

Meridian, MS, Key Field, ILS OR LOC RWY 19, Orig-A
 Garrison, ND, Garrison Muni, Takeoff Minimums and Obstacle DP, Orig
 Stanley, ND, Stanley Muni, Takeoff Minimums and Obstacle DP, Orig
 Broken Bow, NE, Broken Bow, Muni, Takeoff Minimums and Obstacle DP, Amdt 3
 Harvard, NE, Harvard State, RNAV (GPS) RWY 35, Orig
 Harvard, NE, Harvard State, Takeoff Minimums and Obstacle DP, Orig
 Harvard, NE, Harvard State, VOR/DME RNAV OR GPS RWY 35, Orig, CANCELLED
 Schribner, NE, Schribner State, Takeoff Minimums and Obstacle DP, Orig
 Portland, OR, Portland Intl, VOR-A, Amdt 10
 Beaufort, SC, Beaufort County, RNAV (GPS) RWY 25, Amdt 2
 Rapid City, SD, Rapid City Rgnl, ILS OR LOC RWY 32, Amdt 19
 Newport News, VA, Newport News/Williamsburg Intl, ILS OR LOC RWY 7, Amdt 33
 Newport News, VA, Newport News/Williamsburg Intl, ILS OR LOC RWY 25, Amdt 1
 Newport News, VA, Newport News/Williamsburg Intl, LOC/DME RWY 20, Amdt 1
 Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 2, Amdt 6
 Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 20, Amdt 5
 Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 2, Amdt 1
 Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 7, Amdt 3
 Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 20, Amdt 2
 Newport News, VA, Newport News/Williamsburg Intl, RNAV (GPS) RWY 25, Amdt 2
 Norfolk, VA, Hampton Roads Executive, RNAV (GPS) RWY 10, Amdt 1
 Norfolk, VA, Hampton Roads Executive, RNAV (GPS) RWY 28, Orig, CANCELLED
 Yakima, WA, Yakima Air Terminal/McAllister Field, Takeoff Minimums and Obstacle DP, Amdt 5
 Yakima, WA, Yakima Air Terminal/McAllister Field, ZILLA TWO Graphic Obstacle DP
 Huntington, WV, Tri-State/Milton J. Ferguson Field, Takeoff Minimums and Obstacle DP, Amdt 1

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CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC-2010-0085]

16 CFR Parts 1632 and 1633

Third Party Testing for Certain Children's Products; Mattresses, Mattress Pads, and/or Mattress Sets: Revisions to Terms of Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to Commission's Acceptance of Accreditation

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of requirements; revision of retrospective testing terms.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a notice amending the terms under which it will accept certifications for children's products based on third party conformity assessment body (laboratory) testing to the flammability regulations at 16 CFR parts 1632 and/or 1633 that occurred before the Commission's acceptance of the accreditation of the third party conformity assessment body. We are taking this action in response to requests from certain mattress manufacturers to reduce unnecessary retesting of mattresses, mattress pads, and/or mattress sets that have already been tested and found to be in compliance with CPSC regulations.

DATES: *Effective Date:* The revision announced in this notice is effective November 29, 2010.

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for The Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: rhowell@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the

Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the Commission has established and published notice of the requirements for accreditation tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.*, section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

In the **Federal Register** of August 18, 2010 (75 FR 51020), we published a notice of requirements providing the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to 16 CFR parts 1632, "Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended)," and/or 1633, "Standard for the Flammability (Open Flame) of Mattress Sets," which set minimum standards for flammability of mattresses, mattress pads, and/or mattress sets under the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) (FFA). The notice of requirements stated that the publication had the effect of lifting the stay of enforcement with regard to testing and certification of children's products under 16 CFR parts 1632 and/or 1633, such that each manufacturer of such a product must have any such product manufactured after November 16, 2010, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance based on that testing (75 FR at 51021 through 51022).

