

INFORMATION COLLECTION REQUEST

Supporting Statement

Third Party Testing of Children's Products

RIN: 3041-AC71 & 3041-AC86

A. Justification

1. Circumstances Necessitating Information Collection

This information collection request covers the recordkeeping requirements set forth in a final rule on Testing and Labeling Pertaining to Product Certification (16 CFR part 1107; the testing rule), as well as the recordkeeping and third party disclosure requirements set forth in a final rule on 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 (16 CFR part 1109; the component part rule). These rules implement third party testing and certification requirements for children's products as required by sections 14(a)(2) and 14(i)(2)(B) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2063(a)(2) and (i)(2)(B). Final rules on Testing and Labeling Pertaining to Product Certification (16 CFR part 1107; the testing rule) and 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 (16 CFR part 1109; the component part rule) implement third party testing and certification requirements for children's products.

Testing Rule: Section 14(a)(2) of the CPSA 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 accredited by the Consumer Product Safety Commission (CPSC or Commission) 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 applicable children's product safety rules 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 certificate is called a Children's Product Certificate.

Additionally, section 14(i)(2)(B)(i) of the CPSA requires manufacturers to conduct additional testing of children's products to ensure compliance of continuing production, and

thus, the validity of the initial product certification. To ensure continued compliance, the Commission is required, by regulation, to 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; and
- Safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

The testing rule establishes requirements for manufacturers for initial third party testing and certification for children's products, testing when there has been a material change in the product, continuing testing, and guarding against undue influence.

Component Part Rule: The component part rule is a companion to the testing rule that is intended to reduce third party testing burdens by providing all parties involved in the required testing and certifying of children's products the flexibility to conduct or rely on testing where it is the easiest and least expensive. Component part suppliers may conduct testing 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 component part rule allows for maximum flexibility because a manufacturer (including importers) 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.

Recordkeeping Requirements: Each rule has its own recordkeeping requirements that largely overlap. Section 1107.26 of the testing rule requires each manufacturer or importer of a children's product subject to a children's product safety rule to establish and maintain the following records:

- a copy of the Children's Product Certificate (§ 1107.26(a)(1));
- records of each certification test (§ 1107.26(a)(2));
- records of periodic tests (§ 1107.26(a)(3));
- records documenting the basis for selection of representative samples for periodic testing purposes (§ 1107.26(a)(4));
- records of descriptions of all material changes in product design, manufacturing process, and sourcing of component parts, the certification tests run, and the test values (§ 1107.26(a)(5)); and
- records of undue influence procedures (§ 1107.26(a)(6)).

Section 1109.5(g) of the component part rule requires the creation and maintenance of specific data points, as well as documents that each certifier and testing party must provide, either in hard copy or electronically, to another party who intends to rely on such documentation to issue a certificate:

- *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;*
- *The 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;*
- *Component part certificate(s) or finished product certificate(s), 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;
- Records to support traceability as defined in § 1109.4(m), which includes the identity of all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product. Parties that conduct testing may include a manufacturer, a supplier, a testing laboratory, or a third party conformity assessment body; 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 test result integrity requirements set forth in § 1109.5(b), including that: (1) proper management and control of all raw materials, component parts, subassemblies, and finished products is established and maintained for any factor that could affect the finished product's compliance with all applicable rules; (2) the manufacturing process does not add or result in a prohibited level of a chemical from any source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product; and (3) no action or inaction subsequent to testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation.

Items that overlap with the testing rule are indicated in italics above. The first five items are data points that are usually included on a test report. Test reports are also required to be maintained under the testing rule. Component part and finished product certificates, the seventh item, are also a requirement in the testing rule. All of these records need to be

created and maintained only once to meet the applicable recordkeeping requirements. The only unique records required in the component part rule are the last three bullets, which include two attestations and records that demonstrate who is responsible for having component parts of the product tested.

Unlike the testing rule, the component part rule requires records, or electronic access to records, to be provided to a third party, when that party intends to rely on such records to certify a product. The component part rule does not require that the records actually be physically provided to another party; electronic access to records is sufficient. Under both rules, § 1107.26(b) and § 1109.5(j), records must be maintained for 5 years and must be made available, either in hard copy or electronically, for inspection by the CPSC, upon request.

