

INFORMATION COLLECTION REQUEST

Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements

RIN: 3041-AC86

A. Justification

1. Circumstances Necessitating Information Collection

Except as provided in section 14(a)(2) of the Consumer Product Safety Act (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 Consumer Product Safety Commission (CPSC or Commission), to certify, based on a test of each product or upon a reasonable testing program, that the product complies with all CPSC requirements, and the certificate 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 whose accreditation has been accepted by the CPSC to be tested for compliance with such children's product safety rule. Based on that testing, the manufacturer or private labeler must certify that such children's product complies with all applicable children's product safety rules. 15 U.S.C. 2063(a)(2)(B).

Additionally, section 14(i)(2)(B) of the CPSA, 15 U.S.C. 2063(i), requires the Commission, by regulation, to establish protocols and standards for ensuring that a certified children's product that has been tested for compliance with all applicable children's product safety rules is subjected to additional testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts. The final rule on "Testing and Labeling Pertaining to Product Certification," to be codified at 16 CFR part 1107, implements sections 14(a) and (i) of the CPSA.

This final rule on component part testing, to be codified at 16 CFR part 1109, is intended to give all parties involved in testing and certifying consumer products pursuant to sections 14(a) and 14(i) of the CPSA the flexibility to conduct or rely on required certification testing where such testing is the easiest and least expensive. For example, it may be more efficient to test component parts of consumer products before final assembly. Such testing may be done by component part suppliers so that test reports can

be provided to multiple manufacturers using such component parts. Alternatively, manufacturers who assemble finished products can test component parts as they are received to reduce costs where, for example, the same component part is used in multiple product lines. The final rule allows for maximum flexibility because a domestic manufacturer or importer who is required to certify consumer products pursuant to 16 CFR part 1110 (“finished product certifier”) can base such certificate upon one or more of the following: (a) component part testing; (b) component part certification; (c) another party’s finished product testing; or (d) another party’s finished product certification.

The final rule applies to all manufacturers and importers who are required to issue finished product certifications pursuant to section 14(a) of the CPSA and 16 CFR part 1110, and to certifiers that procure tests to ensure continued compliance pursuant to section 14(i) of the CPSA. The final rule also applies to manufacturers and suppliers of component parts or finished products who are not required to test or certify consumer products pursuant to 16 CFR part 1110, but who voluntarily choose to undertake testing or certification.

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

Section 1109.5(g) of the final rule requires that testing parties (§ 1109.4(k)) and certifiers (§ 1109.4(a)) provide certain documentation, either in hard copy or electronically, to a certifier relying on such documentation as a basis for issuing a certificate. Section 1109.5(j) requires that documentation be made available for inspection by the CPSC upon request, and that documentation may be maintained in languages other than English if they can be: (1) provided immediately by the certifier or testing party to the CPSC; and (2) translated accurately into English by the certifier or testing party within 48 hours of a request by the CPSC, or any longer period negotiated with CPSC staff.

Finished product certifiers, component part certifiers, and the CPSC will use the documentation and disclosures required by the final rule to determine whether testing parties and certifiers are performing their third party testing responsibilities properly. The required documentation will be used to identify consumer products, components of consumer products, test results, and the parties responsible for testing. Such documentation will make it easier to identify which components and consumer products do not comply with the law and to implement an appropriate corrective action.

3. Consideration of Information Technology

The final rule allows 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 final rule requires that certified products and their component parts, if tested separately, be traceable to the parties conducting and procuring third party testing. The required documentation is the type of information that is likely already maintained by testing parties and certifiers, but the final rule requires the information to be provided to parties further down the supply chain intending to rely on such testing or certification to certify the finished product. It is unlikely that the required information is available from other sources.

5. Impact on Small Business

The recordkeeping requirements in the final rule are unlikely to have a significant impact on small businesses. The required documentation is the type of information that is likely already maintained by testing parties and certifiers, and the final rule does not prescribe any particular method for establishing and maintaining records. Thus, small businesses have the flexibility to establish and maintain records in any manner that suits their needs.

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

In order for component part 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 maintained must be sufficient to demonstrate that the products comply with the law and to enable particular component parts to be traced back to the party that had the component parts tested for compliance, and to the third party laboratory that conducted the tests. Any less documentation and recordkeeping would not achieve this purpose, and would impede CPSC's ability to investigate compliance violations and enforce testing and certification rules for children's products.

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

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

8. Agency's Federal Register (FR) Notice and related information

A Notice of Proposed Rulemaking (NPR) was published in the Federal Register on May 20, 2010 (75 FR 28362). A final rule was published in the Federal Register on November 8, 2011 (76 FR 69546). The preamble to the final rule summarizes and responds to comments pertaining to the Paperwork Reduction Act that were submitted in response to the proposed rule. See 76 FR at 69578.

9. 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 with an outside agency was necessary. However, the

NPR solicited comments on the Paperwork Reduction Act. The preamble to the final rule summarizes and responds to the comments at 76 FR at 69578.

10. Payment or Gift to Respondents

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

11. 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.

