Billing Code 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1109

[CPSC Docket No. CPSC–2010–0037]

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

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a final rule regarding the conditions and requirements for relying on testing or certification of either component parts of consumer products, or another party's finished product, or both, to demonstrate, in whole or in part, compliance of a consumer product with all applicable rules, bans, standards, and regulations to support a children's product certificate ("CPC"); as part of the standards and protocols for continued testing of children's products; 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.

DATES: The final rule is effective on [insert date 30 days after date of publication in the **FEDERAL REGISTER**].[1]

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Project Manager,

[1] The Commission voted 3-2 to publish this final rule, with changes, in the Federal Register. Chairman Inez M. Tenenbaum, Commissioners Robert S. Adler and Thomas H. Moore voted to publish the final rule with changes. Commissioners Nancy A. Nord and Anne M. Northup voted against publication of the final rule. Chairman Tenenbaum, Commissioner Adler, and Commissioner Moore issued a joint statement. Commissioner Nord and Commissioner Northrup issued statements. The statements can be found at http://www.cpsc.gov/pr/statements.html.

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. What is the purpose of the final rule?

Elsewhere in this issue of the *Federal Register*, we are issuing a final rule titled, "Testing and Labeling Pertaining to Product Certification." That rule addresses testing, continuing testing, and labeling requirements for children's products, and creates a new 16 CFR part 1107. It is the hope of the Commission that component part testing will help manufacturers meet their testing, continuing testing, and certification obligations under section 14 of the Consumer Product Safety Act ("CPSA").

This final rule on component part testing is intended to give all parties involved in testing and certifying consumer products pursuant to sections 14(a) and 14(i) of the CPSA the flexibility to conduct or rely on required certification testing where such testing is the easiest and least expensive. For example, it may be more efficient to test component parts of consumer products before final assembly. Such testing may be done by component part suppliers so that test reports can be provided to multiple manufacturers using such component parts. Alternatively, manufacturers who assemble finished products can test component parts as they are received to reduce costs where, for example, the same component part is used in multiple product lines. The final rule allows for maximum flexibility because a domestic manufacturer or importer who is required to certify consumer products pursuant to 16 CFR part 1110 ("finished product certifier") can base such certificate upon one or more of the following: (a) component part testing; (b)

component part certification; (c) another party's finished product testing; or (d) another party's finished product certification.

Component part testing as described in this rule is voluntary. While some regulations may require testing a component part of a product to meet a standard, such as the lead content limit in children's products, which must be measured in parts per million per component part, component part testing is never required to be conducted before assembly of a final product. A finished product certifier has the option to contract with its component part suppliers to conduct testing on component parts before assembly; it could procure testing of component parts after receiving them from suppliers but before assembly; or it could provide a sufficient number of finished products to a third party conformity assessment body to test for lead content on a per component part basis.

Although relying on another party's finished product testing or certification, or on component part testing before final assembly of a consumer product, is voluntary, once a party decides to conduct or rely upon either, the requirements in this rule apply. To the extent component part testing is not addressed by another CPSC-enforced rule, regulation, standard, or protocol, the final rule will 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.

Except for component part testing for phthalate content, discussed in section II.D.3 of this preamble, this final rule is intended to supersede all policy statements and guidelines as they apply to testing of component parts.

B. What does the law require?

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 of conformity. 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") for non-children's products. Although discussed in the proposed rule, the final rule on "Testing and Labeling Pertaining to Certification" does not implement requirements for a reasonable testing program for non-children's products. Accordingly, we have not adopted any provisions in this final rule directly related to a reasonable testing program or a GCC. It should be noted, however, that although we are not implementing requirements for a reasonable testing program for non-children's products, manufacturers of non-children's products that are subject to a product safety rule, ban, standard, or regulation are still obligated by the CPSA, as amended by the CPSIA, to certify that their products comply with all applicable safety rules based on a test of each product or a reasonable testing program. Nothing in this rule is intended to preclude a certifier from using component part testing as part of a reasonable testing program to certify non-children's products.

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. 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 ("CPC").

Section 14(i)(2)(B) of the CPSA, 15 U.S.C. 2063(i), requires the Commission, by regulation, to establish protocols and standards for ensuring that a certified children's product that has been tested for compliance with all applicable children's product safety rules is subjected to additional testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts. The final rule on "Testing and Labeling Pertaining to Product Certification," 16 CFR part 1107, implements sections 14(a) and (i) of the CPSA. (On August 12, 2011, the President signed H.R. 2715 into law. Among other things, H.R. 2715 corrected an editorial error in section 14 of the CPSA, by renumbering a second section 14(d) of the CPSA on "Additional Regulations for Third Party Testing" to section 14(i) of the CPSA. Accordingly, throughout this preamble, including comment summaries and responses, we have replaced references to section 14(d) of the CPSA with section 14(i) of the CPSA to be consistent with this renumbering.)

Section 14(g) of the CPSA contains additional requirements for 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 Commission. CPSC regulations, at 16 CFR part 1110, limit the parties responsible for issuing certificates to domestic manufacturers and importers. Part 1110 also specifies the form and content of certificates, and other requirements, including that certificates can be provided in electronic form.

Finally, we note that H.R. 2715 requires us to seek public comment on the extent to which manufacturers with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body. This final rule allows finished product certifiers to use component part testing to meet certification requirements under certain circumstances. Elsewhere in this issue of the *Federal Register*, we have published a notice seeking comment on the issues specified in H.R. 2715, including the testing of a subset of components.

C. What comments did we receive about the proposed rule?

In the *Federal Register* of May 20, 2010 (75 FR 28208), we published a proposed rule that would establish a new part 1109, titled, "Conditions and Requirements for Testing

Component Parts of Consumer Products." Proposed 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. The proposed rule was intended to set out the conditions under which a party certifying a product under section 14 of the CPSA would be able to 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 verifying that the product complies with all applicable requirements enforced by the Commission.

We received 26 comments on the proposed rule, discussing 58 different issues. Most commenters supported the proposed rule. For example, one commenter suggested that the testing and certification of component parts can be cost effective. Other commenters stated that the proposed rule, along with the proposed rule on testing and labeling, which appeared in the same issue of the *Federal Register*, were well thought out and wholly appropriate. Another commenter said that component part testing was more practical and protective of consumers than requiring all tests to be performed on the finished product. Another commenter stated that the rule appropriately placed the final responsibility for ensuring that only certified component parts are used in the finished product on the finished product certifier. Another commenter liked the strong chain of custody and expressed the belief it would encourage manufacturers to use suppliers who have good practices.

Other commenters expressed general concerns about the proposed rule. For example, one commenter thought that the rule's complexity would limit the willingness of some suppliers to certify their component parts voluntarily and therefore, limit the relief that the rule would provide to small businesses.

We discuss these comments, and our responses, in part II of this preamble.

II. Comments on the Proposed Rule, CPSC's Responses, and Explanation of the Final Rule

A. Introduction

The final rule establishes a new 16 CFR part 1109, setting forth the 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. The new part 1109 consists of three subparts: Subpart A – General Conditions and Requirements; Subpart B – Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals; and Subpart C – Conditions and Requirements for Composite Testing.

In this section, we describe each section of the proposed rule, summarize the comments we received for each section, and respond to the comments. We also discuss what changes we made to the final rule. A summary of each of the commenters' topics is presented, and each topic is followed by the Commission's response. For ease of reading, each topic will be prefaced with a numbered "Comment"; and each response will be prefaced by a corresponding numbered "Response." Each "Comment" is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value or importance or the order in which it was received. Comments on similar topics are grouped together.

B. General Comments

1. Should the final rule include finished products?

In the preamble to the proposed rule, we invited comment on whether the final rule should allow finished product certifiers to rely on tests or certifications on finished products as well as on component parts:

> 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?

75 FR at 28209.

(Comment 1) – Some commenters asked whether an importer can accept a finished product certificate from a foreign manufacturer to certify the product. Some commenters stated that, occasionally, two certified products are bundled together for retail sale as a single unit. The commenters stated that the retailer or importer should be able to rely upon the certificates for each of the two bundled products, rather than have to follow the process of certifying the bundled product.

(Response 1) – The preamble to the proposed rule invited comment on whether we should allow finished product suppliers to issue finished product certificates upon which importers or other certifiers receiving such products from the suppliers could use as the basis for issuing their finished product certificates (75 FR 28209). The final rule allows this practice because no practical difference exists between relying on another party's component part testing or certification and relying on another party's finished product testing or certification, provided the same due care and documentation requirements are followed for both types of testing and certification. Just as with component part testing and certification, certifiers may be able to

achieve efficiencies by using this approach and still ensure compliance to applicable safety standards.

For example, under the final rule, an importer can rely on finished product testing or certification provided by a foreign supplier, as suggested by the commenter. Where multiple parties import the same product, a foreign supplier could provide finished product testing reports or certifications to all importers, removing the necessity for each importer to conduct certification testing. Likewise, a party who "bundles" one or more finished products can rely on finished product testing or certifications from another party to issue a finished product certificate for the bundled product. In cases where a finished product certifier combines more than one certified finished product, it has several options in certifying such bundled product. Based on the certificates received for each product in the bundle, the finished product certifier can: (a) issue a new certificate for each product in the bundle; (b) issue a new certificate for the bundled product; or (c) pass along the finished product certificates provided by another party. If the certifier chooses option (b), the certificate should indicate what information required by section 14(g)(1) of the CPSA and 16 CFR part 1110 is applicable to each product.

Our intent is that children's products introduced into commerce in the United States are certified as compliant with all applicable children's product safety rules by a party required to issue such certificate pursuant to 16 CFR part 1110, a domestic manufacturer or an importer. There are multiple ways that this can be achieved by a party required to certify a children's product. The party required to certify a children's product may use one or more of the following:

- Procure component part testing (for those tests for which component part testing is allowed) or finished product testing from a CPSC-accepted third party conformity assessment body and issue a finished product certificate based on those passing test results;

- Rely upon component part testing or finished product testing, procured by another party using a CPSC-accepted third party conformity assessment body, as a basis for issuing a finished product certificate; or

- Rely upon component part certification or finished product certification from another party as a basis for issuing a finished product certificate. If the supplier providing a certificate is also a required certifier (a domestic manufacturer or importer), then the party receiving a certificate does not need to reissue a certificate. If the supplier providing a certificate is doing so voluntarily, and is not required to provide a certificate, then the domestic manufacturer or importer must issue the finished product certificate. It may do so based on the certificates provided.

We also have revised the title for part 1109 from, "Conditions and Requirements for Testing Component Parts of Consumer Products," to "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." The revised title reflects more accurately the fact that the rule sets forth conditions and requirements for relying on testing and certification of component parts, as well as for relying on another party's testing and certification of finished products, to meet the testing and certification requirements in section 14 of the CPSA. We also revised the following sections to reflect that a finished product certifier may rely on finished product testing or certification, in addition to component part testing or certification, from another party who is not required to conduct testing or issue certifications: § 1109.1; § 1109.2; § 1109.3; §§ 1109.4(c), (i), and (m); §§ 1109.5(b), (d), (f), (g), (h), and (i).

2. Can there be a "master certificate" relied upon by multiple manufacturers?

(Comment 2) – One commenter encouraged us to allow importers to reference a "master certificate" issued by another interested party, such as the manufacturer. The commenter stated that in many cases, multiple importers will import identical finished products. Often, these are nationally branded products that simply are imported separately by multiple retailers for

convenience. Without the ability to reference another "master" certificate, each importer/retailer would have to generate its own certificate independently, the commenter asserted.

(Response 2) – As set forth in response to Comment 1 in section II.B of this preamble, if a foreign manufacturer certifies its product and sells that product to many importers, each importer may use the manufacturer's certificate (and other required records) to issue its own certificate. Importers may rely on a "master certificate" issued by another interested party, such as a foreign manufacturer, to eliminate redundant testing, but only if the importer issues its own certificate. Requiring the importer to generate its own certificate means that the importer must exercise due care to make certain that the foreign manufacturer's testing and certification procedures are sufficient to ensure compliance with CPSC regulations, as well as aid the CPSC's enforcement of certification requirements.

If the importer makes a material change in the product, the importer may be able to use the manufacturer's certificate, plus tests pertaining only to the material change, as a basis for issuing its own certificate. Importers remain responsible for the recordkeeping requirements of products they certify.

3. Must component part manufacturers test their components?

(Comment 3) – One commenter stated that we should clarify that component part testing is entirely voluntary for parties supplying component parts or finished products to a finished product certifier ("upstream suppliers"). The commenter further stated that raw material or component part producers, who voluntarily certify their components parts, should be able to include relevant limitations on the certification form to avoid any confusion about the scope of the certification and should not have to furnish certificates in connection with the finished consumer product.

(Response 3) – We agree that component part testing by component part suppliers is voluntary. To reduce any possible confusion about whether the CPSA requires component part manufacturers or suppliers to provide component part certificates, we have added clarifying language regarding the voluntary nature of providing component part test reports or component part certifications by parties other than those who are required to certify pursuant to 16 CFR part 1110. The clarifying language appears in the following sections: (1) Scope – § 1109.1; (2) Applicability – § 1109.3; (3) definition of "component part certifier" – § 1109.4(c); and (4) the definition of "finished product certifier" – § 1109.4(h). For example, § 1109.1 now states: "Component part manufacturers and suppliers may certify or test their component parts, but are not required to do so." As another example, the definition of "component part certifier" in § 1109.4(c) now states that a component part certifier is a party who voluntarily issues a certificate, even though they are not required to do so. Further, in the first sentence of § 1109.5(a) of the final rule, we have clarified that "[a]ny 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."

With regard to limiting the scope of a certificate, the scope of a certificate is dictated by statute and regulation. Sections 14(a)(1)(B) (for non-children's products) and 14(a)(2)(B) (for children's products) of the CPSA state that a certificate must list each safety rule applicable to the product. This requirement is mirrored in 16 CFR § 1110.11(b). Pursuant to proposed § 1109.5(g) (renumbered to § 1109.5(h) in the final rule), component part certificates also must meet the content requirements in 16 CFR § 1110.11. Thus, a component part supplier who voluntarily certifies component parts must list all safety standards and regulations to which the

certificate applies. Unlike a finished product certificate, however, a component part certifier may not know all of the rules and regulations that a component part ultimately may be subject to, or may not choose to certify a component part to every applicable rule and regulation, depending upon what type of finished product incorporates the component part. The requirement to list the safety standards and regulations being certified should allow component part certifiers to state unambiguously the scope of the certification.

Finished product manufacturers should be mindful of the scope of component part certifications and of how such component parts are integrated into finished products to ensure that any additional testing required to certify the finished product is met. For example, a component part supplier of colored bolts may certify to the lead paint and lead in substrate standards. A finished product certifier using such bolts in a children's product would not need to retest for these standards. However, a finished product certifier likely still would need to conduct additional small parts testing on the finished product because small parts testing is something that only can be conducted on finished products.

Finally, under § 1109.5(g), component part certifiers must provide certificates to the finished product certifier who is relying on such certification. A component part certifier, however, does not have to furnish certificates to accompany a finished product; only the finished product certifier must do this, pursuant to 16 CFR part 1110.