We addressed testing performed by a third party conformity assessment body prior to the Commission's acceptance of its accreditation, or "retrospective" testing, in section IV of the notice of requirements. We stated that we would accept a certificate of compliance with the standard included in 16 CFR parts 1632 and/or 1633, based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a

firewalled conformity assessment body), prior to the Commission's acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC-MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited by order at or before the time the product was tested, even though the order will not have included the test methods in the regulations specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;
- The third party conformity assessment body's application for testing using the test methods in 16 CFR part 1632 and/or 1633 is accepted by the CPSC on or before October 18, 2010;
- The product was tested under 16 CFR part 1632 and/or 1633 on or after August 18, 2010;
- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to 16 CFR part 1632 and/or 1633;
- The test results show compliance with the applicable current standards and/or regulations; and
- The third party conformity assessment body's accreditation, including inclusion in its scope of 16 CFR part 1632 and/or 1633, remains in effect through the effective date for mandatory third party testing and manufacturer certification for conformity with 16 CFR parts 1632 and/or 1633.

75 FR at 51022.

II. Requests for Revision

In response to the notice of requirements, the International Sleep Products Association (ISPA) submitted a letter to the Commission arguing that the CPSIA's third party testing requirements do not apply to part 1632 or 1633. In the alternative, the ISPA urged that we adopt a longer implementation period for third party testing under 16 CFR part 1632, and to "grandfather in all previously conducted 1632 and 1633 testing performed by third party labs accredited by the CPSC, regardless of whether those tests occurred before or after August 18, 2010." (The ISPA letter may be viewed at <http://www.regulations.gov> in the docket folder for docket number CPSC-2010-0085.) The ISPA met with individual Commissioners and CPSC staff to discuss the requests on September 15, October 22, October 26, and November 9, 2010. Summaries of those meetings may be found at:

<http://www.cpsc.gov/library/foia/meetings/meetings.html>.

With regard to the request for a longer implementation period for third party testing for 16 CFR part 1632, the ISPA requested an additional year "[f]or those prototype and ticking substitutes that were not tested by a third party lab and that are being used in children's mattresses sold today * * * to allow manufacturers of children's mattresses 12 months to retest all of the applicable prototypes and ticking substitutes." The ISPA presented two main arguments in support of this request. First, it noted that "using a third party to perform the required 1632 tests will involve substantial time and costs." Second, it asserted that "changes in how 1632 tests are to be performed make it difficult to conduct those tests at this moment." The standard for the flammability of mattresses and mattress pads at 16 CFR part 1632 sets forth a test to determine the ignition resistance of a mattress or mattress pad when exposed to a smoldering cigarette. Lighted cigarettes are placed at specified locations on the surface of a mattress (or mattress pad). The ignition source is specified in 16 CFR part 1632 by physical properties that were originally selected to represent an unfiltered Pall Mall cigarette, but those cigarettes are no longer available. ISPA stated a concern that there may be substantial confusion about what ignition source will be required for part 1632 tests "[f]or at least the short term."

With regard to the request that we accept, for children's product certification purposes, all tests pursuant to 16 CFR parts 1632 and 1633 previously conducted by accredited third party laboratories, regardless of when the test occurred, the ISPA presented three main arguments, all of which focused on the testing conducted under 16 CFR part 1633. First, the ISPA noted that because the mattress flammability test required by 16 CFR part 1633 since 2007 is a complex, open-flame test that involves the destruction of a mattress, most manufacturers have been using third party laboratories for this testing. According to the ISPA, many of the laboratories that have done the testing since the standard was revised substantially in 2007 meet the baseline requirements for acceptance by the CPSC. Second, there have been no changes to the test method required under 16 CFR part 1633 since 2007. Third, the ISPA notes that testing under 16 CFR part 1633 is expensive and time-consuming. It argued that accepting only those third party tests of children's mattresses under 16 CFR part 1633 that

have occurred since August 18, 2010, would be "arbitrary and wasteful" because requiring the mattress industry to retest all mattress prototypes used in making children's mattress sets "would take months to perform and cost the industry hundreds of thousands—if not millions—of dollars and would provide no discernable safety benefit."

