Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1109

[CPSC Docket No. CPSC–2010–0037]

Conditions and Requirements for Testing Component Parts of Consumer Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a notice of proposed rulemaking regarding the conditions and requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations: to support a general conformity certificate or a certificate for a children's product pursuant to section 14(a) of the Consumer Product Safety Act (CPSA); as part of a reasonable testing program pursuant to section 14(a) of the CPSA; as part of the standards and protocols for continued testing of children's products pursuant to section 14(d)(2) of the CPSA; and/or to meet the requirements of any other rule, ban, standard, guidance, policy, or protocol regarding consumer product testing that does not already directly address component part testing.[1]

DATES: Written comments must be received by August 3, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0037, 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 (email) 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, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed collection of information. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing, with the sensitive portions clearly identified.

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

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7562; e-mail *rbutturini@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Except as provided in section 14(a)(2) of the CPSA, section 14(a)(1) of the CPSA, 15 U.S.C. 2063(a)(1), requires manufacturers and private labelers of a product that is subject to a consumer product safety rule (defined in section 3(a)(6) of the CPSA), or to any similar rule, ban, standard, or regulation under any other act enforced by the Commission, to issue a certificate. The certificate: (1) Must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all CPSC requirements; and (2) must specify each rule, ban, standard, or regulation applicable to the product. This certificate is called a General Conformity Certificate (GCC).

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 accredited by CPSC to be tested for compliance with such children's product safety rule. Based on that testing, the manufacturer or private labeler must issue a certificate that certifies that such children's product complies with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to conduct such tests. 15 U.S.C. 2063(a)(2)(B). The manufacturer or private labeler of the children's product must issue either 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.

Section 14(g) of the CPSA contains additional requirements for these certificates. 15 U.S.C. 2063(g). Each certificate must identify the manufacturer or private labeler issuing the certificate and any third party conformity assessment body on whose testing the certificate depends. The certificate must include, at a minimum, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, telephone number, and contact information for the individual responsible for maintaining records of test results. Every certificate must be legible, and all required content must be in the English language. A certificate also may contain the same content in any other language.

Section 14(g) of the CPSA also states that every certificate must accompany the applicable product or shipment of products covered by the same certificate, and a copy of the certificate must be furnished to each distributor or retailer of the product. Upon request, the manufacturer or private labeler issuing the certificate must furnish a copy of the certificate to the

[1] The Commission voted 5–0 to approve publication of this proposed rule. Chairman Inez Tenenbaum and Commissioners Nancy Nord and Anne Northup each filed a statement concerning this action. These statements may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

Commission. The Commission has regulations, at 16 CFR part 1110, specifying the parties responsible for issuing certificates, the form and content of certificates, and other requirements for certificates, including that certificates can be provided in electronic form.

This proposed rule would set forth the conditions and requirements for testing of component parts of consumer products, including children's products, where such testing is intended to demonstrate, in whole or in part, the product's compliance with any rule, standard, ban, or regulation enforced by the Commission that is subject to the requirements of section 14 of the CPSA and that does not itself directly address testing of component parts. Specifically, the proposed rule would establish the conditions under which a party certifying a product under section 14 of the CPSA may rely on tests of component parts of the product, including materials used to produce it, as all or part of the basis for a valid certificate that the product complies with all applicable requirements enforced by the Commission. The proposed rule also would set out the conditions under which such tests of component parts can be conducted by persons other than the manufacturer, such as the manufacturer or supplier of the component parts. The proposed rule is consistent with earlier positions taken by the Commission (*see:* (1) A Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety Improvement Act, available on the Commission's Web site at *http://www.cpsc.gov/about/componenttestingpolicy.pdf,* which outlined the Commission's interim position on component testing of products containing plasticized component parts for phthalates; (2) a Statement of Policy: Testing and Certification of Lead Content in Children's Products, available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf.*; (3) *Guidance Document:* Testing and Certification Requirements Under the Consumer Product Safety Improvement Act of 2008, available at *http://www.cpsc.gov/library/foia/foia10/brief/102testing.pdf;* (4) a notice regarding a Commission workshop on testing and certification published in the **Federal Register** on November 13, 2009, at 74 FR 58611, 58616; and (5) an Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2000 Lead Limits (the Lead Limits Interim Enforcement Policy), available at *http://www.cpsc.gov/businfo/frnotices/fr10/comppol.pdf* and published in the **Federal Register** on December 29, 2009 (74 FR 68593)). The proposed rule also reflects the Commission's consideration of comments to those notices and to the workshop.

The Commission invites comment on whether finished product certifiers should be permitted to rely on other types of certifications from other persons (in addition to component part certifications). The proposed rule only would allow a finished product certifier to rely on certificates relating to the performance of individual component parts; it would not authorize a finished product certifier to rely on a certificate from another party certifying that the finished product itself complies with an applicable rule. For example, it would not allow certification by others in the case of standards, such as the small parts ban at 16 CFR 1500.19, which require testing of the entire product as opposed to an individual component. Should this limitation be modified so that the importer of a product would be able to base its own certification on what might be termed a "subordinate" certificate from a foreign manufacturer or other interested party to the effect that the product complies with one or more of these standards? What are the risks and benefits of allowing such an arrangement?

Elsewhere in this issue of the **Federal Register**, the Commission is issuing a proposed rule titled "Testing and Labeling Pertaining to Product Certification"; that proposed rule would address testing, continuing testing, and labeling requirements for consumer products, including children's products, and would create a new 16 CFR part 1107. Component testing may help manufacturers meet their testing or continuing testing obligations under section 14 of the CPSA.

II. Description of the Proposed Rule

A. Introduction

The proposed rule would establish a new 16 CFR part 1109, setting forth the conditions under which the Commission will allow certification of consumer products based in whole or in part on testing of component parts or composite parts. The new part 1109 would consist of two subparts: Subpart A—General Conditions and Requirements, and Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals.

B. Proposed Subpart A—General Conditions and Requirements

Proposed subpart A, consisting of §§ 1109.1 through 1109.5, would set out generally applicable conditions and requirements.

1. Scope—Proposed § 1109.1

Proposed § 1109.1 would define the scope of the rule as applying to all tests of component parts of consumer products where the test results are used to support a certificate of compliance issued pursuant to section 14(a) of the CPSA or where the tests are otherwise required or permitted by section 14 of the CPSA.

2. Purpose—Proposed § 1109.2

Proposed § 1109.2 would discuss the rule's purpose, which is to set forth the conditions and requirements under which the Commission will require or accept the results of testing of component parts of consumer products, instead of the entire consumer product, to meet, in whole or in part, the testing and certification requirements of sections 14(a), 14(b), and 14(d) of the CPSA.

3. Applicability—Proposed § 1109.3

Proposed § 1109.3 would specify that the rule applies to all manufacturers, importers, or private labelers and to the manufacturers or suppliers of component parts that: (1) Are responsible for certifying products under section 14(a) of the CPSA or for continued compliance testing under section 14(d) of the CPSA; or (2) test component parts of consumer products to support a certification of compliance under section 14(a) of the CPSA or to comply with continuing testing requirements under section 14(d) of the CPSA.

4. Definitions—Proposed § 1109.4

Proposed § 1109.4 would define various terms used in the rule. For example, the proposal would define a component part, in part, as "any part of a consumer product, including a children's product, that either must or may be tested separately from a finished consumer product, to assess the consumer product's ability to comply with a specific rule, ban, standard, or regulation enforced by the CPSC." As another example, proposed § 1109.4 would define a "finished product certifier" as "a firm responsible for certifying compliance of a consumer product with all applicable rules, bans, standards, and regulations pursuant to part 1110 of this chapter." "Component part certifier" would be defined as "a firm that certifies component parts to be

used in consumer products as complying with one or more rules, bans, standards, or regulations enforced by the CPSC pursuant to part 1109." The generic term "certifier" would be defined as a firm that is either a finished product certifier or a component part certifier.

