



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

This document has been electronically
approved and signed.

DATE: September 30, 2015

BALLOT VOTE SHEET

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Patricia H. Adkins, Executive Director

FROM: Patricia M. Pollitzer, Assistant General Counsel
David M. DiMatteo, Attorney, OGC

SUBJECT: Draft Direct Final Rule and Notice of Proposed Rulemaking: Amendment to clarify when component part testing can be used and which textile products have been determined not to exceed the allowable lead content limits

BALLOT VOTE DUE: October 6, 2015

The Office of the General Counsel is providing for Commission consideration the attached direct final rule and notice of proposed rulemaking for clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits.

A. *Federal Register* Notice for Direct Final Rule

Please indicate your vote on the following options:

- I. Approve publication of the attached direct final rule in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached direct final rule in the *Federal Register*, with changes. (Please specify.)

(Signature)

(Date)

III. Do not approve publication of the attached direct final rule in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

B. *Federal Register* Notice for Proposed Rulemaking

Please indicate your vote on the following options:

- I. Approve publication of the attached notice of proposed rulemaking in the *Federal Register*, as drafted.

(Signature)

(Date)

- II. Approve publication of the attached notice of proposed rulemaking in the *Federal Register*, with changes. (Please specify.)

(Signature)

(Date)

- III. Do not approve publication of the attached notice of proposed rulemaking in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachments: Draft *Federal Register* Notices for Direct Final Rule: Amendment to clarify when component part testing can be used and which textile products have been determined not to exceed the allowable lead content limits; and Notice of Proposed Rulemaking: Amendment to clarify when component part testing can be used and which textile products have been determined not to exceed the allowable lead content limits.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1109 and 1500

[Docket No. CPSC-2011-0081]

Amendment to Clarify When Component Part Testing Can be Used and Which Textile Products Have Been Determined Not to Exceed the Allowable Lead Content Limits.

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Consumer Product Safety Act (“CPSA”) requires third party testing and certification of children’s products that are subject to children’s product safety rules. The Consumer Product Safety Commission (“Commission,” or “CPSC”) has previously issued regulations related to this requirement: a regulation that allows parties to test and certify component parts of products under certain circumstances; and a regulation determining that certain materials or products do not require lead content testing. The Commission is issuing a direct final rule clarifying when component part testing can be used and clarifying which textile products have been determined not to exceed the allowable lead content limits.

DATES: The rule is effective on **[insert date 60 days after publication in the FEDERAL REGISTER]**, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive a timely significant adverse comment, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2011-0081, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier 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 notice. 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 that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: <http://www.regulations.gov>, and insert the docket number CPSC-2011-0081, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; (301) 987-2558; email; khatlelid@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 14(a) of the CPSA, as amended by the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), requires that manufacturers of products subject to a consumer product safety rule or similar rule, ban, standard or regulation enforced by the CPSC must certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). For children’s products, certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* Public Law No. 112-28 (August 12, 2011) directed the CPSC to seek comment on “opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.” In response to Pub. L. No. 112-28, the Commission published in the *Federal Register* a Request for Comment (“RFC”). *See* <http://www.cpsc.gov/PageFiles/103251/3ptreduce.pdf>. As directed by the Commission, staff submitted a briefing package to the Commission that described opportunities that the Commission could pursue to potentially reduce the third party testing costs consistent with assuring compliance. *See* <http://www.cpsc.gov/PageFiles/129398/reduce3pt.pdf>.

In addition to soliciting and reviewing comments as required by Pub. L. No. 112-28, the Commission published in the *Federal Register* on April 16, 2013 a Request for Information (“RFI”) on four potential opportunities to reduce testing burdens. *See* <http://www.gpo.gov/fdsys/pkg/FR-2013-04-16/pdf/2013-08858.pdf>. In February 2014, the Commission also published a notice in the *Federal Register* of a CPSC workshop on potential ways to reduce third party testing costs through determinations consistent with

assuring compliance. See <http://www.gpo.gov/fdsys/pkg/FR-2014-02-27/pdf/2014-04265.pdf>. The workshop was held on April 3, 2014.

The Commission has issued several regulations concerning third party testing and certification. In this direct final rule, the Commission clarifies provisions in two such regulations. The Commission believes that these clarifications will enable manufacturers to better understand their testing obligations so that they can avoid unnecessary testing.

B. Amendment to Part 1109

1. Background

In November 2011, the Commission promulgated 16 CFR part 1109, *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* (“component part testing rule”). Through the component part testing rule the Commission sought to help manufacturers meet their testing, continuing testing, and certification obligations under section 14 of the CPSA. The component part testing rule is intended to give all parties involved in testing and certifying consumer products pursuant to section 14 of the CPSA the flexibility to procure or rely on required certification testing where such testing is easiest to conduct or least expensive.

2. Description of the Amendment

Subpart A of 16 CFR part 1109 provides the general requirements for component part testing, and subparts B and C provide for additional conditions for specific products and requirements. Although the component part testing rule does not specifically limit the applicability of component part testing to just those products and requirements included in subparts B and C, the inclusion in the rule of conditions and requirements for

specific products and requirements may have been misinterpreted by stakeholders as excluding the option of component part testing for other products and requirements that are not explicitly specified in the requirements currently referenced in subpart B (paint, lead content of children’s products, and phthalates in children’s toys and child care articles). An example of a requirement not explicitly specified in subpart B of 16 CFR part 1109 where component part testing may be used is the requirement for the solubility of specified chemicals for toy substrate materials other than paints in the ASTM F963 mandatory toy standard.

This amendment makes the following revisions to the component part testing rule. Section 1109.1(c) is revised to clarify that subpart B applies only to products or requirements expressly identified in subpart B rather than placing limitations on the use of component part testing of chemical content. Section 1109.5(a) is revised to clarify that the requirements of subpart B and C are only required if applicable in the circumstances identified in subparts B and C. Thus, manufacturers are free to use component part testing in addition to the specific circumstances in subpart B (paint, lead content of children’s products, and phthalates in children’s toys and child care articles) and subpart C (composite testing).

