***Consumers Union * Consumer Federation of America* * Kids in Danger * National Research Center for Women & Families * Public Citizen * U.S. Public Interest Research Group ***

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Office of the Secretary
Consumer Product Safety Commission
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Comments of Consumers Union, Consumer Federation of America, Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group to the U.S. Consumer Product Safety Commission
on
"Laboratory Accreditation Process for Crib and Pacifier Testing"

Introduction

Consumers Union of U.S., Inc. (CU), Consumer Federation of America (CFA), Kids in Danger, National Research Center for Women & Families, Public Citizen and the U.S. Public Interest Research Group (jointly "We") submit the following comments in response to the U.S. Consumer Product Safety Commission ("CPSC" or "Commission") in the above-referenced matter ("Notice of Requirements" or "Notice").[1] The CPSC has published this Notice of Requirements in order to implement section 102(a) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314, ("CPSIA") which amends the Consumer Product Safety Act. In this Notice of Requirements, the CPSC "provides the criteria and process for Commission acceptance of 'third party'

[1] "Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1508, Part 1509, and/or Part 1511 of Title 16, Code of Federal Regulations" 73 Fed. Reg. 62965 (October 22, 2008).

laboratories for testing to the regulations for cribs/and or pacifiers."[2] We submit these comments in response to the CPSC's Notice of Requirements.

Background

Section 102(a) of the CPSIA requires the CPSC to publish a "notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is subject." See CPSIA § 102(a)(3), as codified at 15 U.S.C. 14(a)(3)(B)(ii). Within 60 days after the date of enactment, the Commission must publish notice of the requirements for accreditation of third party conformity assessment bodies that will assess conformity with parts 1508, 1509, and 1511 of 16 C.F.R., full size-cribs, non full-size cribs, and pacifiers, respectively. In this case, the requirements became effective upon publication. However, the Commission seeks comments "on the accreditation procedures as they apply to that testing and on the accreditation approach in general, since the Commission must publish additional testing laboratory procedures over the coming months."[3]

Recommendations

We urge the CPSC to adopt the following recommendations in its implementation of section 102(a):

We support the requirements (described in section I.B. of the Notice) for "firewalled laboratories" seeking accreditation status to submit copies of their training materials to the Commission for review "showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the laboratory's test results."[4] These additional requirements are designed to prevent undue influence by manufacturers or private labelers who own the testing laboratory used, and apply to any laboratory for which a

[2] Id.
[3] Id. at 62966.
[4] Id.

manufacturer or private labeler of the children's product to be tested holds an interest of 10 percent or more. We are concerned, however, that the Commission declined to address situations where the manufacturer or private labeler is owned by the same parent company that owns the laboratory. We believe that the same or similar undue influence could arise from a parent company that owns both the laboratory and the manufacturer. For this reason we urge the CPSC to extend the document submission requirements for "firewall laboratories" to situations of common parentage -- where the manufacturer or private labeler is owned by the same parent as the laboratory.

We think the definition of firewalled laboratories should be expanded beyond those labs where manufacturers or private labelers own more than a ten percent interest. To prevent potential conflict-of interest, we believe that the extra requirements for proving impartiality must also be applied to any independent lab that does 50 percent or more of their business with a single manufacturer or private labeler of children's products.

It is important that the Commission apply rigorous standards to ensure that impartiality is maintained within firewalled laboratories. We support the requirement that these laboratories must submit to the Commission for review copies of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over the laboratory's test results. However, we believe that the Commission should develop a stringent standard that such training documents must meet. Standards for impartiality are addressed in ISO/IEC Guide 50 - General Requirements for Bodies Operating Product Certification Systems, which could, as a starting place, be applied for this purpose. This standard requires a documented structure that seeks to safeguard impartiality, including provisions to ensure the impartiality of the operations of the certification body. Other standards or best practices that are more protective of laboratory and test result integrity should also be considered for the development of a training document standard. As part of the accreditation process, the laboratory should

be required to show proof of its compliance with the ISO/IEC Guide 50 or the more stringent standard regarding impartiality protections.

The Commission should also conduct periodic reviews and revise accreditation requirements to ensure that the highest standards for laboratory accreditation are being followed. For example, if the ISO/IEC 17025 : 2005 – General Requirements for Competence of Testing and Calibration Laboratories is superseded by a more stringent accreditation standard, then the Commission should adopt the more stringent standard.

The Commission should establish a defined system for de-listing an accredited laboratory for just cause. Examples of reasons for delisting and accredited lab might include, but are not limited to:

- evidence of conflict-of-interest or where there is undue influence by a manufacturer, a common parent company, or other party that could have affected test results;
- a laboratory has been found to be incompetent to conduct required testing due to personnel or laboratory equipment changes; or
- a laboratory has a record of repeatedly certifying products that are later identified as non-compliant.

Conclusion

For the foregoing reasons, we urge the Commission to adopt these recommendations in its future implementation of section 102(a) of the CPSIA.

Respectfully submitted,

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