Similarly, on November 2, 2010, the Commission received a letter from the Springs Creative Products Group, LLC, claiming that the notice of requirements would "put an extreme burden on mattress manufacturers to complete additional and redundant testing by accredited labs * * * by November 16, 2010," and asking that we:

- "Grandfather in all Part 1633 qualification and confirmation testing performed since 2006 by all test labs that are accredited by the CPSC;"
- "Grandfather in all Part 1632 tests performed by accredited labs since 2006;" and
- Grant a one year compliance period "for all Part 1632 prototypes and ticking substitutes that were not tested by accredited labs."

Letter from Derick S. Close, CEO, Springs Creative Products Group, LLC, to Inez Tenenbaum, Chairman, Consumer Product Safety Commission (October 26, 2010). (The Springs Creative Products Group letter may be viewed at <http://www.regulations.gov> in the docket folder for docket number CPSC-2010-0085). The letter asserted that "[r]equiring manufacturers to have the same labs retest the same Part 1633 prototypes following the same exact test method as was done since 2006 would impose wasted costs on an industry recovering from the worst recession in 70 years" and that "the industry needs more time to retest materials [in] an orderly manner because the CPSC is in the midst of changing the cigarettes used for testing." *Id.* at pages 1 through 2.

III. The Response to the Requests

A. A Brief Description of Testing Under 16 CFR Parts 1632 and 1633

We have considered the requests and, through this notice, are revising our position regarding "Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation." To help interested parties understand our reasons for revising our position, we begin by explaining what prototype testing pursuant to 16 CFR parts 1632 and 1633 involves and the relevance of the letters' reference to cigarettes.

The Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR part 1632, sets forth a test to determine the ignition resistance of a mattress or mattress pad when exposed to a lighted cigarette. In brief, the regulations require pre-market prototype testing for each new mattress design and also require prototype testing when there has been a change in materials of an existing prototype design that could influence cigarette ignition resistance. Six mattress surfaces must be tested for each prototype. Lighted cigarettes are placed at specified locations on the surface of a mattress (or mattress pad). The Standard establishes pass/fail criteria for the tests. Currently, the Standard specifies the ignition source for these tests by its physical properties. These properties originally were selected to represent an unfiltered Pall Mall cigarette, which was identified as the most severe smoldering ignition source. Recently, however, the Commission published a proposed rule (75 FR 67047 (Nov. 1, 2010)), to amend the mattress standard to require a standard reference material cigarette, which was developed by the National Institute of Standards and Technology, as the ignition source for testing to the mattress Standard.

The Standard for the Flammability (Open Flame) of Mattress Sets, 16 CFR part 1633, is intended to minimize or delay “flashover” when a mattress is ignited in a typical bedroom fire. (“Flashover” is the point at which the entire contents of a room are ignited simultaneously by radiant heat, making conditions in the room untenable and a safe exit from the room impossible. At flashover, room temperatures typically exceed 600–800 degrees Celsius (approximately 1100–1470 degrees Fahrenheit).) In general, the Standard requires manufacturers to test specimens of each of their mattress prototypes (designs) before mattresses of that prototype may be introduced into commerce. The specimen is to be no smaller than twin size, unless the largest size mattress or set produced of that type is smaller than twin size, in which case the largest size must be tested.

The Standard prescribes a full-scale test using a pair of T-shaped gas burners designed to represent burning bedclothes. The mattress set must not exceed a peak heat release rate of 200 kilowatts (kW) at any time during a 30 minute test, and the total heat release for the first 10 minutes of the test must not exceed 15 megajoules (“MJ”). Mattresses that meet the Standard’s criteria will make only a limited contribution to a fire, especially in the fire’s early stages. This will allow

occupants more time to discover the fire and escape.