C. Subpart A – General Conditions and Requirements

1. Proposed § 1109.1 – Scope

Proposed § 1109.1 would describe the scope of part 1109 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."

As stated earlier in our response to Comment 3 in section II.B of this preamble, we have revised § 1109.1 to clarify that component part manufacturers and suppliers may certify or test their component parts, but they are not required to do so. Parties who are not required to test finished products or to issue finished product certificates pursuant to 16 CFR part 1110 may also voluntarily test such finished products or issue finished product certificates.

Additionally, because the final rule extends to finished products, we have reorganized § 1109.1 to include finished products. As revised, § 1109.1(a) describes the overall scope of part 1109. Section 1109.1(b) clarifies that component part testing and certification and finished product testing and certification under part 1109 are voluntary. We also have added, on our own initiative, a new § 1109.1(c) to summarize the three subparts in part 1109, and we have revised the reference to section 14(d) of the CPSA to section 14(i) of the CPSA due to renumbering arising out of H.R. 2715.

2. Proposed § 1109.2 – Purpose

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.

We received no comments related directly to the purpose of the proposed rule. As stated earlier in our response to Comment 1 in section II.B of this preamble, we revised the purpose in the final rule to incorporate the concept that a finished product certifier may rely upon finished

product testing or certification from another party, in addition to component part testing or certification, to meet the testing and certification requirements in sections 14(a) and 14(i) of the CPSA. Likewise, we removed the concept that a component part could be tested "instead of the entire consumer product," as stated in the proposed rule because the final rule also allows a finished product certifier to rely on testing or certification of a finished product conducted by another party. On our own initiative, we removed the reference to section 14(b) of the CPSA in the last sentence, which now states that component part testing or finished product testing can be used to meet the testing and certification requirements of sections 14(a) and 14(i) of the CPSA. While nothing prohibits certifiers from using component part testing as part of a reasonable testing program, section 14(b) of the CPSA does not itself contain a certification or testing requirement. Section 14(b) of the CPSA allows the Commission to prescribe a reasonable testing program by rule. Elsewhere in this issue of the *Federal Register,* we have issued a final rule on "Testing and Labeling Pertaining to Product Certification." The final rule on "Testing and Labeling Pertaining to Product Certification" reserves, rather than finalizes, provisions pertaining to a "reasonable testing program." Thus, we removed the reference to section 14(b) of the CPSA. We also revised the reference to section 14(d) of the CPSA to cite section 14(i) of the CPSA throughout the rule as a result of renumbering arising out of H.R. 2715.

3. Proposed § 1109.3 – Applicability

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 are responsible for: (1) certifying products under section 14(a) of the CPSA or for continued compliance testing under section 14(d) of the CPSA; or (2) testing 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.

We received no comments related directly to the applicability of the proposed rule. As stated earlier in our response to Comment 1 and Comment 3 in section II.B of this preamble, we revised, on our own initiative, the final rule to incorporate the concept that a finished product certifier may rely upon finished product testing or certification from another party and to clarify, as well, that component part testing is voluntary. We also simplified the final rule's language to establish more clearly that the rule applies to manufacturers and importers who are required to issue finished product certificates pursuant to 16 CFR part 1110, as well as to manufacturers and suppliers of component parts or finished products who are not required to certify products, but who choose voluntarily to undertake certification testing or issuing certificates. We revised the reference to section 14(d) of the CPSA to cite section 14(i) of the CPSA, as a result of renumbering arising out of H.R. 2715.

4. Proposed § 1109.4 – Definitions

Proposed § 1109.4 would define various terms used in the rule.

a. Proposed § 1109.4(a) – Certifier

Proposed § 1109.4(a) would define a "certifier" as a firm that is either a finished product certifier or a component part certifier, as defined in the final rule.

We received no comments on the proposed definition. However, on our own initiative, we have made a nonsubstantive editorial change to replace the word "firm" with the word "party." We made this change in several places in the rule to be consistent internally and to clarify that the term includes organizations and individuals.

b. Proposed § 1109.4(b) – Component part

Proposed § 1109.4(b) 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."

(Comment 4) – Some commenters suggested that the definition of "component part" should include raw materials. The commenters said that, in many cases, a supplier might use the same raw materials in different combinations to make various component parts. For example, a button manufacturer may use various combinations of five different colored dyes and one type of plastic to manufacture a hundred different colored buttons. If each raw material met the requirements of a chemical content rule, then any component manufactured from the materials also would comply.

(Response 4) – Raw materials, such as the colored dyes mentioned by the commenter, could be component parts if they meet the conditions in § 1109.5(a). However, if the compliance characteristics of raw materials could be affected adversely by subsequent processing or contamination, tests of the raw materials would not be suitable to show compliance of component parts made out of such raw materials. The language in the definition is broad enough to encompass raw materials as "any part of a consumer product." Thus, we decline to amend the rule as suggested by the commenters.

However, on our own initiative, we have revised the definition of "component part" to clarify that the type of test performed on each part may vary, depending upon the applicable regulation. For example, each painted plasticized component part of a children's toy must be tested to the lead paint limit and the phthalate content limit, while painted wooden component parts of a children's toy would need to be tested to the lead paint limit only. The proposed

definition would state, in part, that "[w]ithin the same consumer product, which component parts will have to be tested may vary, depending on the test being conducted." We revised the sentence to state: "[w]ithin the same consumer product, the component parts to be tested and the tests to be conducted may vary, depending on the applicable regulations and required test methods, if any."

c. Proposed § 1109.4(c) – Component part certifier

Proposed § 1109.4(c) would define a "component part certifier" 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."

We did not receive any comments about the definition. However, because the final rule allows a finished product certifier to rely on finished product testing or certification from another party, and it reemphasizes that testing and certification of component parts is voluntary, we revised the definition of "component part certifier" on our own initiative. The final rule clarifies that a "component part certifier" is a "party who, although not required to do so pursuant to part 1110 of this chapter, voluntarily certifies the following as complying with one or more rules, bans, standards, or regulations enforced by the CPSC, consistent with the content requirements for certification in part 1110 of this chapter: (1) component parts to be used in consumer products; or (2) finished products."

d. Proposed § 1109.4(d) – CPSA

Proposed § 1109.4(d) would define "CPSA" to mean the Consumer Product Safety Act.

We received no comments on the definition, and we have finalized it without change.

e. Proposed § 1109.4(e) – CPSC

Proposed § 1109.4(e) would define "CPSC" to mean the Consumer Product Safety Commission.

We received no comments on the definition, and we have finalized it without change.

f. Proposed § 1109.4(f) – CPSIA

Proposed § 1109.4(f) would define "CPSIA" to mean the Consumer Product Safety Improvement Act of 2008.

We received no comments on the definition, and we have finalized it without change.

g. Proposed § 1109.4(g) – Due care

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."

We did not receive any comments about the definition of "due care." On our own initiative, we have clarified the definition by adding one sentence. The new sentence states: "[d]ue care does not permit willful ignorance." This is not intended to be a substantive change because any party who is willfully ignorant of material facts, by definition, would not be exercising due care. However, we wanted the final rule to emphasize that a party cannot, and should not, purposely avoid knowing a business partner's testing and certification practices to benefit from an exception contained in section 19(b) of the CPSA.

Section 19(b) of the CPSA provides that a person who holds a certificate issued in accordance with section 14(a) of the CPSA 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, mandatory recall orders, or that are banned hazardous substances) unless such person knows that such consumer

product does not conform. Even those who can take advantage of the exception in section 19(b) of the CPSA may still 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. Certifiers and testing parties have an obligation to resolve known or knowable (in the exercise of due care) problems with testing or certification by another party before relying upon or passing on test reports or certifications.

h. Proposed § 1109.4(h) – Finished product certifier

Proposed § 1109.4(h) 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."

We received no comments on this definition. However, on our own initiative, we made several minor changes. We replaced the word "firm" with "party" to be consistent internally within the rule and to clarify that the term includes organizations and individuals. We also added the word "finished" before "consumer product" to distinguish between voluntary component part certifiers and the requirement in 16 CFR part 1110 to certify finished products. This change arises out of the response to Comment 1 in section II.B of this preamble. Finally, we moved the phrase "pursuant to part 1110 of this chapter" from the end of the sentence and placed it after "consumer product" to clarify that the requirement to certify finished consumer products is contained in part 1110.

i. Proposed § 1109.4(i) – Identical in all material respects

Proposed § 1109.4(i) would define "identical in all material respects" to mean that "there is no difference with respect to compliance to the applicable rules between the samples and the finished product."

We received no comments on this definition. However, on our own initiative, we revised the definition to make several changes that correspond to the change in the final rule that allows a finished product certifier to rely on finished product testing or certification from another party, as discussed in response to Comment 1 in section II.B above. As revised, the definition states: "identical in all material respects" requires that there be no difference with respect to compliance to the applicable rules between the "samples to be tested for compliance and the component part or finished product distributed in commerce."

We also revised the phrase "to the applicable rules" with the phrase "to the applicable rules, bans, standards, or regulations." The inclusion of "bans, standards, or regulations" reflects more accurately the language in section 14(a) of the CPSA. This is intended to be a nonsubstantive editorial change.

j. Proposed § 1109.4(j) – Paint

Proposed § 1109.4(j) would define "paint" to mean "any type of surface coating that is subject to part 1303 of this chapter or section 4.3.5.2 of ASTM F 963."

We received no comments on this definition. However, on our own initiative, we revised the reference to ASTM F 963 to read: "ASTM F 963–08 (or any successor standard of section 4.3.5.2 of ASTM F 963–08 accepted by the Commission)." This change clarifies that successor standards for ASTM F 963 will apply if the Commission accepts them, so that we will not need to update the rule upon adoption of successor standards to ASTM F 963.

k. Proposed § 1109.4(k) – Testing party

Proposed § 1109.4(k) would define "testing party" to mean: "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."

(Comment 5) – Some commenters noted that the definition of a "testing party" includes third party conformity assessment bodies. The commenters also noted that proposed § 1109.5(f)(4) (renumbered § 1109.5(g)(4) in the final rule) specifies that testing parties must provide documentation of the sampling protocols used to the finished product certifier. The commenters stated that third party conformity assessment bodies are responsible only for the samples submitted to them by suppliers or manufacturers and generally are not responsible for the sampling process. Therefore, the commenters stated that they cannot always provide sampling protocols to the certifier. The commenters suggested that we delete or modify the requirement that third party conformity assessment bodies provide documentation of the sampling protocols.

(Response 5) – The commenters are correct that the proposed definition of "testing party" would include a third party conformity assessment body who may not be involved in sample selection or the batch/lot identification of the product and may not be able to provide documentation of these steps. Therefore, we have revised the definition of "testing party" to encompass parties who procure testing, and we exclude specifically from the definition testing laboratories and third party conformity assessment bodies. The definition also explains that "procure" means a party who either conducts testing themselves, when such testing is allowed, or arranges for another party to conduct testing. While they are not required to select samples, third

party conformity assessment bodies and testing laboratories still must provide an attestation to a testing party or certifier who procures a test from them, which states that all testing was performed in compliance with applicable provisions of section 14 of the CPSA, and 16 CFR part 1107, or any more specific rules, bans, standards, or regulations. This requirement is in § 1109.5(g)(7).

l. Proposed § 1109.4(l) – Third party conformity assessment body

Proposed § 1109.4(l) would define "third party conformity assessment body" as: "a third party conformity assessment body recognized by the CPSC to conduct certification testing on children's products."

We received no comments on this definition. However, on our own initiative, we made several changes to the definition. First, we removed "third party conformity assessment body" in the definition's text because the phrase was not helpful. The revised definition states that a "third party conformity assessment body" means "a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children's products." This is a nonsubstantive change that is meant to clarify the definition.

We also added a new sentence to clarify that when the term "third party conformity assessment body" is used throughout the rule, we mean only those laboratories whose scope of accreditation includes the applicable required tests. Only such laboratories can be used to support certification of children's products pursuant to section 14(a) of the CPSA and to ensure continued compliance pursuant to section 14(i) of the CPSA. This change also is nonsubstantive and is meant to clarify the definition.

m. Proposed § 1109.4(m) – Traceable

Proposed § 1109.4(m) would define "traceable" to mean: "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 a component part and, if different, the manufacturer or the component part."

(Comment 6) – Some commenters asked for clarification of component part traceability. Several commenters suggested that traceable means traceability to the part that was tested and not to the constituent components of that part. One commenter stated that it would be extremely difficult to track resin used in plastic parts and suggested deleting the traceability requirements. Another commenter stated that many component manufacturers are, in fact, assemblers of components received from other suppliers. The commenter recommended that the requirements for traceability extend through the supply chain to include the manufacturers of the subcomponents used in component parts.

(Response 6) – After consideration of all of the comments received on traceability, including Comments 12 through 14, discussed in section II.C.5.e of this preamble and in this comment, we amended the definition of "traceability" in the final rule to mean: "the ability of a certifier to identify all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product. Parties who conduct testing may include a manufacturer, a supplier, a testing laboratory, or a third party conformity assessment body."

Traceability extends to the level at which a component part or finished product is tested for compliance to the applicable rule(s). For example, some component part suppliers make parts that may be used eventually in both children's and non-children's products, and a supplier does not necessarily know what the final use may be. This supplier may decide against conducting certification testing on its products. A distributor or subassembly fabricator who

purchases such products, however, may procure third party testing to be able to sell the products to a children's product manufacturer. A finished product certifier who relies on test reports provided by such distributor or subassembly fabricator must be able to trace the component parts back to the party who had the parts tested for compliance.

If a subassembly was tested for compliance to a chemical standard (*e.g.*, lead or phthalates), the testing would have to show that each subcomponent of the subassembly met the required concentration limits. The traceability requirement would extend to the subassembly and not to the supplier of each subcomponent. If the certificate for a subassembly is based on test reports or certificates of subcomponents (such as resin and other constituents), the traceability extends to the subcomponents. We decline to delete traceability requirements from the final rule because the concept of traceability arises out of section 14(g)(1) of the CPSA and because traceability provides the ability to determine where in the testing and certification process, errors occurred that allowed the certification of noncomplying products.

On our own initiative, we also revised the definition to include the concept that a certifier can rely on both component part testing and finished product testing conducted by another party. This change arises out of the response to Comment 1 in section II.B.1 of this preamble.

n. Additional definitions suggested by commenters

(Comment 7) – One commenter suggested that we add several definitions to § 1109.4 to clarify which inks are subject to 16 CFR § 1303.2 (b)(2) and, therefore, could be subject to § 1109.11 (component part testing for paint). The commenter suggested the following definitions:

> **Ink:** a pigmented, liquid or paste used for printing on children's products.
> **Base Colors:** A range of stock colors with which, by intermixing in prescribed combination and amounts, an ink mixer can obtain a wide range of tints, tones, shadings, and intermediate hues.

