CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1630 and 1631

[CPSC Docket No. CPSC–2010–0078]

Third Party Testing for Certain Children's Products; Carpets and Rugs: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the CPSC regulations relating to carpets and rugs. The Commission is issuing this notice of requirements pursuant to the Consumer Product Safety Act (CPSA).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1630 and/or 1631 are effective upon publication of this document in the **Federal Register**.[1]

Comments in response to this notice of requirements should be submitted by August 20, 2010. Comments on this notice should be captioned "Third Party Testing for Certain Children's Products; Carpets and Rugs: Requirements for Accreditation of Third Party Conformity Assessment Bodies."

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0078 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert "Jay" Howell, Assistant Executive Director for Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including the importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the **Federal Register** publication date of a notice of the requirements for accreditation, tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,* section 14(h) of the CPSA, as added by section 102(b) of the CPSIA).

The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances can be found in part IV of this document below.

This notice provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing pursuant to the following regulations:

- 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1–70).*
- 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70).*

Section 3(a)(2) of the CPSA defines a children's product as "a consumer product designed or intended primarily for children 12 years of age or younger." Although most carpets and rugs are general use products because they are produced for general consumption rather than being produced specifically for use by children, some carpets and rugs are "designed or intended primarily for children 12 years of age or younger." (For convenience, we will refer to carpets and rugs designed or intended primarily for children 12 years of age or younger as "youth carpets and rugs.") Youth carpets and rugs are subject to the third party testing and certification requirements in section 14(a)(2) of the CPSA. Accordingly, this notice of requirements addresses the accreditation of conformity assessment bodies to test youth carpets and rugs for conformity with 16 CFR parts 1630 and/or 1631.

Although section 14(a)(3)(B)(vi) of the CPSA directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess conformity with "all other children's product safety rules," this notice of requirements is limited to the regulations identified immediately above.

The CPSC also recognizes that section 14(a)(3)(B)(vi) of the CPSA is captioned as "All Other Children's Product Safety Rules," but the body of the statutory requirement refers only to "other children's product safety rules." Nevertheless, section 14(a)(3)(B)(vi) of the CPSA could be construed as requiring a notice of requirements for "all" other children's product safety rules, rather than a notice of requirements for "some" or "certain"

[1] The Commission voted 3–2 to publish this notice of requirements. Chairman Inez M. Tenenbaum, Commissioner Nancy A. Nord, and Commissioner Anne Meagher Northup each issued a statement, and the statements can be found at *http://www.cpsc.gov/pr/statements.html.*

children's product safety rules. However, whether a particular rule represents a "children's product safety rule" may be subject to interpretation, and the Commission staff is continuing to evaluate which rules, regulations, standards, or bans are "children's product safety rules." The CPSC intends to issue additional notices of requirements for other rules which the Commission determines to be "children's product safety rules."

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA. Generally speaking, such third party conformity assessment bodies are: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

The Commission requires baseline accreditation of each category of third party conformity assessment body to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories." The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA), and the scope of the accreditation must include testing in accordance with the regulations identified earlier in part I of this document for which the third party conformity assessment body seeks to be accredited.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulations)," dated November 2008 and available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf.)*

The Commission has established an electronic accreditation registration and listing system that can be accessed via its Web site at *http://www.cpsc.gov/ABOUT/Cpsia/labaccred.html.*

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396); the stay applied to testing and certification of various products, including carpets and rugs. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. One section of the December 28, 2009, notice addressed "Consumer Products or Children's Products Where the Commission Is Continuing the Stay of Enforcement Until Further Notice," due to factors such as pending rulemaking proceedings affecting the product or the absence of a notice of requirements. The carpets and rugs testing and certification requirements were included in that section of the December 28, 2009, notice. As the factor preventing the stay from being lifted in the December 28, 2009, notice with regard to testing and certifications of carpets and rugs was the absence of a notice of requirements, publication of this notice has the effect of lifting the stay with regard to 16 CFR parts 1630 and/or 1631.

The Commission noted in the December 28, 2009, notice that the stay of enforcement did not extend to guaranties under the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*) (FFA). The manufacturer or supplier of a carpet or rug may issue a guaranty, based on reasonable and representative tests, that the carpet or rug complies with FFA standards. The holder of a valid guaranty is not subject to criminal prosecution under section 7 of the FFA (penalties) for a violation of section 3 of the FFA (prohibited transactions).

