INFORMATION COLLECTION REQUEST

Testing and Labeling Pertaining to Product Certification Regarding Representative Samples for Periodic Testing of Children's Products

RIN: **3041-AD14**

A. Justification

1. Circumstances Necessitating Information Collection

Section 14(a)(2) of the Consumer Product Safety Act ("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 Consumer Product Safety Commission ("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. 15 U.S.C. 2063(a)(2)(B). CPSC regulations, at 16 CFR part 1110, limit the certificate requirement to importers and domestic manufacturers. The manufacturer or importer of the children's product must issue a separate certificate for each applicable children's product safety rule or a combined certificate that certifies compliance with all applicable children's product safety rules and specifies each such rule. This certificate is called a Children's Product Certificate ("CPC").

Further, former section 14(d)(2)(B) of the CPSA, 15 U.S.C. 2063(d)(2)(B), as originally provided in section 102 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires that we establish protocols and standards for:

- ensuring that a children's product tested for compliance with a children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;
- testing of random samples to ensure continued compliance;
- verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and
- safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

In the *Federal Register* of May 20, 2010 (75 FR 28336), we published a proposed rule on "Testing and Labeling Pertaining to Product Certification." The proposed rule was

intended to implement what was then known as section 14(d)(2)(B) of the CPSA and to implement parts of section 14(a) of the CPSA. Proposed § 1107.22, "Random Samples," would implement the testing of random samples requirement in the CPSA, by requiring each manufacturer of a children's product to select samples for periodic testing by using a process that assigns each sample in the production population an equal probability of being selected (75 FR at 28349 through 28350, 28365).

On August 12, 2011, the President signed H.R. 2715 into law. Among other things, H.R. 2715 replaced the CPSA's requirement for the testing of "random samples" with a requirement for the testing of "representative samples." Additionally, H.R. 2715 corrected an editorial error in section 14 of the CPSA, by renumbering section 14(d) of the CPSA, "Additional Regulations for Third Party Testing," as section 14(i) of the CPSA.

In the *Federal Register* of November 8, 2011 (76 FR 69482), the CPSC published a final rule for part 1107, "Testing and Labeling Pertaining to Product Certification," on those aspects of the rule left unchanged by H.R. 2715. However, because H.R. 2715 amended the CPSA to require the testing of "representative samples," we deleted § 1107.22 from the final rule, and issued a proposed rule to implement the new statutory requirement for the testing of representative samples, at 76 FR 69586. Additionally, § 1107.26 of the final rule on testing and labeling establishes recordkeeping requirements. We have reserved § 1107.26(a)(4) in anticipation of a recordkeeping requirement related to representative samples. The proposed rule, therefore, would establish a new recordkeeping requirement for representative samples.

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

The proposed rule would require a manufacturer of a children's product subject to an applicable children's product safety rule to maintain records documenting the testing of representative samples, as set forth in proposed § 1107.21(f) on periodic testing, including the number of representative samples selected and the procedure used to select representative samples. Records also must include the basis for inferring compliance of the product manufactured during the periodic testing interval from the results of the tested samples.

Manufacturers and the CPSC will use the records maintained to assess whether a manufacturer is compliant with the law and the regulation requiring the testing of representative samples.

3. Consideration of Information Technology

No format for recordkeeping is specified. Thus, 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 require that manufacturers of children's products periodically test such products after initial product certification using representative samples. The required documentation, including the number of representative samples, the method used to select the samples, and the basis for inferring compliance of all products, is information that is uniquely known by the manufacturer. This information is not available from other sources.

5. Impact on Small Business

The recordkeeping requirements in the proposed rule are unlikely to have a significant impact on small businesses. The required documentation is the type of information that is already maintained by manufacturers implementing a testing and certification regime to meet the requirements of 16 CFR part 1107. Moreover, the proposed rule would not prescribe any particular method for establishing and maintaining records. Thus, small businesses would 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

Failure to provide the required information would impede CPSC's ability to determine whether a manufacturer is complying with the testing and certification requirements of section 14 of the CPSA and its requirement to periodically test representative samples of certified children's products to ensure continued compliance.

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

A Notice of Proposed Rulemaking (NPR) was published in the *Federal Register* on November 8, 2011 (76 FR 69586).

9. Consultation Outside the Agency

Given the statutory requirements for testing, certification, the testing of representative samples, 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. CPSC has, however, requested comments on the NPR from the public.

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

Recordkeeping requirements do not involve questions of a sensitive nature.

13. Estimates of Burden Hours and Explanation

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

- Although it might take a manufacturer several hours, perhaps several days to analyze its products and manufacturing processes to determine its options for selecting representative samples (and some might need to hire consultants for this purpose), the actual documentation of the procedure and basis for inferring compliance will probably take less time.

