electrocution caused by contact with powerlines. No particular wording is required for this information, but it shall be in legible English and readily understandable to a user with a sixth grade reading ability (other languages may be included as appropriate).

(*1*) An explanation of the risk of electrocution caused by contacting powerlines while putting up or taking down the antenna.

(*2*) An identification of the generally available types and sizes of antenna supporting structures that are suitable for use with the antenna. If a generally available type or size of supporting structure is not identified as suitable, an explanation of why it is not suitable shall be included.

(*3*) If pipe or tubular non-telescoping masts are a suitable supporting structure for the antenna, the instructions shall contain the following in relation to installation of the antenna on such masts:

(*i*) How to select and measure the installation site.

(*ii*) An explanation (pictorial where appropriate) of methods that can be used to reduce the possibility of contact with powerlines when putting up and taking down the antenna mast.

(*iii*) Instructions for properly attaching the separate label that is required to accompany the antenna by paragraph (a)(1)(i)(B) of this section.

(*iv*) A statement that if the supporting structure to be used with the antenna does not have a label of the type provided by the manufacturer, the provided label should be attached to the base of the supporting structure by the installer.

(2) *Antenna supporting structures.* Antenna supporting structures, except pipe or tubular nontelescoping mast sections less than 11 ft. (335 cm.) in length that are not individually packaged or otherwise contained in a package intended for distribution to the consumer, shall comply with the following requirements:

(i) *Label.* (A) Antenna supporting structures shall bear the label shown in fig. 1, which shall be legible for an average expected life of at least 3 years. The label shall be attached so that it is conspicuous during installation and is 3 to 5 ft. (91 to 152 cm.) from the base of the supporting structure.

(B) The word ''product'' may be substituted for ''antenna'' in the label, as may ''tower'', ''tripod'', or other term,

if it accurately describes the supporting structure.

(ii) *Instructions.* Antenna supporting structures shall be accompanied by instructions that include the following:

(A) The following warning statement, placed on the first page of the document(s) containing the instructions and at the beginning of the body of the instructions: ''WARNING: INSTALLATION OF THIS PRODUCT NEAR POWERLINES IS DANGEROUS. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS.'' This statement shall be legible and conspicuous and shall be in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, and similar designations, and that is preferably no smaller than 10 point type.

(B) The information set forth below, which shall be in a part of the instructions that is conspicuously identified as containing information concerning the risk of electrocution caused by contact with powerlines. No particular wording is required for this information, but it shall be in legible English and understandable to a user with a sixth grade reading ability (other languages may be included as appropriate).

(*1*) An explanation of the risk of electrocution caused by contacting powerlines while putting up or taking down the supporting structure.

(*2*) How to select and measure the installation site.

(*3*) An explanation (pictorial where appropriate) of methods that can be used to reduce the possibility of contact with powerlines when putting up and taking down the supporting structure.

(3) *Packaging.* (i) The following warning statement shall legibly and conspicuously appear on either the packaging or the parts container of any CB base station antenna, TV antenna, or antenna supporting structure: ''Warning: Installation of this product near powerlines is dangerous. For your safety, follow the enclosed installation directions.''

(b) *Data provided to the Commission.* (1) Manufacturers of CB base station antennas, TV antennas, and antenna supporting structures shall provide to the Commission samples of all the labels, warning statements, and instructions which will be used to satisfy the requirements of paragraph (a) of this section. These samples shall be provided to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Md. 20207, by October 27, 1978, or, in the event of a subsequent change in the warning statements or instructions or if a new product is introduced, within 30 days after the change or introduction.

(2) Manufacturers need not submit a separate sample for each model of antenna or supporting structure where different models use the same label and warning statement and where the portion of the instructions required by this part is the same for the different models (even though the remainder of the instructions may be different for each model). Changes in instructions which do not affect the portions of the instructions required by this part do not require the submission of additional samples.

(3) The reporting requirement contained in this section has been approved by the U.S. General Accounting Office under No. B–180232 (R0555).

[43 FR 28392, June 29, 1978, as amended at 43 FR 47722, Oct. 17, 1978; 46 FR 63250, Dec. 31, 1981; 62 FR 46667, Sept. 4, 1997]

APPENDIX I TO PART 1402—RECOMMENDED OUTLINE FOR INSTRUCTION BOOKLET ON ''HOW TO SAFELY INSTALL YOUR CB BASE STATION ANTENNA''

I. Required Warning Label Statement.
II. Statement of Hazard.
III. General Safety Instructions:
A. Seek professional assistance.
B. Select your site with safety in mind.
C. Call your electric power company.
D. Plan your procedure.
E. What to do if the assembly starts to drop.
F. What to do if the assembly contacts powerlines.
G. What to do in case of electric shock.
IV. Site Selection (How to select and measure the installation site):
A. Distance from powerlines.
B. FCC height limitations.
C. Alternate locations:
1. Roof.