In addition, the amendment brings two other provisions in the component part rule up to date. Section 1109.11(a) currently refers to an older version of the mandatory toy standard, ASTM F963-08. However, the toy standard has been revised, and the appropriate reference should be ASTM F963-11. The amendment revises section 1109.11(a) to update the obsolete references to the mandatory toy standard. The amendment also updates section 1109.13 to refer to guidance that the Commission issued

after publication of the component part rule. Section 1109.13 addresses when a certifier may rely on component part testing for phthalates in children’s toys and child care articles. The amendment adds a reference to the Commission’s guidance concerning inaccessible component parts (16 CFR part 1199). This change will make the provision concerning phthalates (section 1109.13) consistent with the provision concerning lead (section 1109.12) and will help certifiers understand which components are inaccessible and do not need to be tested for phthalate content.

These revisions to part 1109 do not, and are not intended to, make any substantive revisions to the existing rule, but rather clarify what the Commission intended when the rule was originally promulgated and bring the rule up to date by referencing current regulations.

C. Amendment to Part 1500

1. Background

The Commission determined by rule that certain products and materials inherently do not contain lead at levels that exceed the lead content limits under section 101(a) of the CPSIA, so long as those materials have not been treated or adulterated with materials that could add lead. 16 CFR 1500.91. The effect of these determinations is to relieve the material or product from the third party testing requirement.

Section 1500.91(d)(7) states that such a determination applies to “textiles (excluding after-treatment applications, including screen prints, transfers, decals, *or other prints*) consisting of [various fibers].” 16 CFR 1500.91(d)(7) (emphasis added). Thus, the rule determined that dyes and dyed textiles do not contain lead. As explained in the

preamble to the determination rule, dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so that they penetrate into the fiber. 74 FR 43031, 43036 (Aug. 26, 2009). Dyes can be applied to textiles at the fiber, yarn, fabric or finished product stage. Although some dye baths may contain lead, the colorant that is retained by the finished textile after rinsing would not contain lead above a non-detectable lead level. In contrast to dyes, pigments may be either organic or inorganic and they are insoluble in water. Some textiles may have lead based paints and pigments that are directly incorporated onto the textile product or added to the surface of textiles. Examples are decals, transfers, and screen printing. *Id.* The reference in the rule to “other prints” referred only to those after-treatment applications that use non-dye substances. Such prints, in which the non-dye substances do not become part of the fiber matrix but remain a surface coating, could contain lead, and are subject to the testing required under the CPSIA for children’s products.

The American Apparel & Footwear Association (“AAFA”) has expressed confusion about the phrase “or other prints” in 16 CFR 1500.91(d)(7). AAFA argues that this phrase can be read to exclude from the determination rule items that are dyed (and are lead free) merely because of the technique used to apply colorant.¹ AAFA asserts that this interpretation has resulted in a “significant amount of unnecessary testing.” The Commission is amending the rule to reduce any confusion about the meaning of the phrase “or other prints” in 16 CFR 1500.91(d)(7).

¹ Letter from the American Apparel and Footwear Association to Robert Adler, Acting Chairman of the Consumer Product Safety Commission (June 2, 2014). Available as document CPSC-2011-0081-0059 in docket CPSC-2011-0081 at www.regulations.gov.

As discussed above, the preamble to the determination rule explained the parameters of the determination regarding textiles. Whether textiles require testing for lead content depends on whether the products are dyed or include other non-dye finishes, decorations, colorants, or prints, and not on the techniques that are used in manufacturing, printing, or applying such products. Some printing, treatments, and applications involve dyes that do not contain lead, others may use paints, pigments, or inks that may contain lead. The phrase “or other prints” in the exclusion in 1500.91(d)(7) may mistakenly give the impression that the application process (e.g., printing) is a determining factor. The Commission is amending the provision to clarify that dyed textiles, regardless of the techniques used to produce such materials and apply such colorants, are not subject to required testing for lead in paint or for total lead content.

2. Description of the amendment

Section 1500.91(d)(7) is revised to clarify that the Commission has determined that textiles that have treatments and applications consisting entirely of dyes do not exceed the lead content limits, and are not subject to the third party testing requirements for children’s products, so long as those materials have not been treated or adulterated with materials that could add lead. The amendment does not make any substantive change in the requirements of the current rule.

D. Direct Final Rule Process

The Commission is issuing these amendments as a direct final rule (“DFR”). The Administrative Procedure Act (“APA”) generally requires notice and comment rulemaking 5 U.S.C. 553(b). In Recommendation 95-4, the Administrative Conference of the United States (“ACUS”) endorsed direct final rulemaking as an appropriate

procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we believe the clarifications will not be controversial. The rule will not impose any new obligations, but rather will clarify existing rules to make clear what is permissible and what is required to be third party tested. We expect that the clarifications will be supported by stakeholders. The clarifications respond to the desire expressed by numerous stakeholders and Congress that the Commission provide relief from the burdens of third party testing while also ensuring that products will comply with all applicable children’s product safety rules. We expect that these clarifications will not engender any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on [**insert date 60 days after publication in the FEDERAL REGISTER**]. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule’s underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission will withdraw this direct final rule. If a significant adverse comment is received for an amendment to only one of the two rules being revised in the direct final rule, the Commission will only withdraw the amendment to the rule receiving a significant adverse comment. A notice of proposed rulemaking (“NPR”), providing an opportunity for public comment, is also being published in this same issue of the *Federal Register*.

E. Effective Date

The APA generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). Because the final rule provides relief from existing testing requirements under the CPSIA, the effective date is **[insert date 60 days after publication in the FEDERAL REGISTER]**. However, as discussed in section D of the preamble, if the Commission receives a significant adverse comment the Commission will withdraw the DFR and proceed with the NPR published in this same issue of the *Federal Register*.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) generally requires that agencies review proposed and final rules for the rules’ potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604.