The proposed rule would provide that when samples of component parts are tested, they must be identical in all material respects to the component parts used in the finished product. Proposed § 1109.4 would specify that "identical in all material respects" means there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

5. Conditions and Requirements Generally—Proposed § 1109.5

Proposed § 1109.5 would set out conditions and requirements that generally apply to all types of component part testing. Proposed § 1105.5(a)(1) would state that finished product certifiers may rely on testing of a component part of a consumer product only where testing of the component part is required or sufficient to assess the consumer product's compliance, in whole or in part, with an applicable rule, ban, standard, or regulation. For example, testing a component part of a children's product for lead may be sufficient in situations where only the component part is known to contain or may contain lead. On the other hand, testing a component part of a consumer product for compliance with the small parts requirements of 16 CFR part 1501 will rarely, if ever, be appropriate, because the test procedure described at 16 CFR 1501.4 generally requires that the entire product be tested to determine whether small parts can be detached during the use or abuse of the entire product. Proposed § 1109.5(a)(1) also would specify that any doubts about whether testing one or more component parts of a consumer product can help to assess whether the entire product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the entire product.

Proposed § 1109.5(a)(2) would require that the component part tested be identical in all material respects to the component used in the finished consumer product. Under this section, to be identical in all material respects to a component for purposes of supporting a certification of a children's product, a sample need not necessarily be of the same size, shape, or finish condition (such as polished, deburred, etc.) as the component part of the finished product; rather, the sample may consist of any quantity that is sufficient for testing purposes and may be in any form that has the same content as the component part of the finished product. For example, assume that a children's toy manufacturer receives plastic resins in an unfinished state (such as pellets) from a supplier and later molds the plastic resins into a component or a finished children's toy in the manufacturing process, and assume that the plastic resins need to be tested for phthalates. The children's toy manufacturer may send samples of the plastic, either as pellets or in their finished state, to a third party conformity assessment body for testing. A finished product certifier must exercise due care to ensure that no change in the component parts after testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation. Proposed § 1109.5(a)(2) also would state that manufacturers must exercise due care in the proper management and control of all raw materials, component parts, subassemblies, and finished goods for any factor that could affect the finished product's compliance with all applicable rules. The manufacturer must exercise due care that the manufacturing process does not add a prohibited chemical from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product. Proposed § 1109.4(g) would define "due care" to mean the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

Under proposed § 1109.5(b), a finished product certifier would not be able to rely on testing of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the entire consumer product to assess compliance.

Under proposed § 1109.5(c), certifiers and testing parties would be required to ensure that the required test methods and sampling protocols, as set forth in proposed 16 CFR part 1107, as well as any more specific applicable rules, bans, standards, regulations, or testing protocols, are used to assess compliance of the component part.

Proposed § 1109.5(d) would state that, subject to any more specific rule, ban, standard, or regulation, component part testing may occur before final assembly of a consumer product, provided that nothing in the final assembly of the consumer product can cause the component part or the consumer product to become noncompliant.

Proposed § 1109.5(e) would specify that finished product certifiers may not rely on component part testing conducted by another unless such component parts are traceable. Traceable is defined in proposed § 1109.4(m) as the ability of a certifier to identify the source of a component part, including the name and address of the entity providing the component part to the certifier.

Proposed § 1109.5(f) would require testing parties who are not themselves certifying a component part to provide the following documentation to the component part certifier, either in hard copy or electronically:

(1) Identification or a description of the component part tested;

(2) Identification of a lot or batch number for which the testing applies;

(3) Identification of the applicable rules, bans, standards, and regulations for which each component part was tested;

(4) Identification or a description of the testing methods and sampling protocols used;

(5) The date or date range when the component part was tested;

(6) The results of each test on a component part; and

(7) If the product was tested by a third party conformity assessment body, regardless of whether such third party testing was required because the product is a children's product or whether the testing party chose to use such third party conformity assessment body, identification of such conformity assessment body, a copy of the original test results, and a certification that all testing was performed in compliance with section 14 of the CPSA and proposed part 1107 of this title.

The above information is needed so that, if noncomplying products are found, the Commission can use this information to determine whether a finished product certifier, component part certifier, or third party conformity assessment body is not complying with the appropriate requirements.

Under proposed § 1109.5(g)(1), the Commission would consider any certificate issued by a component part certifier in accordance with this part to be a certificate issued in accordance with section 14(a) of the CPSA. A component part certificate must contain all of the information required by part 1110 of this chapter. This provision would allow finished product certifiers to rely on section 19(b) of the CPSA, which provides that a person who holds a certificate issued in accordance with section 14(a) of the CPSA (to the effect that a consumer product conforms to all applicable consumer product safety

rules) is not subject to the prohibitions in section 19(a)(1) of the CPSA (regarding distributing noncomplying products) and section 19(a)(2) of the CPSA (regarding distributing products subject to certain voluntary corrective actions) unless such person knows that such consumer product does not conform. However, such person may violate section 19(a)(6) of the CPSA if the products that are the subject of any certificate issued by that person in fact do not comply with the applicable standard(s) and such person, in the exercise of due care, would have reason to know that their certificate is false or misleading in any material respect. Proposed § 1109.5(h)(1) would address how this duty of due care applies to finished product certifiers.

Proposed § 1109.5(g)(2) would provide that any person who elects to certify compliance of a component part with an applicable rule must assume all responsibilities of a manufacturer under part 1107 of this chapter with respect to that component part's compliance with the applicable rule.

Under proposed § 1109.5(h)(1), a finished product certifier must exercise due care in order to rely, in whole or in part, on a component part certificate issued by a component part certifier or on component part testing by a testing party as the basis for a finished product certificate. If a finished product certifier fails to exercise due care in its reliance on a certificate for a component part, then the Commission will not consider the finished product certifier to hold a component part certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps a prudent and competent person would take to conduct a reasonable review of a component part certificate and to address any concern over its validity. Such steps may vary according to the circumstances.

Under proposed § 1109.5(h)(2), a finished product certifier must not rely on component part testing by a testing party or component part certifier unless it receives the documentation under proposed § 1109.5(f) from the component part certifier or testing party. The Commission may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

Under proposed § 1109.5(h)(3), any certification of a consumer product based, in whole or in part, on component part testing performed by a component part certifier or a testing party must:

(1) Identify both the corresponding documentation required in proposed § 1109.5(f) and any report provided by a third party conformity assessment body on which the consumer product's certification is based; and

(2) Certify that nothing subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it affected the product's ability to meet all applicable rules, bans, standards, and regulations.

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

Some requirements enforced by the Commission limit the content of certain chemicals in consumer products. These include the limits for lead content in children's products in section 101(a) of the CPSIA, the limit for lead content of paint and similar surface-coating materials in 16 CFR part 1303, the prohibition of more than 0.1 percent of certain phthalates in children's toys and child care articles in section 108 of the CPSIA, and the limitation of the amounts of compounds of antimony, arsenic, barium, cadmium, chromium, lead, mercury, or selenium in paints or other surface coatings in toys in section 4.3.5.2 of ASTM F 963 ("Standard Consumer Safety Specification for Toy Safety"). (Section 106(a) of the CPSIA states that the requirements of ASTM F 963 must be considered to be consumer product safety standards issued by the Commission under section 9 of the CPSA.)

The testing of component parts consists of three general categories: (1) Testing for the levels of chemicals in paints or surface coatings; (2) testing of actual component parts of a product to determine the content of chemicals in the component parts; and (3) testing of a combination of paints or surface coatings or a combination of component parts (*i.e.,* composite testing), which can reduce the number of tests required or the number of products needed to obtain a sample large enough to test.

C. Proposed Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

1. Introduction

Proposed subpart B would consist of four provisions, §§ 1109.11 through 1109.14. The first three provisions would discuss specific requirements for consumer products (namely chemicals in paint and similar surface coatings, lead content, and phthalates in products). The fourth provision would concern composite testing.