2. Chimney.
3. Side of house.
4. Free standing.
V. Types and Sizes of Support Structures and Mountings:
A. Tripod:
1. Where it can be used.
2. Limitations.
3. Suitable mounting methods.
B. Tubular Mast:
1. Non-telescopic:
a. Where it can be used.
b. Limitations.
c. Suitable mounting methods.
2. Telescopic:*
a. Where it can be used.
b. Limitations.
c. Suitable mounting methods.
C. Tower:*
1. Where it can be used.
2. Limitations.
3. Suitable mounting methods.
VI. Installation Instructions:
A. General Instructions:
1. Materials.
2. Assembly.
3. How to walk-up a tubular mast:
a. Height limitations.
b. Tying off.
c. Raising the mast with an X-frame.
d. Raising the mast without an X-frame.
4. Guy Wires.
B. How to Install a Tripod:
1. Preparation.
2. Erecting the assembly.
3. Securing the assembly.
C. How to Install a Non-telescopic Tubular Mast:
1. Roof Mount:
a. Preparation.
b. Erecting the assembly.
c. Securing the assembly.
2. Chimney Mount:
a. Preparation.
b. Erecting the assembly.
c. Securing the assembly.
3. Side of House Mount:
a. Preparation.
b. Erecting the assembly.
c. Securing the assembly.
4. Free Standing Mount:
a. Preparation.
b. Erecting the assembly.
c. Securing the assembly.
VII. Grounding Your Antenna:
D. How to Install a Telescopic Mast:*
1. Preparation.
2. Erecting the assembly.
3. Securing the assembly.
E. How to Install a Tower:*
1. Preparation.
2. Erecting the assembly.
3. Securing the assembly.

*Detailed instructions for installing these supports would come with the product.

VIII. Instructions for Attaching Label to Antenna and Supporting Structure.

PART 1404—CELLULOSE INSULATION

Sec.

AUTHORITY: Secs. 2, 27, 35, Pub. L. 92–573, Pub. L. 95–319; 86 Stat. 1207, 1228; 92 Stat. 386 (15 U.S.C. 2051, 2076, 2082).

SOURCE: 44 FR 40001, July 6, 1979, unless otherwise noted.

§ 1404.1 Scope, application, and effective date.

(a) *Scope.* This part 1404 establishes a requirement for manufacturers, including importers, of cellulose insulation to notify (1) prospective purchasers of such products at the time of original purchase and (2) the first purchasers of such products for purposes other than resale (installers and consumers) of ways to avoid the fire hazard that exists where cellulose insulation is installed too close to the sides or over the top of a recessed electrical light fixture or where cellulose insulation is installed too close to the exhaust flues from heat-producing devices or apparatus such as furnaces, water heaters, and space heaters. The notification consists of a warning label on the containers of cellulose insulation.

(b) *Application and effective date.* This rule applies to cellulose insulation that is for sale to consumers for installation in households or residences, as well as insulation that is produced or distributed for installation by professionals in households or residences. Cellulose insulation that is labeled as, marketed, and sold solely for nonresidential installation is not included within the scope of this proceeding. The rule applies to all products manufactured after October 15, 1979.

§ 1404.2 Background.

Based on available fire incident information, engineering analysis of the probable fire scenarios, and laboratory tests, the Consumer Product Safety

Commission has determined that fires can occur where cellulose insulation is improperly installed too close to the sides or over the top of recessed electrical light fixtures, or installed too close to the exhaust flues from heat producing devices or apparatus such as furnaces, water heaters, and space heaters. These fires may result in serious injuries or deaths. Presently available information indicates that fires may occur where cellulose insulation is improperly installed even though the cellulose insulation complies with the Commission's amended interim standard for cellulose insulation (16 CFR part 1209) based on GSA Specification HH-I-515D. The Commission has determined that it is necessary to require labeling to inform persons installing cellulose insulation and consumers in whose homes the insulation is installed of the fire hazard associated with improperly installed cellulose insulation and the method of properly installing the insulation to prevent this hazard. The Commission anticipates that this regulation will accomplish the purpose of helping protect the public against the unreasonable risk of injury associated with improperly installed cellulose insulation.

§ 1404.3 Definitions.

The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1404.

Cellulose insulation is cellulosic fiber, loose fill, thermal insulation that is suitable for blowing or pouring applications.

Manufacturer means any person who manufactures or imports a consumer product. The term includes both a person who manufactures the product at the direction of another (such as a packager) and the person at whose direction the product is manufactured (such as the marketer of the brand).

§ 1404.4 Requirements to provide performance and technical data by labeling—Notice to purchasers.

(a) Manufacturers of cellulose insulation shall give notification of performance and technical data related to performance and safety (1) to prospective purchasers at the time of original purchase and (2) to the first purchaser of such products for purposes other than resale in the following manner. Manufacturers of cellulose insulation shall label all containers of cellulose insulation with the following statement, using capital letters as indicated:

CAUTION

Potential Fire Hazard: Keep cellulose insulation at least three inches away from the sides of recessed light fixtures. Do not place insulation over such fixtures so as to entrap heat.

Also keep this insulation away from exhaust flues of furnaces, water heaters, space heaters, or other heat-producing devices.

To be sure that insulation is kept away from light fixtures and flues, use a barrier to permanently maintain clearance around these areas. Check with local building or fire officials for guidance on installation and barrier requirements.

Request to Installer: Remove this label and give it to the consumer at completion of job.

Manufacturers of cellulose insulation may substitute the phrase ''TO HELP AVOID FIRE'' for the phrase ''POTENTIAL FIRE HAZARD'' in the label described above. Manufacturers may also delete the word ''cellulose from the first sentence of the label and may delete the word ''this'' from the third sentence of the label. The remainder of the label statement shall appear exactly as described above.

(b) The labeling statement required by § 1404.4(a) shall appear prominently and conspicuously on the container. The word ''CAUTION'' shall appear in capital letters at least one-fourth inch in height. The words ''POTENTIAL FIRE HAZARD'' and ''REQUEST TO INSTALLER'' shall appear in capital letters at least three-sixteenths inch in height. The remainder of the statement shall appear in capital letters at least three-sixteenths inch in height, with lower case letters in corresponding proportion but at least one-eighth inch in height. The labeling statement shall be enclosed within a rectangle formed with lines at least one-sixteenth inch in width. The labeling statement shall be printed with legible type in a color which contrasts with the background on which the statement is printed.