The revisions to the component part testing rule clarify that component part testing can be used whenever tests on a component part will provide the same information about the compliance of the finished product as would be provided by tests of the component after it is incorporated into or applied to a finished product. The revisions do not make any substantive changes in the requirements of the current component part rule. Therefore, the number of manufacturers affected should be small. The changes will not increase costs for any entities. Therefore, the changes to the rule are not expected to have a significant impact on a substantial number of small entities.

The revision to the lead determination rule clarifies that textiles that have treatments and applications that consist entirely of dyes are determined by the

Commission not to exceed the lead content limits, and are not subject to the third party testing requirements for children’s products. The amendment does not make any substantive change in the requirement of the current rule. The change will not increase costs for any entities. Therefore, the change to the rule is not expected to have a significant impact on a substantial number of small entities.

Due to the small number of entities affected and the limited scope of the impact, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b).

G. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for Commission rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required. The Commission’s regulations state that safety standards for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this rule alters that expectation.

List of Subjects

16 CFR Part 1109

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

16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission amends Title 16 of the Code of Federal Regulations, as follows:

PART 1109—CONDITIONS AND REQUIREMENTS FOR RELYING ON COMPONENT PART TESTING OR CERTIFICATION, OR ANOTHER PARTY’S FINISHED PRODUCT TESTING OR CERTIFICATION, TO MEET TESTING AND CERTIFICATION REQUIREMENTS

1. The authority citation for part 1109 continues to read as follows:

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

2. Amend § 1109.1 by revising paragraph (c) to read as follows:

§ 1109.1 Scope.

(c) Subpart A establishes general requirements for component part testing and certification, and relying on component part testing or certification, or another party’s finished product certification or testing, to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA. Subpart B sets forth additional requirements for component part testing for specific consumer products, component parts, and chemicals. Subpart B is applicable only to those products or requirements expressly included in subpart B. Subpart C describes the conditions and requirements for composite testing.

* * * * *

3. Amend § 1109.5 by revising the first sentence in paragraph (a) to read as follows:

§ 1109.5 Conditions, requirements, and effects generally.

(a) *Component part testing allowed.* Any party, including a component part manufacturer, a component part supplier, a component part certifier, or a finished product certifier, may procure component part testing as long as it complies with the requirements in this section, and with the requirements of subparts B and C of this part, if applicable in the circumstances identified in subparts B and C.

* * *

4. Amend § 1109.11 by revising paragraph (a) to read as follows:

§ 1109.11 Component part testing for paint.

(a) *Generally.* The Commission will permit certification of a consumer product, or a component part of a consumer 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 of ASTM F 963–11 or any successor standard of section 4.3 of ASTM F 963–11 accepted by the Commission if, for each paint used on the product, the requirements in § 1109.5 and paragraph (b) of this section are met.

* * * * *

5. Amend § 1109.13 to read as follows:

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

A certifier may rely on component part testing of appropriate component parts of a children’s toy or child care article for phthalate content provided that the requirements

in § 1109.5 are met, and the determination of which, if any, parts are inaccessible pursuant to section 108(d) of the CPSIA and part 1199 of this chapter is based on an evaluation of the finished product.

6. Revise part 1500 to read as follows:

**PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES:
ADMINISTRATION AND ENFORCEMENT REGULATIONS**

7. The authority citation for part 1109 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016.

8. Amend § 1500.91 by revising paragraph (d)(7) to read as follows:

§ 1500.91 Determinations regarding lead content for certain materials or products under section 101 of the Consumer Product Safety Improvement Act.

(d) * * *

(7) Textiles (excluding any textiles that contain treatments or applications that do not consist entirely of dyes) consisting of:

* * * * *

Dated: _____

Todd A. Stevenson, Secretary,
Consumer Product Safety Commission

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1109 and 1500

[Docket No. CPSC-2011-0081]

Amendment to Clarify When Component Part Testing Can Be Used and Which Textile Products Have Been Determined not to Exceed the Allowable Lead Content Limits.

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Act (“CPSA”) requires third party testing and certification of children’s products that are subject to children’s product safety rules. The Consumer Product Safety Commission (“Commission” or “CPSC”) has previously issued regulations related to this requirement: a regulation that allows parties to test and certify component parts of products under certain circumstances; and a regulation determining that certain materials or products do not require lead content testing. The Commission is proposing to clarify when component part testing can be used and clarify which textile products have been determined not to exceed the allowable lead content limits. In the “Rules and Regulations” section of this *Federal Register*, the Commission is issuing this determination as a direct final rule. If we receive no significant adverse comment in response to the direct final rule, we will not take further action on this proposed rule.

DATES: Submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2011-0081, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: www.regulations.gov. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier 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 notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: www.regulations.gov. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number CPSC-2011-0081, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; (301) 987-2558; email; khatlelid@cpsc.gov.

SUPPLEMENTARY INFORMATION: Along with this proposed rule, CPSC is publishing a direct final rule in the “Rules and Regulations” section of this issue of the *Federal Register*. This direct final rule clarifies when the component part testing can be used and clarifies which textile products have been determined not to exceed the allowable lead content limits. CPSC believes that the clarifications contained in the proposed rule are not controversial, and CPSC does not expect significant adverse comment. CPSC has explained the reasons for the clarifications in the direct final rule. Unless CPSC receives significant adverse comment regarding the clarifications during the comment period, the direct final rule in this issue of the *Federal Register* will become effective [INSERT DATE 60 DAYS AFTER PUBLICATION], and CPSC will not take further action on this proposal. If a significant adverse comment is received for an amendment to only one of the two rules being revised in the direct final rule, CPSC will withdraw only the amendment to the rule that is the subject of a significant adverse comment. If CPSC receives a significant adverse comment, CPSC will publish a notice in the *Federal Register* withdrawing the direct final rule, and the rule will not take effect. CPSC will then respond to public comments in a later final rule, based on this proposed rule. CPSC does not intend to institute a second comment period on this action. Parties interested in commenting on this determination must do so at this time. For additional information, please see the direct final rule published in the “Rules and Regulations” section of this issue of the *Federal Register*.