2. Proposed § 1109.11—Lead in Paint and Surface Coatings

Proposed § 1109.11 would address component part testing for the levels of specified chemicals in paints or surface coatings. This aspect of the proposed rule is based on the Commission's previously published enforcement policy for testing products for compliance with lead limits. 74 FR 68593 (December 28, 2009).

Section 101(f)(1) of the CPSIA required the Commission to revise its preexisting regulation (at 16 CFR 1303.1) so that paints and similar surface coating materials having a lead content in excess of 0.009 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film are banned hazardous products. (To simplify this discussion, we use the term "paint" broadly to include any type of surface coating that is subject to 16 CFR part 1303 or section 4.3.5.2 of ASTM F 963.) The new lower limit in 16 CFR part 1303 applies not only to paint sold to consumers as such (for example, a gallon of paint sold at a hardware store), but also to any paint on toys or other articles for children and to any paint on certain household furniture items (not limited to children's furniture). *See* 16 CFR part 1303. The principles for testing paint subject to 16

CFR part 1303 also apply to the testing of paint and surface coatings for toys in section 4.3.5.2 of ASTM F 963.

In the case of paint and coatings, a manufacturer of a children's product can send samples of the finished product to a third party conformity assessment body so that each type of paint may be scraped off and tested individually. However, where small amounts of a particular paint are used (such as painted eyes on a doll), under existing regulations, a large number of samples of the children's product may be needed to obtain enough of that paint to test.

Because compliance of a paint to its content limits is a function of the paint and not of the component part or substrate to which it is applied, proposed § 1109.11(a)(1) would require testing of paint after it has been applied to any suitable substrate, in an appropriate quantity, and dried. The substrate used need not be of the same material as in the finished product or have the same shape or other characteristics as the part of the finished product to which the paint will be applied.

Proposed § 1109.11(a)(2) would provide that, for the tested paint to be identical in all material respects to that used in production of the consumer product, the paint samples tested must have the same composition as the paint used on the finished product. For example, if a children's product manufacturer uses a drying agent that mixes with the paint, then the test sample must reflect this mixture. However, a larger quantity of the paint may be tested than is used on the consumer product, in order to generate a sufficient sample size. For example, a children's product manufacturer may spray paint a large surface area of a substrate with the paint product for the purposes of generating a sufficient amount of paint for the sample. The paint may be supplied to the third party conformity assessment body either in liquid form or in the form of a dried film of the paint on any suitable substrate. (A third party conformity assessment body is a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products. Such facilities are listed on the Commission's Web site at *http://www.cpsc.gov/cgi-bin/labapplist.aspx.)*

Proposed § 1109.11(a)(3) would require that the documentation required by a testing party pursuant to proposed § 1109.5(f) and the certificate required of finished product certifiers under section 14(a) of the CPSA and proposed § 1109.5(g) identify each paint tested by color, location, specification number or other characteristic, the manufacturer of the paint, and the supplier of the paint (if different).

Proposed § 1109.11(b) would state that, as part of its basis for certification of a children's product to the lead paint limit or other paint limit, a certifier may rely on a test report showing passing test results for one or more paints used on the product, based on testing performed by a third party conformity assessment body. The manufacturer of the children's product must ensure that each paint sample sent to a third party conformity assessment body is identical in all material respects to the paint used on the finished product. Test reports must identify each paint tested, by color, formulation, or other characteristic, and identify the manufacturer of the paint and the supplier of the paint (if different).

Proposed § 1109.11(c) would state that, as part of its basis for certification of a children's product to the lead paint limit or other paint limit, a component part certifier or finished product certifier may rely on a certificate from another person certifying that paint complies with the applicable limit. The paint certificate for a children's product must be based on testing by a third party conformity assessment body of samples of paints that are identical in all material respects to the paints used on the finished product. The paint certificate must identify all test reports underlying the certification.

Proposed § 1109.11(c) also would provide that any finished product certifier who certifies a children's product as complying with the lead paint limit or other paint limit should be able to trace each batch of paint that is used on the product to the supplier and, if different, the paint manufacturer. The finished product manufacturer should ensure that paints meeting the applicable limits are not later contaminated with lead from other sources before or during application to the product.

For consumer products that are not children's products but are subject to lead paint limits (such as certain furniture items), proposed § 1109.11(c) would provide that a finished product certifier may base its certification to the lead paint limit on its own testing of each paint used on the product, on testing by any third party conformity assessment body, on paint certification(s) from any person, or on a combination of these methods. However, product manufacturers must ensure that paint meeting the applicable limits when tested and certified is not later contaminated with lead from other sources before or during application to the product.

3. Proposed § 1109.12—Component Part Testing for Lead Content of Children's Products

a. Testing for Lead Content

On August 14, 2009, the general limit for lead in any accessible part of a children's product was reduced from 600 parts per million ("ppm") to 300 ppm (see section 101(a)(2)(B) of the CPSIA). On that date, it became unlawful to sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any product that is subject to the new lead limits, but fails to comply, regardless of when the product was made. Under section 101(a)(1) of CPSIA, any children's product containing an accessible part with lead above the limit is to be treated as a banned hazardous substance under the Federal Hazardous Substances Act. Section 101 of the CPSIA provides that the lead content limit for children's products will be lowered to 100 ppm beginning August 14, 2011, unless the Commission finds that a limit of 100 ppm is not technologically feasible for a product or product category.

Currently, testing and certification is required for metal component parts of children's metal jewelry. 73 FR 78331 (December 22, 2008); 74 FR 6396 (February 9, 2009). The certification must be based on testing by a third party conformity assessment body listed on CPSC's Web site as qualified to test for lead in children's metal jewelry (see *http://www.cpsc.gov/cgi-bin/labapplist.aspx*). If the children's metal jewelry bears paint, it must also be certified as in compliance with the 90 ppm limit. The requirement for testing and certification of other children's products for lead content (except paint) has been stayed until February 10, 2011. 74 FR 68588 (December 28, 2009).

The Commission has determined that some materials, by their nature, will never exceed the lead content limits. These materials include many natural materials such as gemstones, wood, cotton, and wool, as well as certain refined metals and alloys. For a more complete list of such materials, *see* 74 FR 43031 (August 26, 2009). If all accessible parts of a children's product consist of such materials, then that product need not be tested or certified as in compliance with the lead content limits. The Commission recently issued a "Statement of Policy on Testing and Certification of Lead Content in Children's Products" (*see* 74 FR 55820 (Oct. 29, 2009)).

Since the lead content requirements for children's products apply to any accessible part of the product, testing of the children's product's component parts may be required. The Commission has promulgated a final rule for determining when parts of a children's product may be deemed inaccessible and do not need to be tested for lead content. 16 CFR 1500.87; 74 FR 39535 (August 7, 2009). Neither paint nor electroplating may be considered as making underlying materials inaccessible (see section 101(b)(3) of the CPSIA).

b. Certification of Children's Products Subject to Lead Content Requirements

Children's products, other than children's metal jewelry or those made of materials that, by their nature, will never exceed the lead content limits, must be certified as being in compliance with the 300 ppm lead content limit only if they are manufactured after February 10, 2011, and only as to accessible parts that are not subject to a Commission determination as described in 16 CFR part 1500.91. Pursuant to section 14(a)(2) of the CPSA, the certification must be based on testing by a third party conformity assessment body listed on CPSC's Web site as qualified to test for lead in children's products.

Thus, proposed § 1109.12 would describe requirements pertaining to component part testing of children's products to determine their lead content. Proposed § 1109.12(a) would explain that a certifier may rely on component part testing of each accessible part of a children's product provided that:

- The determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the CPSIA is based on an evaluation of the finished product; and
- For each accessible component part of the product, the certifier either has a component part test report or a component part certificate.

Proposed § 1109.12(b) states that, as part of its basis for certification of a children's product to the lead content limit, a finished product certifier could rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. The proposal would require the component part test reports to identify each component part tested, by part number or other specification, as well as the manufacturer of the component part and the supplier (if different).

