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B-322741

November 22, 2011

The Honorable John D. Rockefeller IV  
Chairman  
The Honorable Kay Bailey Hutchison  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Fred Upton  
Chairman  
The Honorable Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: Consumer Product Safety Commission: Testing and Labeling Pertaining to  
Product Certification

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Consumer Product Safety Commission (Commission), entitled "Testing and Labeling Pertaining to Product Certification" (CPSC-2010-0038). We received the rule on November 10, 2011. It was published in the *Federal Register* as a final rule on November 8, 2011. 76 Fed. Reg. 69,482.

The final rule establishes protocols and standards with respect to certification and continued testing for children's products. The final rule also establishes requirements for labeling of consumer products to show that the product complies with the certification requirements under section 14(a) of the Consumer Product Safety Act (CPSA).

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Philip L. Chao  
Assistant General Counsel  
for Regulatory Affairs  
Consumer Product Safety Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
CONSUMER PRODUCT SAFETY COMMISSION  
ENTITLED  
"TESTING AND LABELING PERTAINING  
TO PRODUCT CERTIFICATION"  
(CPSC-2010-0038)

(i) Cost-benefit analysis

The Commission did not prepare a cost-benefit analysis in conjunction with the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission determined that the final rule will have a significant adverse impact on a substantial number of small businesses and prepared a regulatory flexibility analysis in conjunction with the final rule. The Commission stated that the impact is expected to be disproportionate to small and low-volume manufacturers because testing costs are relatively fixed. The Commission incorporated some provisions into the final rule intended to lessen the impact on small businesses, including provisions allowing for longer maximum intervals between periodic testing if the manufacturer conducts certain other testing; allowing manufacturers to use component part testing; and permitting manufacturers and importers to rely upon the certifications issued by other parties as a basis for issuing their own finished product certificates. The Commission also considered other alternatives to reduce the impact on small businesses that were not adopted in the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act does not apply to independent regulatory agencies, such as the Consumer Product Safety Commission.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On May 20, 2010, the Commission published a notice of proposed rulemaking in the *Federal Register*. 75 Fed. Reg. 28,336. The Commission received comments and responded to the comments in the final rule. 76 Fed. Reg. 69,482.

GAO-12-250R

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Paperwork Reduction Act, and the Commission has applied to the Office of Management and Budget (OMB) for a control number for the information collection and plans to publish a notice providing the number once it receives approval from OMB. The Commission estimates that approximately 300,000 non-apparel children's products will be covered by the rule and that an average of 5 hours will be needed for the recordkeeping associated with these products. The Commission also estimates that there are approximately 1.3 million children's apparel and footwear products that will require an average of 3 hours for the recordkeeping. Thus, the total hour burden of the recordkeeping associated with the final rule is 5.4 million hours. Additionally, the total cost of the recordkeeping associated with the testing and certification rule is approximately \$197 million.

Statutory authorization for the rule

The final rule is authorized by section 14(a)(2) and (i) of the CPSA, as amended by section 102(b) of the Consumer Product Safety Improvement Act of 2008.

Executive Order No. 12,866 (Regulatory Planning and Review)

The Executive Order does not apply to independent regulatory agencies, such as the Consumer Product Safety Commission.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Consumer Product Safety Commission.