DRAFT – September 30 2015

Dated: _____

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission



Staff Briefing Package

Amendment of 16 C.F.R. Part 1109:
*Conditions and requirements for relying on component
part testing or certification, or another party's finished
product testing or certification, to meet testing and
certification requirements, regarding testing and
certification of children's toys*

September 30, 2015

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Briefing Memorandum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

This document has been electronically
approved and signed.

Date: September 30, 2015

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Stephanie Tsacoumis, General Counsel
Patricia H. Adkins, Executive Director
Robert J. Howell, Deputy Executive Director for Safety Operations

FROM : George A. Borlase, Ph.D., P.E., Assistant Executive Director, Office of Hazard
Identification and Reduction
Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Division of Toxicology and
Risk Assessment, Directorate for Health Sciences

SUBJECT : Amendment of 16 C.F.R. Part 1109—*Conditions and requirements for relying
on component part testing or certification, or another party's finished product
testing or certification, to meet testing and certification requirements,
Regarding Testing and Certification of Children's Toys*

1. Introduction

Section 14(a)(2) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2063(a)(2), requires manufacturers and private labelers of any children's product that is subject to a children's product safety rule to submit sufficient samples of the product, or samples that are identical in all material respects to the product, to a third party conformity assessment body whose accreditation has been accepted by the U.S. Consumer Product Safety Commission ("CPSC," "Commission") to be tested for compliance with such children's product safety rule ("third party testing"). Furthermore, 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).

In 2011, the Commission issued 16 C.F.R. part 1109, *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* ("component part testing rule"). Through this rule, the Commission sought to help manufacturers meet their testing, continuing testing, and certification obligations under section 14 of the CPSA by giving all parties involved in testing and certification the flexibility to procure or rely on testing that is easiest to conduct or least expensive. For example, it may be more efficient to test component parts of consumer products before final assembly. Such testing may be procured by component part suppliers who then provide the test reports to multiple manufacturers who use such component parts.

Alternatively, manufacturers who assemble finished products can procure component parts testing as the component parts are received, to reduce costs where, for example, the same component part is used in multiple product lines. Component part testing is voluntary.

Part 1109 allows testing at the component part level for compliance to an applicable product safety rule when the entire product is not needed for that test. Tests for chemicals (*e.g.*, lead content, phthalates content, and the solubility of the chemical elements listed in the ASTM International¹ (“ASTM”) standard, ASTM F 963-11, *Standard Consumer Safety Specification for Toy Safety* (“toy safety standard”)),² as well as certain mechanical or performance tests, generally can be performed at the component part level of a product.

Part 1109, subpart A, establishes the scope, purpose, applicability, definitions, and general conditions and requirements for component part testing and certification. Subpart B specifies additional requirements for component part testing for paint, lead content of children’s products, and phthalates in children’s toys and child care articles. Finally, subpart C addresses the use of composite testing (*i.e.*, a technique for testing a combination of different paints or component part samples in a single test for chemical content to determine that each constituent of the composite is within the applicable limit).

Many tests for compliance to consumer product safety requirements are appropriately conducted on component parts, rather than finished products. The component part testing rule was intended to provide the framework by which manufacturers could procure such testing for compliance with applicable requirements. Although the Commission did not include in the rule an exhaustive, enumerated list of all consumer product safety testing requirements that may be conducted through testing component parts of products, nothing in the rule, including subpart B, precludes the use of component part testing for a wide range of products, provided that the general requirements for component part testing are met.

Nonetheless, input from some in the regulated community indicates some uncertainty about whether component part testing is permitted in the assessment of compliance with requirements other than the specific requirements currently referenced in subpart B (paint, lead content of children’s products, and phthalates in children’s toys and child care articles). An example of a requirement not explicitly specified in 16 C.F.R. part 1109 subpart B where component part testing may be used is the requirement in the ASTM F 963 toy safety standard for solubility of specified chemicals for toy substrate materials other than paints.

2. Discussion

Subpart A of 16 C.F.R. part 1109 provides the general requirements for component part testing, and subparts B and C provide for additional conditions for specific products and requirements. Although the component part testing rule does not specifically limit the applicability of component part testing to just those products and requirements included in subparts B and C, the inclusion in the rule of conditions and requirements for specific products and requirements could be misinterpreted by stakeholders as excluding the option of component part testing for other products and requirements that are not explicitly specified in the rule.

¹ <http://www.astm.org/>.

² <http://www.astm.org/Standards/F963.htm>.

Section 1109.1(a) of 16 C.F.R. part 1109 provides the general scope of the rule:

This part applies to tests or certifications of the following when such testing or certification is used to support a certificate of compliance pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA:

- (1) Component parts of consumer products; and
- (2) Finished products when conducted by a party that is not required to test or certify products pursuant to part 1110 of this chapter.

Section 1109.1(c) of 16 C.F.R. part 1109 continues the description of the rule:

Subpart A establishes general requirements for component part testing and certification, and relying on component part testing or certification, or another party's finished product certification or testing, to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA. *Subpart B sets forth additional requirements for component part testing of chemical content* [emphasis added]. Subpart C describes the conditions and requirements for composite testing.

Section 1109.5(a) of 16 C.F.R. part 1109 specifies:

Any party, including a component part manufacturer, a component part supplier, a component part certifier, or a finished product certifier, may procure component part testing as long as it complies with the requirements in this section *and subparts B and C of this part* [emphasis added].

The emphasized text from sections 1109.1(c) and 1109.5(a) shown above may be read as restricting the applicability of component part testing only to the chemical requirements that are specified in subpart B, which explicitly includes paint, lead content of children's products, and phthalates in children's toys and child care articles.

However, section 1109.5(a) further states:

A finished product 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(i) of the CPSA, *based, in whole or in part, on passing component part test reports or certification of one or more component parts of a consumer product* [emphasis added] 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 is sufficient to assess whether the finished product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the finished product; and

(2) The component part tested is identical in all material respects to the component parts used in the finished consumer product. To be identical in all material respects to a component part 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 as the component part of the finished product; rather, it may consist of any quantity that is

sufficient for testing purposes and be in any form that has the same content as the component part of the finished product.