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

Testing Rule: The recordkeeping requirements require manufacturers and importers of children's products to establish, upon request by the Commission, that products are properly third party tested and certified before they enter commerce and have been properly retested for conformity with all applicable rules on a continuing basis, including after a material change in the product's design or manufacturing processes.

Component Part Rule: The recordkeeping requirements are intended to allow tracking of testing or certification conducted on component parts of consumer products. The parties to which the rule applies include more than just a manufacturer or importer because any person can conduct component part testing, including suppliers and foreign manufacturers. Finished product certifiers (including manufacturers and importers) and component part certifiers will review the records to ensure third party testing is conducted properly and to issue a certificate of compliance. The CPSC will use the required documentation 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 testing and component part rules allow records to be maintained electronically and provided in that form to the Commission, upon request. The component part rule also allows records to be accessed by all parties electronically.

4. Efforts to Identify Duplication and Similar Information Already Available

Testing Rule: The recordkeeping requirements are intended to allow a manufacturer to establish that a product was certified properly before it enters commerce and has been retested properly, on a continuing basis, for conformity with all applicable CPSC rules, including testing after a material change in the product's design or manufacturing processes. Consequently, unless manufacturers are relying on component part testing as described below, it is unlikely that the required information is duplicated or already available from other sources.

Component Part Rule: Certified products and their component parts, if tested separately, must be traceable to the parties conducting and procuring third party testing. The required documentation is largely the type of information that is already maintained by testing parties and certifiers on test reports. However, the final component part rule requires such information to be provided to, or available to, third parties in the supply chain, such as manufacturers and importers, who intend to rely on such testing or certification to certify the finished product. Multiple parties are not required to keep duplicate records under the component part rule, which allows a party who conducts testing on component parts to make such testing and certification records available electronically. As long as third parties who rely on these records to certify a product continue to have access to the required records, and can make the records available to the CPSC as required by the rule, they do not need to maintain them separately. It is unlikely that the required information and records are available from other sources.

Stakeholder Outreach: Stakeholders were given an opportunity to comment on the proposed recordkeeping requirements as part of the rulemaking process. A notice of proposed rulemaking was published in the *Federal Register* for both rules on May 20, 2010: 75 FR 28336 (testing rule) and 75 FR 28208 (component part rule). The CPSC's responses to comments appear in the final rules published on November 8, 2011: 76 FR 69482 (testing rule) and 76 FR 69547 (component part rule). Stakeholders were also given an opportunity to comment on recordkeeping requirements in an amendment to the testing rule that requires the selection of representative samples and associated recordkeeping. A notice of proposed rulemaking on this amendment was published in the *Federal Register* on November 8, 2011, 76 FR 69586. The CPSC responded to one comment on the recordkeeping burden in the final rule implementing the representative sample requirement, which was published in the *Federal Register* on December 5, 2012, at 77 FR 72205. Finally, all stakeholders were given the opportunity to comment on reducing third party testing burden associated with the testing of children's products pursuant to a request for comment issued by the Commission on November 8, 2011 (76 FR 69596).

5. Impact on Small Business

Although many small businesses will be required to keep records under these two rules, small businesses have the flexibility to establish and maintain records in any manner or format that suits their needs. Moreover, documentation in the component part rule largely

overlaps recordkeeping required in the testing rule. Although in some instances multiple parties may keep copies of the same records, they are not required to do so. Access to the same records electronically is allowed by the component part rule. Finally, using component part testing is voluntary. To the extent that small businesses do not achieve a cost savings by conducting component part testing, they are not required to use it in certifying children's products.

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

Testing Rule: Failure to provide the information required would impair the CPSC's ability to determine whether a manufacturer is complying with the testing and certification requirements of section 14 of the CPSA and the requirements of the testing rule.

Component Part Rule: Without appropriate recordkeeping, allowance of component part testing could lead to degradation in compliance of finished products. Accordingly, the component part rule requires documentation sufficient to demonstrate the component part's compliance with the standards tested, and that enable component parts to be traced back to the party that had them tested, 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 testing and component part rules are consistent with the guidelines in 5 CFR § 1320.5(d)(2).