(c) To meet this requirement, manufacturers may use any type of label, including one which is pressure sensitive or glued-on, provided the label is made in such a manner that it will remain

attached to the container for the expected time interval between the manufacture of the product and its installation.

[44 FR 40001, July 6, 1979, as amended at 49 FR 21701, May 23, 1984]

PART 1406—COAL AND WOOD BURNING APPLIANCES—NOTIFICATION OF PERFORMANCE AND TECHNICAL DATA

Sec.

AUTHORITY: 15 U.S.C. 2051, 2076.

§ 1406.1 Scope, purpose, and effective date.

(a) *Scope.* This part 1406 requires manufacturers, including importers, of coal and wood burning appliances, as defined in §1406.3(a), to provide consumers with a specified notification concerning the installation, operation, and maintenance of the appliances. The notification is intended to provide consumers with technical and performance information related to the safety of the appliances. This part 1406 also requires these manufacturers to provide to the Commission a copy of the notification to consumers and a statement of the reasons supporting the manufacturer's conclusion that certain clearance distances contained in the notification are appropriate for preventing fires.

(b) *Purpose.* This regulation is intended to reduce the unreasonable risk of injury from fire associated with inadequate information provided with coal and wood burning appliances. This rule does not replace any voluntary standards applicable to these appliances or any state or local requirements applicable to the installation, use, or maintenance of such appliances that are not inconsistent with this rule. Thus, for example, a local code could require the actual installation of appliances at different distances from combustibles than those specified on the label required by this rule, and voluntary standards or local codes could require labeling or instructions in addition to those required by this rule. The fact that a product complies with this regulation is not intended to be a substitute for the performance tests and other criteria established by listing organizations whose approval is required to meet some state or local requirements applicable to these appliances.

(c) *Effective date.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, manufacturers, including importers, of coal and wood burning appliances as defined in §1406.3(a) must comply with this regulation with respect to stoves that are manufactured or imported after October 17, 1983, or that are first introduced into United States commerce after May 16, 1984, regardless of the date of manufacture. For the purposes of this rule, an appliance is manufactured when no further assembly of the appliance is required (i) before shipment by the manufacturer or (ii), if the product is not so shipped, before delivery to the first purchaser. A product manufactured in the United States (U.S.) is first introduced into U.S. commerce when it is shipped by the manufacturer or delivered to the next purchaser, whichever comes first. A product manufactured outside the U.S. is first introduced into U.S. commerce when it is first brought within a U.S. port of entry.

(2) The requirements of §1406.4(c) apply to sales catalogs and point of sale literature provided by manufacturers after May 16, 1984.

(3) Section 1406.5 is effective December 6, 1983.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 3041–0040)

[48 FR 21914, May 16, 1983; 48 FR 26761, June 10, 1983, as amended at 48 FR 50706, Nov. 3, 1983; 48 FR 52889, Nov. 23, 1983]

§ 1406.2 Background.

(a) Fire data analyzed by the Consumer Product Safety Commission disclose a number of incidents involving coal and wood burning appliances. Many of these cases involve improper

installation of the appliances, especially where they are installed with insufficient clearances to adjacent combustibles such as walls, ceilings, floors, draperies, carpets, or furnishings. Another common installation problem involves the use of improper types of chimneys or chimney connectors and insufficient clearances between these devices and combustibles. Other incidents involve improper operation of the appliance, such as by overfiring it or using flammable liquids to start the fire. Still other incidents occur when appliances are improperly maintained and develop mechanical defects or excessive deposits of flammable creosote.

(b) After considering the available data on the causes of fires in these appliances, the Commission concludes that there is an unreasonable risk of injury associated with appliances that are sold without notifying consumers of the information they need to prevent many of these occurrences. Accordingly, the Commission has determined that disclosure of the information required by §1406.4 is necessary to help the Commission in carrying out the purposes of the Consumer Product Safety Act of (1) helping to protect the public against unreasonable risks of injury associated with consumer products and (2) assisting consumers in evaluating the comparative safety of consumer products.

(c) The Commission has also determined that in carrying out these purposes of the act, it is necessary for manufacturers to provide to the Commission a copy of the information provided to consumers and a statement of the reasons why some of the information was selected, in accordance with §1406.5.

[48 FR 21914, May 16, 1983, as amended at 48 FR 50706, Nov. 3, 1983]

§1406.3 Definitions.

For the purposes of this rule:

(a) *Coal and wood burning appliances* means fireplace stoves, room heater/fireplace stove combinations, cookstoves and ranges, and radiant and circulating heaters. It does not include central heating units, masonry fireplaces and chimneys, fireplace inserts, or factory built fireplaces (zero clearance fireplaces).

(b) *Central heating units* include boilers, furnaces, and furnace add-ons. These appliances are designed to be connected to hot water distribution or ductwork systems for heating several rooms. The furnace add-on converts an existing gas, oil, or electric heating system to one capable of using solid fuel as well as its original fuel.

(c) A *chimney* is a vertical or nearly vertical enclosure containing one or more passageways called flue passages for conveying combustion wastes to the outside atmosphere.

(d) A *chimney connector* is the stovepipe which connects the appliance flue with the chimney flue.

(e) *Cookstoves and ranges* are chimney connected solid fuel burning appliances that are used primarily for cooking. In addition to the firechamber, there may be one or more ovens or warmer compartments and several removable cooking space pothole lids. The intensity of the fire is controlled by damper and draft regulators.

(f) A *factory built fireplace* is a firechamber and chimney assembly consisting entirely of factory made parts. It is designed for component assembly without requiring field construction. These ''zero clearance'' units are fabricated for safe installation against combustible surfaces and for burning fireplace fuel.