> **Scrapeable:** Ink products that do not bond with the substrate and can be removed from the substrate without causing undue harm or damage to the underlying substrate. These inks are subject to the provisions of part 1303 of this chapter.
> **Unscrapeable:** Ink products that bond with the substrate and cannot be removed from the underlying substrate. Unscrapeable inks are not subject to the provisions of part 1303 of this chapter.

(Response 7) – Pursuant to section 14(i)(5)(A)(i) of the CPSA, as amended by H.R. 2715, third party certification testing no longer applies to ordinary books or to ordinary paper–based printed materials. The exception does not apply to books or other printed materials that contain components that are printed on material other than paper or cardboard, non-paper components like metal or plastic parts, or to accessories that are not part of the binding and finishing materials. The exception also does not apply to books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book.

Given the exception created by H.R. 2715, we do not have to consider the commenter's suggestion regarding inks used in ordinary books. With regard to the non-excepted products and inks applied to other substrates, we decline to revise the rule as suggested by the commenter. Our existing regulation defines paint and other similar surface-coating materials to be:

> a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually becomes part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

16 CFR § 1303.2(b)(1). Therefore, inks that are not printing inks or that do not actually become part of the substrate would be considered to be paints or other similar surface coatings. These inks could be tested or certified according to § 1109.11. Although not covered by § 1109.11, component part testing or certification can be used with printing inks and inks that actually

become part of the substrate if § 1109.5 is met. For example, if an ink is manufactured wholly from a combination of different base colors, and each base color is tested and found to be compliant with the lead content requirements, then the finished ink can be certified based on the testing of the base colors.

In conducting component part testing on printing inks or inks that do become part of the substrate, testing parties and certifiers should ensure that the tests are applicable to the form in which the ink will be in the finished product. For example, if there are volatile components in the ink that will evaporate during the manufacturing process, the volatile components should not be considered in calculating the lead concentration.

We also note that we have made a determination that CMYK process printing inks (excluding spot colors, other inks that are not used in CMYK process, inks that do not become part of the substrate under 16 CFR part 1303, and inks used in after–treatment applications, including screen prints, transfers, decals, or other prints) inherently do not contain lead in excess of the allowed limits and are excluded from the testing requirements of the CPSIA (16 CFR §1500.91(d)(6)).

5. Proposed § 1109.5 – Conditions and Requirements Generally

Proposed § 1109.5 would set out conditions and requirements that apply generally to all types of component part testing and certification, as well as to finished product testing and certification by another party.

a. Proposed § 1109.5(a) – Component part testing allowed

Proposed § 1109.5(a) would allow certification of a consumer product with all applicable rules, bans, standards, and regulations as required by section 14(a) of the CPSA, and may be used to 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 or a testing party if several requirements are met.

We received no comments specifically on proposed § 1109.5(a). However, we have finalized this section with several changes arising out of the response to Comment 3 in section II.B above. Comment 3 requested that we clarify that component part testing by suppliers is voluntary. We agree. Consistent with this fact, on our own initiative, we added a new opening sentence to § 1109.5(a), clarifying that component part testing is not only voluntary, any party can conduct such testing: "[a]ny 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." The list of parties in this sentence is intended to be illustrative and not exhaustive. On our own initiative, we also clarified that a finished product certifier can rely on either passing component part test reports or certification of one or more component parts of a consumer product, to serve as the basis for issuing a finished product certificate, if the requirements in section (a) are met. Finally, we revised the reference to section 14(d) of the CPSA to cite section 14(i) of the CPSA as a result of renumbering arising out of H.R. 2715.

(1) Proposed § 1109.5(a)(1)

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, section 101 of the CPSIA requires testing an accessible component part of a children's product for lead content because the lead content requirement is measured per part. 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 finished product be tested to determine whether small parts can be detached during the use or abuse test of the finished 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 finished product complies with applicable rules, bans, standards, and regulations should be resolved in favor of testing the finished product.

We received no comments on this provision. However, on our own initiative, we have revised § 1109.5(a)(1) by making several minor changes. We replaced the phrase "can help" in the second sentence with the phrase "is sufficient," to be consistent with the first sentence that establishes when component part testing can be used; this change also reflects more accurately our expectation of when component part testing is appropriate. Throughout the final rule, we also changed any references to the "entire product" to refer instead to the "finished product" to be consistent with the wording used to describe a product ready for distribution to consumers.

(2) Proposed § 1109.5(a)(2)

Proposed § 1109.5(a)(2) would require that the component part that is 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 part for purposes of supporting certification of a children's product, means 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. 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.

(Comment 8) – Multiple commenters expressed concern that a finished product certifier would not be able to ensure that a tested component part was not changed or degraded after testing in a way that could affect compliance. One commenter wrote: "[i]t is beyond the importer's ability to reach back into the supplier's and sub-supplier's manufacturing and transport processes to detect whether there was a substitution or a material change in a component." Another commenter wrote: "[t]o take advantage of this rule, a manufacturer must take responsibility at the sub-micro-level for manufacturing quality."

Several commenters requested that the final rule state that the finished product certifier must "attest that due care was taken" to ensure that no action subsequent to component part testing changed or degraded the product, rather than require the finished product certifier to "certify" that no action was taken subsequent to component part testing that changed or degraded the product. The commenter asserted that this change should be made because a finished product certifier does not have control over the actions of other parties after testing occurs. One commenter noted that the due care requirement applies only to a few specific provisions of the proposed rule, such as proposed § 1109.5(h)(1) (renumbered to § 1109.5(i)(1) in the final rule), which pertains to reliance by finished product certifiers on a component part certificate or a

component part test result. The commenter suggested that the due care standard generally should be applicable to all elements of the proposed rule so that manufacturers will not be left to wonder whether more than their exercise of reasonable judgment and practice, based upon their manufacturing experience and sound knowledge of the product, is required for those aspects of the rule that do not reference explicitly the due care standard.

One commenter quoted the following statement from the proposal: "[t]he 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." The commenter went on to state: "[o]ur company has several hundred vendors producing thousands of SKUs—do you honestly believe we could possibly manage how all these independent companies wash out their molding machines or manage their regrinding operations?"

(Response 8) – We agree that finished product certifiers cannot always attest that no action was taken subsequent to component part testing that could affect compliance adversely. In a practical sense, all the finished product certifier can do to ensure the continued compliance of the component part is to exercise due care toward that end. Accordingly, we revised the rule to ensure that after a product is tested, certifiers and testing parties who are in custody of the product or component part, exercise due care to prevent contamination or degradation of the component parts or finished products to which the testing applies.

First, we moved the last three sentences of proposed § 1109.5(a)(2) into a new § 1109.5(b), now called *Test result integrity*. Sections 1109.5(b)(1) through (b)(3) of the final rule track the last three sentences in proposed § 1109.5(a)(2), with some modifications. In the proposed rule, each of the last three sentences in § 1109.5(a)(2) would refer to different entities,

i.e., "[a] certifier," "[m]anufacturers of finished consumer products," and "[t]he manufacturer." Use of these varying terms may be confusing to stakeholders, and they do not convey accurately that we intend all of these provisions to apply to both testing parties and certifiers. Thus, on our own initiative, we added an opening sentence to § 1109.5(b) to clarify that the provisions in (b)(1) through (b)(3) apply to both certifiers and testing parties. Moreover, to address the commenters' concern that certifiers will not always have knowledge or control over the actions of other parties, we added that the requirements apply only while a component part or finished product is in each party's custody. Finally, the opening sentence in § 1109.5(b) provides that it applies to both component parts and finished products, to incorporate the concept that a finished product certifier also can rely on finished product testing or certification from another party, as set forth in section II.B.1, above.

Second, to maintain test result integrity in the supply stream, we added a new attestation to § 1109.5(g)(10), as suggested by the commenters. This section requires certifiers and testing parties to attest to the exercise of due care to ensure compliance with the requirements set forth in the revised § 1109.5(b) on *Test result integrity*.

With respect to the commenter's suggestion that the due care standard be applied to all elements of the proposed rule, we assume that prudence and competence will be exercised by all parties involved in component part testing and certification. Due care in the context of this rule, as explained in § 1109.4(g) of the final rule, "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. Due care does not permit willful ignorance." Due care is stressed in sections where a certifier relies on component part or finished product test reports or certificates supplied

by another party, and in sections that ensure that a product is not altered in a manner that could affect compliance, such as contamination or degradation, after certification testing.

With respect to the commenter with several hundred vendors producing thousands of SKUs, it would not be necessary for the finished product certifier to know "how all these independent companies wash out their molding machines or manage their regrinding operations." If these vendor companies are providing component part or finished product testing reports or certificates, they will have attested that due care has been taken to ensure that actions subsequent to component part testing have not adversely affected the part. A finished product certifier should receive and review such attestations. Moreover, a finished product certifier may rely upon test reports or component part certificates from another party, provided that such certifier exercises the degree of care that a prudent and competent person in the same line of business would exercise in accepting their validity and is not being willfully ignorant of information suggesting that a supplier is providing noncompliant products, invalid test reports, or falsified certifications. If the importer is unwilling to assume this burden of exercising due care, it can always decide to procure third party testing of children's products from a third party conformity assessment body whose accreditation has been accepted by the CPSC, as set forth in 16 CFR part 1107, because this is a voluntary rule.

We did not receive any comments related to the first two sentences in proposed § 1109.5(a)(2) on samples for component part testing. Section 1109.5(a)(2) has been finalized with these first two sentences only, in order to focus on the sample selection requirements for component part testing. We made several minor editorial changes. We moved the phrase "in all material respects" from the end of the first sentence and placed it in the middle of the sentence, to clarify that the sample must be "identical in all material respects," as defined in § 1109.4(i).

We also removed the phrase "to the applicable content limit" from the second sentence because it was unnecessary and because testing component parts, depending on the product, may involve testing something other than a content limit.

As set forth in response to Comment 8 immediately above, the remaining requirements in proposed § 1109.5(a)(2), regarding ensuring that a component part is not contaminated or degraded after testing but prior to distribution, have been renumbered to § 1109.5(b) in the final rule. Aside from the changes outlined in response to Comment 8, sections 1109.5(b)(1) and (b)(2) of the final rule have been finalized from the last two sentences in proposed § 1109.5(a)(2) with minor editorial changes. For example, on our own initiative, we revised the phrase "finished goods" in §1109.5(b)(1) to "finished products" to avoid introducing a new term and to use consistent language throughout the final rule.

Similarly, on our own initiative, we revised the language in § 1109.5(b)(2) of the final rule. We replaced proposed language requiring the exercise of due care to ensure that "the manufacturing process does not add a prohibited chemical from an untested source…" with language in the final rule stating that "the manufacturing process does not add or result in a prohibited level of a chemical from any source …." This revision clarifies that the rule covers actively adding a chemical to a product to create a noncompliance, as well as passive addition of a prohibited chemical arising out of the manufacturing process, regardless of whether the source is tested or untested. For example, passive contamination could occur if a product is manufactured in close proximity to another product or component, where lead paint that exceeds the allowed lead content limit is being sprayed. This circumstance may allow a children's product to become contaminated with the lead paint. Another scenario may arise where the ink or paint being applied to children's clothing meets the lead paint standard, but the stamps or

screens used to apply the paint result in an unallowable amount of lead being transferred to the children's product.

Finally, we renumbered the third sentence in proposed § 1109.5(a)(2) to § 1109.5(b)(3) in the final rule and made one modification. On our own initiative, we revised the phrase: "no change . . . after testing" and replaced it with the phrase: "[n]o action or inaction subsequent to testing," to clarify that the regulation covers circumstances that involve passive actions, such as storage of consumer products or components, as well as affirmative actions taken by a testing party or certifier.

b. Proposed § 1109.5(b) – Limitation

Under proposed § 1109.5(b) (renumbered to § 1109.5(c) in the final rule), 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.

We received no comments on this provision, but have renumbered it as § 1109.5(c) in the final rule. On our own initiative, we have rephrased this limitation to state that a certifier "must not use tests of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the finished product to assess compliance with that rule, ban, standard, or regulation." This change is intended to clarify the limitation.

c. Proposed § 1109.5(c) – Test Method and Sampling Protocol

Proposed § 1109.5(c) (renumbered to § 1109.5(d) in the final rule) would require that 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, as well as any more specific applicable rules, bans,

standards, regulations, or testing protocols, are used to assess the compliance of the component part.

(Comment 9) – Several commenters requested clarification of proposed § 1109.5(c) (renumbered to § 1109.5(d) in the final rule). One commenter stated that the provision that "certifiers and testing parties must ensure that the required test methods and sampling protocols, as set forth in part 1107, . . . are used to assess compliance of the component part," could be read as charging testing parties with ensuring that certifiers comply with the provisions . . .." This commenter stated that it assumes this is not the Commission's intention. It requested clarification and suggested replacing "both certifiers and testing parties" with "certifiers."

One commenter suggested adding: "(and, as to test methods for tests they conduct, testing parties)." One commenter observed that the proposed rule "appears to clearly provide that the certifying party, including a finished product certifier, must fulfill all the requirements of Section 1107 in sampling and testing of the certified component." The commenter requested that the rule address more specifically issues particular to component parts, such as how requirements for periodic testing and random sampling are to be applied in the context of components or raw material inputs.

(Response 9) – We did not intend that testing parties ensure that finished product certifiers comply with proposed § 1109.5(c). Accordingly, we have clarified the final rule to reflect that when either party, a certifier or a testing party, procures a test, each is responsible for exercising due care to ensure that any required sampling protocols are followed, that the test is conducted using the required test method, if any, and that all other applicable requirements in section 1107, or any other more specific rule, ban, standard, or regulation, are met. We also incorporated the concept that a testing party or certifier may be testing or certifying either a

finished product or a component part. Further, the concept of "due care" is incorporated into this provision, in recognition of the fact that, for children's products, certification testing must be performed by a third party conformity assessment body. Testing parties and certifiers should use due care to ensure that the third party conformity assessment body follows all applicable test methods.

A component part supplier who manufactures and certifies a component part for a children's product is subject to periodic testing and any sampling protocols that may be defined in 16 CFR part 1107, or any more specific rule, standard, ban, or regulation. Finished product certifiers who purchase the component part from a supplier who does not certify or test the component part, must sample and test the batch or lot of the supplied component, or submit samples of the finished products in which the components are used, for testing for compliance with all applicable safety rules, in accordance with 16 CFR part 1107.

(Comment 10) – One commenter stated that the definitions and the requirements imposed on a component part certifier and a testing party regarding their testing and reporting duties appear to be the same. The commenter concluded that the only significant difference between a component part certifier and a testing party appears to be that a certifier assumes legal liability under the law, and a testing party does not. The commenter asked: (1) what additional benefits would component part certifiers expect to receive for taking on the additional liabilities; and (2) what kinds of enforcement actions, if any, would a testing party be subject to if it failed to comply with the reporting and recordkeeping requirements described in the proposed rules? The commenter suggested that the rule define more specifically and differentiate clearly the roles and duties of these two parties.