The reasonable and representative tests sufficient for the issuance of an FFA guaranty are generally performed by the manufacturer; those tests are sufficient for the issuance of a general conformity certification for nonchildren's products under section 14(a)(1) of the CPSA. However, because section 14(a)(2) of the CPSA requires children's products subject to a children's product safety rule to be tested by an accredited third party conformity assessment body, reasonable and representative tests sufficient for the issuance of an FFA guaranty which are performed by a manufacturer are not sufficient for the issuance of a certification of compliance with 16 CFR part 1630 and/or part 1631 for youth carpets and rugs (unless the manufacturer's facility is a CPSC-accredited firewalled conformity assessment body).

This notice of requirements is effective on July 21, 2010. Further, as the publication of this notice of requirements effectively lifts the stay of enforcement with regard to testing and certifications related to 16 CFR parts 1630 and/or 1631, each manufacturer (including the importer) or private labeler of a children's product subject to 16 CFR parts 1630 and/or 1631 must have any such product manufactured after October 19, 2010 tested by a third party conformity assessment body accredited to do so and must issue a certificate of compliance with 16 CFR parts 1630 and/or 1631 based on that testing.

This notice of requirements is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (*see* section 14(a)(3)(G) of the CPSA, as added by section 102(a)(2) of the CPSIA (15 U.S.C. 2063(a)(3)(G)).

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods in the regulations identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories," and the scope of the accreditation must expressly include testing to the regulations in 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1–70),* and/or 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70).* A true copy, in English, of the accreditation and scope documents demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of third

party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support certification by the manufacturer or private labeler of compliance with the regulations identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of ten percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How does a third party conformity assessment body apply for acceptance of its accreditation?

The Commission has established an electronic accreditation acceptance and registration system accessed via the Commission's Internet site at *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location, the type of accreditation it is seeking, and electronic copies of its ILAC–MRA accreditation certificate and scope statement, and firewalled third party conformity assessment body training document(s), if relevant.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-operated conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that may ultimately seek acceptance as a firewalled third party conformity assessment body also can initially request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the firewalled conformity assessment body will then be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may then begin testing of children's products to support certification of compliance with the regulations identified earlier in part I of this document for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with the standards for carpets and rugs included in 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1–70),* and/or 16 CFR part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70),* based on testing performed by an accredited third party conformity assessment body (including a government-owned or -controlled conformity assessment body, and a firewalled conformity assessment body) prior to the Commission's acceptance of its accreditation if:

- At the time of product testing, the product was tested by a third party conformity assessment body that was ISO/IEC 17025 accredited by an ILAC–

MRA member at the time of the test. For firewalled conformity assessment bodies, the firewalled conformity assessment body must be one that the Commission accredited by order at or before the time the product was tested, even though the order will not have included the test methods in the regulations specified in this notice. If the third party conformity assessment body has not been accredited by a Commission order as a firewalled conformity assessment body, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body before it is accredited, by Commission order, as a firewalled conformity assessment body;

- The third party conformity assessment body's application for testing using the test methods in the regulations identified in this notice is accepted by the CPSC on or before September 20, 2010;
- The product was tested on or after July 21, 2010 with respect to the regulations identified in this notice;
- The accreditation scope in effect for the third party conformity assessment body at the time of testing expressly included testing to the regulations identified earlier in part I of this document;
- The test results show compliance with the applicable current standards and/or regulations; and
- The third party conformity assessment body's accreditation, including inclusion in its scope the standards described in part I of this notice, remains in effect through the effective date for mandatory third party testing and manufacturer/private labeler certification for conformity with 16 CFR parts 1630 and/or 1631.

Dated: July 15, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–17724 Filed 7–20–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0692; FRL–8830–6]

Poly(oxy-1,2-ethanediyl), α-isotridecyl-ω-methoxy; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of poly(oxy-1,2-ethanediyl), α-isotridecyl-ω-methoxy (CAS Reg. No. 345642–79–7) when used as an inert ingredient (surfactant) at a maximum concentration of 10% in pesticide formulations under 40 CFR 180.920 on growing crops only. Bayer CropScience submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of poly(oxy-1,2-ethanediyl), α-isotridecyl-ω-methoxy.

DATES: This regulation is effective July 21, 2010. Objections and requests for hearings must be received on or before September 20, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0692. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0851; e-mail address: *sunderland.deirdre@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Test Guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0692 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 20, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not