12. Sensitive Questions

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

13. Estimates of Burden Hours and Explanation

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

- The final rule requires certifiers to maintain records of the parties that procured and conducted third party testing on component parts 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 final rule requires that the testing party or certifier provide certain documentation or records to a party using such documentation to certify a product. These records include: identification of the component part or the finished product tested; identification of a lot or batch number, or other information sufficient to identify the component parts or finished products to which the testing applies; identification of the applicable rules, bans, standards, and regulations for which each component part or finished product was tested; identification of the testing method(s) and sampling protocol(s) used; date or date range when the component part or finished product was tested; test reports that provide the results of each test on a component part or finished product, and the test values, if any; identification of the party that conducted each test (including testing conducted by a manufacturer, testing laboratory, or third party conformity assessment body), and an attestation by the party conducting the testing that all testing of a component part or finished product by that party was performed in compliance with applicable provisions of section 14 of the CPSA, part 1107 of this chapter, or any more specific rules, bans,

standards, or regulations; component part certificate(s) or finished product certificate(s), if any; records to support traceability as defined in § 1109.4(m); and an attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure compliance with the requirements set forth in § 1109.5(b).

- Records required to be maintained are similar to the records that a manufacturer is required to develop and maintain under the final rule on “Testing and Labeling Pertaining to Product Certification,” 16 CFR 1107, which appears in the same issue of the Federal Register as this final rule, at 76 FR 69482, 69543 (November 8, 2011). Most of the records for children’s products concern documentation of the test plan and test results for the component part or finished product, which would be required regardless of 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 because changes in the component part or the sourcing of the component part would constitute a material change and trigger requirements for additional testing.
- Based on the comments received, we revised the burden estimate that was set forth in the proposed rule on “Testing and Labeling Pertaining to Product Certification” and likewise, we revised the burden estimate for the component testing rule. A full discussion of the revised analysis appears in the final rule on “Testing and Labeling Pertaining to Certification.” The estimate of the total recordkeeping burden consists of three components: (1) the number of products for which recordkeeping will be required; (2) the average number of hours, per product, that will be required to manage the recordkeeping; and (3) the hourly compensation rate to be used to estimate the cost of the recordkeeping. The final rule on “Testing and Labeling Pertaining to Certification” contains the following revised estimates, concluding that the total cost of recordkeeping associated with that rule is \$197 million:
 - 300,000 non-apparel children’s products are covered by the final rule;
 - an average of 5 hours will be required for the recordkeeping associated with these products;
 - Approximately 1.3 million children’s apparel and footwear products are covered by the final rule;
 - an average of 3 hours will be required for the recordkeeping associated with these products;
 - Total hour burden = 5.4 million hours (300,000 x 5 hours plus 1,300,000 x 3 hours);
 - Total cost of recordkeeping burden = \$197 million (5.4 million hours x \$36.43 per hour).

- The component part rule will shift some testing costs and some recordkeeping costs to component part and finished product suppliers because some testing will be performed by these parties rather than by the finished product certifiers. However, a finished product certifier will still be responsible for receiving records from component part and finished product suppliers and for recording information on the finished product certificate. Thus, even if a finished product certifier could rely entirely on component part and finished product suppliers for all required testing, the finished product supplier would still have some recordkeeping burden. Therefore, although the component part testing rule is expected to reduce the total cost of the testing required by the testing and certification rule, it will lead to an increase in the recordkeeping burden for those who choose to use component part testing.
- No clear basis exists for estimating the amount of testing that will be performed by component part and finished product suppliers; nor is it known how many component part and finished product suppliers will be willing to provide the required testing or conformity certificates. Likewise, there is no clear method for estimating the number of finished product certifiers who might conduct their own component part testing. In the preamble to the proposed rule (75 FR at 28218), we suggested that the recordkeeping burden for the component part testing rule could amount to 10 percent of the burden estimated for the testing and labeling rule. Although some comments suggested that the resulting estimates were too low, no commenter provided a better estimate or suggested a better method for estimating the burden. Moreover, because the estimate of the recordkeeping burden for the testing and labeling rule has been increased, using the same methodology used in the proposed rule, the estimates for the component rule also would increase. This may address the concern of the commenters who believed the estimate used in the proposed rule was too low.
- Therefore, if we continue use to use the estimate that component part testing will amount to about 10 percent of the burden estimated for the testing and labeling rule, then the hour burden of the component part rule would be about 540,000 hours. At \$36.43 per hour, the total cost of the recordkeeping for the component part rule would be about \$19.7 million.

14. Annual Cost to Respondents

If we continue to use the estimate that component part testing will amount to about 10 percent of the burden estimated for the testing and labeling rule, then the hour burden of the component part rule would be about 540,000 hours. At \$36.43 per hour, the total cost of the recordkeeping for the component part rule would be about \$19.7 million. This estimate was obtained by multiplying the total hour burden estimate (540,000 hours) by \$36.43, which is based on the assumption that about half the labor is management or professional and the other half is sales or office labor. For all workers in private industry, the total hourly compensation for management, professional, and related occupations is \$50.08, and it is \$22.78 for office and administrative occupations (Bureau of Labor Statistics, Employer Cost for Employee Compensations, March, 2011). The actual cost burden would depend upon the extent to which component suppliers are willing to voluntarily obtain the third party testing.

15. 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 component parts. 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 required by the rule is incidental to a CPSC investigation, so we anticipate that the annual cost to the government will be minimal.

16. Changes in Burden

Documenting and recordkeeping represent a new collection of information and increase the overall information collection burden by 540,000 hours.

17. Statistical Reporting

Information collected under this requirement will not be published.

18. Exemption for Display of Expiration Date

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

19. Exemption to Certification Statement

N/A.

B. Statistical Methods

The information collection requirements do not employ statistical methods.