(Response 10) – The commenter is correct that the testing and reporting duties of component part certifiers and testing parties in the proposal were similar. This is because either a component part certificate or a test report from a testing party can serve as the basis for a finished product certificate. As the commenter noted, however, a person who elects to be a component part certifier, thereby assumes the responsibilities of a manufacturer under 16 CFR part 1107. These responsibilities include: third party certification testing, third party periodic testing, and recordkeeping. A party may choose to assume these responsibilities in the hope of increasing sales to customers who desire to have their component parts certified. Also, some customers may insist on certification of such parts, as a condition of buying the party's products.

As to the commenter's second question, component part testing and certification are voluntary. However, any party who undertakes such testing or certification, and who fails to comply with an obligation imposed by part 1109, has committed a prohibited act under section 19(a)(6) of the CPSA and may be subject to civil or criminal penalties, pursuant to sections 20 and 21 of the CPSA.

(Comment 11) – One commenter stated that it would be useful for the CPSC to specify what aspects of the reasonable testing program under 16 CFR part 1107 are required of a component part testing party. The commenter stated that proposed § 1109.5(c) (renumbered to § 1109.5(d) in the final rule) seems to require a testing party to maintain all aspects of a reasonable testing program, including the recordkeeping and reporting requirements. Part 1109, however, has its own recordkeeping requirements for testing parties, as well as its own disclosure/reporting requirements.

(Response 11) – The final rule on "Testing and Labeling Pertaining to Product Certification," published elsewhere in this *Federal Register*, reserves, rather than finalizes, the

section on a reasonable testing program[2]. Regardless, even under the proposed rule, component part suppliers would not be required to test their products, and therefore would not need a reasonable testing program. With regard to children's products, component part suppliers who choose to become component part testing parties or component part certifiers, must follow testing standards and protocols under part 1107, as well as any more specific rules that apply to the products manufactured. For example, under part 1107, a component part testing party who procures periodic testing may rely on a production testing plan to increase the maximum amount of time between required third party tests to meet the continued compliance provision of section 14(i) of the CPSA. Moreover, testing parties must provide the documentation listed in § 1109.5(g) of the final rule to a certifier relying on such documentation as the basis for issuing a certificate.

In addition to the changes discussed in response to comment 9, on our own initiative we made several formatting and editorial changes to § 1109.5(d) intended to clarify the rule. We altered the format to separate out the requirements related to test methods and sampling protocols into three numbered paragraphs. The proposed rule had contained the concepts in the three paragraphs, but had organized them differently. In § 1109.5(d)(3), we added language to include the concept that testing and certification of both component parts and finished products under this part 1109 rule must follow all applicable requirements in part 1107 of this chapter, as well as section 14 of the CPSA, and any more specific rule, ban, standard, or regulation. Finally, we removed the phrase "testing protocols" from § 1109.5(d)(3) because it is duplicative of the requirement to use applicable test methods, if any, presented in § 1109.5(d)(1).

[2] It should be noted that although we are not implementing requirements for a reasonable testing program for non-children's products, manufacturers of non-children's products that are subject to a product safety rule, ban, standard, or regulation are still obligated by the CPSA, as amended by the CPSIA, to certify that their products comply with all applicable safety rules based on a test of each product or a reasonable testing program.

d. Proposed § 1109.5(d) – Timing

Proposed § 1109.5(d) (renumbered to § 1109.5(e) in the final rule) 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.

We received no comments about this section of the proposed rule, and have finalized with it with one editorial change, the addition of a comma after the word "product." Also, we renumbered this section in the final rule to § 1109.5(e).

e. Proposed § 1109.5(e) – Traceability

Proposed § 1109.5(e) (renumbered to § 1109.5(f) in the final rule) would specify that finished product certifiers may not rely on component part testing conducted by another testing party unless such component parts are traceable.

(Comment 12) – One commenter noted that finished product manufacturers may receive discrete component part shipments that may be commingled with similar components from other sources ordered at different times. Since component parts generally do not carry identifying manufacturing data, the commenter said the traceability requirement will be understood better if they specifically include instructions to maintain inventories to avoid commingling component parts from different sources or even commingled component parts ordered from the same source at different times. The commenter stated that commingling can threaten the integrity of component testing as a viable alternative testing procedure and that mixing a batch of noncompliant component parts with a batch of compliant component parts contaminates the entire lot without any way to sort them out again. The commenter stated that we could

discourage this by requiring finished product manufacturers to manage their component part inventories in ways that will avoid the use of commingled lots in a single finished production lot.

(Response 12) – Section 1109.5(f) of the final rule (renumbered from proposed § 1109.5(e)) states: "[a] certifier must not rely on component part and/or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable." This provision addresses the commenter's concerns. The final rule defines traceability as: "the ability of a certifier to identify all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product. Parties who conduct testing may include a manufacturer, a supplier, a testing laboratory, or a third party conformity assessment body." Accordingly, finished product certifiers who rely on certified component parts from another party must ensure that the component parts are traceable to the party who had the component parts tested for compliance. This requirement means that indistinguishable tested or certified component parts covered by different test reports or certificates should not be comingled. Further, § 1109.5(b)(1) requires that all testing parties and certifiers exercise due care to ensure "[p]roper management and control of all raw materials, component parts, subassemblies, and finished products is established and maintained for any factor that could affect the finished product's compliance with all applicable rules." Although § 1109.5 does not address expressly comingling, comingling component parts can adversely affect the traceability of the component parts of the finished product. Comingling is not allowed if traceability is lost. The final rule gives manufacturers the flexibility to manage inventories in a manner that suits them, as long as compliance is established and maintained.

With respect to the commenter's concern about comingling lots from the same manufacturer that might have been received at different times, if the component part supplier has not identified a shipment as belonging to a previously tested or certified lot or batch, then the finished product manufacturer should not comingle the lots. This is because the finished product manufacturer does not know if the component part supplier has made a material change in the component part after the previous lot was received, and so the finished product manufacturer should conduct certification tests on the new lot (or submit samples of all finished products in which the component part is used for testing for compliance with all applicable safety rules). Alternatively, if the component part supplier has certified or provided testing data on the component part, the component parts could be comingled, as long as the same certificate or testing data covered both batches.

(Comment 13) – One commenter said that the rule should allow a finished product certifier to issue a single certificate covering a set of related products that may be composed of various combinations of a set of component parts. The commenter said that each of the various products covered by the certificate may not necessarily include every component part. The commenter suggested that the rule allow flexibility for a certificate to be over inclusive of the component parts (and component part certifications) that may be used on that actual product, as long as all component parts in a product are covered by at least one of the certifications, and all other conditions of the rule are met.

(Response 13) – If traceability is not maintained between the final products and their constituent component parts, this practice would not be allowed under the rule. For example, if multiple suppliers provide identical component parts, only one of which is included in the final product, traceability is not maintained to a testing party of a component part found to be

noncompliant. However, if multiple suppliers provide distinct component parts, and not every component part is included in the final product, traceability to a component part's testing party can be maintained, and that circumstance is allowed. The traceability requirements in the final rule allow manufacturers and the CPSC to trace testing and certification problems back to the party that had the product tested for compliance. Also, such requirements may help manufacturers identify products that are noncompliant, should a recall become necessary.

The final rule does not contain any requirements regarding the content of certificates. Certificate content requirements are set forth in 16 CFR part 1110, which currently does not require a finished product certificate to list component parts.

(Comment 14) – One commenter suggested that the traceability provisions allow for flexibility, where there may be multiple sources for a single component, but each source is certified independently and listed separately on the certificate. Thus, for a particular product covered by the certificate, a single component may be from Source A, Source B, or Source C, but the components from all three sources have been certified and all are listed on the finished product certificate.

(Response 14) – The final rule does not contain a requirement to list component parts on a certificate. The regulation on certificate contents, 16 CFR part 1110, also does not require a certificate to list component parts. The final rule requires that each component part ultimately can be traced to the party who had the component part tested. Thus, documentation that merely contains the names of various suppliers, without sufficient information to determine which testing party or certifier procured certification testing on each component part, would not comply with the traceability requirement in the final rule.

However, on our own initiative, we finalized § 1109.5(f) with several changes. The final requirement states: "[a] certifier must not rely on component part and/or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable." We added the phrase "finished product" in two places to incorporate fully the concept that a finished product certifier may rely on finished product testing or certification from another party, as long as the finished product is traceable. This change arises out of our response to Comment 1 in section II.B.1 of this preamble. Additionally, we clarified that certifiers can rely on testing or certification from both testing parties and certifiers. The proposed rule would have used only the term "testing party." Because certifiers can also be testing parties, we included both terms in the final rule to prevent any confusion. Finally, we made one editorial change, replacing the word "conducted" with the word "procured" to be consistent with use of these terms in the definition of "testing party" in § 1109.4(k).

f. Proposed § 1109.5(f) – Documentation by Testing Party

Proposed § 1109.5(f) (renumbered to § 1109.5(g) in the final rule) would require testing parties who are not certifying a component part themselves 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 preamble to the proposed rule explained that the information listed is needed so that, if noncomplying products are found, we 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. (75 FR 28210)

(1) Proposed § 1109.5(f)(1)

On our own initiative, we finalized proposed § 1109.5(f)(1) (renumbered to § 1109.5(g)(1) in the final rule) with one change to include the concept that a testing party or certifier may test or certify both component parts and finished products, as explained in response to Comment 1 in section II.B.1 of this preamble.

(2) Proposed § 1109.5(f)(2)

(Comment 15) – Some commenters took exception to proposed § 1109.5(f)(2) (renumbered to § 1109.5(g)(2) in the final rule), which would require identification by lot or batch numbers. One commenter noted that, for ink systems, lot and batch numbers are assigned each time a color is mixed, which could amount to a large number of tests per year, depending upon production schedules. The commenter recommended that for printing ink systems, ink manufacturers should be allowed to group-test, and certify "product families" for component testing because product families represent the same "core formula." The commenter added that

certification of any given component should be allowed, as long as the formula, composition, and manufacturing process does not change. The commenter remarked that the date or date range of when a component part is tested serves the same purpose as a batch or lot number, and thus, suggested that identification by lot or batch numbers be deleted from the final rule.

Another commenter suggested that identification of a lot or batch number should be understood to allow a component part certificate to apply to all of the same materials (rather than a lot or batch) from a supplier, unless and until a material change in the tested materials requires further testing. The commenter noted that the certification would represent the product line as produced by the manufacturer, rather than just the units produced for a particular lot or batch.

(Response 15) – The intent of the proposed requirement to identify the lot or batch number for which the testing applies was to allow for the identification of the particular set of component parts to which the testing applies. The commenters pointed out correctly that this may be done in ways other than by lot or batch numbers. Accordingly, we changed § 1109.5(g)(2) of the final rule to require documentation of "a lot or batch number, or other sufficient information to enable the identification of the component parts or finished products to which the testing applies." This information could include, but would not be limited to, lot or batch numbers, a production date range, or a particular shipment or purchase.

Pursuant to section 14(i)(5)(A)(i) of the CPSA, as amended by H.R. 2715, third party certification testing no longer applies to ordinary books or to ordinary paper–based printed materials. The exception does not apply to non-paper components like metal or plastic parts, or to accessories that are not part of the binding and finishing materials. The exception also does not apply to books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or

packaged with an ordinary book. Thus, it is unnecessary for us to address this comment as it relates to inks used in ordinary books because, as a result of H.R. 2715, ordinary books do not need to be component part tested for certification purposes. With regard to the non-excepted products and inks applied to other substrates, inks may be certified based upon tests of their component parts that show that any combination of the component parts will meet all applicable requirements, provided that no material change has occurred in the component parts since they were tested. This aspect of component part testing should allow the commenter to certify "product families" or "core formulas."

We disagree that the date of testing, or the date range over which testing is conducted, always will have a logical relationship to identification of the products to which the testing applies, as required by § 1109.5(g)(2). For example, a manufacturer could have many different types of component parts tested on the same date. A date or date range may be insufficient to identify each component part tested. However, for those products where the date of testing or the date range over which testing was conducted is the same as "other sufficient information to enable the identification of the component parts or finished products to which the testing applies," such date information can be used to meet the requirement of § 1109.5(g)(2).

(3) Proposed § 1109.5(f)(3)

On our own initiative, we finalized proposed § 1109.5(f)(3) (renumbered to § 1109.5(g)(3) in the final rule) with a revision incorporating the concept that a testing party or certifier may test both component parts and finished products, as explained in response to Comment 1 in section II.B.1 of this preamble.

(4) Proposed § 1109.5(f)(4)

We finalized proposed § 1109.5(f)(4) (renumbered to § 1109.5(g)(4) in the final rule) with a minor editorial revision. On our own initiative, we changed the words "method" and "protocol" to be plural because products and parts may be tested for more than one standard.

(5) Proposed § 1109.5(f)(5)

On our own initiative, we finalized proposed § 1109.5(f)(5) (renumbered to § 1109.5(g)(5) in the final rule) with a revision incorporating the concept that both component parts and finished products may be tested, as explained in response to Comment 1 in section II.B.1 of this preamble.

(6) Proposed § 1109.5(f)(6)

We finalized proposed § 1109.5(f)(6) (renumbered to § 1109.5(g)(6) in the final rule) with several changes. We broadened the rule to include finished products, as discussed in response to Comment 1 in section II.B.1 of this preamble. On our own initiative, we clarified that the Commission expects certifiers and testing parties to provide both the test results and the test values, if any, to a certifier who intends to rely upon such tests to certify a component part or finished product.

(7) Proposed § 1109.5(f)(7)

(Comment 16) – One commenter suggested that the terminology in proposed § 1109.5(f)(7) refer to "all testing of component parts by that body," instead of "all testing," to emphasize that the manufacturer, and not the testing laboratory, is responsible for obtaining samples that are identical in all material respects to the components used in the finished product.

(Response 16) – The issue raised by this commenter affects proposed §§ 1109.5(c), and 1109.5(f)(7) (renumbered to §§ 1109.5(d) and 1109.5(g)(7), respectively, in the final rule). The commenter is correct that, unless parties contract otherwise, a third party conformity assessment

body is not responsible for the selection of samples. Accordingly, we have revised the final rule to relieve testing laboratories of any responsibility under either of these sections, by redefining a testing party to exclude testing laboratories and third party conformity assessment bodies in § 1109.4(k). *See* section II.C.4.k in this preamble. In addition, we have revised § 1109.5(g)(7) to incorporate the commenter's suggestion to clarify who has the responsibility to attest to compliance with 16 CFR part 1107. The final rule states that the attestation is by "the party conducting the testing," meaning the third party conformity assessment body, in the case of a children's product.

Furthermore, on our own initiative, we streamlined the requirement by deleting the following text: "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 . . .." Removal of this text is editorial, and it is not intended to be a substantive amendment. It remains true that identification of the party conducting the testing is required, regardless of the reason for using a particular type of testing laboratory, including a third party conformity assessment body. We also removed the requirement for original test results in this section on our own initiative because test results are already discussed in § 1109.5(g)(6). Finally, we broadened the rule to include finished products, as discussed in response to Comment 1 in section II.B.1 of this preamble.

(Comment 17) – Another commenter stated that proposed § 1109.5(f)(7) seems to require a testing party to "certify" that third party testing results meet the requirements of section 14 of the CPSA. The commenter said that the provision appears to conflict with other provisions in the proposed rule that establish testing parties as entities that conduct proper testing, but who do not have to "certify" under the CPSA.