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

Testing Rule: A notice of proposed rulemaking (NPR) was published in the *Federal Register* on May 20, 2010 (75 FR 28336). A final rule was published in the *Federal Register* on November 8, 2011 (76 FR 69482). 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 69538-40. The testing rule was amended to require the selection of representative samples for periodic testing of children's products, including an associated recordkeeping requirement. An NPR for this amendment was published in the *Federal Register* on November 8, 2011 (76 FR 69586). The CPSC responded to one comment on the recordkeeping burden in the final rule implementing the representative sample requirement, which was published in the *Federal Register* on December 5, 2012 at 77 FR 72205.

Component Part Rule: An 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. Payment or Gift to Respondents

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

10. Confidentiality of Information

The information submitted 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 testing and component part rules. However, these rules do not require the disclosure of such information.

12. Estimates of Burden Hours and Explanation

Testing Rule: Three types of third party testing of children's products are required by the testing rule: certification testing, material change testing, and periodic testing. Component part testing can be used to meet any of these requirements. Certification testing must occur for every regulated children's product before the product is introduced into commerce. After certification testing, continuing testing must occur when the product undergoes a material change and periodically. If no material changes occur in continuing production of a children's product, periodic testing still must be conducted at certain intervals. The maximum periodic testing interval is 1 year, unless a manufacturer uses a production testing plan (2 years), or uses a testing laboratory accredited to ISO/IEC 17025:2005(E) (3 years). When conducting periodic testing, manufacturers must select representative samples for third party testing. Material change testing is tantamount to recertification, and it can reset the periodic testing interval for the product or component part tested.

The CPSC reviewed every category in the NAICS and selected those that included firms that could manufacture or sell any consumer product that could be covered by a consumer product safety rule. Using data from the U.S. Census Bureau, we determined that there were more than 37,000 manufacturers, almost 80,000 wholesalers, and about 128,000 retailers in these categories. However, these categories also include many non-children's products, which are not covered by any children's product safety rules. Therefore, these numbers would constitute an overestimate of the number of firms that are subject to the recordkeeping requirements.

The testing rule requires that manufacturers conduct sufficient testing to ensure that they have a high degree of assurance that their children's products comply with all applicable children's products safety rules before such products are introduced into commerce. Each manufacturer is required to obtain third party certification tests for each children's product and maintain the resulting records, including the children's product certificate.

Manufacturers are also required to conduct continuing tests on their children's products and maintain the records associated with this testing. Continuing testing includes third party testing after a material change to the product and periodic third party testing or a combination of periodic third party testing and production (first party) testing. Because of the vast number and variety of children's products, there is a corresponding variety of manufacturing processes for children's products. Accordingly, the testing rule allows manufacturers a substantial amount of flexibility in designing their testing programs. For example, manufacturers may use first party production testing to increase the maximum time interval between required third party periodic testing from 1 to 2 years. Manufacturers also have the option of simply recertifying each batch of products instead of conducting periodic or production testing.

Based on the comments that we received from manufacturers in response to the NPR, we estimate that several hours of recordkeeping, per product, will be required each year, including the cost to develop any records. However, because firms have multiple options for conducting the required testing, it is not possible for us to estimate how this time will be distributed over the records listed under §1107.26. Although all manufacturers will have at least one children's product certificate for each children's product that they produce during the year, some manufacturers will simply conduct certification tests on each batch produced during the year. This means that they will have to create records of multiple certification tests and multiple children's product certificates for each product but no records of periodic tests, production tests, or material changes. Other manufacturers may opt to conduct periodic or production tests instead of recertifying each batch. Therefore, these manufacturers will be responsible for creating and maintaining records of one set of certification tests and one children's product certificate, but they will also be responsible for creating and maintaining the records associated with their periodic testing and material changes.

If a manufacturer conducts periodic testing, they are required to keep records that describe how the samples for periodic testing are selected, the number of samples that will be selected, and an explanation of why the procedure described will result in the selection of representative samples. Although it might take a manufacturer several hours, or perhaps several days, to analyze its products and manufacturing processes to determine its options for selecting representative samples, the actual documentation of the procedure and basis for inferring compliance will probably take less time. This is not likely to be done on a per product basis, but on a per plan basis, which could be used for more than one product. This is a first year cost. In successive years, it will apply only to new products or to products

whose sampling plan changes, so the burden will be reduced. Documenting representative sample selection will likely be part of developing a periodic or production testing plan.

The hour burden of the recordkeeping requirements will likely vary greatly from product to product, depending upon such factors as the complexity of the product and the amount of testing that must be documented. Therefore, estimates of the hour burden of the recordkeeping requirements are somewhat speculative.