Thus, both 16 CFR parts 1632 and 1633 contemplate testing of prototypes rather than testing mattresses, mattress sets, or mattress pads that are already in production. The prototype itself does not have to be a children’s mattress, mattress set, or mattress pad for purposes of section 14(a)(2) of the CPSA; however, to support the issuance of a certificate for a children’s product, the prototype testing must be conducted by a CPSC-accepted third party conformity assessment body.

B. The Revised “Limited Acceptance of Children’s Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission’s Acceptance of Accreditation”

Given the nature of prototype testing under 16 CFR parts 1632 and 1633, we agree that revising our position on our “Limited Acceptance of Children’s Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission’s Acceptance of Accreditation” is appropriate. The revised position will reduce further the need for redundant testing. We will accept children’s product certifications based on third party conformity assessment body testing, prior to our acceptance of accreditation, under two different scenarios.

1. Testing Performed by Certain Accredited Third Party Conformity Assessment Bodies on or After July 1, 2007

The notice of requirements that appeared in the **Federal Register** on August 18, 2010 described the circumstances under which the Commission would accept a certificate of compliance with the standard included in 16 CFR parts 1632 and/or 1633 based on testing performed by an accredited third party conformity assessment body (75 FR at 51023). Due to the nature of prototype testing under 16 CFR parts 1632 and 1633 and the date on which the requirements in 16 CFR part 1633 became effective, we are modifying section IV of the notice of requirements as follows:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an accreditation body that is a signatory to the ILAC–MRA;
- The third party conformity assessment body’s application for testing using the test methods in 16 CFR part 1632 and/or 1633 is accepted by the CPSC on or before November 16, 2010;

- The product was tested under 16 CFR part 1632 and/or 1633 on or after July 1, 2007. The date on which the requirements in 16 CFR part 1633 became effective is July 1, 2007, and, in an “Interim Enforcement Policy for Mattresses Subject to 16 CFR Parts 1632 and 1633,” dated May 15, 2006, the CPSC anticipated that 16 CFR part 1633 could prompt manufacturers to redesign mattress prototypes and use new materials to meet the then-new flammability requirements in 16 CFR part 1633, and that the new prototypes also would have to be tested to demonstrate compliance with 16 CFR part 1632. Therefore, provided that the other conditions set forth in part III.B.1 of this document are met, we will accept testing that was done on or after July 1, 2007. We decline to accept results for tests conducted in 2006, because such tests were not equivalent to the tests required in 16 CFR part 1633;

- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to 16 CFR part 1632 and/or 1633;

- The test results show compliance with the applicable current standards and/or regulations; and

- The third party conformity assessment body’s accreditation, including inclusion in its scope of 16 CFR part 1632 and/or 1633, remains in effect through the effective date for mandatory third party testing and manufacturer certification for conformity with 16 CFR parts 1632 and/or 1633.

2. Testing Performed by Seven Testing Laboratories

In July 2007, CPSC staff conducted onsite reviews of the facilities that were performing testing to 16 CFR part 1633. During these reviews, we met with laboratory technical staff, toured the laboratory facilities, and observed the laboratory staff performing the test procedures. The purpose of the onsite reviews was to observe and gather information because the CPSC had concerns about test performance. The CPSC staff reviews examined:

- Laboratory staff qualifications;
- Test area and equipment;
- Calibration of equipment;
- Testing, data collection, and storage of samples; and
- Sample handling.