(Response 17) – We agree that use of the word "certify" in proposed § 1109.5(f)(7) (renumbered to § 1109.5(g)(7) in the final rule) may be confused with a product certification requirement. Accordingly, we changed the word "certify" to "attest" in § 1109.5(g)(7). Pursuant to § 1109.5(g)(7), the party who conducts testing, including a manufacturer or supplier who conducts testing, a testing laboratory, or a third party conformity assessment body, must attest (state in writing) that such testing was performed in compliance with section 14 of the CPSA and 16 CFR part 1107, or any more specific applicable rule, ban, standard, or regulation. Moreover, the party signing the attestation is only responsible for attesting to following the requirements that are applicable to them. Thus, a third party conformity assessment body that merely conducts testing will attest to the testing protocol that was followed. Such a third party conformity assessment body would not need to attest to following applicable sampling protocols, if they were not the party responsible for sample selection.

We finalized proposed § 1109.5(f) (renumbered to § 1109.5(g) in the final rule) with several changes. On our own initiative, we changed the title of this section from "Documentation by testing party" to "Documentation by certifiers and testing parties," to reflect more accurately that both certifiers and testing parties are required to provide the documentation listed in this section. We also clarified that each certifier and testing party is responsible for providing the documentation to a certifier who is relying on such documentation to issue a certificate: "[e]ach certifier and testing party must provide the following documentation, either in hard copy or electronically, to a certifier relying on such documentation as a basis for issuing a certificate." For example, a component part testing party or certifier must provide the documentation to a finished product certifier who is relying on such documentation to issue a

finished product certificate. A testing party must provide this documentation to a component part supplier relying on such documentation to certify a component part.

(8) New §§ 1109.5(g)(8) through (g)(10)

On our own initiative, we added three documentation requirements in the final rule in §§ 1109.5(g)(8), (g)(9), and (g)(10). We based two requirements on other sections in the proposed rule, and the third results from comments we received on the proposed rule.

New § 1109.5(g)(8) requires that a testing party or certifier provide: "[c]omponent part certificate(s) and/or finished product certificate(s), if any . . ." to a certifier relying upon such documentation as the basis for a certificate. The proposed rule contemplated that finished product certifiers could rely upon component part certificates, but the requirement that a component part certifier provide access to the actual certificate was not listed in the documentation section in proposed the proposed rule. For example, proposed § 1109.5(h)(1) would state: "[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 . . .." We corrected the omission of component part certificates in the final rule by adding § 1109.5(g)(8). Moreover, we included both component part certificates and finished product certificates, if any, because a finished product certifier could rely upon either component part certificates or finished product certificates from another party.

New § 1109.5(g)(9) requires that a testing party or certifier provide: "[r]ecords to support traceability as defined in § 1109.4(m) . . ." to a certifier relying upon such documentation as the basis for a certificate. This requirement was moved from proposed § 1109.5(i) on recordkeeping, which would require that "all certifiers must maintain records to support the traceability of component part suppliers . . .." On our own initiative, we decided to move this

requirement to maintain traceability records to the documentation section in the final rule, so that all documentation requirements are in one section. Also, the slightly rephrased requirement to maintain traceability records is more accurate, in that it recognizes that such records can originate from both testing parties and certifiers, and it informs that the details of what is meant by "traceability records" can be found in § 1109.4(m). Section 1109.4(m) clarifies that traceability records include: "the name and address of each testing party and any party that conducted testing on the component part or finished product. . . . Traceability extends to the component part of the product that was tested for compliance, such that if a subassembly is tested, that subassembly must be traceable, not each component part of the subassembly, if those parts were not individually tested for other rules, bans, standards, or regulations."

New § 1109.5(g)(10) requires that a testing party or certifier provide: "[a]n attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure compliance with the requirements set forth in subparagraph (b) of this section." Subparagraph (b) refers to § 1109.5(b) on *Test result integrity*. The rationale for this addition is set forth in response to Comment 9, discussed above in section II.B.5.a.2 of this preamble.

g. Proposed § 1109.5(g) – Effect of Voluntary Certification by Component Part Certifiers

On our own initiative, we shortened the section titled, "Effect of voluntary certification" in the final rule. We removed the phrase "by component part certifiers" from the title to reflect the fact that a testing party or certifier may test voluntarily or certify finished products as well, as set forth in response to Comment 1 in section II.B.1 of this preamble.

(1) Proposed § 1109.5(g)(1)

Proposed § 1109.5(g)(1) (renumbered to § 1109.5(h)(1) in the final rule) 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, and would further require component part certificates to contain all of the information required by part 1110 of this chapter. The preamble to the proposed rule (75 FR at 28210) stated that 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, mandatory recall orders, or that are banned hazardous substances), unless such person knows that such consumer product does not conform. The preamble to the proposed rule (75 FR at 28210 through 28211) further stated that certifiers 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) (renumbered to § 1109.5(i)(2) in the final rule) would address how this duty of due care applies to finished product certifiers.

Section 1109.5(h)(1) of the final rule has been finalized with one revision. On our own initiative, we modified the second sentence in § 1109.5(h)(1) to remove: "[a] component part certificate," and replace it with: "[a]ll certificates," to reflect the fact that this section can relate to both a component part certificate and a finished product certificate, as explained in response to Comment 1 in section II.B.1 of this preamble. All certificates should meet the content

requirements set forth in sections 14(g) of the CPSA, as well as the content requirements in our regulation set forth in part 1110. We note, however, that the only certificate required to accompany a *finished product* is the finished product certificate issued by an importer or domestic manufacturer, as set forth in part 1110. Otherwise, certificates must be provided to a certifier relying on such documentation to certify a product, and certificates must be provided to the Commission, upon request, pursuant to §§ 1109.5(g) and 1109.5(j) of the final rule.

(2) Proposed § 1109.5(g)(2)

Proposed § 1109.5(g)(2) (renumbered to § 1109.5(h)(2) in the final rule) 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.

(Comment 18) – A commenter stated that because the word "certify" or "certification" is so prevalent in business communications in a variety of different contexts, it would be quite simple for a component part supplier to be deemed a component part certifier when it did not intend to become one. To avoid this, the commenter would modify the rule to require any party seeking to be a component part certifier under proposed § 1109.5(g) (renumbered to § 1109.5(h) in the final rule), or a testing party under proposed § 1109.4(k), to state specifically, in writing, that it is providing a certification or supplying testing data as a certifier or testing party (as the case may be) under those regulations.

(Response 18) – We do not believe that the prevalence of the terms "certify" and "certification" in business forms and communications will cause the confusion feared by the commenter. As noted in proposed § 1109.5(g) (now renumbered as § 1109.5(h) in the final rule), component part certificates must contain all of the information required by part 1110 of this

chapter. That unique combination of information, together with the required express certification that the part or product complies with the identified requirements, should make it clear when a party is issuing a certificate pursuant to section 14(a) of the CPSA.

However, we have changed the word "certify," used in proposed § 1109.5(f)(7) (now renumbered to § 1109.5(g)(7) in the final rule) to "attestation." We made this change to clarify and distinguish that the "attestations" required in §§ 1109.5(g)(7) and (10) of the final rule are not the same as product certifications. The words "certify" and "certification," as used in this rule, refer to the product certifications required by section 14(a) of the CPSA.

(Comment 19) – One commenter stated that any obligation to provide a component part or raw material certificate of conformity to the CPSC should rest with the consumer product manufacturer and not with the component part or raw material supplier.

(Response 19) – The CPSIA does not require component part suppliers or raw material suppliers to certify their products. Testing or certification of component parts are entirely voluntary activities for component part manufacturers or component part suppliers. Parties that have no requirement to test or certify their products, and who have not undertaken such tasks, are not expected to provide the CPSC with a certificate. However, we have clarified in § 1109.5(h)(2) that any party who elects to certify compliance of a component part or a finished product with an applicable rule, standard, ban, or regulation, must assume all responsibilities of a manufacturer under sections 14(a) (requiring issuance of a General Conformity Certificate and/or a Children's Product Certificate) and 14(i) (requiring continuing third party testing of children's products) of the CPSA and 16 CFR part 1107 with respect to that component part or finished product's compliance to the applicable rules, standards, bans, or regulations. Moreover, § 1109.5(j) of the final rule requires certifiers and testing parties to make documentation required

by § 1109.5(g) available to the CPSC for inspection, upon request. Such documentation includes certifications, if any. Once a party undertakes testing or certification of a component part or finished product, they are expected to adhere to the requirements of this rule.

Finally, with respect to providing certificates to the CPSC, we also note that section 14(g)(3) of the CPSA states that, upon request, a manufacturer or private labeler must provide a copy of a certificate to the CPSC.

Section 1109.5(h)(2) has been finalized with several changes. On our own initiative, we changed the word "person" to "party" to make it clear that a certifier can be either a person or an entity, and to be consistent with similar language throughout the final rule. We also replaced the phrase "applicable rule" in both places it is used with "applicable rules, standards, bans, or regulations," to track the statutory language of section 14(a) of the CPSA and to be consistent with similar language throughout the final rule. Finally, we added a reference to sections 14(a) and 14(i) of the CPSA for the reasons set forth in response to Comment 19 immediately above.

h. Proposed § 1109.5(h) – Certification by Finished Product Certifiers

(1) Proposed § 1109.h(1)

Proposed § 1109.5(h)(1) (part of which has been renumbered to § 1109.5(i)(2) in the final rule) would require a finished product certifier to 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. The proposal also would require that, if a finished product certifier fails to exercise due care in its reliance on a certificate for a component part, we would not consider the finished product certifier to hold a component part certificate issued in accordance with section 14(a) of the CPSA. Proposed § 1109.5(h)(1) would add that exercising due care 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.

We did not receive any comments on this section of the proposed rule. On our own initiative, we revised § 1109.5(i)(1) to clarify the four different types of documentation that a finished product certifier can rely upon to certify a finished product. We revised the first sentence in proposed § 1109.5(h)(1) to state: "[a] finished product certifier must exercise due care in order to rely, in whole or in part, on one or more of the following as a basis for issuing a finished product certificate: (i) finished product certificate(s) issued by another party; (ii) finished product test report(s) provided by another party; (iii) component part certificate(s); or (iv) component part test report(s)." The phrase "by another party" is associated only with finished product testing and certification in this section because component part testing can be done by the finished product certifier or another party. While finished product certification also can be done by the finished product certifier, part 1109 would not come into play in that circumstance. Part 1109 is relevant only when: (a) any certifier relies on component part testing or certification, regardless of who conducts the testing or provides certification; and (b) a finished product certifier is relying on finished product testing or certification provided by another party. We moved the remaining text in proposed § 1109.5(h)(1) to § 1109.5(i)(2). This revision to clarify the four types of documentation that a finished product certifier can rely on to certify a finished product arises out of the changes made throughout the final rule to incorporate the concept that a finished product certifier can rely upon a finished product certificate provided by another party, as discussed in response to Comment 1 in section II.B.1 of this preamble.

Because the concept that was included in the first sentence of proposed § 1109.5(h)(1), now comprises § 1109.5(i)(1), § 1109.5(i)(2) begins with the second sentence from what was

proposed § 1109.5(h)(1). On our own initiative, we removed the phrase regarding the requirement to exercise due care in reliance on "a certificate for a component part" and replaced it with "another party's certifications or test reports." This phrase broadens § 1109.5(i)(2) so that it incorporates all four of the options for certifying a finished product under part 1109, now described in § 1109.5(i)(1), including finished product testing and certification. We also revised the phrase "a component part certificate" in the first sentence to "a certificate" because the finished product certifier may be relying on component part or finished product certificates. We made a similar change in the second sentence to broaden "a component part certificate" to "another party's certification and/or test reports" to reflect the range of documentation that a finished product certifier may rely on to certify a product. These changes arise out of the concept that a testing party or certifier may test or certify both component parts and finished products in the final rule, as explained in response to Comment 1 in section II.B.1 of this preamble. Further, on our own initiative, we inserted the phrase: "before relying on such documents to issue a finished product certificate," to set forth our expectation that a finished product certifier should exercise due care in relying upon another party's documentation before issuing its own certificate. Finally, we updated the definition of "due care" to track the revised definition in § 1109.4(g).

Section 1109.5(i)(2) in the final rule is intended to limit a finished product certifier from relying on section 19(b) of the CPSA when they know or should know that a certificate is invalid, or based on faulty data or test procedures. Section 19(b) of the CPSA 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 liable for a violation under 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, mandatory recall orders, or that are banned hazardous substances), unless such person knows that such consumer product does not conform. Willful ignorance of testing or certification violations committed by suppliers will not shield finished product certifiers. Parties may also 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.

(2) Proposed § 1109.5(h)(2)

Proposed § 1109.5(h)(2) (renumbered to § 1109.5(i)(3) in the final rule) would state that 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 provision also would state that we may consider a finished product certifier who does not obtain such documentation before certifying a consumer product to have failed to exercise due care.

(Comment 20) – A commenter stated we should clarify that it is sufficient if the finished product certifier "identifies" (instead of "receives") the testing party's compliance with proposed § 1109.5(f) by reference to the testing party's having provided the required documentation to the finished product manufacturer issuing a certificate for the finished product.

(Response 20) – We interpret the commenter's suggestion as allowing a certifier to provide access (such as through an Internet website) to the records, rather than by requiring physical possession of those records. We agree with the commenter and have revised the rule to state: "The finished product certifier may receive such documentation either in hard copy or

electronically, or access the documentation through an Internet website." Electronic access to records can take other forms as well, such as via flash drive, as an e-mail attachment, or by display on a monitor. The final rule does not require any particular format for the transmission or receipt of electronic records.

In addition, we have, on our own initiative, made two changes to the first sentence in § 1109.5(i)(3). We revised the first sentence to state: "[a] finished product certifier must not rely on another party's certificates or test reports unless the finished product certifier receives the documentation under paragraph (g) of this section from the certifier or testing party." We also replaced the proposed rule's phrase: "must not rely on component part testing by a testing party or component part certifier," to state: "must not rely on another party's certificates or test reports" in the final rule. The revised language broadens the section to incorporate the concept that a finished product certifier can rely on another party's finished product test reports or certification, as well as rely on their component part test reports or certificates, as discussed in response to Comment 1, in section II.B.1 of this preamble. We also revised the reference to § 1109.5(f) to § 1109.5(g) in the final rule, where the documentation requirements are now stated.

(3) Proposed § 1109.5(h)(3)

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:

- 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

- 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.