Based on the comments we received on the proposed testing rule, we revised the estimated number of children's products that are affected, as well as the hourly recordkeeping burden estimate. We now estimate 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. We also estimate that there are approximately 1.3 million children's apparel and footwear products, for which an average of 3 hours of recordkeeping will be required. Thus, the total hour burden of the recordkeeping associated with the final testing rule is 5.4 million hours (300,000 non-apparel children's products x 5 hours per non-apparel children's product plus 1,300,000 children's apparel products x 3 hours per children's apparel product = 1.5 million hours + 3.9 million hours, or a total of 5.4 million hours). At \$36.43 per hour hourly compensation rate, the total cost of the recordkeeping associated with the testing rule is approximately \$197 million (5.4 million hours x \$36.43 = \$196,722,000).

It is unclear how recordkeeping for the selection of representative samples changes the recordkeeping burden for children's products because the requirement exists only for manufacturers who conduct periodic testing. Additionally, the same basis could apply to multiple products, and therefore, documentation may not need to be reproduced for each product to which it applies but could be cited in the periodic or production testing plan. In the final rule implementing representative sample selection, we estimate that if each product line averages 50 individual models or styles, then a total of 32,000 individual representative 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 \$6.5 million (128,000 hours x \$50.41 per hour). If each product line averages 10 individual models or styles, then a total of 160,000 different representative 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 \$32.3 million (640,000 hours x \$50.41 per hour). Thus, the requirement to document the basis for selecting representative samples could increase the hour burden by up to 640,000 hours and increase the cost of recordkeeping associated with third party testing of children's products by up to \$32.3 million, bringing the total cost for the testing rule to an estimated \$229 million.

Component Part Rule: 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 (manufacturers and importers). However, a finished product certifier will still be responsible for receiving or having access to required testing and traceability records from component part and finished product suppliers and for recording pertinent 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 in order to create and maintain a finished product certificate. 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.

Because we do not know how many companies will participate in component part testing and supply test reports or certifications to other certifiers in the supply chain, No clear basis existswe have no concrete data for estimatingto estimate the recordkeeping and third party disclosure requirements in the component part rule. 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.

As discussed above, although we have no concrete data to estimate the amount of component part recordkeeping associated with this rule, we have suggested that it could amount to about 10 percent of the recordkeeping burden associated with the testing rule. The component part rule also requires third party disclosure of test reports and certificates, if any, to a certifier intending to rely on such documents to issue its own certificate. Without data it is also difficult to allocate our burden estimation between the recordkeeping and third party disclosure requirements. However, we believe that creating and mainaining records will account for 90 percent of the burden, while the third party disclosure burden will be much less, perhaps 10 percent. Therefore, 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 total; allocating 486,000 hours for recordkeeping and 54,000 hours for third party disclosure. At \$36.43 per hour, the total cost of the recordkeeping and third party

disclosures for the component part rule would be about \$19.7 million.-

13. Annual Cost to Respondents

Normally, records required by the rules will not be provided to the government. Records are most likely to be requested by CPSC when we are investigating a noncomplying product. The component part rule requires disclosure of records to third parties, but it allows for electronic access of records by such parties. Thus, the component part rule does not require that records be duplicated and physically provided to third parties, as long as such records can be made available to CPSC upon request. No particular format for recordkeeping is required by either rule. The annual cost to respondents to provide records to the CPSC and to third parties is expected to be minimal because records can be provided electronically, via electronic mail, or via any other electronic format, such as an Internet website.

14. Annual Cost to the Government

Normally, the records will not be sent to the government. Records are most likely to be provided to CPSC when we are investigating a noncomplying product. The records are intended to provide documentation of testing and certification, and traceability of 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. Although the CPSC cannot estimate how often it will investigate allegedly noncomplying product incidents, the examination of records required by the rule would largely be incidental to a CPSC investigation. Accordingly, we anticipate that the annual cost to the government will be minimal.

15. Changes in Burden

Testing Rule: The documentation and recordkeeping requirements would represent a new collection of information and increase the overall information collection burden for the CPSC by up to 6 million hours.

Component Part Rule: The Documentation, testing and recordkeeping, and third party disclosures represent a new collection of information and increase the overall information collection burden for third party testing of children's products by about 540,000 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.