Proposed § 1109.12(c) would address component part certificates. The proposal states that, as part of its basis for certification of a children's product to the lead content limit, a finished product certifier could rely on a certificate from another person certifying that a component part complies with the lead limit. The component part certificate would have to be based on testing by a third party conformity assessment body of a sample identical in all material respects to the component part(s) used in the finished product. The proposal would require the component part certificate to identify all test reports underlying the certification consistent with section 14 of the CPSA.

Under proposed § 1109.12(d), the certificate accompanying the children's product would have to list each component part tested, by part number or other specification, and for each such part identify the corresponding test report or component part certificate on which product certification is based.

4. Proposed § 1109.13—Component Part Testing for Phthalates in Children's Toys and Child Care Articles

Section 108 of the CPSIA permanently prohibits the sale of any children's toy or child care article containing concentrations of more than 0.1 percent of three specified phthalates (di-(2-ethylhexyl) phthalate, dibutyl phthalate, or benzyl butyl phthalate). Section 108 of the CPSIA also prohibits, on an interim basis, the sale of any children's toy that can be placed in a child's mouth or child care article containing concentrations of more than 0.1 percent of three additional phthalates (diisononyl phthalate, diisodecyl phthalate, or di-n-octyl phthalate), pending the recommendation of a Chronic Hazard Advisory Panel. These prohibitions became effective on February 10, 2009.

The Commission has stayed the requirement for testing and certification for the phthalate content requirements until 90 days after the Commission publishes a notice of requirements for accrediting conformity assessment bodies to test to the phthalate content requirements. 74 FR 68588 (December 28, 2009).

In general, phthalates are chemicals added to plastic to make the plastic more flexible or resilient, and concerns have been raised about possible adverse health effects resulting from exposure to phthalates. In March 2009, the Commission's staff sought comment on a method for testing phthalate content as a percentage of the entire toy or child care article. Testing the phthalate content of an entire children's toy or child care article may present certain difficulties. For example, the risk presented by phthalates in a component part may not be adequately described if the percentage concentration of phthalates is determined in comparison to the whole product, which may have other component parts that do not contain phthalates. In an extreme example, a product that has a plasticized component part that had a phthalate concentration above 0.1 percent arguably could be brought into compliance with the phthalate limit by adding more non-plasticized material and thus "dilute" the concentration of phthalates in the whole product. However, this approach would not reduce the risk posed by the concentration of phthalates in the component part. Testing only the plasticized component parts would avoid such "dilution" scenarios, is more protective of human health, and is consistent with the CPSIA's goal of limiting children's exposure to phthalates. The benefits of the component part approach are twofold; in addition to providing more protection for children, it also may significantly reduce the testing costs for manufacturers in certain circumstances.

Proposed § 1109.13(a) would reflect our position regarding component part testing for phthalates by stating that a certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content if the certifier is provided with a copy of the original test results obtained from the third party conformity assessment body.

Proposed § 1109.13(b) would state that, as part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a recognized third party conformity assessment body. Component part test reports would have to identify each component part tested, by part number or other specification, and the manufacturer and the supplier of the component part (if different).

Proposed 1109.13(c) would state that, as part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the limit. The component part report must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects

to the component parts used in the finished product. The component part certificate must identify all test reports underlying the certification required by section 14 of the CPSA. Any person who certifies a children's product as complying with the phthalate content limits must be able to trace each component part of the product to the component part's manufacturer.

Proposed § 1109.13(d) would require that the certificate accompanying the children's product list each component part tested by part number or other specification and, for each such part, identify the corresponding test report or component part certificate on which product certification is based.

5. Proposed § 1109.14—Composite Part Testing

Composite testing is where more than one paint or surface coating, or more than one component part, are combined and the combination is tested for the level of the target chemical. This can reduce the number of tests required or the number of products needed to obtain a sample large enough to test (composite testing). For example, if different parts of a doll are painted with small amounts of different paints, the paints could be mixed together and tested for lead. Proposed § 1109.14 would address composite testing and would consist of three subsections, one dealing with tests of composite paints and surface coatings, one dealing with tests of composite component parts, and one dealing with how to ensure that no failure to comply with the chemical content limits will go undetected.

Proposed § 1109.14(a) would state that, in testing paints for compliance with chemical content limits, testing parties may test a combination of different paint samples so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected. For an example of an acceptable method, see Test Method CPSC–CH–E1003–09, Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings (April 26, 2009) (available on the Internet at *http://www.cpsc.gov/about/cpsia/CPSC–CH–E1003–09.pdf*). Proposed § 1109.14(a) also would require testing and certification of composite paints to comply with proposed § 1109.11.

Proposed § 1109.14(b) would allow a third party conformity assessment body to test a combination of plastic component parts or a combination of metal component parts so long as the third party conformity assessment body follows procedures ensuring that no failure to comply with the lead limits will go undetected. The proposal would require such testing and certification of component parts to comply with proposed § 1109.12 for the lead content of children's products or with proposed § 1109.13 for the phthalate content of children's toys and child care articles.

When using composite testing, only the total amount of the target chemical is determined, not how much was in each individual paint or component part. Therefore, to determine that each paint or component part is within the applicable limit, proposed § 1109.14(c) would provide that the entire amount of the target chemical in the composite is attributed to each paint or component part. If this method yields an amount of the target chemical that exceeds the limit applicable to any paint or component part in the composite sample, additional testing would be required to determine which of the paints or component parts, if any, fails to meet the applicable limit.

III. Previous Guidance on Component Part Testing and Requests for Comment

Between 2008 and December 28, 2009, the Commission discussed component part testing issues, either generally or regarding specific substances (such as lead and phthalates), and invited comment. We also held a public workshop on issues relating to product testing, including component part testing (*see* 74 FR 58611 (November 13, 2009). In brief, the previous activities on component part testing have consisted of the following:

First, the Commission's staff posted a document on the Commission's Web site explaining the new requirements for third party testing of children's products and requesting comments on a number of issues related to component part testing. That document is available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/ComponentPartsComments.pdf*. The comment period closed on January 30, 2009.

Second, on August 7, 2009, the Commission issued a Statement of Policy: Testing of Component Parts with Respect to Section 108 of the CPSIA, available on the Commission's Web site at *http://www.cpsc.gov/about/componenttestingpolicy.pdf*. The August 7, 2009, Statement of Policy outlined the Commission's interim position on component part testing of products containing plasticized component parts for phthalates. In the **Federal Register** of August 17, 2009 (74 FR 41400), the Commission invited comments on the Statement of Policy. The comment period closed on September 16, 2009.

Third, in October 2009, the Commission issued a Statement of Policy: Testing and Certification of Lead Content in Children's Products, available at *http://www.cpsc.gov/about/cpsia/leadpolicy.pdf*. The October 2009 Statement of Policy on lead content addressed component part testing for lead in children's products and provided that component part testing could be used to test for compliance with the 300 ppm lead content limit, especially in circumstances where a product is made up of several substances, some of which will not, by their nature, contain lead, or where lead containing parts are inaccessible.

Fourth, on November 3, 2009, CPSC staff issued a proposed Guidance Document Testing and Certification Requirements Under The Consumer Product Safety Improvement Act of 2008 (available at *http://www.cpsc.gov/library/foia/foia10/brief/102testing.pdf*). The proposed Guidance Document set forth the CPSC staff's proposed interpretation of the testing and certification requirements established in section 102 of the CPSIA. Although the Commission did not vote on this document, the document provided the framework for the December 10 through 11, 2009, workshop on testing and certification requirements under section 14 of the CPSA. The Guidance Document addressed component part testing in sections III.C and III.D of the document, as well as in section IV on Questions and Answers, in questions 14 through 20. Moreover, component part testing was discussed in several sessions at the December 2009 workshop on testing and certification requirements. Stakeholders were able to submit comments on our proposed interpretation of section 14 of the CPSA with regard to testing of component parts and on the discussion on component part testing at the December 2009 workshop by submitting comments on the workshop. We invited written comments on the December 2009 workshop and testing and certification issues through January 11, 2010, in a notice announcing the workshop that appeared in the **Federal Register** of November 13, 2009, at 74 FR 58611, 58616. We summarize and respond to these comments in section IV of this document below.