(Comment 21) – Multiple commenters stated that adding detailed component part information on the certificate would inject enormous complexity to the certification process; they further asserted that we should not require component part test results to be listed on the certificate. One commenter added that, as long as the testing and traceability requirements are met, the method of such documentation should be determined by the certifier. One commenter would revise proposed § 1109.5(h)(3)(i) to state expressly that *only* component parts (not subcomponents of components or raw materials of components) need to be listed on the final product certification. For example, a zipper is composed of several subcomponents; each of these subcomponents would be required to be listed on the conformity certificate of the zipper. However, the commenter said that it would be burdensome to require that each zipper subcomponent be listed again on the finished product certificate. The commenters said that traceability of the subcomponents would be preserved because the finished product certificate could refer to the certificate for the zipper, which would list the subcomponents. Another commenter argued that if all of the component part certification information is required on a finished product certificate, the certificate would be long and complex. The commenter asked for clarification on the requirements for certificates and suggested a change in the rule as follows:

> . . . Thus, the Commission should clarify that it is sufficient for the finished–product certification to "identify" the testing party's compliance with § 1109.5(f) by generally referring to the testing party's having provided the required documentation to the finished–product certifier . . ..

(Response 21) – The information required on certificates is specified in section 14(g)(1) of the CPSA and 16 CFR part 1110. Section 14(g)(1) of the CPSA requires the certificates to include the date and place where the product was tested. We interpret this to require references

to every test performed to support the certificate of the product being certified, including tests of component parts. However, references can be indirect, such as by referring readers of the certificate to a source for the underlying certificates or test reports. In addition, to avoid duplication or inconsistency in requirements for certificates between this rule and 16 CFR part 1110, we have deleted sections containing requirements for certificates from the final rule. Thus, we have deleted proposed § 1109.5(h)(3), which would require certificates to identify documentation in proposed § 1109.5(f) and certify that no change occurred after testing that could affect adversely a product's ability to comply with all applicable rules, and proposed §§ 1109.12(d) and 1109.13(d), which would concern certificates for products tested for the lead in paint limit and the phthalate content limit.

(Comment 22) – A commenter stated that, in proposed § 1109.5(h)(3)(i), the word "identify" is ambiguous when it is applied to requiring supporting documentation for a certificate. The commenter suggested that it should be sufficient "for the finished product certification to 'identify' the testing party's compliance with § 1109.5(f) of the proposed rule by generally referring to the testing party's having provided the required documentation to the finished product certifier."

(Response 22) – As noted immediately above in our response to Comment 21, we deleted § 1109.5(h)(3)(i) in the final rule, as well as all other requirements for finished product certificates. Accordingly, it is unnecessary for us to act on the commenter's suggestion.

Proposed § 1109.5(h)(3) has been deleted in the final rule for the reason set forth in response to Comment 21 and because proposed § 1109.5(h)(3)(ii) is redundant to § 1109.5(b) in the final rule. Section 1109.5(b) requires certifiers, including finished product certifiers, among other things, to exercise due care to ensure that while a component part or finished product is in

its custody, no action or inaction subsequent to testing and before distribution in commerce occurs that would affect compliance, including contamination or degradation.

i. Proposed § 1109.5(i) – Recordkeeping Requirements

Proposed § 1109.5(i) (renumbered to § 1109.5(j) in the final rule) would require testing parties to maintain the documentation that would be required in proposed § 1109.5(f) for five years. Additionally, the proposal would require all certifiers 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 five years. The proposal also would require test records to be kept for five years and that all records are available in the English language. The preamble to the proposed rule explained that the record retention period would be set at five years because the statute of limitations under 28 U.S.C. 2462 allows the Commission to bring an action within that time. The proposal also 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 proposal also would require manufacturers to make these records available, either in hard copy or electronically, for inspection by the CPSC, upon request.

(Comment 23) – Several commenters declared that maintaining records for the "life of the product, plus five years" is excessive. One commenter stated that they have been selling a product for more than 30 years and that keeping records for that period of time would be very expensive.

(Response 23) – We have revised the final rule to state that a maximum records retention period of five years will be sufficient for all records required in § 1109.5(g) of the final rule. If a product has a significant noncompliance, it seems likely that the noncompliant aspect of the

product would become apparent within that period. Thus, § 1109.5(j) (renumbered from proposed § 1109.5(i)), now requires that records be kept for a period of five years. Certifiers and testing parties may wish to consider maintaining records for durable products, such as furniture or some infant products, for more than five years. In the event of a recall, such records may be useful in determining the number of affected products and limiting the recall's scope.

(Comment 24) – Some commenters stated that the recordkeeping requirements of proposed § 1109.5(i) (renumbered to § 1109.5(j) in the final rule) seem burdensome in requiring that records be in English and kept in a location in the United States. With much manufacturing occurring outside of the United States and in non-English speaking countries, the commenters said that allowing offshore storage in the local language would make the records most usable to local compliance (*e.g.*, quality assurance) staff. One commenter suggested allowing production of those records in English to CPSC staff, upon request. A commenter suggested that instead of requiring that finished product certifiers maintain the records at a location within the United States, as proposed § 1109.5(i) would require, we should allow the records to be maintained outside the United States, as long as the records can be accessed from the location in the United States that is specified on the certificate.

(Response 24) – We agree that it could be burdensome to maintain all records in the United States. To reduce this burden and still maintain prompt access to records, when needed, § 1109.5(j) (renumbered from proposed § 1109.5(i)) allows required records to be maintained outside the United States, as long as the records can be provided to us upon request, either in hard copy or electronically, such as through an Internet website.

We also agree that, in many cases, it could be burdensome for the records to be maintained in English. Therefore, § 1109.5(j) allows records to be maintained in languages other

than English, if the records can be provided immediately by the certifier or testing party to the CPSC, and if an accurate English translation can be provided by the certifier or testing party within 48 hours of our request, or within such longer period as may be negotiated with CPSC staff. Note, however, that section 14(g) of the CPSA and our regulation at 16 CFR part 1110 require that certificates be in the English language. Accordingly, all certificates, including component part certificates, must be in English.

(Comment 25) – One commenter said that in the preamble to the proposed rule (75 FR 28361), the CPSC states that it will: ". . . likely request access to these records only when it is investigating potentially defective or noncomplying products." (Emphasis added). The commenter expressed the belief that this indicates that collection of this information on every item is not necessary for the proper performance of the CPSC's functions.

Some commenters asked for more flexibility in developing the recordkeeping requirements so that different industries and companies can tailor recordkeeping to their products, processes, and materials used. The commenters added that we should avoid provisions in the final rule that would require companies to integrate multiple systems in order to compile data points across hundreds of thousands to millions of product component parts in order to meet the recordkeeping requirements of the rule, as long as companies, upon request, can provide reasonable data customary in a particular industry to verify that certified components were used in the finished product.

(Response 25) – The commenter's citation to 75 FR at 28361 is contained in the proposed rule, "Testing and Labeling Pertaining to Product Certification," and we have addressed it in the response to comments memorandum and preamble for the final rule on part 1107. Thus, this

portion of the comment is out of scope for the proposed rule on "Conditions and Requirements for Testing Component Parts of Consumer Products."

The remainder of the comment discusses the proposed rule on component part testing. The commenters did not elaborate on what type of flexibility is desired in the recordkeeping provisions. However, the requirements listed in §§ 1109.5(g) and (j) (formerly proposed §§ 1109.5(f) and (i)) indicate only what information is expected to be collected, not the format for collection. Therefore, it should be necessary for the manufacturer or importer to identify and store only the required elements that are not already part of their current recordkeeping system and be certain that the remaining documentation can be produced, upon request, in a manner that clearly identifies the requisite parts. Section 1109.5(j) requires the records to be made available to us, upon request, either in hard copy or electronically, such as through an Internet website. This requirement does not oblige the certifier to implement any specific records management system, and so a certifier is free to structure its recordkeeping systems to meet its needs and to capture the information required by the rule. No change to the final rule was made based on this comment.

(Comment 26) – One commenter stated that the traceability recordkeeping requirements are unnecessary, given the minimal risk to the public's health from the health hazards being addressed, as demonstrated by the CPSC's injury data regarding lead exposure.

(Response 26) – Congress has determined the allowable lead levels and requires that products subject to such requirements be tested and certified. The traceability recordkeeping requirements are intended to make it possible to identify the parties who procured and conducted testing on products that are not in compliance with the applicable rules, bans, standards, and

regulations, and to determine why the testing and certification system did not prevent such noncompliance.

(Comment 27) – One commenter asserted that the proposed rule "makes it abundantly clear that the CPSC is perfecting a myriad of claims to be made against any and all manufacturers when it suits the purpose of the agency." The commenter expressed its fear that the agency could make charges based on missing records or paperwork.

(Response 27) – Component part testing before final assembly of a finished product is voluntary. A finished product certifier is not required to rely on component part certificates or test reports. Even when a test method requires testing of component parts, a finished product certifier can test finished products by disassembling for testing. In some cases, it may be more economical for the finished product to be certified based on tests of the finished product itself, instead of relying on component part certificates or test reports. The main purposes of the documentation requirements in part 1109 are to maintain the integrity of the testing and certification process and to provide traceability to the testing of component parts and finished products on which certification is based.

(Comment 28) – One commenter stated that the Commission needs to provide more guidance to finished product or component part certifiers on how to trace the component parts or how to manage the lot/batch details in their recordkeeping systems. The commenter stated that while some certifiers have sophisticated tracking systems, many certifiers do not and will require a template to guide them.

(Response 28) – Given the range of consumer products, certifiers, and testing parties affected by this rule, we decided to give parties the flexibility to devise recordkeeping systems that are appropriate to their operations. In particular, the breadth of component part types, their

manufacturing methods, and their uses make it impractical to attempt to design a universal recordkeeping template. The final rule specifies the documentation to be provided and its retention period. Certifiers and testing parties should use their knowledge of manufacturing specific products and component parts and tailor their recordkeeping systems to the products, processes, and materials they use.

(Comment 29) – Some commenters expressed concern that the recordkeeping, documentation, and traceability requirements are too complex and are likely to undercut any benefits from component part testing. One commenter stated that using component part testing for some rules, while finished product testing is required for other rules, would be overly complex. One commenter stated that the complex procedures might be appropriate for materials or products that pose a risk of acute toxicity or a serious risk of injury but asserted that they are "overkill" with regard to lead content, lead in paint concentration, and phthalate concentration rules, which the commenter apparently perceives as addressing lesser risks.

(Response 29) – The requirement in the final rule that the component parts tested be traceable, arises out of the requirement in section 14(g)(1) of the CPSA, which requires the finished product certificate to contain some specific information, including the date and place of manufacture, the name and address of any third party laboratory on whose testing the certification depends, the date of the testing, and contact information for the individual responsible for maintaining records of test results. Thus, if we allow parties other than the finished product certifier, such as component part suppliers, to test and certify products, the regime must have elements of traceability, as well as ensure the integrity of the testing and certification process. For example, specific information about testing and certification of component parts will not necessarily appear on the face of a certificate if such testing and

certification is done by component part suppliers. However, we still need to be able to trace the product or component parts back to the parties responsible for testing and certification if a noncompliance is found.

The complexity of the testing and certification process to which the commenter alluded, stems, in part, from the variety of methods available to test or certify component parts and finished products. This flexibility is built into the requirements to allow those who voluntarily test or certify component parts or finished products, to choose the methods that are best suited to their circumstances. How a product is tested or certified, meaning whether the finished product certifier relies on component part testing or certification, or finished product testing or certification, depends upon the product and the applicable safety standards being tested. For example, the same product may involve testing of component parts, such as lead in substrate; and it also might require that some tests, such as small parts testing, be performed on the finished product.

The documentation requirements in proposed § 1109.5(f) (renumbered in the final rule to § 1109.5(g)) and the traceability requirements of proposed § 1109.5(e) (renumbered to § 1109.5(f) of the final rule) are needed to ensure that the finished product certifier has the required information to issue a finished product certificate. These data must be available to the finished product certifier for each component part used in the finished product that was tested separately from the finished product. The statute applies certification requirements to all consumer product safety rules under the CPSA and to any similar rule, ban, standard, or regulation under any other act enforced by the Commission; we do not have the discretion to relax these requirements for products subject to any particular one of these rules. Therefore, we

will not relax the recordkeeping requirements in the final rule, as suggested by these commenters.

D. Subpart B – Conditions and Requirements for Specific Consumer Products, Component Parts, and Chemicals

Subpart B, §§ 1109.11 through 1109.13 of the proposed rule, would set forth conditions and requirements for specific chemical content regulated by the CPSC. These would include the limits for lead content of paint and similar surface-coating materials in 16 CFR part 1303; 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"); the limits for lead content in children's products in section 101(a) of the CPSIA; and the prohibition against more than 0.1 percent of certain phthalates in children's toys and child care articles in section 108 of the CPSIA. (Section 106(a) of the CPSIA states that the requirements of ASTM F 963 must be considered consumer product safety standards issued by the Commission under section 9 of the CPSA.)

1. Proposed § 1109.11 – Component part testing for paint and other 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 was 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 us to revise our 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.

We received several comments about component part testing of paint, which were unrelated to any particular provision of the proposed rule.

(Comment 30) – A commenter stated that the presumption that only the CPSC (or Congress) can make sound judgments when considering safety issues is simply not supported by the data. The commenter added that the concept of using component parts supported by General Conformity Certificates (GCCs) is simple enough. The commenter asked that, given that the restrictions on lead in paint and lead content of children's products are clear under the CPSIA, why not let businesses exercise their judgment on how to meet those requirements and then measure businesses on their success in doing so?

(Response 30) – The proposed rule did not make any presumptions regarding who can make sound judgments about safety issues. The restrictions on lead mentioned by the commenter pertain to the lead in paint requirements under 16 CFR part 1303 and lead content restrictions on children's products in section 101 of the CPSIA. Section 14(a)(2) of the CPSA requires that children's products be tested by a third party conformity assessment body before a children's product can be certified. Therefore, component part tests used as a basis for issuing a

children's product certificate must also be conducted by a third party conformity assessment body.

GCCs, issued pursuant to section 14(a)(1) of the CPSA, do not require third party conformity assessment body testing, and therefore, reliance on such certificates is not permissible as the basis for issuing a Children's Product Certificate. However, GCCs of component parts can be used as a basis for issuing a finished product certificate for a non-children's product.

Part 1109 is intended to give businesses the flexibility to use component part tests in whole, or in part, as the basis for issuing a finished product certificate. Businesses must determine whether component part testing is allowed or required, based on any applicable standard or test method, and they also must decide whether to use component part testing when certifying finished products.

(Comment 31) – One commenter noted that the proposed rule seemed to address paints as if they were components of finished products. The commenter noted that components of finished products, such as fasteners, are often painted, and it would be useful to clarify whether the rule would apply to certifiers of components, as well as to certifiers of finished products.

(Response 31) – By noting in § 1109.4(b) of the final rule that ". . . a component part means any part of a consumer product . . .," it is possible that a component part may be both a component part of a finished product and a component part of another component part. Paints are component parts, in addition to being subject to 16 CFR part 1303. The rule applies to component part certifiers and finished product certifiers.

(Comment 32) – A commenter requested that we specifically approve testing and certification to the lead paint standard of finished product components prior to their

incorporation into the finished product because specific allowance of this finished component testing method for children's products would enhance the likelihood that such testing would be embraced by importers, retailers, and private labelers.

