

U.S. Consumer Product Safety Commission



New Actions to Determine the Feasibility of More Active Participation in Voluntary Standards Development

Response to Recommendations Contained in the
U.S. Government Accountability Office (GAO) Report 12-582,
*Consumer Product Safety Commission:
A More Active Role in Voluntary Standards
Development Should Be Considered*

1. Introduction

Section 504 of the Consolidated Appropriations Act of 2012 directed the U.S. Government Accountability Office (GAO) to analyze manufacturers' compliance with voluntary industry standards overseen by the U.S. Consumer Product Safety Commission (CPSC).¹ In furtherance of this mandate, GAO conducted a study to evaluate:

- 1) "what is known about the extent to which manufacturers comply with voluntary standards for consumer products, including inexpensive imported products";
- 2) the "CPSC's authority and ability to require compliance with voluntary standards";
- 3) "the consequences for manufacturers that fail to comply with voluntary standards"; and
- 4) "CPSC's efforts to identify patterns of noncompliance."

In the course of conducting this study, GAO met with CPSC officials and staff, interviewed three standards development organizations, and gathered documentary information from consumer, industry, and legal organizations. GAO completed its study and issued a final report of its findings, *Consumer Product Safety Commission: A More Active Role in Voluntary Standards Development Should Be Considered*, on May 21, 2012. The study contained the following recommendation for executive action:

To strengthen the adequacy of voluntary standards, we recommend that the Chairman of the CPSC direct agency staff to review the policy for participating in voluntary standards development activities and determine the feasibility of assuming a more active, engaged role in developing voluntary standards.

The CPSC supports the recommendation and respectfully submits this report to Congress to outline the activities that the Commission is undertaking to address the recommendation in the GAO report.²

¹ 125 Stat. 786, 908 (2011).

² Pursuant to 31 U.S.C. § 720, the head of a federal agency must submit a written statement of the actions taken on GAO's recommendations to: (i) the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Oversight and Government Reform not later than 60 calendar days from the date of GAO's report, and (ii) the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 calendar days after that date.

2. Voluntary Standards Development Activities

2.1 The CPSC's Role in Voluntary Standards Development

Voluntary standards are developed through a collaborative process facilitated by a voluntary standards coordinating organization, with participation from various groups, such as government, industry, test laboratories, consumer groups, and nonprofit organizations.

GAO reported that, generally, industry prefers voluntary standards over mandatory standards. One reason for this is that voluntary standards are developed through a consensus process that includes open meetings and proceedings. Industry representatives indicated that they spend considerable time and resources on developing voluntary standards. This involvement raises the likelihood that products comply with the voluntary standards.

CPSC staff participates in the voluntary standards development process by providing expert advice, technical assistance, and information based on analyses of the numbers and causes of deaths, injuries, or incidents associated with a product. Staff may be more involved in the process by presenting CPSC research, performing laboratory tests, and writing draft language for a standard. The level of support and monitoring CPSC staff provides is dependent upon available resources. The level of support decreased substantially after the passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA), due to the reallocation of agency resources to rulemaking proceedings required by the CPSIA.

2.2 Current CPSC Regulations on Commission Participation and Employee Involvement in Voluntary Standards Activities

Current CPSC regulations contain procedures that specify the criteria and requirements governing membership and the level of staff involvement in the process of developing voluntary standards in an effort to ensure fair and open stakeholder participation.³ Standards coordinating groups, such as ASTM International, the American National Standards Institute (ANSI), and Underwriters Laboratories (UL), also provide methods and requirements for interested parties to come together to develop product safety national consensus voluntary standards. These methods seek to develop effective standards in a timely fashion and allow for openness, a balance of interests, and due process. Representatives from industry, government (including CPSC staff), consumer groups, and other interested parties write the safety standards while using the methods and requirements of the standards coordinating organizations. Specifically, staff may attend standards development meetings, participate in discussions, provide data and explanatory material, and sometimes, written comments. By regulation, staff is prohibited from voting on standards, or from otherwise indicating formally, approval or disapproval of a voluntary standard during the course of a voluntary standard development process.

³ CFR 16 § 1031.11.

The Executive Director of the CPSC appoints a staff member, the Voluntary Standards Coordinator, to coordinate agency participation in voluntary standards organizations. Only the Voluntary Standards Coordinator, with approval from the Executive Director, may hold leadership positions on standards development committees. Staff only can participate in standards development meetings that are open to the public, except in extraordinary circumstances, and when approved by the Executive Director.

2.3 CPSC Actions to Determine the Feasibility of Assuming a More Active Role in Voluntary Standards Development Activities

The four CPSC Commissioners signed a unanimous joint letter to GAO on May 16, 2012, supporting GAO's recommendation. On May 16, 2012, CPSC Chairman Inez Tenenbaum also sent a memorandum to the CPSC's Executive Director, directing him to "instruct staff to begin the process of reviewing CPSC's policies regarding staff participation in the voluntary standards development process . . ." and, if staff determines that it is feasible to take a more active role, to begin the process immediately of amending the relevant rules and directives.

Staff has identified the following potential actions that staff could take to participate more actively in the development of voluntary standards:

- voting to approve or disapprove ballot items for matters pending before voluntary standards coordinating organizations;
- holding leadership positions at various levels in standards coordinating organizations, including task groups, subcommittees, or committees; and
- other internal process-related activities, such as the policy of having staff post draft responses to ballots of proposed standards on the CPSC website for 5 days before submitting the ballot response to the standards organization proposing the standard.

These potential actions will take additional work to evaluate. In evaluating these action items, staff will identify the advantages of increased participation in voluntary standards development, identify any barriers in regulatory language, assess resource requirements, and assess any potential negative consequences for each option.

3. Conclusion

The CPSC agrees with the recommendation to determine whether staff can participate more actively in voluntary standards activities. Pursuant to the directive of the CPSC Chairman, CPSC staff is actively exploring potential pathways for a more active role for the CPSC in voluntary standards development activities, and we are developing options for Commission consideration.