- On the assumption that, because this document would be required by regulation, manufacturers will make sure that the document is reviewed and edited properly, it could take an average of 4 hours to prepare this document, once the procedure that will be used is decided and the number of samples has been determined. Developing the sampling procedure and documenting it are managerial or professional functions. According to the Bureau of Labor Statistics, as of March 2011, total compensation for management, professional, and related occupations for all workers in private industry was $50.08 an hour. Therefore, the cost of creating the record documenting a procedure for selecting representative samples could be estimated to be about $200 ($50.08 x 4 hours).[1]

- In developing the estimates of the recordkeeping burden associated with the testing and labeling pertaining to the certification of a children's products rule, 16 CFR part 1107, we estimated that there were about 1.6 million children's products. However, manufacturers probably will not need to develop and document a separate sampling procedure for each product. It might be more reasonable to believe that manufacturers will be able to use the same sampling plan for similar or closely related products or product lines. Therefore, manufacturers may need to develop and document separate sampling procedures for each set of closely related children's products or children's product lines

1 Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 9 (March 2011). Available at: http://www.bls.gov/ncs.

rather than each individual product. For example, a manufacturer of die-cast toy cars might offer 50 different models, but if each one is manufactured using the same manufacturing processes and the same materials, one sampling plan for all die-cast cars might be sufficient. We do not have information on the number of closely related products or product lines that manufacturers offer or the average number of individual models within each set of closely related products or product lines. In some cases, a manufacturer might have only one product in a particular product line. Some large manufacturers may offer several hundred models or styles within some product lines.

- A starting point to estimate the recordkeeping burden of the proposed rule is to assume that each product line averages 10 to 50 individual product models or styles. If each product line averages 50 individual models or styles, then a total of 32,000 individual sampling plans (1.6 million children's products ÷ 50 models or styles) would need to be developed and documented. This would require 128,000 hours (32,000 plans x 4 hours per plan) at a total cost of approximately $6.4 million (128,000 hours x $50.08 per hour). If each product line averages 10 individual models or styles, then a total of 160,000 different sampling plans (1.6 million children's products ÷ 10 models or styles) would need to be documented. This would require 640,000 hours (160,000 plans x 4 hours per plan), at a total cost of approximately $32 million (640,000 hours x $50.08 per hour). For purposes of this analysis, we will use the higher estimate of $32 million.

- Once a sampling plan is developed and documented, manufacturers will probably not incur the full cost of documenting their sampling plans in subsequent years because the same plan and documentation should be valid. However, each year, it is expected that manufacturers will retire some product lines and introduce new ones. Moreover, some manufacturers will leave the market, and other manufacturers will enter the market. Therefore, there will be some ongoing costs associated with documenting sampling plans.

- We do not have data on the number of new product lines introduced annually, whether from existing manufacturers or from new manufacturers entering a market. For purposes of this analysis, we will assume that about 20 percent of the children's product lines are new each year, either because an existing manufacturer has changed an existing product line to the extent that a new sampling plan is required, introduced a new product line, or because a new manufacturer has entered the market. If this is the case, then the ongoing recordkeeping costs associated with the draft proposed rule would be 25,600 hours (128,000 hours x 0.2) to 128,000 hours (640,000 hours x 0.2) annually or approximately $1.3 million (25,600 hours x $50.08 per hour) to approximately $6.4 million (128,000 hours x $50.08 per hour) annually. For purposes of this analysis, we will use the higher estimate of $6.4 million annually.

- Another potential ongoing recordkeeping cost might result if manufacturers make adjustments or revisions to their sampling plans or procedures for their existing product lines. This might occur if manufacturers find that their initial procedures are difficult to implement or if they come up with more efficient methods of selecting representative samples. We do not have any information that could be used to estimate how often manufacturers will revise these plans. For purposes of this analysis, we will assume that this, too, would amount to about 20 percent of the burden estimated for the initial year, or approximately $1.3 million to $6.4 million annually. For purposes of this analysis, we will use the higher estimate of $6.4 million annually.

- As noted above, we do not have empirical data for most of the numbers used in the examples above. We invite comments from manufacturers and others to gather better insight on the potential recordkeeping burden of the draft proposed rule.

14. Annual Cost to Respondents

Based on the analysis and costs outlined in number 13 above, the initial cost to respondents to develop sampling plans is estimated to be between $6.4 million and $32 million. Thereafter, we estimate that the annual cost to respondents to develop plans for new product lines, revise product lines, or to adjust sampling plans, will be between $2.6 million and $12.8 million annually. For purposes of this analysis, we will use the higher estimate of $12.8 million annually.

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 protocols and procedures, in order to ensure that the manufacturer is meeting the requirement to periodically test representative samples. 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

The documentation and recordkeeping requirements represents a new collection of information. We estimate that it will increase the overall information collection burden by 179,000 to 896,000 hours. For purposes of this analysis, we will use the higher estimate of 896,000 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.