(g) *Fireplace inserts* are heating units that fit into a fireplace and connect to the fireplace flue. These units function like radiant and circulating heaters.

(h) A *fireplace stove* is a freestanding, chimney-connected firechamber which is constantly open to view. It is designed to burn regular fireplace fuel and function as a decorative fireplace.

(i) A *masonry chimney* is a chimney field-constucted of solid masonry units, brick, stones, or reinforced concrete.

(j) A *masonry fireplace* is an open firechamber built into a structure along with a chimney and hearth. It is constructed of solid masonry units such as bricks, stones, or reinforced concrete.

(k) *Radiant and circulating heaters* have firechambers which may be airtight[1] or non-airtight and are available in a number of sizes, shapes, and designs. The firechamber is closed in use, but there may be a window of specially formulated glass for viewing the fire. Drafts and dampers are used to control the burning process. There may be a secondary combustion chamber, baffles, a thermostat, a blower, or other components which function to improve combustion efficiency or to control heat output. The primary function of these appliances is as space heaters. However, some have lift-off cooking pothole lids, and the top surface of most can be used for cooking. The fuel may be wood, coal, or both. Radiant heaters transmit heat primarily by direct radiation. Circulating heaters have an outer jacket surrounding the fire chamber. Air enters from the bottom, is warmed by passing over the fire chamber, and exits at the top. Movement is by natural convection or forced air circulation.

(l) A ''room heater/fireplace stove combination'' is a freestanding, chimney-connected fire chamber with doors. It is designed to be used to burn fireplace fuels with the firechamber either open or closed to view. This appliance functions as a decorative fireplace when the doors are open and as a nonairtight heater when the doors are closed.

[48 FR 21914, May 16, 1983]

§ 1406.4 Requirements to provide performance and technical notice to prospective purchasers and purchasers.

Manufacturers, including importers, of coal and wood burning appliances as defined in §1406.3 shall give notification of performance and technical data related to performance and safety to prospective purchasers at the time of original purchase and to the first purchaser of such products for purposes other than resale, in the manner set forth below:

(a) *Written notice on appliance.* (1) The appliance shall bear a legible notice containing the following performance and technical data.

(i) Appropriate minimum clearances from unprotected combustibles to avoid the occurrence of fire.[2] The clearances shall include:

(A) Distance from the back and sides of the appliance, and the chimney connector, to walls, stated in diagrammatic form.

(B) Distance to be maintained between the chimney connector and ceilings, in either diagrammatic or written form.

(ii) Type and dimensions of floor protection, if necessary to protect combustible floors.

(iii) Proper type(s) of chimney and chimney connector to be used with the appliance. This information should include the proper designations so that the chimney and chimney connector are of suitable design and construction to withstand the temperature of the flue gases and other probable environmental stresses and so that the inside dimensions are suitable to adequately vent the products of combustion. See Figs. 1 and 2 for examples of an acceptable designation for a chimney and chimney connector.

(iv) Identification of parts or precautions required for passing a chimney through combustible walls or ceilings or for passing a chimney connector through combustible walls. The following statement is an example of one that complies with this requirement:

> Special methods are required when passing through a wall or ceiling. See instructions or building codes.

(v) A statement not to overfire the appliance, and a description of at least 1 condition which signals overfiring.

(vi) A statement of how often the chimney and chimney connector should

[1] An airtight stove is defined as ''A stove in which a large fire can be suffocated by shutting the air inlets, resulting ultimately in a large mass of unburned fuel remaining in the stove.'' Jay W. Shelton, *Wood Heat Safety*, Garden Way Publishing, Charlotte, Vermont (1979), p. 160.

[2] Appropriate distances are to be determined by the manufacturer. The Commission expects that test procedures utilized by a nationally recognized testing organization would be suitable for determining appropriate distances.

be inspected and that it should be cleaned when necessary.

(vii) Information explaining that the appliance should be installed and used only in accordance with the manufacturer's directions and local building codes.

(viii) A direction to contact local building or fire officials about restrictions and installation inspection requirements.

(ix) A statement that furnishings and combustible materials should be kept a considerable distance from the appliance or a statement to keep furnishings and other combustibles far away.

(x) The types of fuel suitable for use in the appliance.

(xi) The name and address of the manufacturer, importer or private labeler to which the owner can write for a copy of the manufacturer's directions or for additional information, and a sufficient identification of the appliance model so that the appropriate information can be supplied.

(2) No specific wording is required on the written notice, but the information shall be printed in legible English in clear and readily understandable language. Examples of acceptable labels are given in Figs. 1 and 2, appendix I.

(3) The written notice shall be placed in a location that is conspicuous before the appliance is installed. In addition, the written information required by paragraphs (a)(1)(v), (a)(1)(vi), (a)(1)(ix), and (a)(1)(x) of this section shall be readily visible during normal use of the appliance. A label on the back of the stove would not be considered ''readily visible'' during normal use if the stove is suitable for installation with its back within a few feet of the wall. Locations within compartments or behind doors or panels may be readily visible during normal use if the location is readily visible when the door or panel is opened or removed and the door or panel must be opened or removed, or the compartments used, as part of the normal operating procedures for the appliance. An example of a notice format where the information required to be readily visible during normal use is separated from the remainder of the notice is given in Fig. 1, appendix I. The Commission recommends the use of this 2 label format in order to provide more consumer awareness of the operation and maintenance information after the appliance is installed, since this information would be on a simpler label that would not have installation information competing for the consumer's attention.

(4) The written notice shall be provided so that it will remain legible for the maximum expected useful life of the appliance in normal operation.