Fifth, on December 16, 2009, the Commission approved an Interim Enforcement Policy on Component Testing and Certification of Children's Products and Other Consumer Products to the August 14, 2000 Lead Limits (available at *http://www.cpsc.gov/businfo/frnotices/fr10/comppol.pdf*. The Lead Limits Interim Enforcement Policy

was published in the **Federal Register** on December 29, 2009 (74 FR 68593).

Finally, a petition was filed with the Commission seeking recognition of various methods of component part testing for lead in paint. The petition seeks approval for three methods of testing for lead in paint on component parts of a consumer product. In a notice that appeared in the **Federal Register** of December 29, 2009 (74 FR 68596), we invited comments on the petition. The comment period ended on February 26, 2010.

Any final rule arising out of this notice of proposed rulemaking is intended to supersede all policy statements and guidelines referred to above in section III of this document as they apply to testing of component parts. To the extent component part testing is not addressed by another CPSC-enforced rule, regulation, standard, or testing protocol, the Commission intends that this proposed rule, if finalized, shall apply. In general, certifiers should test and certify consumer products, including children's products, based on the most specific regulation that applies to such consumer product.

IV. Comments on Component Part Testing and the CPSC's Responses

As described in section III of this document above, we have invited and received comments on a number of documents relating to component part testing and at a public workshop. All of these documents were publicly available before the end of the comment period associated with the workshop held by the Commission on December 10 through 11, 2009. *See* 74 FR 58611 (November 13, 2009). The comment period for the workshop ended on January 11, 2010. During that comment period, we received 27 comments relating to testing of component parts of regulated products. Because the comment period for the workshop was the latest opportunity for interested parties to submit comments, and because the comments received cover the issues raised by previous comments, we now address only the comments received between November 13, 2009 (the date on which we issued a **Federal Register** notice announcing the workshop) and January 11, 2010 (the closing date of the comment period for the workshop). To make it easier to identify comments and responses, the word "Comment" will precede each topic addressed by the comments, and the word "Response" will precede each response to a topic. We also have numbered each topic to make it easier to identify and distinguish comments. The number assigned to each topic is for organizational purposes and does not signify the comment's value, importance, or order in which it was received.

Comment 1—Almost all persons who commented on component part testing favored it. Many commenters acknowledged the benefit of component part testing to small businesses. The commenters cited component part testing as a way to reduce redundant testing when a particular component part is used in multiple products. They also wanted the option of component part testing when the amount of the component part in the finished product is small and testing of the finished product requires destruction of a large number of units to collect a sufficient quantity of the component part to be tested. Several commenters indicated that testing at the component part level may reduce costs associated with reworking products that do not meet safety standards due to a noncompliant component part.

Response—We view component part testing, when appropriate, as a cost-effective option to facilitate assurance of compliant consumer products. A certifier may choose testing of a component part, which by its construct or materials is subject to a consumer product safety rule under the CPSA, or a similar rule, ban, standard, or regulation under any other act enforced by the Commission, when the component part is not altered during the manufacturing process. Tested component parts must be identical in all material respects to those used in a finished product, and certified component parts in a finished product must be able to be traced back to their certificates.

Comment 2—Commenters had different opinions concerning who should conduct component part testing and whether a certification provided by a supplier can be used. One commenter suggested that component part testing be limited to the finished product manufacturer, and not be available to component part suppliers, many of whom, according to the commenter, are located in foreign countries. The commenter's concern is that supply chain integrity might not always be maintained and untested or counterfeit component parts could be introduced into a manufacturer's production. Other commenters suggested that product manufacturers should be able to use testing results obtained from component part suppliers or manufacturers, rather than requiring the product manufacturer to test each component part separately. Three commenters indicated that the supplier who certifies a component part, and not the manufacturer that uses the supplier-certified component part, should be held liable for noncompliance.

Response—Excluding the option of using supplier-provided component part certificates may unduly burden some manufacturers or importers. Where appropriate, certifiers may rely on component part certificates received from suppliers of component parts as the basis for issuance of their own certificates for the component part or the finished product. However, under section 19(a)(6) of the CPSA, certifiers may be charged with issuing a false certificate if, in the exercise of due care, they would have had reason to know that a certificate upon which they relied was false or misleading in any material respect. Therefore, certifiers who rely on a certification from a component part supplier should use due care when electing to use the component part suppliers' certification. Ultimately, the domestic manufacturer or importer is responsible for compliance of its finished product.

Comment 3—Other commenters suggested that, to protect against counterfeit supplier component part certifications, CPSC should set up an annual review process of the laboratories that it recognizes to prevent such falsifications.

Response—We disagree with the commenters. Neither the CPSA nor this rule requires a certifier to accept a component part certification provided by a supplier. A certifier is always free to have the component part or the product tested and then issue a certificate for the product based on tests conducted by the certifier (in the case of nonchildren's products) or by a third party conformity assessment body (in the case of children's products).

If the concern is whether manufacturers will be unable to distinguish between genuine and counterfeit component part certificates purporting to come from a specific component part supplier, we note that suppliers themselves can take steps to deter or reduce counterfeiting. For example, a supplier concerned about counterfeit certificates could add various security features, such as color-shifting ink, microprinting, and holograms, to its certificates to make counterfeiting more difficult.

Comment 4—One commenter suggested that we establish different requirements for different component parts based on their inherent safety risks. Component parts presenting the least risk would be exempt from mandatory third party testing.

Response—In the CPSIA, Congress set the chemical content levels applicable to children's products. The CPSIA does not provide that component parts presenting a real, albeit low, risk can be exempted from the requirements for third party testing.

Comment 5—Many commenters stated that reliance on component part testing requires that the tested component parts be representative of those used in the finished product and that adequate traceability of component parts is maintained. One commenter stressed the need to prepare component part samples (such as a large paint sample substituted for a sample obtained by scraping paint from a large number of products, each with only a tiny amount of paint) using the same technique and equipment that is used for the products. Some commenters were concerned that, subsequent to testing, raw materials (*e.g.,* premolded plastic pellets or wet paint in the can) could be contaminated in the production process, resulting in the manufacture of noncompliant products. If, for example, wet paint is found to be compliant, the commenter stated, the drying process could evaporate enough solvent to raise the concentration above the allowable limit. Another commenter stated that compositing of similar materials should be valid, so long as the acceptance limit for the test is adjusted downward to account for multiple materials being tested.

Response—Under the proposed rule, testing of component parts is an option when the component part is not altered during the process of assembling the finished product. If, during processing or assembly of the component part into the finished product, there is a chance that the component part could be contaminated or changed in such way that it is no longer compliant with the applicable safety rule(s), the manufacturer or importer should test the finished product, or its component parts, for compliance. Component part samples must be identical in all material respect to the component parts that will be used in the finished product. Component part testing of composited samples is acceptable provided the subsequent procedures will ensure that no failure to comply with a limit will go undetected. An example of an acceptable procedure is provided in CPSC–CH–E1003–09, Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings (available on the Commission's Web site at *http://www.cpsc.gov/about/cpsia/CPSC-CH-E1003-09.pdf*). We note that the criteria for lead content refer to the percentage of lead (calculated as lead metal) by weight of the total nonvolatile content of the paint or the weight of the dried paint film. Thus, the commenter's concern about evaporation of solvents from the paint increasing the lead concentration is unwarranted.

Additionally, under the proposed rule, finished product certifiers would have to maintain documents that demonstrate the traceability of certified materials in their products.

Comment 6—Several commenters noted that many component parts are not children's products until they are actually incorporated into a completed product. To these commenters, mandatory third party testing of all component parts that might be used in a children's product would be inefficient and wasteful. The commenters added that component part suppliers often do not know whether their component part will be used in the manufacture of other products.