Thus, although the rule is intended to apply broadly to component part testing of consumer products for which component part testing is either required (*i.e.*, the test can only be conducted on a component part of the product, not on the product as a whole), or is sufficient to assess compliance, in whole or in part, of the consumer product with the applicable rule, ban, standard, or regulation, the emphasized text from this part of section 1109.5(a), and the preceding emphasized portion of section 1109.5(a), could be misunderstood to limit the conditions for certification of products based on component part testing.

The requirement in the ASTM F 963-11 toy safety standard for solubility of specified chemical elements from materials other than paints is one example of a requirement not specified in subpart B. Component part testing is appropriate and permitted for certifying compliance with the ASTM F 963-11 standard. Testing for the solubility of specified chemicals other than paints must be conducted on individual, accessible component parts of toys subject to the requirement, as specified in the test procedures in section 8.3 of the toy standard.

Another example of a requirement that is not specified in subpart B, for which component part testing is appropriate, is a bicycle rim test, in which the bicycle wheel must be removed from the bicycle. 16 C.F.R. § 1512.18(j).

In these examples, not only is component part testing acceptable, the tests are required to be conducted on component parts, not assembled finished products.

3. Staff's Recommended Revisions for 16 C.F.R. part 1109

3.1. Clarify Scope

To clarify that component part testing is allowed to determine compliance with any test for which the finished product is not required, such as the ASTM F 963-11 solubility requirements for heavy elements, as long as the general conditions are met, staff recommends that the rule specifically address the general applicability of the rule through an amended subpart A, both in section 1109.1 (scope), and in section 1109.5 (general conditions and requirements) as well.

Staff recommends that the Commission amend section 1109.1(c) of 16 C.F.R. part 1109 to read as follows, where deleted text is indicated with ~~strike through~~, and new text is underlined:

Subpart A establishes general requirements for component part testing and certification, and relying on component part testing or certification, or another party's finished product certification or testing, to support a certificate of compliance issued pursuant to section 14(a) of the Consumer Product Safety Act (CPSA) or to meet continued testing requirements pursuant to section 14(i) of the CPSA. Subpart B sets forth additional requirements for component part testing ~~of chemical content for specific consumer products, component parts, and chemicals.~~ Subpart B is applicable only to those products or requirements expressly identified in subpart B. Subpart C describes the conditions and requirements for composite testing.

Staff recommends that the Commission amend section 1109.5(a) of 16 C.F.R. part 1109 to read as follows, where new text is underlined:

Any party, including a component part manufacturer, a component part supplier, a component part certifier, or a finished product certifier, may procure component part testing as long as it complies with the requirements in this section, and with the requirements of subparts B and C of this part, if applicable in the circumstances identified in subparts B and C.

3.2. Additional Revisions

CPSC staff notes that the component part testing rule contains obsolete references to the ASTM mandatory toy standard and to section numbers within that standard. Staff also notes that the rule does not reflect current guidance concerning inaccessible component parts regarding the phthalate content requirements for certain children's toys and child care articles. Staff recommends that the Commission also address these issues through revision of the component part testing rule.

3.2.1. Update Section 1109.11(a)

The regulation at 16 C.F.R. § 1109.11 addresses testing of paint on toys, with reference to section 4.3.5.2 of ASTM F 963-08. This reference is out of date for both the version and the applicable section of the standard. To avoid confusion, staff recommends that the Commission revise 16 C.F.R. § 1109.11 to reflect the current ASTM F 963-11 toy safety standard and the correct section, as follows, where deleted text is indicated with ~~strikethrough~~, and new text is underlined:

Generally. The Commission will permit certification of a consumer product, or a component part of a consumer 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-~~08~~11 or any successor standard of section 4.3.5.2 of ASTM F 963-~~08~~11 accepted by the Commission if, for each paint used on the product, the requirements in § 1109.5 and paragraph (b) of this section are met.

3.2.2. Update Section 1109.13

After 16 C.F.R. part 1109 was published, the Commission published guidance at 16 C.F.R. part 1199, which implemented section 108(d) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), as amended through Public Law No. 112-28, regarding inaccessible component parts for compliance with the restrictions for phthalates content in certain children's toys and child care articles. The guidance explains the characteristics of component parts that the Commission considers inaccessible and the methods to be used for evaluating accessibility of component parts as a result of normal and reasonably foreseeable use and abuse of the product. Inaccessible component parts are not subject to the phthalates content restrictions.

To reflect the Commission's guidance on inaccessible phthalates, staff recommends that the Commission revise section 1109.13 to clarify that a determination that component parts are inaccessible and need not be tested for compliance with the phthalates requirements should be based on evaluation of the finished product as follows, where new text is underlined:

A certifier may rely on component part testing of appropriate component parts of a children's toy or child care article for phthalate content provided that the requirements in

§ 1109.5 are met, and the determination of which, if any, parts are inaccessible pursuant to section 108(d) of the CPSIA and part 1199 of this chapter is based on an evaluation of the finished product.

This language would be consistent with section 1109.12 regarding inaccessible lead.

4. Economic Analysis

Staff's analysis of small business impacts of the recommended revision of the component part testing rule (Tab A) shows that the proposed changes in the text of the rule could be beneficial to manufacturers who have hesitated to use component part testing because they interpreted the rule to allow component part testing only for the requirements explicitly included in subpart B of the rule.

The recommended revisions to the rule would clarify that component part testing can be used whenever tests on a component part will provide the same information about the compliance of the finished product as the tests of the component after it is incorporated into or applied to a finished product would provide. The revisions do not make any substantive change in the requirements of the current rule. Therefore, the number of manufacturers affected should be small. The proposed change will not increase costs for any entities. Therefore, the recommended change to the rule is not expected to have a significant impact on a substantial number of small entities, and the Commission could certify to that effect.

5. Conclusions and Recommendations

CPSC staff recommends that the Commission amend 16 C.F.R. part 1109 to clarify that component part testing is allowed to determine compliance with any test for which the finished product is not required, such as the ASTM F 963-11 solubility requirements. Staff believes that these clarifications to 16 C.F.R. part 1109 could provide some reduction in third party testing costs while still assuring compliance.