(Response 32) – The commenter correctly interpreted that the proposed rule would allow paints used in products subject to a rule to be tested as component parts without the need to be tested on the finished product. Specifically, "paint" clearly fits into the definition of "component part" in § 1109.4(b) of the final rule. On our own initiative, we shortened the name of § 1109.11 to "Component part testing for paint." The phrase "and other surface coatings" was removed because the word "paint" is a defined term in the rule, at § 1109.4(j), which includes other surface coatings.

a. Proposed § 1109.11(a) – Generally

Proposed § 1109.11(a) would state that 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 4.3.4.2 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 meets the requirements in §§ 1109.11(a)(1) through (a)(3).

We received no comments on proposed § 1109.11(a). On our own initiative, we finalized this section with several changes. First, we revised the language to include both finished products and component parts, consistent with changes throughout the rule to incorporate finished product testing or certification, as discussed in response to Comment 1 in section II.B.1 of this preamble. Second, we amended the reference to section 4.3.5.2 of ASTM F 963 to include "ASTM F 963-08 or any successor standard of this section accepted by the Commission. . . ." This revision is consistent with a change made to the definition of "paint" in § 1109.4(j) of

the final rule, and allows us to rely on revised versions of ASTM F 963 without revising part 1109 whenever we accept a successor standard to any particular version of ASTM F 963. Finally, we deleted the phrase which required that 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 replaced it with a statement that the requirements "in § 1109.5 and paragraph (b) of this section are met." Although the deleted language is an accurate statement of the Commission's expectation, it is duplicative of the general requirements already set forth in § 1109.5. Throughout Subpart B we simplified the rule by removing language that is duplicative of general requirements for component part testing, and we replaced such language with a requirement that the general requirements in § 1109.5 be met, in addition to any more specific requirements set forth in Subpart B.

(1) Proposed § 1109.11(a)(1)

Because compliance of a paint to its content limits is a function of the paint and not the component part or substrate to which it is applied, proposed § 1109.11(a)(1) (renumbered to § 1109.11(b)(1) in the final rule) would require that all testing 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).

(Comment 33) – One commenter urged us to make an explicit statement allowing the use of spray sampling/multiple stamping (where one sample of a product is painted or stamped with a surface coating over a larger area than on the actual product in order to ensure enough paint or other surface coating is available for testing) as an alternative to requiring the destruction of

many samples to obtain a sufficient quantity of a paint or surface coating for testing when the paint appears only on a small part of the product.

(Response 33) – As explained in proposed §§ 1109.11(a)(1) and (2) (renumbered to §§ 1109.11(b)(1) and (2) in the final rule), paint to be tested can be applied to any suitable substrate. The substrate need not be of the same material as the material used in the finished product. Further, a larger quantity of paint may be tested than the quantity used on the finished product. The commenter seemed to believe that the paint must be scraped off an example of the finished product; however, this is not the case. The techniques described by the commenter are acceptable under the rule, but other techniques also could be used.

However, on our own initiative, we moved § 1109.11(a)(1) to § 1109.11(b)(1) in the final rule, and added explanatory language regarding the two requirements for component part testing of paint in this new section (b) as follows: "(b) Requirement. For each paint used on the product: . . ." We also removed the text in brackets regarding the fact that "the substrate used need not be of the same material as the material used in the finished product . . ." and made this information a separate sentence. We made these changes simply for formatting purposes, and we do not consider them to be substantive changes. Finally, on our own initiative, we clarified in § 1109.11(b)(1) that it is unnecessary to scrape dried paint off of a substrate for testing when using Energy Dispersive X-Ray Fluorescence Spectrometry as described in the ASTM F 2583-10 test method to test for lead in paint. Although the paint must be dry, it does not need to be scraped off of a substrate when using this technology. We made this change to acknowledge that on April 5, 2011, we published in the *Federal Register,* a Notice of Requirements for accreditation of third party conformity assessment bodies for lead in paint (76 FR 18645). In that Notice of Requirements, the use of ASTM F2583–10, "Standard Test Method for Determination of Lead in

Paint Layers and Similar Coatings or in Substrates and Homogeneous Materials by Energy Dispersive X–Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams," is allowed for testing the lead content in paint.

(2) Proposed § 1109.11(a)(2)

Proposed § 1109.11(a)(2) (renumbered to § 1109.11(b)(2) in the final rule) would provide that the tested paint must 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. 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.

We received one comment related to proposed § 1109.11(a)(2), which we have summarized above in Comment 33. Additionally, on our own initiative, we renumbered proposed § 1109.11(a)(2) to § 1109.11(b)(2) in the final rule. We also revised the last sentence to state that paint may be supplied to the testing laboratory "for testing" either in liquid form or in the form of a dried film of the paint on any suitable substrate. This revision is intended to clarify the reason why such paint is supplied to a testing laboratory.

(3) Proposed § 1109.11(a)(3)

Proposed § 1109.11(a)(3) would require that the documentation required by a testing party and the certificate required of finished product certifiers under section 14(a) of the CPSA 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).

(Comment 34) – One commenter stated that proposed § 1109.11(a)(3) would specify that the documentation required by a testing party and the certificate required by certifiers shall identify each paint tested by location and formulation. The commenter stated that paint formulations involve commercial and technical secrets and that the requirement to identify paint formulations is beyond the scope of the CPSIA. The commenter suggested deleting the requirement to identify paint formulations.

(Response 34) – The commenter has misinterpreted proposed § 1109.11(a)(3), which would require that documentation identify each paint tested "by color, location, formulation, or other characteristic" (emphasis added). Nevertheless, we deleted this section in the final rule because it is duplicative of the general requirement for all products in § 1109.5(g)(1). Section 1109.5(g)(1) of the final rule requires identification of the component part to which the test report or certificate applies. Any characteristic sufficient to identify the paint that was tested will satisfy this requirement (*e.g.*, "red paint on coat of doll," or "red paint #1234"). The final rule does not require a certifier to provide formulation data. No change has been made to the final rule in response to this comment.

(Comment 35) – One commenter stated that the requirement in proposed § 1109.11(a)(3) for the documentation to identify the location on the finished product where each paint is used would be too difficult to identify each accurately before its use. The commenter suggested deleting this requirement or making it voluntary.

(Response 35) – As noted above in the response to Comment 34, we deleted proposed § 1109.11(a)(3) from the final rule. Section 1109.5(g)(1) of the final rule requires that a certifier or testing party identify the component part tested. This includes paint. This identification may be, for example, by color, location, formulation, or other characteristic. At least one

characteristic is necessary to identify which paint component part on the product is tested or certified. The final rule does not require specifying more than one of these characteristics, but certifiers and testing parties should do so if it is necessary to identify the applicable paint. Therefore, the documentation does not necessarily have to specify the location of the paint on the part. Further, when the test report or certification is solely for the paint, as opposed to a component part with paint applied to it, the location where the paint ultimately might be used is irrelevant to the paint's certification.

b. Proposed § 1109.11(b) – Test reports

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).

We received no comments on proposed § 1109.11(b). However, on our own initiative we deleted this section from the final rule because it is duplicative of other regulations regarding paint, as well as the general requirements for component part testing or certification that have already been set forth in § 1109.5. For example, the fact that paint on a children's product must meet the lead paint limit is already set forth in 16 CFR part 1303. Additional limits on heavy metals in paint for children's products are set forth in section 4.3.5.2 of ASTM F 963. The fact that a children's product must be tested by a third party conformity assessment body is required

by section 14(a)(2) of the CPSA and our regulation at 16 CFR part 1107, published elsewhere in this *Federal Register*. The fact that component part samples tested must be identical in all material respects to the component parts used in the finished product is required by § 1109.5(a)(2) of the final rule, as well as § 1109.11(b)(2). Finally, identification of the paint tested is required by § 1109.5(g)(1) of the final rule.

c. Proposed § 1109.11(c) – Paint certificates

(1) Proposed § 1109.11(c)(1) – Children's Products

Proposed § 1109.11(c)(1) 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.

We received no comments on proposed § 1109.11(c)(1). However, on our own initiative, we deleted this section from the final rule because the requirements are duplicative of other regulations and the general requirements for component part testing or certification in § 1109.5 of the final rule. For example, the fact that a finished product certifier can rely on component part testing or certification is duplicative of §§ 1109.5(a) and 1109.5(i)(1) of the final rule. The fact that a Children's Product Certificate must be based on testing by a third party conformity assessment body is duplicative of section 14(a)(2) of the CPSA and our regulation at 16 CFR part 1107, published elsewhere in this *Federal Register*. The fact that component part samples tested must be identical in all material respects to the component parts used in the finished

product is required by § 1109.5(a)(2) of the final rule, as well as § 1109.11(b)(2). Finally, as described in response to Comment 21 in section II.C.5.h.(3) of this preamble, content requirements for certificates have been removed from the final rule. Certificate content requirements are set forth in section 14(g) of the CPSA and our regulation at 16 CFR part 1110.

(2) Proposed § 1109.11(c)(2) – Non-children's products.

Proposed § 1109.11(c)(2) would provide that for non-children's products that are subject to lead paint limits (such as certain furniture items), 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.

We received no comments on proposed § 1109.11(c)(2). On our own initiative, however, we deleted this section from the final rule because it is a restatement of the law on non-children's products and the general requirements for component part testing or certification in § 1109.5 of the final rule. Moreover, pursuant to § 1109.5(a) of the final rule, a finished product certifier may rely on component part testing to certify its product.

(3) Proposed § 1109.11(c)(3) – Traceability

Proposed § 1109.11(c)(3) 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.

(Comment 36) – A commenter stated that our position on the testing of paint (*Traceability*, proposed § 1109.11(c)(3)), should not be interpreted literally, so long as the

manufacturer can show the source of that batch, consistent with the more general definition and requirement of traceability.

(Response 36) – We agree with the commenter. Similar to other component parts, the traceability of paint to the lead content requirements or other rules should extend to the level at which the paint was tested for compliance. We amended § 1109.4(m) to define traceability to extend to the component part of the product tested. In the commenter's example, if the paint was tested at the batch level (as opposed to the constituent components of the paint), the traceability extends to the batch. We also deleted the traceability requirement specifically for paint in proposed § 1109.11(c)(3), because it was duplicative of the traceability requirements in §§ 1109.4(m) and 1109.5(f) in the final rule, which applies to all products and component parts, including paint.

(Comment 37) – One commenter sought clarification of the traceability requirement for testing paint (proposed § 1109.11(c)(3)). The commenter stated that requiring a finished product manufacturer to trace a batch of paint to its source would be reasonable. However, the commenter added, if the intent of the provision is to require the manufacturer to be able to trace back from a particular item of a finished product to the batch of paint used on that product, then the requirement would be onerous and serve no clear purpose.

(Response 37) – We deleted § 1109.11(c)(3) from the final rule because it is duplicative of the general traceability requirements that apply to all component parts in §§ 1109.4(m) and 1109.5(f) of the final rule. One reason for the traceability requirement is to be able to identify the testing party and the third party conformity assessment body if a noncomplying paint is found on a children's product distributed in commerce. Traceability from the finished product to the party who tested the paint is required to help determine why the testing and certification

scheme embodied in parts 1107 and 1109 failed to prevent the use of a noncomplying paint on a children's product. Moreover, if a noncompliant paint is found, traceability information can help us and a manufacturer to determine the scope of any resulting recall.

(4) Proposed § 1109.11(c)(4) – Prevention of contamination subsequent to testing

Proposed § 1109.11(c)(4) would require that the finished product manufacturer must ensure that paint meeting the applicable limits when tested and certified is not contaminated later with lead from other sources before or during application to the product.

We received no comments regarding this section. However, on our own initiative, we deleted § 1109.11(c)(4) from the final rule because it is duplicative of § 1109.5(b) on test result integrity that applies to all certifiers and testing parties.

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

On August 14, 2011, the general limit for lead in any accessible part of a children's product was reduced from 300 parts per million ("ppm") to 100 ppm (*see* section 101(a)(2)(B) of the CPSIA). On August 12, 2011, the President signed H.R. 2715 into law. The new law revised section 101 of the CPSIA to state that the lead content limits apply only to children's products that are manufactured after the effective date of each limit; thus, the 100 ppm lead content limit applies only to children's products manufactured after August 14, 2011.

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 whose accreditation to test for lead in children's metal jewelry has been accepted by the CPSC. Such entities are listed on the CPSC's website (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 lead paint limit in 16 CFR part 1303. The requirement for testing and certification of other children's products for lead content (except paint) currently is stayed until December 31, 2011.

Children's products, other than children's metal jewelry, or products made of materials which, by their nature, will never exceed the lead content limits, must be certified as being in compliance with the 100 ppm lead content limit, only if they are manufactured after December 30, 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 whose accreditation to test for lead in children's products has been accepted by the CPSC.

This section of the final rule is based on our previously published enforcement policy for testing products for compliance with lead limits. 74 FR 68593, 68595 (December 28, 2009). Section 1109.12 on component part testing for lead content of children's products is intended to supersede the enforcement policy with regard to component part testing of lead content in children's products contained in section V of the enforcement policy.

We received several general comments, summarized below, about component part testing for lead content in children's products that do not relate directly to a proposed section of the rule.

(Comment 38) – One commenter requested that we make an explicit statement about component part testing, given that certain types of component part materials are exempt from testing and certification requirements. The commenter is concerned that, without specific language, the final customer will not accept component testing if exempt parts are not tested. The commenter placed the comment on the docket for the proposed 16 CFR part 1107 rule, and recommended revising proposed § 1107.20(c) as follows:

> (c) Except where otherwise specified by a children's product safety rule, a manufacturer may substitute component part testing for complete product testing

> pursuant to 16 CFR [part] 1109 if the component part, without the remainder of the finished product, is sufficient to determine compliance for the entire product. *Component part testing can be used to substantiate compliance for those children's products where part of the product has been exempted from testing pursuant to Section 1500.91.* (Italics indicate proposed language.)

(Response 38) – This comment concerns the component part testing rule; accordingly, we are responding to this comment here. If the suggested change were to be made, the appropriate place to make the change would be to the component part testing for lead content section, proposed 16 CFR § 1109.12. We agree that component part testing is appropriate to substantiate compliance for children's products in which part of the product has been exempted for testing. However, we do not believe that it is necessary to revise the final rule to add the language suggested by the commenter. The commenter's suggested language would be duplicative of what already is stated in other rules on exceptions from testing. Lead content, in particular, must be tested part-by-part under section 101 of the CPSIA. Because the statute and the regulations already specify that exempted materials do not require testing, we decline to repeat those exemptions in part 1109.

(Comment 39) – One commenter stated that the proposed rule on component part testing was stricter than necessary and that Congress did not require such a complicated regulatory scheme. The commenter stated that the CPSC's recall data from 1999–2010, show only one death and three purported injuries from lead. The commenter further states that incidents of fraud in testing are infrequent and are already addressed by other statutes. The commenter also mentioned its own record of a single recall of a total of 130 pieces since 1985.