Response—Under the proposal, a component part supplier may, but is not required to, subject its component part to third party testing and/or certification (assuming that the component part becomes part of a children's product). Similarly, manufacturers may, but are not required to, decide whether to purchase third party certified component parts from a supplier or whether to conduct third party testing and certification at the component part or finished product level. The proposed rule would not require third party testing or certification of component parts that are not used in children's products.

Comment 7—One commenter suggested that reasonable attestations from raw material manufacturers should be used in determinations on whether or not to test for phthalates. The commenter contended that third party tests by an accredited third party conformity assessment body should not be required. The commenter argued that, as part of a reasonable testing program, assurances provided by suppliers that plastic resins meet Food and Drug Administration (FDA) requirements should be considered as a basis to reduce the amount of periodic testing of toys or children's products, or component parts thereof, made from food-grade plastics. Further, the commenter suggested excluding the limits or requirement for testing for inaccessible component parts that may contain phthalates, similar to the exclusion for lead.

Response—We will consider these comments as part of any rulemaking activity for phthalates. However, neither section 14 of the CPSA nor section 108 of the CPSIA contains an exclusion for products that happen to meet FDA requirements.

Comment 8—Many commenters mentioned that manufacturers with very small production quantities would not be able to afford the destructive testing of a significant percentage of their production. Another commenter mentioned that destructive testing of gold jewelry is very expensive and that component part testing would alleviate that situation.

Response—The concerns of these commenters are addressed by the proposed rule, since component part testing can eliminate or reduce the need to test the finished product.

Comment 9—One commenter stressed that some component parts require testing of the completed product to evaluate compliance to the applicable rules.

Response—We agree with the comment. Many CPSC rules may require testing of a finished product. The proposed rule would not disturb any preexisting regulation that requires testing of a finished product.

Comment 10—One commenter said that precertified component parts also should be allowed as part of a reasonable testing program. The supplier would undertake third party testing and supply a copy of its certificate to the manufacturer. No additional testing on the component parts should be required.

Response—A manufacturer may rely upon a supplier's certification of a component part, provided that the component part is not altered during the assembly of the finished product. The manufacturer must exercise due care to determine that the supplier's component part certificate is not false or misleading in any material respect and must maintain traceability of component parts. The person required to issue a product certificate under section 14(a) of the CPSA for the finished product is ultimately responsible for the finished product's compliance to CPSC's safety rules.

Comment 11—One commenter stated that component part testing with production process control measures should be acceptable as verification to issue a general certificate of conformity.

Response—Proposed part 1109 would allow component part testing in appropriate circumstances. Requirements for a reasonable testing program sufficient to support a general certificate of conformity are addressed in the proposed rule titled "Testing and Labeling Pertaining to Product Certification," which is published

elsewhere in this issue of the **Federal Register** as proposed 16 CFR part 1107.

V. Environmental Considerations

Generally, the Commission's regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). The proposed rule contains the Commission's conditions and requirements for testing of component parts of consumer products to support, in whole or in part, a finished product certificate that a consumer product complies with all applicable rules, bans, standards, and regulations, pursuant to section 14(a) of the CPSA and to ensure continued compliance pursuant to section 14(d) of the CPSA. As such, the proposed rule is not expected to have an adverse impact on the environment. The rule falls within the categorical exclusion in 16 CFR 1021.5(b)(2) for product certification rules. Accordingly, no environmental assessment or environmental impact statement is required.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. The RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. The proposed rule defines conditions upon which the finished product certifier (currently the manufacturer or importer) can rely upon tests conducted on component parts of the product, rather than on the whole product, as the basis for the certification. This section discusses the impact that the draft proposed rule would have on small businesses.

In the absence of component part testing, certifiers of children's products would have to obtain test results for each component part of a consumer product even if the same component part were used in more than one consumer product. Component part testing will allow certifiers to rely upon tests conducted on the component part to certify that the finished product meets the applicable safety rules. Because testing costs are relatively fixed, component part testing allows the cost of the testing to be spread over more units of finished goods. This can significantly reduce the cost of testing and certifying products.

For example, a manufacturer that uses the same paint on five different products could obtain test results for the paint and use those results to certify that the same paint, when used on each of the five products, complies with the applicable safety rules (provided that nothing is added to the paint after the testing or during the application process). Without component part testing, the manufacturer would have to test the paint on each product on which it is used, which would increase the costs of testing by a factor of about 5.

Because component part testing can significantly reduce the cost of testing, the proposed rule would reduce, but not eliminate, the economic impact that the testing and certification requirements of the CPSIA may have on manufacturers and importers of consumer products subject to consumer product safety rules.

VII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invite comments on: (1) Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

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

These records are similar to the records that a manufacturer would be required to develop and maintain under the proposed rule on "Testing and Labeling Pertaining to Product Certification" (which appears elsewhere in this issue of the **Federal Register**). Most of the records concern the documentation of the test plan and test results for the component part, which would be required whether the component part was tested as part of the finished product or apart from the finished product. Even without component part testing, certifiers would be expected to maintain records regarding the lot, batch, or other information identifying the component parts used, since changes in the component part or the sourcing of the component part would constitute a material change and trigger requirements for additional testing.

The proposed component part testing rule may shift the responsibility for preparing the records, especially those documenting the test results, in some cases, from the manufacturer or importer of the consumer product to the manufacturer or supplier of the component part.

We do not know how many manufacturers or wholesalers will voluntarily test component parts for manufacturers of children's products. Component part manufacturers that are not themselves manufacturers of children's products could voluntarily obtain the required third party testing for children's product manufacturers who use their component parts. Such manufacturers might include textile manufacturers, paint and coating manufacturers, manufacturers of buttons and other fasteners, and manufacturers of plastics material and resin. The 2007 Economic Census showed that there were 5,220 establishments that were engaged in manufacturing these materials or component parts. However, the number who would actually obtain

third-party testing will probably be a small subset of these establishments.

At this time, there is no clear basis for estimating the recordkeeping burden on component part suppliers that voluntarily obtain the third party testing. We note that, in the proposed rule titled, "Testing and Labeling Pertaining to Product Certification" (which appears elsewhere in this issue of the **Federal Register**), we tentatively estimated that the total recordkeeping burden for that proposal with respect to the continued testing requirements of the CPSIA would be 200,000 to 300,000 hours annually. Some of this burden cannot be shifted to the component part suppliers because some tests must be performed on the whole product. In other cases, the burden will not be shifted because the component part is unique to the product or the manufacturer or because the component part supplier declines to obtain the third party testing. However, if we assume that eventually 10 percent of the total testing were ultimately shifted to the component part suppliers, then the recordkeeping burden shifted would be approximately 20,000 to 30,000 hours. The total cost of the burden shifted would be $0.9 million to 1.5 million. This estimate was obtained by multiplying the total hour burden estimates by $48.91, which is the total hourly compensation for private sector workers in management, professional, and related occupations. The actual cost burden would depend upon the extent to which component suppliers are willing to voluntarily obtain the third party testing.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the CPSC has submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding information collection by June 21, 2010, to the Office of Information and Regulatory Affairs, OMB (*see* **ADDRESSES**).

VIII. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 26 of the CPSA only addresses the preemptive effect of consumer product safety standards under the CPSA. The current rule is not a consumer product safety standard under the CPSA. Accordingly, this rule does not fall within the scope of any provision of any act enforced by the Commission that grants preemptive effect to rules.

IX. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of a final rule. 5 U.S.C. 553(d). The Commission intends that any final rule based on this proposal would become effective 180 days after the date of publication of a final rule in the **Federal Register**. This should allow time for any product changes needed for testing of component parts and for implementation of the component part testing requirements.

X. Request for Comments

Although the CPSC has, on several occasions, invited and received comments on component part testing, the issuance of this proposed rule begins a rulemaking proceeding under sections 3 and 102 of the CPSIA which will establish the conditions and requirements for testing of component parts of consumer products to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations. We invite interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice of proposed rulemaking.