In addition, staff recommends that the Commission revise 16 C.F.R. § 1109.11 to reflect the current ASTM F 963-11 toy safety standard. Staff additionally recommends that the Commission revise section 1109.13 to incorporate evaluation of inaccessible component parts, consistent with current Commission guidance.

CPSC staff has provided the Commission with draft *Federal Register* notices for a direct final rule and a notice of proposed rulemaking, as directed by the Commission in the Fiscal Year 2015 Operating Plan Midyear Manager's Amendment. CPSC staff recommends an effective date of 60 days after publication of the *Federal Register* notice, unless the Commission receives a significant adverse comment within 30 days of publication.

TAB A: Economic Analysis

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: September 30, 2015

TO : Kristina Hatlelid, Ph.D., M.P.H.
Project Manager
16 C.F.R. part 1109 Rule Clarification

THROUGH: Gregory B. Rodgers, Ph.D.
Associate Executive Director
Directorate for Economic Analysis

Deborah V. Aiken, Ph.D.
Senior Staff Coordinator
Directorate for Economic Analysis

FROM : Robert Franklin
Economist
Directorate for Economic Analysis

SUBJECT : Small Business Impacts of a Draft Final Rule Amending the Applicability
of the Component Part Testing Rule.

The CPSC staff is recommending that the Commission approve a draft rule that would amend the component part testing rule, which is codified at 16 C.F.R. part 1109 (“1109,” or “the rule”), in order to clarify when the rule can be used. Some industry representatives have reportedly expressed concern that 1109 limits component part testing to testing for lead and phthalate content. However, although the rule has a specific section on lead and phthalate testing, the component part testing rule was never intended to be, and was never interpreted by CPSC staff to be limited to testing for lead and phthalate content. The purpose of the draft amendment is to clarify that component part testing can be used whenever testing of a component part is sufficient to assess compliance of a finished product, in whole or in part, with an applicable product safety rule. Additionally, the draft amendments would update references to the toy voluntary standard (ASTM F 963-11 or a successor standard) and to the procedures for determining which components are inaccessible and do not have to be tested for phthalate content.

The changes in the text of the draft rule could be beneficial to any manufacturer that has hesitated to use component part testing because they mistakenly believed that component part testing could only be used for lead and phthalate content testing. In fact, 1109 can be used

whenever tests on a component part will provide the same information about the compliance of the finished product as would be provided by tests of the component after the component has been incorporated into or applied to a finished product. For example, compliance with the ASTM F 963 elements requirements could be certified by testing component parts before they are incorporated into a final product. The changes staff recommends for the component part testing rule are only intended to clarify this point. They are not intended to make any change in the substantive requirements of the rule.

Based on the above discussion, the number of manufacturers affected should be small. The recommended changes will not increase costs for any entities. Therefore, the draft rule is not expected to have a significant impact on a substantial number of small entities and the Commission could certify to that effect.



Staff Briefing Package

Amendment of 16 C.F.R. § 1500.91—Determinations regarding lead content for certain materials of products under section 101 of the Consumer Product Safety Improvement Act, regarding printing and dyeing of textiles

September 30, 2015

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Briefing Memorandum



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

This document has been electronically
approved and signed.

Date: September 30, 2015

TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Patricia H. Adkins, Executive Director

Stephanie Tsacoumis, General Counsel

Robert J. Howell, Deputy Executive Director for Safety Operations

FROM : George A. Borlase, Ph.D., P.E., Assistant Executive Director, Office of Hazard
Identification and Reduction

Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Division of Toxicology and
Risk Assessment, Directorate for Health Sciences

Allyson Tenney, Director, Division of Engineering, Directorate for Laboratory
Sciences

SUBJECT : Amendment of 16 C.F.R. § 1500.91—Determinations regarding lead content
for certain materials of products under section 101 of the Consumer Product
Safety Improvement Act, regarding printing and dyeing of textiles

Introduction

The Consumer Product Safety Improvement Act (“CPSIA”) mandates specific lead content limits for children’s products. A children’s product is a consumer product designed or intended primarily for children 12 years of age or younger. 15 U.S.C § 2052(a)(2). Section 101(a) of the CPSIA provides that children’s products manufactured on or after August 14, 2011 may not contain more than 100 ppm of lead.

The CPSIA also established requirements for third party testing of children’s products. These requirements are codified in section 14 of the Consumer Product Safety Act (“CPSA”). Section 14(a)(2) of the CPSA, 15 U.S.C. § 2063(a)(2), requires manufacturers and private labelers of any children’s product that is subject to a children’s product safety rule to submit samples of the product, or samples that are identical in all material respects to the product, to a third party conformity assessment body whose accreditation has been accepted by the CPSC to be tested for compliance with such children’s product safety rule (“third party testing”).

By rule, the Commission determined that certain products and materials inherently do not contain lead at levels that exceed the lead content limits under section 101(a) of the CPSIA. 16 C.F.R. § 1500.91 (“determinations rule”). The effect of such a Commission determination is to relieve the material or product from the third party testing requirement.

Some members of the regulated community have expressed uncertainty about the scope of the determinations rule.¹ This package addresses the potential confusion about the rule and provides a recommendation for clarifying the wording of the rule.

Discussion

The American Apparel & Footwear Association (“AAFA”), a national trade association, has stated that the rule “has unintentionally subjected many inherently lead free operations to testing.” Specifically, AAFA expressed confusion about the meaning of the phrase “or other prints” in 16 C.F.R. § 1500.91(d)(7).

Section 1500.91(d)(7) states that the Commission has determined that certain textile materials do not contain lead at levels that exceed the lead content limits, and that this determination excludes certain textile applications, as follows:

The following materials do not exceed the lead content limits under section 101(a) of the CPSIA provided that these materials have neither been treated or adulterated with the addition of materials that could result in the addition of lead into the product or material:

...

