Undue Influence Training

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New CPSIA requirements effective February 8, 2013

• Testing and Labeling Pertaining to Product Certification – 16 CFR 1107
  • Certification of Children’s Products 1107.20
    • 1107.21 – Periodic Testing
    • 1107.23 – Material Change
    • 1107.24 – Undue Influence
    • 1107.26 – Recordkeeping
    • 1107-30 – Consumer Product Labeling Program
Purpose

• Establish protocols and standards for ensuring continued testing of children’s products
• Material change requirements
• Safeguards against exercise of undue influence
• Establish program for labeling of consumer products
Undue influence

• Undue influence occurs when one party uses his/her position to influence the other party to gain some advantage
• Pressure is typically exerted through persuasion rather than coercion
Undue influence

- Undue influence may result in undermining the integrity of testing data that can result in defective products that may injure or kill consumers, bring liability to the company and cause loss of business.
What is undue influence training?

- Undue influence training is training to ensure that manufacturers and their employees do not exert undue influence on testing laboratories to alter test methods or test results that serve as the basis for certifying a product’s compliance under federal law.
If you interact with a third-party testing lab, what must you do?

• **Establish procedures** to safeguard against the exercise of undue influence by the manufacturer on a third-party laboratory
  • Written policy
  • Training and retraining
  • CPSC notification of any attempt to hide or exert undue influence over test results
  • Staff assurances
Written policy

• This policy should not only satisfy the rule, but also **accentuate** to staff its **importance to the company**

• **Make** the written undue influence **policy visible** and available to customers and the public

• Consider including the policy in the company code of conduct
  
Training courses

• CPSC does not provide a model undue influence training course.
Training

• **All employees who interact with testing labs** must undergo training to ensure that no one engages in actions or makes statements that will be considered undue influence.

• If the undue influence policy changes, all employees must be retrained.
Requirements

• A digital signature or other electronic attestation (such as a check box), indicating that an employee took the training as part of software or online training, would meet the requirement to “sign a statement attesting to participation in such training.”
Best practices to avoid unduly influencing a third party lab

• Ensure you follow appropriate sample selection protocols
• Do not test “golden samples”
• Don’t threaten to change third party testing providers because of an unsatisfactory test report
• Avoid developing personal relationships with the lab that could somehow influence test results
Obligation to exercise due care

• Applies to each *domestic manufacturer or importer* of a children’s product.

• The importer is not required to train employees of foreign manufacturers, but *must be sure to exercise due care*. 
Obligation to exercise due care

- **Communicate your policy and educate your factories** and advise them that their acts of undue influence on labs may cause you to rely on their supplied test reports for CPCs that can be deemed invalid by the CPSC and bring **liability to you as the “certifier”** for failing to exercise due care in preventing undue influence in your supply chain.
Obligation to exercise due care

• If the importer receives a test report that is the result of undue influence, the **CPSC could deem the certificate invalid** and the CPSC may hold the domestic manufacturer/importer responsible for failing to exercise due care
Reporting

• If you **witness or are aware** of what you believe is an incident of undue influence, it is your **responsibility to report** it

• Ideally, you should report it to your **immediate supervisor**. If you are not comfortable doing so, you may report it to **any company officer**.

• The **CPSC must be notified immediately** of any attempt by the manufacturer to hide or exert undue influence over test results
Reporting

• For our purposes, **any action or statement that undermines** the credibility and validity of the testing process used for the certification of children’s products is undue influence.

• **If you have any doubt, report it.**
Staff assurances

• Manufacturers must inform their employees that allegations of undue influence may be reported confidentially to the CPSC, and manufacturers must tell their employees how to make such confidential reports.

• Reports alleging undue influence should be filed with the CPSC Office of the Secretary.
Reporting

• You may report incidents of undue influence confidentially directly to the CPSC:

  U.S. Consumer Product Safety Commission
  4330 East West Highway
  Bethesda, MD 20814
  301.504.7923 or 800.638.2772
  www.cpsc.gov
When undue influence occurs

- Employees who have engaged in undue influence should be **disciplined in accordance with the company’s policy** for employee disciplinary actions.
- Discipline may range from a **written or verbal warning up and including termination** of employment.
New CPSIA requirements effective 2.8.2013

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Periodic testing

• Manufacturers must develop a Periodic Testing Plan to ensure continued compliance that includes:
  • Tests to be conducted
  • Intervals at which the tests will be conducted
  • Number of samples tested

• At **minimum**, periodic testing should be performed **annually**
Material change

• A material change includes changes in:
  • Product design
  • Manufacturing process
  • Sourcing of component parts
  • Tooling
  • Changes in manufacturing facility

• New certification testing will be required on the “new product”
Recordkeeping

• Children’s Product Certificate (CPC) for each product
• Records of each third party certification test
• Records of period tests
• Records of descriptions of all material changes
• Records of undue influence procedures—including training materials and training records of all employees
• These records must be kept for 5 years and may be maintained in languages other than English if they can be immediately provided to the CPSC and translated into English within 48 hours of a request by the CPSC
Consumer product labeling program

• MEETS CPSC SAFETY REQUIREMENTS
  • Label must be visible and legible
  • Product must comply with all applicable rules, bans, standards and regulations enforced by the CPSC
  • Additional labels may be added - Verbiage must not imply that the CPSC has tested, approved, or endorsed the product
Product Responsibility Resources

• PPAI: [www.ppaio.org](http://www.ppaio.org)
• Questions?
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