

## INFORMATION COLLECTION REQUEST

### Conditions and Requirements for Testing Component Parts of Consumer Products RIN: 3041-AC86

#### A. Justification

##### 1. Circumstances Necessitating Information Collection

Except as provided in section 14(a)(2) of the CPSA, section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1), requires manufacturers and private labelers of a product that is subject to a consumer product safety rule, or to any similar rule, ban, standard, or regulation under any other act enforced by the Commission, to issue a certificate. The certificate: (1) must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all CPSC requirements; and (2) must specify each rule, ban, standard, or regulation applicable to the product.

Section 14(a)(2) of the CPSA, 15 U.S.C. 2063(a)(2), requires manufacturers and private labelers of any children's product that is subject to a children's product safety rule to submit samples of the product, or samples that are identical in all material respects to the product, to a third party conformity assessment body recognized by CPSC to be tested for compliance with such children's product safety rule. Based on that testing, the manufacturer or private labeler must issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests. 15 U.S.C. 2063(a)(2)(B).

This proposed rule would set forth the conditions and requirements for testing of component parts of consumer products, including children's products, where such testing is intended to demonstrate, in whole or in part, the product's compliance with any rule, standard, ban, or regulation enforced by the Commission that is subject to the requirements of section 14 of the CPSA and that does not itself directly address testing of component parts. Specifically, the proposed rule would establish the conditions under which a party certifying a product under section 14 of the CPSA may rely on tests of component parts of the product, including materials used to produce it, as all or part of the basis for a valid certificate that the product complies with all applicable requirements enforced by the Commission. The proposed rule also would set out the conditions under which such tests of component parts can be conducted by persons other than the manufacturer, such as the manufacturer or supplier of the component parts. Certifiers may issue certificates based on test results from an appropriate testing facility or based on a certificate from another person that the product complies, where such certificate is based on testing by an appropriate testing facility. The tests of the component parts are required by statute, and the proposed rule should allow a reduced amount of testing by

component part manufacturers, suppliers and certifiers where the component parts or materials are sold to more than one customer or used in more than one product.

The proposed rule would require that testing parties that are not themselves certifying a component part provide specified documentation to the certifier requesting the test (§ 1109.5(f)).

The proposed rule applies to three categories of requirements: (1) limits on the content of heavy metals in paints and surface coatings in certain applications (§ 1109.11); (2) limits on the lead content of children's products (§ 1109.12); and (3) limits on the phthalate content in children's toys and child care articles (§ 1109.13). These sections require that the documentation underlying certificates, and the certificates themselves, contain certain information, including enough information that the component parts can be traced back to their suppliers and, if different, their manufacturers.

Proposed § 1109.5(i) would require testing parties to maintain the documentation that would be required in proposed § 1109.5(f) for 5 years. Additionally, all certifiers would have to maintain records to support the traceability of component part suppliers for as long as the product is produced or imported by the certifier plus 5 years. Test records would be retained for 5 years. All records would be required to be available in the English language. Records would be required to be maintained for 5 years because the statute of limitations under 28 U.S.C. 2462 allows the Commission to bring an action within that time. The proposal would require certifiers to maintain the records at the location within the United States specified in 16 CFR 1110.11(d), or, if the records are not maintained at the custodian's address, at a location specified by the custodian. The manufacturer must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

2. How, by Whom, and for What Purpose Information Used

Finished product certifiers, component part certifiers, and the CPSC would use the documentation and disclosures that would be required by the proposed rule to determine whether parties are performing their testing responsibilities properly. This should make it easier to identify which components do not comply and to implement an appropriate corrective action.

3. Consideration of Information Technology

The proposed rule would allow records to be maintained electronically and provided in that form to the Commission upon request.

4. Efforts to Identify Duplication and Similar Information Already Available

The proposed rule would ensure that information demonstrating the compliance of component parts follows the parts from the time of initial testing for certification purposes to the time the finished product is certified. Although much information required by this rule is already kept by component part manufacturers and suppliers or by the finished product certifiers, the proposed rule would require the information to be passed on to the persons who purchase from the component manufacturers or suppliers if such information is to be used as part or all of the basis for a finished product's certificate. It is unlikely that the required information is available from other sources.

5. Impact on Small Business

The proposed rule would define conditions under which the finished product certifier (currently the manufacturer or importer) can rely upon tests conducted on component parts of the product, rather than on the whole product, as the basis for the certification. Absent component part testing, certifiers of children's products would have to obtain test results for each component part of a consumer product even if the same component part were used in more than one consumer product. Component part testing will allow certifiers to rely upon tests conducted on the component part to certify that the finished product meets the applicable safety rules. Many of the component part certifiers, finished part certifiers, and testing facilities affected by this rule are small businesses.

Because testing costs are relatively fixed, component part testing allows the cost of the testing to be spread over more units of finished goods. This can significantly reduce the cost of testing and certifying products. For example, a manufacturer that uses the same paint on five different products could obtain test results for the paint and use those results to certify that the same paint, when used on each of the five products, complies with the applicable safety rules (provided that nothing is added to the paint after the testing or during the application process). Without component part testing, the manufacturer would have to test the paint on each product on which it is used, which would increase the costs of testing by a factor of about 5 in this example. Therefore, the component part testing that would be allowed by this proposed rule could significantly reduce the cost of testing.