(7) Textiles (excluding after-treatment applications, including screen prints, transfers, decals, *or other prints*) consisting of:

- (i) Natural fibers (dyed or undyed) including, but not limited to, cotton, kapok, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, sisal, silk, wool (sheep), alpaca, llama, goat (mohair, cashmere), rabbit (angora), camel, horse, yak, vicuna, qiviut, guanaco;
- (ii) Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex. 16 C.F.R. § 1500.91(d) (*emphasis added*).

The rule determined that dyes and dyed textiles do not contain lead. However, the rule recognized that some applications and treatments, such as screen prints and other surface treatments, could contain substances that are not inherently lead free. The reference to “other prints” in the rule referred to those after-treatment applications that use non-dye substances. Such prints, in which the non-dye substances do not become part of the fiber matrix but remain a surface coating, could contain lead, and are subject to the testing required under the CPSIA for children’s products. Thus, the determinations, as well as the exclusions from the determinations, are based on the materials used to produce the textile products, and are not based on the techniques used in manufacturing the products.

AAFA’s statements indicate agreement with the Commission’s determination that “screen prints,” “transfers,” or “decals” are not inherently lead free and are still subject to the required

¹ Letter from the American Apparel and Footwear Association to Robert Adler, Acting Chairman of the Consumer Product Safety Commission (June 2, 2014). Available as document CPSC-2011-0081-0059 in docket CPSC-2011-0081 at www.regulations.gov.

testing. However, AAFA asserts that other “printed” fabrics (that use dyes) never contain lead, and that the phrase “or other prints” can be read to exclude from the determination rule items that are dyed (and are lead free) merely because of the technique used to apply colorant. AAFA asserts that this interpretation has resulted in a “significant amount of unnecessary testing.”

Given the complexity of products and manufacturing processes, CPSC staff previously developed Frequently Asked Questions (“FAQs”) to provide guidance about the requirements for lead content in children’s products, including textile products, and the required testing.² As described in the FAQs, dyes absorb into fibers and yarns of fabrics and will not contain lead, while other materials, such as some inks, paints, or pigments may contain lead, and are thus subject to the lead content and testing requirements.

Staff believes that the determinations rule and the FAQs distinguish between textile products, and whether such products are subject to the required testing for lead content, based on whether the products are dyed or include other non-dye finishes, decorations, colorants, or prints, and not on the techniques that are used in manufacturing, printing, or applying such products. While some printing, treatments, and applications are done with dyes that do not contain lead, others may use paints, pigments, or inks that may contain lead.

Staff recognizes that the rule’s reference to “or other prints” in the section addressing exclusions from the determination for textile products could be a source of confusion, and may have the effect of stakeholders procuring unnecessary testing of component parts and materials that contain only dyed textiles. Dyed textiles, regardless of the techniques used to produce such materials and apply such colorants, are not subject to required testing for lead in paint or for total lead content.

Additional Technical Information

Dyes are organic chemicals that can be dissolved and made soluble in water or another carrier so they can penetrate into the fiber. Lead or lead-containing chemicals are not used in modern textile dyeing and production practices. Dyes can be used in solutions or as a paste for printing and applying decorative applications. The most common textile dye classes are disperse, direct, and reactive dyes. Dyes can be applied to textiles at the fiber, yarn, fabric, or finished product stage. Dyes penetrate (absorb) into the fibers and yarns of the textile fabric.

In contrast to dyes, paints and pigments are either organic or inorganic. Both pigments and paints may be used in the textile industry as colorants applied to textile surfaces in printing and other processes. Surface coatings are finishes that are typically applied to the face of a fabric. A surface coating is generally a liquid or semi-liquid product that changes to a solid film when applied in a thin coating to a fabric surface. The film forming material may contain polymers, pigments, solvents and other additives. The fabric is then cured or dried to stabilize the coating. The purpose of the coating may be decorative, functional or both. The coated fabric will have the properties of both the fabric and the coating. When used as a surface treatment or surface coating, these substances do not penetrate (absorb) into the fibers and yarns of a fabric like dyes.

² See FAQs for “Total Lead Content in Children's Products; Exception and Exemptions” available at https://www.cpsc.gov/lead#tl_04; and “Lead In Paint (And Other Surface Coatings)” at <http://www.cpsc.gov/business--manufacturing/business-education/lead/lead-in-paint/#L6>.

Paints consist of finely ground pigments and a binder and are suspended in a solvent. Paints bond to the fabric surface that they are applied to after the solvent dries. Pigments are insoluble in water and are applied to the surface of textile materials and are held there by a resinous binder (non-lead based). The resin combines with the textile. While most paints and pigments do not contain lead, there are some lead based paints and pigments that could be used for certain textile finishing applications, coloring, or printing. Textile treatments and applications that use certain paints, pigments, and certain ink colorants could contain lead in contrast to textile treatments and applications that consist entirely of dyes, which do not contain lead.

Recommended Rule Revision

Staff concludes that the determination rule could be amended to clarify that dyed textiles do not contain lead and that textile applications and treatments that are not dyes could contain lead and therefore, are subject to required testing for compliance. Staff recommends that the Commission revise 16 C.F.R. § 1500.91(d)(7) as follows, where deleted text is indicated with ~~strikethrough~~, and inserted text is underlined:

Textiles (excluding ~~after~~ any textiles that contain treatments or applications, including screen prints, transfers, decals, or other prints that do not consist entirely of dyes)...

Economic Analysis

Staff's analysis of small business impacts of the recommended revision of 16 C.F.R. § 1500.91 (Tab A) shows that the proposed changes in the text of the rule could be beneficial to manufacturers that have subjected textiles with treatments and applications that consist entirely of dyes to third party testing for lead content because the manufacturer misinterpreted the original language of C.F.R. § 1500.91 to require it.

The recommended revision to the rule would clarify that textiles that have treatments and applications that consist entirely of dyes are determined by the Commission not to exceed the lead content limits, and are not subject to the third party testing requirements for children's products. The amendment does not make any substantive change in the requirements of the current rule. The proposed change will not increase costs for any entities. Therefore, the recommended change to the rule is not expected to have a significant impact on a substantial number of small entities and the Commission could certify to that effect.