At the time that CPSC staff did the onsite reviews, there were 11 laboratories (nine within the United States and two in foreign countries) with the capability to perform the required test. (Resources limited the CPSC staff’s ability to review the

remaining foreign and domestic laboratories prior to the implementation of the Consumer Product Safety Improvement Act.) CPSC staff visited the following laboratories:

- (1) Underwriters Laboratories (UL), in Northbrook, IL;
- (2) Stork Twin City Testing Corporation, in St. Paul, MN;
- (3) Govmark Organization, in Farmingdale, NY;
- (4) SGS US Testing, in Tulsa, OK;
- (5) Southwest Research Institute, in San Antonio, TX;
- (6) Intertek, in Elmendorf, TX; and
- (7) Chilworth, in Kelso, WA.

CPSC staff has confidence that these laboratories can conduct the tests required by the mattress Standard properly because of these field visits and also on the basis of our review of test results submitted to the CPSC since 2007, and, in some instances, verification of the test results by our own independent testing of mattresses built from prototypes tested by these laboratories. Therefore, we will accept children's product certifications based on third party conformity assessment body testing by any of the seven laboratories listed above provided that:

- The laboratory will be ISO/IEC 17025 accredited by an accreditation body that is a signatory to the ILAC-MRA, and the accreditation scope will expressly include testing to 16 CFR part 1632 and/or 1633 by November 16, 2010;
- Testing was conducted on or after July 1, 2007, but not later than November 16, 2010; and
- The test results show compliance with the applicable current standards and/or regulations.

C. The Request for an Extended Compliance Period

Both the ISPA and the Springs Creative Products Group sought an additional one year for manufacturers to comply with the third party testing requirement. Both referred to costs and to the cigarettes to be used in the tests.

We decline to extend the time by which manufacturers must engage in third party testing. We believe that our revised position regarding our "Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation" substantially reduces or eliminates the need to retest products. More importantly, however, we note that section 14(a)(3)(F) of the CPSA expressly declares that:

If the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to

permit certification for a children's product safety rule * * * the Commission may extend the deadline for certification to such rule by not more than 60 days.

Thus, the conditions set forth in section 14(a)(3)(F) of the CPSA have not been met. We do not have information suggesting that there are an insufficient number of third party conformity assessment bodies to conduct tests pursuant to 16 CFR parts 1632 and/or 1633. While we recognize that third party testing may present economic issues for certain manufacturers as described in the ISPA submissions and subsequent meetings, section 14(a)(3)(F) of the CPSA does not authorize us to consider cost or the past or present state of the national economy as reasons for extending the deadline for certification. Additionally, the statute specifically allows for extension "not more than 60 days"; therefore, the one-year extension sought by the ISPA and Springs Creative Product Group would not be possible under section 14(a)(3)(F) of the CPSA.

Dated: November 19, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-253-FOR; Docket ID OSM-2009-0001]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Ohio regulatory program (the "Ohio program") regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment that we are approving involves changes to Ohio's internal and procedural rules arising from a five-year review of the rules. The changes relate to practice and procedures before the reclamation commission, including definitions, commission meetings, appearance and practice before the commission; appeals to the reclamation commission; filing and service of papers; temporary relief; responsive pleadings; discovery; motions; pre-hearing procedures; notice

of hearings and continuance of hearings; site views and location of hearings; conduct of evidentiary hearings; reports and recommendations of the hearing officer; and decisions of the commission.

DATES: *Effective Date:* This rule is effective November 29, 2010.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Chief, Pittsburgh Field Division, Columbus Office, Office of Surface Mining Reclamation and Enforcement, Telephone: (614) 416-2238, e-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Ohio Program
- II. Description and Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7).

You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval in the August 16, 1982, **Federal Register** (47 FR 34688). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description and Submission of the Amendment

By letter dated January 22, 2009, and received on January 23, 2009, (Administrative Record No. OH-2188-01), Ohio sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment includes revisions to its regulations (Ohio Administrative Code).

Pursuant to Ohio Revised Code 119.032, all State agencies must review their internal and procedural rules every five years. In response to this requirement, the Ohio Reclamation Commission reviewed its procedural rules. The Commission's procedural rules are found at Ohio Administrative Code 1513-3-01 through 1513-3-22.