(b) *Directions.* All appliances covered by this rule shall be accompanied by directions that include the following technical and performance information:

(1) The following notice shall be placed on the first page of the document(s) containing the directions and at the beginning of the directions:

SAFETY NOTICE: IF THIS _____ IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA.

This statement shall be conspicuous and in type that is at least as large as the largest type used on the remainder of the page, with the exception of the logo and any identification of the manufacturer, brand, model, and similar designations. At the manufacturer's option, other information may be added to this notice.

(2) Step by step installation directions shall be provided, including all necessary information regarding parts and materials. This information shall include an explanation of the consequences which could result from failure to install the appliance properly. These directions shall include a direction to refer to the chimney and chimney connector manufacturers' instructions and local building codes for installation through combustible walls or ceilings.

(3) These directions shall also include a clearly identified section containing complete use directions, including what types of fuel(s) can be used and how to fire the unit to avoid fire hazards, and a clearly identified section containing complete maintenance directions, including how and when to

clean the chimney and chimney connector. A statement that flammable liquids should not be used with the appliance shall also be included where applicable. These sections shall contain a description of the consequences that could result from failure to use or maintain the appliance properly.

(4) The directions required by paragraphs (b)(2) and (b)(3) of this section shall include all the information required by paragraph (a)(1) of this section and shall be in legible English in readily understandable language. A recommended outline for the directions is given in appendix II.

(c) *Catalogs and point of sale literature.* Literature for the appliance that is intended to induce an immediate order or sale (such as catalogs and point of sale literature) and that is provided by the manufacturer, shall legibly and conspicuously include the information required by paragraph (a)(1)(viii) of this section and shall state the appropriate minimum clearances, to avoid the occurrence of fire, from the back and sides of the appliance to walls.

NOTE: General advertising would not be subject to this requirement.

APPENDIX I TO § 1406.4—RECOMMENDED FORMAT AND WORDING FOR WRITTEN NOTICE

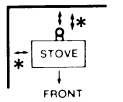
The following are examples of formats and suggested wording for the written notice required by § 1406.4(a). Information to be supplied by the manufacturer is indicated by underlined blank spaces or by asterisks. The Commission recommends the ''two label'' format shown in Fig. 1.

Fig.1 - Example of how written notice requirements are satisfied with two labels. Label (A) is located so that it is conspicuous before installation. Label (B) is located so that it is readily visible during normal use. Insert appropriate information or numbers at "*". Words or diagrams should be changed to suit particular appliance.

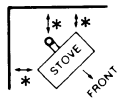
(A)

CONTACT YOUR LOCAL BUILDING OR FIRE OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION IN YOUR AREA

INSTALL WITH MINIMUM CLEARANCES TO WALLS AS SHOWN (IN INCHES)



SIDEWALL-BACKWALL INSTALLATION



CORNER INSTALLATION

PREVENT HOUSE FIRES

INSTALL AND USE ONLY IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS AND LOCAL BUILDING CODES

CHIMNEY TYPE: MINIMUM ___* INCH DIAMETER APPROVED RESIDENTIAL TYPE*

CHIMNEY CONNECTOR: ___* INCH DIAMETER, MINIMUM ___* GAUGE BLUED STEEL * INSTALL AT LEAST ___* INCHES FROM WALL AND ___* INCHES FROM CEILING.

SPECIAL METHODS ARE REQUIRED WHEN PASSING THROUGH A WALL OR CEILING. SEE INSTRUCTIONS AND BUILDING CODES.

MANUFACTURER'S NAME, MAILING ADDRESS, CITY, STATE, ZIP

MODEL NO. *

FLOOR PROTECTOR MINIMUM SIZE (IN INCHES)

FLOOR PROTECTOR MATERIAL

*
*

(OR EQUIVALENT)

(B)

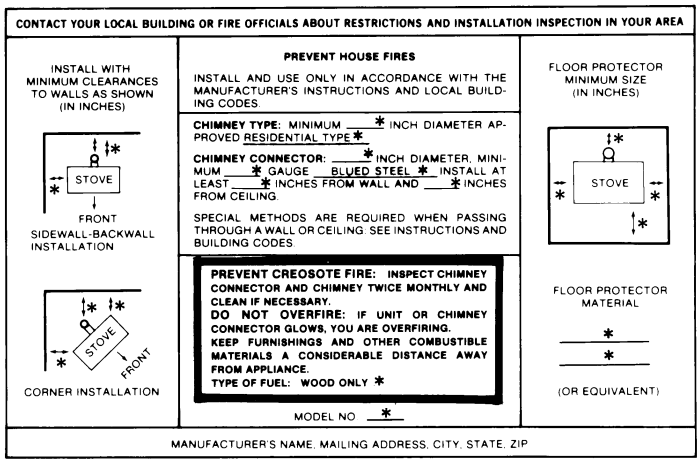
PREVENT CREOSOTE FIRE: INSPECT CHIMNEY CONNECTOR AND CHIMNEY TWICE MONTHLY AND CLEAN IF NECESSARY

DO NOT OVERFIRE: IF UNIT OR CHIMNEY CONNECTOR GLOWS, YOU ARE OVERFIRING.

KEEP FURNISHINGS AND OTHER COMBUSTIBLE MATERIALS A CONSIDERABLE DISTANCE AWAY FROM APPLIANCE.

TYPE OF FUEL: WOOD ONLY *

Fig. 2 - Example of how written notice requirements are satisfied by a single label that is readily visible during normal use of the appliance and conspicuous before installation. Insert appropriate information or numbers at "_*_". Words or diagrams should be changed to suit particular appliance.



APPENDIX II TO §1406.4—RECOMMENDED OUTLINE FOR DIRECTIONS

The following is a recommended outline for the directions required by §1406.4(b). This outline is a guide and should not be considered as including all of the information that may be necessary for the proper installation, use, and maintenance of the appliance since the necessary information may vary from product to product.