Conclusion and Recommendation

CPSC staff believes that revision of 16 C.F.R. § 1500.91(d)(7) would clarify that dyed textile materials need not be tested for lead content, regardless of the techniques, including printing, used to apply the dye. Staff believes that the recommended revision is responsive to stakeholder concerns and would provide some third party cost reduction while still assuring compliance.

CPSC staff recommends that the Commission revise 16 C.F.R. § 1500.91(d)(7) to clarify that the textile items that are excluded from the determination regarding lead content are those produced or finished with substances and materials other than dyes.

CPSC staff has provided the Commission with draft *Federal Register* notices for a direct final rule and a notice of proposed rulemaking as directed by the Commission in the Fiscal Year 2015 Operating Plan Midyear Manager's Amendment. CPSC staff recommends an effective date of 60 days after publication of the *Federal Register* Notice, unless the Commission receives a significant adverse comment within 30 days of publication.

TAB A: Economic Analysis

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UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814

Memorandum

Date: September 30, 2015

TO : Kristina Hatlelid, Ph.D., M.P.H.
Project Manager
Third Party Testing Burden Reduction Project

THROUGH: Gregory B. Rodgers, Ph.D.
Associate Executive Director
Directorate for Economic Analysis

Deborah V. Aiken, Ph.D.
Senior Staff Coordinator
Directorate for Economic Analysis

FROM : Robert Franklin
Economist
Directorate for Economic Analysis

SUBJECT : Small Business Impacts of a Draft Amendment of 16 C.F.R. § 1500.91
Clarifying Which Textile Products Have Been Determined Not To Exceed
the Allowable Lead Content Limits

Background

CPSC staff is recommending that the Commission amend 16 C.F.R. § 1500.91 to clarify which textile products have been determined not to exceed the allowable lead content limits. Manufacturers are not required to obtain third party testing to certify compliance with the lead content limits for products that the Commission has determined not to exceed the limits. Currently, 16 C.F.R. § 1500.91(d)(7) lists the following textile products as having been determined not to exceed the lead content limits:

Textiles (excluding after-treatment applications, including screen prints, transfers, decals, or other prints) consisting of:

(i) Natural fibers (dyed or undyed) including, but not limited to, cotton, kapok, flax, linen, jute, ramie, hemp, kenaf, bamboo, coir, sisal, silk, wool (sheep), alpaca, llama, goat (mohair, cashmere), rabbit (angora), camel, horse, yak, vicuna, qiviut, guanaco;

(ii) Manufactured fibers (dyed or undyed) including, but not limited to, rayon, azlon, lyocell, acetate, triacetate, rubber, polyester, olefin, nylon, acrylic, modacrylic, aramid, spandex.

Some stakeholders have asserted that including the words “or other prints” in the list of textile products excluded from the determination has “unintentionally subjected many inherently lead free operations to testing.”³ CPSC infers from these assertions that some parties have interpreted the reference to “other prints” to include prints that consist entirely of dyes that fully penetrate the fibers of the fabric and essentially become part of the fabric. However, the reference to “other prints” is intended to refer to those after-treatment applications, such as screen printing, in which the print does not become part of the fiber matrix but remains a surface coating. It is not intended to include prints that consist only of dyes or similar materials that become part of the fiber matrix itself. This point has been made previously in guidance issued by CPSC.⁴

Although CPSC intended the wording of 16 C.F.R. § 1500.91 to include its determination that the lead content of textile prints that consist entirely of dyes do not exceed the regulated limit, CPSC staff acknowledges that some stakeholders have stated that the language is confusing. Therefore, CPSC staff recommends changing the wording of the regulation to make the meaning more clear. This change would not make any substantive changes in the regulation. The change would modify the first sentence of 16 C.F.R. § 1500.91(d)(7) as follows:

~~Textiles (excluding after any textiles that contain treatments or applications, including screen prints, transfers, decals, or other prints that do not consist entirely of dyes)...~~

Small Entities That Might Be Impacted by the Draft Amendment

Small entities that might be affected by the draft amendment would be manufacturers or importers of children’s products that contain textile prints that consist only of dyes and who are third party testing for lead content because they do not interpret the current wording of 16 C.F.R. § 1500.91 as exempting them from third party testing. Children’s product producers that might use textile components include clothing and apparel manufacturers and some doll or toy manufacturers, especially manufacturers of doll clothing. Some manufacturers of home furnishing textile products that are intended for children, such as some rugs and curtains, could also be affected if they are currently third party testing printed textiles that consist entirely of dyes for lead. Wholesalers or retailers that import these products could also be affected because the importer is responsible for the testing.

³ Letter from the American Apparel and Footwear Association to Robert Adler, Acting Chairman of the Consumer Product Safety Commission (June 2, 2014).

⁴ For example see https://www.cpsc.gov/en/Business--Manufacturing/Business-Education/Lead/Total-Lead-Content/#tl_04a

The number of firms that would actually be affected is expected to be a small portion of the manufacturers or importers of children's products. In order to be affected, a firm must be: 1) manufacturing or importing children's products that contain printed textile components *and* 2) testing these components for lead content. Many carpet and rug mills, for example, may not produce any carpets or rugs intended primarily for children. Similarly, many toy manufacturers might not manufacture toys with textile components. Other manufacturers or importers might correctly understand the intent of the current version of the regulation and might not be testing textile prints that consist only of dyes for lead content.

Impact of Draft Amendment on Small Entities

As discussed in the **Background** section of this memorandum, the draft amendment is only intended to clarify that the Commission has determined that textile treatments that consist entirely of dyes do not contain lead in excess of the statutory requirements and, therefore, for these textiles, manufacturers do not need to certify their compliance with the lead content limitations based on third party testing. It does not make any substantive changes to any requirement that affects manufacturers or importers. However, the amendment could lead to some reduction in third party testing costs if some manufacturers or importers are, in fact, subjecting textile prints that consist entirely of dyes to third party testing for lead content because they misinterpreted the original language of C.F.R. § 1500.91 to require it. No firm will experience a cost increase because of the draft amendment. Therefore, the draft amendment is not expected to have a significant impact on a substantial number of small entities and the Commission could certify to that effect.