List of Subjects in 16 CFR Part 1109

Business and industry, Children, Consumer protection, Imports, Product testing and certification, Records, Record retention, Toys.

Accordingly, the Commission proposes to add 16 CFR part 1109 to read as follows:

PART 1109—CONDITIONS AND REQUIREMENTS FOR TESTING COMPONENT PARTS FOR COMPLIANCE WITH ALL APPLICABLE RULES, BANS, STANDARDS OR REGULATIONS

Subpart A—General Conditions and Requirements

Sec.

1109.1 Scope.
1109.2 Purpose.
1109.3 Applicability.
1109.4 Definitions.
1109.5 Conditions, requirements, and effects generally.

Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

1109.11 Component part testing for paint and other surface coatings.
1109.12 Component part testing for lead content of children's products.
1109.13 Component part testing for phthalates in children's toys and child care articles.
1109.14 Composite testing.

Authority: Secs. 3 and 102, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063.

Subpart A—General Conditions and Requirements

§ 1109.1 Scope.

This part applies to all tests of component parts of consumer products where the test results are used to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or where the tests are otherwise required or permitted by section 14 of the CPSA. The requirements of this subpart A apply to the consumer products, component parts, and chemicals subject to subpart B of this part.

§ 1109.2 Purpose.

The purpose of this part is to set forth the conditions and requirements under which the Commission will require or accept the results of testing of component parts of consumer products, instead of the entire consumer product, to meet, in whole or in part, the testing and certification requirements of sections 14(a), 14(b), and 14(d) of the CPSA.

§ 1109.3 Applicability.

The provisions of this part apply to all manufacturers, importers, and private labelers, and to the manufacturers and suppliers of component parts who are responsible for certifying consumer products under section 14(a) of the CPSA and continued compliance under section 14(d) of the CPSA or who are responsible for testing component parts of consumer products to support a certificate of compliance under section 14(a) of the CPSA or to comply with continuing testing requirements under section 14(d) of the CPSA.

§ 1109.4 Definitions.

The following definitions apply to this part:

(a) *Certifier* means a firm that is either a finished product certifier or a component part certifier as defined in this section.

(b) *Component part* means any part of a consumer product, including a children's product, that either must or may be tested separately from a finished consumer product to assess the consumer product's ability to comply with a specific rule, ban, standard, or regulation enforced by the CPSC. Within the same consumer product, which component parts will have to be tested

may vary, depending on the test being conducted.

(c) *Component part certifier* means a firm that certifies component parts to be used in consumer products as complying with one or more rules, bans, standards, or regulations enforced by the CPSC pursuant to part 1109.

(d) *CPSA* means the Consumer Product Safety Act.

(e) *CPSC* means the Consumer Product Safety Commission.

(f) *CPSIA* means the Consumer Product Safety Improvement Act of 2008.

(g) *Due care* means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.

(h) *Finished product certifier* means a firm responsible for certifying compliance of a consumer product with all applicable rules, bans, standards, and regulations enforced by the CPSC, pursuant to part 1110 of this chapter.

(i) *Identical in all material respects* means there is no difference with respect to compliance to the applicable rules between the samples and the finished product.

(j) *Paint* means any type of surface coating that is subject to part 1303 of this chapter or section 4.3.5.2 of ASTM F 963.

(k) *Testing party* means the firm (including, but not limited to, domestic manufacturers, foreign manufacturers, importers, private labelers, third party conformity assessment bodies, or component part suppliers) who tests a consumer product, or any component part thereof, for compliance, in whole or in part, with any applicable rule, ban, standard, or regulation enforced by the CPSC.

(l) *Third party conformity assessment body* means a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products.

(m) *Traceable* means the ability of a certifier to identify the source of a component part of a consumer product, including the name and address of the supplier of the component part and, if different, the manufacturer of the component part.

§ 1109.5 Conditions, requirements, and effect generally.

(a) *Component part testing allowed.* A certifier may certify compliance of a consumer product with all applicable rules, bans, standards, and regulations as required by section 14(a) of the CPSA, and may ensure continued compliance of children's products pursuant to section 14(d) of the CPSA, based, in whole or in part, on testing of a component part of the consumer product conducted by the certifier and/or a testing party if the following requirements are met:

(1) Testing of the component part is required or sufficient to assess compliance, in whole or in part, of the consumer product with the applicable rule, ban, standard, or regulation. Any doubts about whether testing one or more component parts of a consumer product can help to assess whether the entire product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the entire product; and

(2) The component part tested is identical to the component parts used in the finished consumer product in all material respects. To be identical in all material respects to a component part for purposes of supporting a certification of a children's product to the applicable content limit, a sample need not necessarily be of the same size, shape, or finish condition as the component part of the finished product; rather, it may consist of any quantity that is sufficient for testing purposes and in any form that has the same content as the component part of the finished product. A certifier must exercise due care to ensure that no change in the component parts after testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation. Manufacturers of finished consumer products must exercise due care in the proper management and control of all raw materials, component parts, subassemblies, and finished goods for any factor that could affect the finished product's compliance with all applicable rules. The manufacturer must exercise due care that the manufacturing process does not add a prohibited chemical from an untested source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product.

(b) *Limitation.* A certifier must not rely on testing of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the entire consumer product to assess compliance.

(c) *Test method and sampling protocol.* Regardless of which entity performs component part testing or selects samples for component part testing, both certifiers and testing parties must ensure that the required test methods and sampling protocols, as set forth in part 1107 of this chapter, as well as any more specific applicable rules, bans, standards, regulations, or testing protocols, are used to assess compliance of the component part.

(d) *Timing.* Subject to any more specific rule, ban, standard, or regulation, component part testing may occur before final assembly of a consumer product provided that nothing in the final assembly of the consumer product can cause the component part or the final consumer product to become noncompliant.

(e) *Traceability.* Certifiers must not rely on component part testing conducted by another testing party unless such component parts are traceable.

(f) *Documentation by testing party.* Unless the testing party is the finished product certifier, a testing party must provide the following documentation to a certifier either in hard copy or electronically:

(1) Identification of the component part tested;

(2) Identification of a lot or batch number for which the testing applies;

(3) Identification of the applicable rules, bans, standards, and regulations it tested for on each component part tested;

(4) Identification of the testing methods and sampling protocols used;

(5) The date or date range when the component part was tested;

(6) The results of each test on a component part; and

(7) If the product was tested by a third party conformity assessment body, regardless of whether it was required because the product is a children's product or whether the testing party chose to use such third party conformity assessment body, identification of such third party conformity assessment body, a copy of the original test results, and a certification that all testing was performed in compliance with section 14 of the CPSA and part 1107 of this chapter.

(g) *Effect of Voluntary Certification by Component Part Certifiers.* (1) The Commission will consider any certificate issued by a component part certifier in accordance with this part to be a certificate issued in accordance with section 14(a) of the CPSA. A component part certificate must contain all of the information required by part 1110 of this chapter.

(2) Any person who elects to certify compliance of a component part with an applicable rule must assume all responsibilities of a manufacturer under part 1107 of this chapter with respect to that component part's compliance to the applicable rule.

(h) *Certification by Finished Product Certifiers.* (1) A finished product certifier must exercise due care in order

to rely, in whole or in part, on a component part certificate issued by a component part certifier or on component part testing by a testing party as the basis for a finished product certificate. If a finished product certifier fails to exercise due care in its reliance on a certificate for a component part, then the Commission will not consider the finished product certifier to hold a component part certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps a prudent and competent person would take to conduct a reasonable review of a component part certificate and to address any concern over its validity. Such steps may vary according to the circumstances.