''HOW TO INSTALL, USE, AND MAINTAIN YOUR _____''

I. SAFETY PRECAUTIONS

A. The Safety Notice required by this rule.

• ''SAFETY NOTICE: IF THIS _____ IS NOT PROPERLY INSTALLED, A HOUSE FIRE MAY RESULT. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. CONTACT LOCAL BUILDING OFFICIALS ABOUT RESTRICTIONS AND INSTALLATION INSPECTION REQUIREMENTS IN YOUR AREA.''

B. Statements of other important safety messages, including:

• ''Creosote may build up in the chimney connector and chimney and cause a house fire. Inspect the chimney connector and chimney at least twice monthly and clean if necessary.''

• ''Overfiring the appliance may cause a house fire. If a unit or chimney connector glows, you are overfiring.''

• ''Never use gasoline or other flammable liquids to start or 'freshen up' a fire.''

• ''Dispose of ashes in a metal container.''

II. INSTALLATION INSTRUCTIONS

A. The parts and materials required, including:

• The size and type of chimney to which the appliance is to be connected.

• The size and thickness or gage of metal of the chimney connector.

• The thimble or type of connection through a combustible wall or ceiling.

B. The step-by-step directions for installing the appliance and its accessories, chimney connector, and chimney. The directions would include:

• Clearances from the appliance and chimney connector to combustibles,

• Methods to safely join the chimney connector to the chimney and how to pass these parts through a combustible wall or to pass the chimney through a ceiling.

• The joining of two or more parts to constitute a safe assembly such as attaching and securing the chimney connector to the appliance and to each adjoining section, and,

• Where required, the parts or materials to be used for the floor protector (hearth). The minimum areas to be covered and their relation to the appliance should be stated.

III. USE INSTRUCTIONS

A. Recommendations about building and maintaining a fire, warnings against overfiring, and condition(s) that signal(s) overfiring.

B. Caution against the use and storage of flammable liquids, as follows: ''Do not use gasoline, gasoline-type lantern fuel, kerosene, charcoal lighter fluid, or similar liquids to start or 'freshen up' a fire in this appliance. Keep these flammable liquids well away from this appliance while it is in use.''

C. Explanation about the use or nonuse of grates, irons and or other methods of supporting the fuel.

D. How to use manual or thermostatic controls.

E. Explanation about the use of any electrical assemblies including care and routing of power supply cord.

F. Caution about disposing of ashes, as follows:

Disposal of Ashes

Ashes should be placed in a metal container with a tight fitting lid. The closed container of ashes should be placed on a noncombustible floor or on the ground, away from all combustible materials, pending final disposal. The ashes should be retained in the closed container until all cinders have thoroughly cooled.

G. Keep furnishings and other combustible materials away from appliance.

IV. MAINTENANCE INSTRUCTIONS

A. How to inspect and maintain the appliance, chimney, and chimney connector.

B. Explanation about the formation and removal of creosote buildup in the chimney connector and chimney as follows:

Creosote Formation and Need for Removal

When wood is burned slowly, it produces tar and other vapors, which combine with moisture to form creosote. Creosote vapors condense in the relatively cool chimney flue, and creosote residue accumulates on the flue lining. When ignited, this creosote make an extremely hot fire.

The chimney connector and chimney should be inspected at least twice monthly during the heating season to determine if creosote buildup has occurred.

If creosote has accumulated, it should be removed to reduce the chance of a chimney fire.

C. Explain how to remove creosote.

V. REFERENCES

A. The name and address of the manufacturer or private labeler from which the owner can obtain additional information if needed. Include other sources of information as appropriate.

B. The manufacturer's or private labeler's catalog designations, model numbers or the equivalent for the appliance and related parts.

[48 FR 21914, May 16, 1983, as amended at 48 FR 28230, June 21, 1983]

§ 1406.5 Performance and technical data to be furnished to the Commission.

Manufacturers, including importers, of coal and wood burning appliances as defined in §1406.3(a) shall provide to the Commission the following performance and technical data related to performance and safety.

(a) *Written notice.* Manufacturers shall provide to the Commission copies of the written notice required by §1406.4(a). If the written notice is provided to purchasers in a way, such as by casting or stamping the notice into the stove, that makes it impractical to furnish a sample of the actual notice to the Commission, the manufacturer will provide an actual-size copy of the notice and a description of the forming process.

(b) *Directions.* Manufacturers shall provide to the Commission a copy of the directions required by §1406.4(b).

(c) *Rationale.* Manufacturers shall provide to the Commission a statement of how the distances to combustibles required to be stated by §1406.4(a)(1) were determined. In addition, the maufacturer will state the type of appliance, its fuel, size, and weight, and the material of which it is constructed, unless this information is included in the directions submitted under paragraph (b) of this section.

(d) *General.* (1) The information required to be submitted under paragraphs (a) through (c) of this section shall be submitted for each distinct design or model of appliance manufactured. An appliance will be considered to be a distinct design or model if it differs from other appliances of the same manufacturer by functional differences such as performance, weight,

size, or capacity. Differences in cosmetic or other nonfunctional features do not require the submission of additional information.

(2) The written notice, directions, and rationale shall be provided to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207, by December 6, 1983. If there is a subsequent change in the component materials or design features of a model for which this information was previously submitted that could cause the model to require different clearances from combustibles or a different type of chimney, or if a new product is introduced into United States commerce, the required information shall be submitted within 30 days after the change or introduction.