6. Consequences of Less Frequent Information Collection and Technical or Legal Obstacles

In order for component testing by parties other than the finished product certifier to serve as the basis for a certification that products comply with all applicable CPSC safety requirements, the documentation and recordkeeping must be sufficient to demonstrate that the products comply and to enable particular component parts to be traced back to the supplier and manufacturer, if different. Any less documentation and recordkeeping would not achieve this purpose.

7. Consistency with the guidelines in 5 CFR 1320.5(d)(2)

The proposed rule is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

Given the statutory requirements for testing and certification, the nature of the information being collected, and CPSC's experience with certification programs for consumer products, no consultation outside the agency was necessary.

9. Payment or Gift to Respondents

The CPSC did not and will not provide any payment or gifts to respondents.

10. Confidentiality of Information

Any information submitted at the request of the Commission would be subject to the Freedom of Information Act and its exemptions to public disclosure.

11. Sensitive Questions

Information regarding ownership, business and governmental relationships, and third party conformity assessment body personnel may be considered sensitive. Such information could appear through the records and documentation required by the proposed rule. However, the rule does not require the disclosure of such information.

12. Estimates of Burden Hours and Explanation

We estimate the burden of this collection of information as follows:

- The proposed rule would require certifiers to maintain records of the source of component parts tested for compliance to ensure traceability of component parts. If a component part is tested for certification by a party other than the manufacturer or importer of the finished product (the finished product certifier), the proposed rule would require that the testing party provide certain documentation or records to the certifier. These records include identification of a lot or batch number for which the testing applies; what applicable rules, bans, standards, and regulations it tested for on each component part tested; what testing methods and sampling protocols were used; the date or date range the component part was tested; the results of each test on a component part; if the product was tested by a third party conformity assessment body, identification of such third party conformity assessment body, a copy of the original test results; and a certification that all testing was performed in compliance with section 14 of the CPSA and proposed 16 CFR part 1107, as applicable.
- These records are similar to the records that a manufacturer would be required to develop and maintain under the proposed rule on "Testing and Labeling

Pertaining to Product Certification” (which appears in the same issue of the FEDERAL REGISTER as this proposed rule, at 75 FR 28336 (May 20, 2010)). Most records concern the documentation of the test plan and test results for the component part, which would be required whether the component part was tested as part of the finished product or apart from the finished product. Even without component part testing, certifiers would be expected to maintain records regarding the lot, batch, or other information identifying the component parts used, since changes in the component part or its design or manufacturing process, including the sourcing of the component part, would constitute a material change and trigger requirements for additional testing and recertification.

- The proposed component part testing rule may shift the responsibility for preparing the records, especially those documenting the test results, in some cases, from the manufacturer or importer of the consumer product to the manufacturer or supplier of the component part. We do not know how many manufacturers or wholesalers will voluntarily test component parts for the benefit of finished product certifiers. Component part manufacturers that are not themselves manufacturers of children’s products could voluntarily obtain the required third party testing for children’s product manufacturers who use their component parts. Such component part manufacturers might include textile manufacturers, paint and coating manufacturers, manufacturers of buttons and other fasteners, and manufacturers of plastic material and resin.
- The 2007 Economic Census showed that there were 5,220 establishments that were engaged in manufacturing these materials or component parts. However, the number who would actually obtain third-party testing will probably be a small subset of these establishments.
- At this time, there is no clear basis for estimating the recordkeeping burden on component part suppliers that would voluntarily obtain the third party testing. We have tentatively estimated that the total recordkeeping burden for that proposal with respect to the continued testing requirements of the CPSIA would be 200,000 to 300,000 hours annually. Some of this burden cannot be shifted to the component part suppliers because some tests must be performed on the whole product. In other cases, the burden will not be shifted because the component part is unique to the product or the manufacturer or because the component part supplier declines to obtain the third party testing. However, if we assume that eventually 10 percent of the total testing will be ultimately shifted to the component part suppliers, then the recordkeeping burden shifted would be approximately 20,000 to 30,000 hours (we use a 25,000 hour estimate here).

13. Annual Cost to Respondents

There are no total capital or start-up costs or service costs projected.

If we assume that eventually 10 percent of the total testing will be ultimately shifted to the component part suppliers, then the recordkeeping burden shifted would be approximately 20,000 to 30,000 hours. Using the midpoint estimate of 25,000 hours, the total cost of the burden shifted would be \$1,245,250. This estimate was obtained by multiplying the total hour burden estimate by \$48.91, which is the total hourly compensation for private sector workers in management, professional, and related occupations (Bureau of Labor Statistics, Employer Costs for Employee Compensation – December 2009). The actual cost burden would depend upon the extent to which component suppliers are willing to voluntarily obtain the third party testing.

14. Annual Cost to the Government

The records will not normally be sent to the government. The only time CPSC is likely to request these records is when we are investigating a noncomplying product. The records are intended to provide documentation of testing and traceability of the components. In an investigation, access to these records should make it easier to identify the noncomplying products and possibly reduce the cost to the government of investigating a recall. Thus, although CPSC cannot estimate how often it will investigate allegedly noncomplying product incidents, the examination of records that would be required by the rule would be incidental to a CPSC investigation, so we anticipate that the annual cost to the government will be minimal.

15. Changes in Burden

The documenting and recordkeeping would represent a new collection of information and increase the overall information collection burden for the CPSC by 25,000 hours.

16. Statistical Reporting

Information collected under this requirement will not be published.

17. Exemption for Display of Expiration Date

The agency does not seek an exemption from displaying the expiration date.

18. Exemption to Certification Statement

N/A.

B. Statistical Methods

The information collection requirements do not employ statistical methods.