(2) A finished product certifier must not rely on component part testing by a testing party or component part certifier unless it receives the documentation under paragraph (f) of this section from the component part certifier or testing party. The Commission may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

(3) Any certification of a finished product based, in whole or in part, on component part testing performed by a component part certifier or a testing party must:

(i) Identify both the corresponding documentation required in paragraph (f) of this section and any report provided by a third party conformity assessment body on which the consumer products certification is based; and

(ii) Certify that no action subsequent to component part testing, for example, in the process of final assembly of the consumer product, changed or degraded the consumer product such that it adversely affected the product's ability to comply with all applicable rules, bans, standards, and regulations.

(i) *Recordkeeping requirements.* All testing parties must maintain the documentation required in paragraph (f) of this section for 5 years. Additionally, all certifiers must maintain records to support the traceability of component part suppliers for as long as the corresponding product is produced or imported by the certifier and for 5 years thereafter. Test records must be maintained for 5 years. All records must be available in the English language. Finished product certifiers must maintain the records at the location within the United States specified in § 1110.11(d) of this chapter or, if the records are not maintained at the custodian's address, at a location within the United States specified by the custodian. The finished product certifier must make these records available, either in hard copy or electronically, for inspection by the CPSC upon request.

Subpart B—Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

§ 1109.11 Component part testing for paint and other surface coatings.

(a) *Generally.* The Commission will permit certification of a product as being in compliance with the lead paint limit of part 1303 of this chapter or the content limits for paint on toys of section 4.3.5.2 of ASTM F 963 if, for each paint used on the product, the party that certifies the product either has obtained a test report or holds a paint certificate as described below and the following requirements are met:

(1) All testing must be performed on dry paint that is scraped off of a substrate for testing (the substrate used need not be of the same material as the material used in the finished product or have the same shape or other characteristics as the part of the finished product to which the paint will be applied);

(2) The tested paint is identical in all material respects to that used in production of the consumer product. The paint samples to be tested must have the same composition as the paint used on the finished product. However, a larger quantity of the paint may be tested than is used on the consumer product, in order to generate a sufficient sample size. The paint may be supplied to the testing laboratory either in liquid form or in the form of a dried film of the paint on any suitable substrate; and

(3) Documentation required by a testing party pursuant to § 1109.5(f) and the certificate required of certifiers under section 14(a) of the CPSA and § 1109.5(g) identifies each paint tested by color, location, formulation, or other characteristic, the supplier of the paint and, if different, the manufacturer of the paint.

(b) *Test reports.* As part of its basis for certifying a children's product to the lead in paint limit, or other paint limit, a finished product certifier may rely on a test report showing passing test results for one or more paints used on the product, based on testing it commissioned from a third party conformity assessment body. The finished product certifier of the children's product must ensure that each paint sample sent to a third party conformity assessment body is identical in all material respects to that used on the finished product. Test reports must identify each paint tested by color, specification number, or other characteristic, as well as the manufacturer of the paint and the supplier of the paint (if different).

(c) *Paint certificates*—(1) *Children's products.* As part of its basis for certification of a children's product to the lead in paint limit or other paint limit, a finished product certifier may rely on a certificate from another person certifying that the paint complies with the lead limit. The paint certificate must be based on testing by a third party conformity assessment body of sample of one or more paints that are identical in all material respects to the paint used on the finished product. The paint certificate must identify all test reports underlying the certification.

(2) *Nonchildren's products.* For consumer products that are not children's products but are subject to paint limits (such as certain furniture items), a finished product certifier may base its certification on its own testing of each paint used on the product, on testing by any third party conformity assessment body, on paint certification(s) from any person, or on a combination of these methods.

(3) *Traceability.* Any person who certifies a product as complying with the lead paint limit or other paint limit must be able to trace each batch of paint that is used on the product to the paint supplier and, if different, the paint manufacturer.

(4) *Prevention of contamination subsequent to testing.* The finished product manufacturer must ensure that paint meeting the applicable limits when tested and certified is not later contaminated with lead from other sources before or during application to the product.

§ 1109.12 Component part testing for lead content of children's products.

(a) *Generally.* A certifier may rely on component part testing of each accessible component part of a children's product for lead content, where such component part testing is performed by a third party conformity assessment body, provided that:

(1) The determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the CPSIA is based on an evaluation of the finished product; and

(2) For each accessible component part of the product, the certifier either has a component part test report or a component part certificate.

(b) *Component part test reports.* As part of its basis for certification of a children's product to the lead content limit, a finished product certifier may

rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. Component part test reports must identify each component part tested, by part number or other specification, and the manufacturer and the supplier of the component part (if different).

(c) *Component part certificates.* As part of its basis for certifying that a children's product complies with the applicable lead content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the lead limit. The component part certificate must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects to the component parts used in the finished product. The certificate pertaining to the component part must identify all test reports underlying the certification consistent with section 14 of the CPSA.

(d) *Certificates for the finished product.* The certificate accompanying the children's product must list each component part that was tested, by part number or other specification, and, for each such component part, identify the corresponding test report, paint certificate, or component part certificate on which a certification for the finished children's product is based.

§ 1109.13 Component part testing for phthalates in children's toys and child care articles.

(a) *Generally.* A finished product certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content if the finished product certifier is provided with a copy of the original test results obtained from the third party conformity assessment body or a component part certificate.

(b) *Component part test reports.* As part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a test report showing passing test results for one or more component parts used on the product, based on testing by a third party conformity assessment body. Component part test reports must identify each component part tested, by part number or other specification, and the component part's supplier and, if different, the component part's manufacturer.

(c) *Component part certificates.* As part of its basis for certification of a children's product to the phthalate content limit, a finished product certifier may rely on a certificate from another person certifying that a component part complies with the limit. The component part certificate must be based on testing by a third party conformity assessment body of a sample that is identical in all material respects to the component part used in the finished product. The component part certificate must identify all test reports underlying the certification consistent with section 14 of the CPSA. Any person who certifies a children's product as complying with the phthalate content limits must be able to trace each component part of the product to the component part's supplier and, if different, the component part's manufacturer.

(d) *Certificates for the finished product.* The certificate accompanying the children's product must list each component part required to be tested by part number or other specification and, for each such part, must identify the corresponding test report from a third party conformity assessment body on which the product's certification is based.

§ 1109.14 Composite part testing.

(a) *Paint and other surface coatings.* In testing paint for compliance with chemical content limits, testing parties may test a combination of different paint samples so long as they follow procedures ensuring that no failure to comply with the lead limits will go undetected (see paragraph (c) of this section). Testing and certification of composite paints must comply with § 1109.11.

(b) *Component parts.* Third party conformity assessment bodies may test a combination of component parts so long as they follow procedures ensuring that no failure to comply with the content limits will go undetected (see paragraph (c) of this section). Testing and certification of composite component parts for lead content must comply with § 1109.12. Testing and certification of composite component parts for phthalate content must comply with § 1109.13.

(c) *How to evaluate composite part testing.* When using composite part testing, only the total amount or percentage of the target chemical is determined, not how much was in each individual paint or component part. Therefore, to determine that each paint or component part is within the applicable limit, the entire amount of the target chemical in the composite is attributed to each paint or component part. If this method yields an amount of the target chemical that exceeds the limit applicable to any paint or component part in the composite sample, additional testing would be required to determine which of the paints or component parts, if any, fail to meet the applicable limit.

Dated: May 7, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–11370 Filed 5–19–10; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission proposes to amend a rule that implements its authority under the District of Columbia Youth Rehabilitation Act to set aside a conviction for a youth offender. The proposed rule specifies the Commission's authority to set aside a youth offender's misdemeanor conviction and describes the information the Commission examines in making such a determination, given that the misdemeanant only served a jail term for the offense without subsequent community supervision on parole or supervised release. In addition, the rule clarifies the Commission's policy for issuing a set-aside certificate for a youth offender who was formerly on supervised release and who was not reviewed for the set-aside certificate before the offender's sentence expired. The proposed rule adopts the Commission's established criteria for conducting set-aside reviews when a youth offender's parole term ends before such a review has been held.

DATES: Comments must be received by June 30, 2010.

ADDRESSES: Submit your comments, identified by docket identification number USPC–2010–02 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, 5550