(Approved by Office of Management and Budget under control number 3041–0040)

[48 FR 50706, Nov. 3, 1983, as amended at 62 FR 46667, Sept. 4, 1997]

PART 1407—PORTABLE GENERATORS: REQUIREMENTS TO PROVIDE PERFORMANCE AND TECHNICAL DATA BY LABELING

Sec.

AUTHORITY: 15 U.S.C. 2076(e).

SOURCE: 72 FR 1450, Jan. 12, 2007, unless otherwise noted.

§ 1407.1 Purpose, scope, and effective date.

This part 1407 establishes requirements under section 27(e) of the Consumer Product Safety Act (15 U.S.C. 2076(e)) for manufacturers to provide consumers with a specified notification concerning the carbon monoxide poisoning hazard associated with the use of portable generators. The notification is intended to provide consumers with technical and performance information related to the safety of portable generators. This part applies to any generator manufactured or imported on or after May 14, 2007.

§ 1407.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1407.

(b) A portable generator is an internal combustion engine-driven electric generator rated no higher than 15 kilowatts and 250 volts that is intended to be moved for temporary use at a location where utility-supplied electric power is not available. It has receptacle outlets for the alternating-current (AC) output circuits, and may have alternating- or direct-current (DC) sections for supplying energy to battery charging circuits.

§ 1407.3 Providing performance and technical data to purchasers by labeling.

(a) *Notice to purchasers.* Manufacturers of portable generators shall give notification of performance and technical data related to performance and safety to prospective purchasers of such products at the time of original purchase and to the first purchaser of such product for purposes other than resale, in the manner set forth below.

(1) *On-product label.* The CO poisoning hazard label shown in fig. 1 shall be used on the product. A different representation of the generator may be substituted for accuracy if consumers are more likely to recognize the substituted representation as the generator to which this label is affixed. Alternate-language versions of this label may appear on the product in addition to the label specified in figure 1. If the product label is also provided by the manufacturer in additional language(s), it shall appear adjacent to or below the English-language version of the product label, and shall be no larger than the English-language version of the label. Versions of the product label that are in a language other than English may appear without the pictograms that appear in the English-language versions.

(i) The signal word ''DANGER'' shall be in letters not less than 0.15 inch (3.8 mm) high. The remaining text shall be

in type whose uppercase letters are not less than 0.1 inch (2.5 mm) high.

(ii) The signal word ''DANGER'' shall appear in white letters on a safety red background. The safety alert symbol shown in fig. 2 shall appear immediately before and next to the signal word and be no smaller than the height of the signal word with the base of the triangle on the same horizontal line as the base of the signal word. The solid portion of the triangle (within the lines of the triangle, around the exclamation mark) shall be white and the exclamation mark shall be safety red. The prohibition circle-slash symbols shall be opaque.

(iii) The on-product hazard label shown in fig. 1 shall be located:

(A) On a part of the portable generator that cannot be removed without the use of tools, and

(B) On a location that is prominent and conspicuous to an operator while performing at least two of the following actions: Filling the fuel tank, accessing the receptacle panel, and starting the engine.

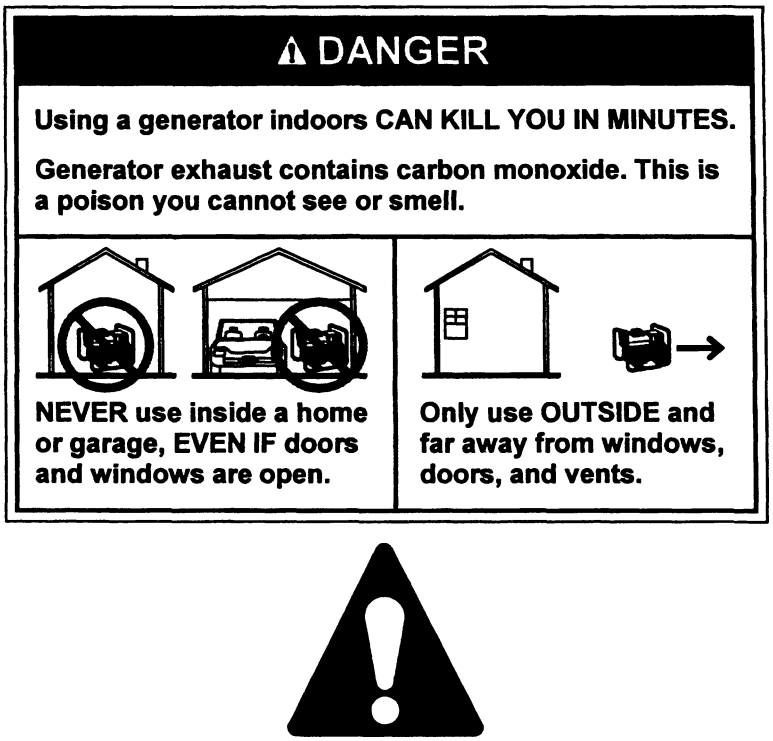
(iv) The on-product hazard label shown in fig. 1 shall be designed to remain permanently affixed, intact, legible, and largely unfaded in the environment in which the product is expected to be operated and stored over the life of the product.

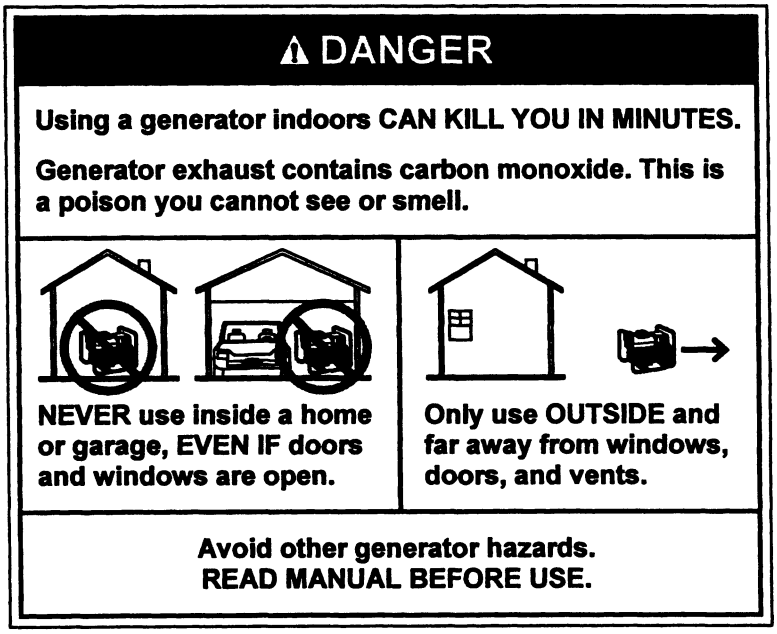
(2) *Carbon monoxide poisoning hazard label for package.* The CO poisoning hazard label shown in fig. 3 shall be affixed to the principal display panel(s) of the package, as well as the surface containing the top flaps of the package. The principal display panel(s) of the package is the portion(s) of the outer packaging that is designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. Any panel of the package that includes text in a language other than English shall also include a CO poisoning hazard label in that language. Alternate-language versions of the label, in addition to the label specified in figure 3, may also appear on the top flaps of the package as long as they are physically separate from one another. A different representation of the generator may be substituted for accuracy if consumers are more likely to recognize the substituted representation as the generator contained within the packaging.

(i) The signal word ''DANGER'' shall be in letters not less than 0.15 inch (3.8 mm) high. The remaining text shall be in type whose uppercase letters are not less than 0.1 inch (2.5 mm) high.

(ii) The signal word ''DANGER'' shall appear in white letters on a safety red background. The safety alert symbol shown in fig. 2 shall appear immediately before and next to the signal word and be no smaller than the height of the signal word with the base of the triangle on the same horizontal line as the base of the signal word. The solid portion of the triangle (within the lines of the triangle, around the exclamation mark) shall be white and the exclamation mark shall be safety red. The prohibition circle-slash symbols shall be opaque.

(b) [Reserved]


⚠ DANGER
Using a generator indoors CAN KILL YOU IN MINUTES.
Generator exhaust contains carbon monoxide. This is a poison you cannot see or smell.
NEVER use inside a home or garage, EVEN IF doors and windows are open.
Only use OUTSIDE and far away from windows, doors, and vents.



[72 FR 1450, Jan. 12, 2007, as amended at 72 FR 2184, Jan. 18, 2007]

PART 1420—REQUIREMENTS FOR ALL TERRAIN VEHICLES

Sec.
1420.1 Scope, application and effective date.
1420.2 Definitions.
1420.3 Requirements for four-wheel ATVs.
1420.4 Restrictions on three-wheel ATVs.

AUTHORITY: The Consumer Product Safety Improvement Act of 2008, Pub. Law 110–314, § 232, 122 Stat. 3016 (August 14, 2008).

SOURCE: 73 FR 67386, Nov. 14, 2008, unless otherwise noted.

§ 1420.1 Scope, application and effective date.

This part 1420, a consumer product safety standard, prescribes requirements for all terrain vehicles. The requirements for four-wheel ATVs in § 1420.3 take effect on April 30, 2012, and apply to new assembled or unassembled ATVs manufactured or imported on or after that date. The restrictions on three-wheel ATVs stated in § 1420.4 take effect September 13, 2008.

[73 FR 67386, Nov. 14, 2008, as amended at 77 FR 12200, Feb. 29, 2012]

§ 1420.2 Definitions.

In addition to the definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052), the following definitions apply for purposes of this Part 1420.

(a) *All terrain vehicle or ATV* means:

(1) Any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

(2) Does not include a prototype of a motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

(b) *ATV action plan* means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the ATVs, the monitoring of such sales, and other safety related measures, and that is substantially similar to the

plans described under the heading ''The Undertakings of the Companies'' in the Commission Notice published in the FEDERAL REGISTER on September 9, 1998 (63 FR 48199–48204).

§ 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles (American National Standards Institute, Inc. ANSI/SVIA 1–2010), approved December 23, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618–3806; telephone 949–727–3727 ext.3023; *www.svia.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) Each ATV must be subject to an ATV action plan filed with the Commission before August 14, 2008 or subsequently filed with and approved by the Commission, and shall bear a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject.

(c) The ATV manufacturer or distributor shall be in compliance with all provisions of the applicable ATV action plan.

[73 FR 67386, Nov. 14, 2008, as amended at 77 FR 12200, Feb. 29, 2012]

§ 1420.4 Restrictions on three-wheel ATVs.

Until a mandatory consumer product safety standard applicable to three-wheel ATVs promulgated pursuant to the Consumer Product Safety Act is in effect, new three wheel ATVs may not be imported into or distributed in commerce in the United States.

PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

Sec.
1450.1–1450.2 [Reserved]
1450.3 Incorporation by reference.

AUTHORITY: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

SOURCE: 75 FR 21987, Apr. 27, 2010, unless otherwise noted.

§§ 1450.1–1450.2 [Reserved]

§ 1450.3 Incorporation by reference.

(a) Each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of ANSI/APSP–16 2011, *Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs*, approved on February 17, 2011. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Association of Pool & Spa Professionals, 2111 Eisenhower Avenue, Alexandria, Virginia 22314; *http://www.apsp.org*, telephone 703–838–0083. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) [Reserved]

[76 FR 47438, July 5, 2011]