(Response 39) – Section 14(a)(2) of the CPSA requires manufactures of children's product subject to an applicable children's product safety rule to submit sufficient samples to a CPSC-accepted third party conformity assessment body for testing. Based on such third party

testing, a children's product manufacturer must issue a certificate that such product complies with the applicable children's product safety rules. Section 14(d)(2)(B) of the CPSA requires the Commission, by regulation, to establish protocols and standards for ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to test periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts. Additionally, section 101 of the CPSIA establishes new lead content limits for children's products, and it lowers the lead paint requirement to 90 ppm.

Our implementation of the statute for component part testing is intended to reduce the statutorily required testing burden, by allowing considerable flexibility for component part suppliers and finished product certifiers. Component part suppliers may choose voluntarily to have their component parts tested or certified. Finished product suppliers may use voluntarily a combination of component part certificates, component part test reports, or test reports or certificates of the finished product to show compliance with the applicable product safety rules. Component part testing may be used voluntarily to reduce the economic burden associated with testing and certification, by taking advantage of component part tests that can be used for multiple products. Because the CPSA requires third party testing of children's products, and because the commenter did not suggest ways in which the rule on component part testing could be made less strict and still comply with the law, nor did the commenter provide any explanation on how a regulation based on risk assessment would comply with the CPSIA, we have no basis to revise the final rule in response to this comment.

(Comment 40) – One commenter suggested that, because there have not been recalls or reports of illness or injury due to the presence of lead in ordinary books, they should be excluded

from the requirements of the CPSIA. The commenter added that there should be a much more reduced testing regimen for books and other products that have a very low potential for risk, followed by their removal from the testing requirement altogether.

(Response 40) – Pursuant to section 14(i)(5)(A)(i) of the CPSA, as amended by H.R. 2715, third party certification testing no longer applies to ordinary books or to ordinary paper-based printed materials. The exception does not apply to non-paper components like metal or plastic parts, or to accessories that are not part of the binding and finishing materials. The exception also does not apply to books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book. Thus, given how H.R. 2715 has amended section 14(i) of the CPSA, it is unnecessary for us to address the commenter's issues and concerns.

(Comment 41) – One commenter stated that it cost $3,700 for the third party testing required for one of his products. The commenter also said the 90 ppm lead concentration limit is not realistic. The standard aluminum die-cast alloy, A380, allows a lead content of up to 500 parts per million, the commenter observed. A380 is used for cooking and baking ware, and according to the commenter, it does not make sense that a child cannot play with a die-cast toy but can eat food baked in a die-cast cake pan. The commenter asserted that because his facility is ISO 9001:2008 compliant, it documents all receipts of raw materials, and conducts a metal analysis for each production run with a spectrometer, there is no need for a third party test.

(Response 41) – The CPSIA altered the lead concentration limit in paint and other surface coatings to 90 ppm (16 CFR part 1303). Such limit does not apply to lead content in children's products. As of August 14, 2011, section 101 of the CPSIA specifies a maximum limit of 100 ppm lead content in children's products; it does not impose a comparable limit on non-children's

products (such as the cooking and baking ware named by the commenter). The 100 ppm limit is set by statute and is not based on a hazard analysis of the particular product under consideration. Section 14(a) of the CPSA states that manufacturers of children's products must have third party conformity assessment body testing to provide a basis for issuing a Children's Product Certificate. The CPSA contains no provision for excluding products made by companies that are ISO 9001:2008 compliant, that document their receipts, or that use first party testing techniques during production. H.R. 2715 establishes a process by which a functional purpose exception to the lead content limit may be granted to a product, class of product, material, or component part if the Commission makes certain determinations, after a notice and hearing. To date, we have not granted any functional purpose exceptions. Because the statute is clear on the lead limits and the requirement for third party testing, and in the absence of functional exceptions, we decline to revise the rule based on this comment.

a. Proposed § 1109.12(a) – Generally

Proposed § 1109.12(a) would explain that a certifier may rely on component part testing of each accessible 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.

We received no comments on proposed § 1109.12(a). On our own initiative, however, we finalized this section with several revisions. Section 1109.12 now states:

> 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 the

> requirements in § 1109.5 are met, and the determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and part 1500.87 of this chapter is based on an evaluation of the finished product.

We do not consider the revisions to be substantive; they are instead intended to remove statements that are unnecessary in this rule on component part testing, and to add helpful citations to other relevant statutes and regulations. We deleted proposed § 1109.12(a)(2) from the final rule because it is duplicative of the general requirements for component part testing set forth in §§ 1109.5(g) (documentation requirements) and (i) (requirements for finished product certifiers) of the final rule. We also added a citation to § 1109.5 to clarify that all of the general requirements in that section for component part testing must be met for lead content component part testing. Proposed § 1109.12(a) was renumbered to § 1109.12, and we moved the language that was in proposed § 1109.12(a)(1) into § 1109.12. This formatting change was done to streamline the rule; by deleting subparagraph (a)(2), it was no longer necessary to number the remaining paragraphs as paragraph (a) or subparagraph (a)(1). Finally, we incorporated citation references to both the CPSIA and our regulation at 16 CFR § 1500.87, which discuss the determination of inaccessible parts of a children's product, to clarify how testing parties and certifiers should determine what is an inaccessible part of a finished product for lead content testing purposes.

b. Proposed § 1109.12(b) – Component part test reports

Proposed § 1109.12(b) would state 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).

We received no comments on proposed § 1109.12(b). However, on our own initiative we deleted this section from the final rule because it is duplicative of other regulations and the general requirements for component part testing in § 1109.5. For example, the fact that a certification to the lead content limit for children's products must be based on testing conducted by a third party conformity assessment body is already a requirement pursuant to section 14(a)(2) of the CPSA and part 1107 of this chapter, published elsewhere in this *Federal Register*. The fact that a finished product certifier can rely on passing test reports or a certification of one or more component parts of a consumer product to certify a finished product is provided for in §§ 1109.5(a) and 1109.5(i) of the final rule. Finally, documentation requirements for reliance on test reports or certifications, including product identification, are set forth in § 1109.5(g) of the final rule.

c. Proposed § 1109.12(c) – Component part certificates

Proposed § 1109.12(c) would state 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 certificate pertaining to the component part must identify all test reports underlying the certification consistent with section 14 of the CPSA.

We received no comments on proposed § 1109.12(c). However, on our own initiative, we deleted this section from the final rule because it is duplicative of other regulations and the

general requirements for component part testing in § 1109.5. For example, the fact that a finished product certifier can rely on a certification of one or more component parts of a consumer product to certify a finished product is provided for in §§ 1109.5(a) and 1109.5(i) of the final rule. The fact that a certification to the lead content limit for children's products must be based on testing conducted by a third party conformity assessment body is already a requirement pursuant to section 14(a)(2) of the CPSA and part 1107, published elsewhere in this *Federal Register*. The requirement that sample component parts tested on which certification is based must be identical in all material respects to the component part(s) used in the finished product is required by section 14(a)(2) of the CPSA and § 1109.5(a)(2) of the final rule. Finally, documentation requirements for reliance on certifications are set forth in § 1109.5(g) of the final rule. As described in response to Comment 21 in section II.C.5.h.(3) of this preamble, all requirements for the contents of certificates have been deleted from the final rule. All certificate content requirements are set forth in section 14(g) of the CPSA and our regulation at 16 CFR part 1110.

d. Proposed § 1109.12(d) – Certificates for the finished product

Proposed § 1109.12(d) would require the certificate accompanying the children's product to list each component part 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 certification for the finished product is based.

We received several comments regarding certificate requirements for component parts, which are summarized in Comment 21 in section II.C.5.h.(3) of this preamble. As set forth in the response to Comment 21, we decided to delete all content requirements for certificates to avoid duplication in or inconsistency with the requirements in 16 CFR part 1110. Accordingly,

we deleted proposed § 1109.12(d) from the final rule. All certificate content requirements are set forth in section 14(g) of the CPSA and our regulation at 16 CFR part 1110.

3. 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.

The Commission approved a "Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety Improvement Act" on August 7, 2009. On August 17, 2009, a Notice of Availability regarding the Statement of Policy was published in the *Federal Register* (74 FR 41400). The Statement of Policy can be viewed and downloaded from the CPSC website at: http://www.cpsc.gov/about/cpsia/componenttestingpolicy.pdf. In brief, we believe that only those plastic parts or other product parts which could conceivably contain phthalates ("plasticized component parts") should be tested for phthalates. We consider it to be unnecessary to test and certify materials that are known not to contain phthalates or to certify that phthalates are absent from materials that are known not to contain phthalates.[3] In addition, we believe that when testing covered products, the assessment of the concentration of phthalates is to be based on testing of the plasticized component parts, rather than testing of the

[3] Untreated/unfinished wood, metal, natural fibers, natural latex and mineral products are not expected to inherently contain phthalates and need not be tested or certified, provided that these materials have neither been treated nor adulterated with the addition of materials that could result in the addition of phthalates into the product or material.

entire product, to avoid dilution of the concentrations of phthalates that can occur when the entire product is considered. The Statement of Policy remains in effect until further notice (except that the CPSC Test Method referenced in the Statement of Policy, CPSC-CH-C1001-09.2, has been superseded by CPSC-CH-C1001-09.3).

On August 12, 2011, the President signed H.R. 2715 into law. Among other things, H.R. 2715 amended section 108 of the CPSIA by adding a new section 108(d)(1) of the CPSIA which states, in part, that the phthalate content limits "shall not apply to any component part of a children's toy or child care article that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission." Pursuant to section 108(d)(3) of the CPSIA, we must promulgate a rule within one year of enactment of this revision to provide guidance on inaccessibility.

Phthalate content limits outlined in section 108 of the CPSIA became effective on February 10, 2009. However, the requirement for testing and certification for the phthalate content requirements is stayed until December 31, 2011 (76 FR 49288). Accordingly, third party testing and certification requirements for products subject to the phthalates content limits apply to products manufactured on or after January 1, 2012.

a. Proposed § 1109.13(a) – Generally

Proposed § 1109.13(a) would state that 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 certifier is provided with a copy of the original test results obtained from the third party conformity assessment body or a component part certificate.

We received no comments directly related to proposed § 1109.13(a). On our own initiative, we have finalized this section with two changes. We broadened the first sentence to

clarify that any certifier, not just a finished product certifier, can rely on component part testing of children's toys or child care articles for phthalate content. We also amended the end of the sentence that required a finished product certifier to be provided a copy of the original test results obtained from a third party conformity assessment body. This statement is duplicative of the documentation requirements already set forth in § 1109.5(g) of the final rule. Accordingly, this section now states that a certifier can rely on component part testing of appropriate component parts of a children's toy or child care article for phthalates provided that the requirements for component part testing in § 1109.5 are met.

b. Proposed § 1109.13(b) – Component part test reports

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 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.

We received no comments on proposed § 1109.13(b). However, on our own initiative, we deleted this section from the final rule because it is duplicative of other regulations and the general requirements for component part testing in § 1109.5 of the final rule. For example, the fact that a certification to the phthalate limit for children's toys and child care articles must be based on testing conducted by a third party conformity assessment body is already a requirement pursuant to section 14(a)(2) of the CPSA and part 1107, published elsewhere in this *Federal Register*. The fact that a finished product certifier can rely on passing test reports or a certification of one or more component parts of a consumer product to certify a finished product

is provided for in §§ 1109.5(a) and 1109.5(i) of the final rule. Finally, documentation requirements for reliance on test reports or certifications are already set forth in § 1109.5(g) of the final rule.

c. Proposed § 1109.13(c) – Component part certificates

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 samples that are 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 supplier and, if different, the component part's manufacturer.

We received no comments on proposed § 1109.13(c). On our own initiative, however, we deleted this section from the final rule because it is duplicative of other regulations and the general requirements for component part testing in § 1109.5 of the final rule. For example, the fact that a finished product certifier can rely on a component part certificate for one or more component parts of a consumer product to certify a finished product is provided for in §§ 1109.5(a) and 1109.5(i) of the final rule. The fact that a certification to the phthalate limit for children's toys and child care articles must be based on testing conducted by a third party conformity assessment body is already a requirement pursuant to section 14(a)(2) of the CPSA and part 1107, published elsewhere in this *Federal Register*. The requirement that the tested component part samples on which certification is based must be identical in all material respects

to the component part(s) used in the finished product is required by section 14(a)(2) of the CPSA and § 1109.5(a)(2) of the final rule. Documentation requirements for reliance on another party's test reports or certificates are already set forth in § 1109.5(g) of the final rule. Further, as described in response to Comment 21 in section II.C.5.h.(3) of this preamble, we deleted all requirements for the contents of certificates from the final rule. All certificate content requirements are set forth in section 14(g) of the CPSA and our regulation at 16 CFR part 1110. Finally, traceability requirements for all component parts are set forth in §§ 1109.4(m) and 1109.5(f) of the final rule.

d. Proposed § 1109.13(d) – Certificates for the finished product

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

We received several comments regarding certificate requirements for component parts, which are summarized in Comment 21 in section II.C.5.h.(3) of this preamble. As set forth in response to Comment 21, we decided to delete all content requirements for certificates, to avoid duplication or inconsistency in content requirements that have already been codified in 16 CFR part 1110. Accordingly, we deleted proposed § 1109.13(d) from the final rule. All certificate content requirements are set forth in section 14(g) of the CPSA and our regulation at 16 CFR part 1110.

4. Proposed § 1109.14 – Composite part testing

Composite part 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.

a. Proposed § 1109.14(a) – Paint and other surface coatings

Proposed § 1109.14(a) (renumbered to § 1109.21(a) in the final rule) 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, as described in proposed § 1109.14(c). Testing and certification of composite paints must comply with proposed § 1109.11.

(Comment 42) – One commenter stated that many manufacturers have multiple paint colors that are mixed from base colors and that testing all marketed colors for lead, including custom colors, imposes a hardship. The commenter said that if each of the base colors complied with the 90 parts per million lead in paint standard, then all of the resulting colors would also meet the standard. The commenter stated that it would be useful if the final rule specifically allowed manufacturers to certify all of their paint colors on the basis of tests on the base colors only, provided that there is no contamination in the manufacturing process that could cause the paint colors to violate the standard.

(Response 42) – The commenter is correct that if each base paint complies with the standard, then the final mixed paints will comply with the standard, provided there is no contamination in the manufacturing process. The constituent components of paint may be considered component parts. If each constituent component complies with the lead in paint standard, then any combination of those components will also be compliant. In the commenter's example, if the constituent components are tested or certified, those test results and certificates

can be used as the basis for issuing test reports or certificates for any paint that is a combination of those constituent components.

To make this explicit, we added the following language to § 1109.21 (a):

> A certificate may be based on testing each component part of the paint according to the requirements of § 1109.11 and certifying that each component part in the mixture individually complies with the lead in paint limit or other paint limit.

(Comment 43) – Some commenters noted that the effect of composite testing is to lower the acceptable lead–in–paint level in a component to a very small parts per million value. In other words, because composite testing considers all the lead in the composite to be in each component part of the composite, composite testing may not be useful where the component parts contain significant, but permissible, levels of lead. One commenter considered this a "gamble." The commenters recommended that the 90 ppm limit be applied to composite samples. One commenter based this recommendation on an argument that lead poses a minimal risk.

(Response 43) – In composite testing, different paint samples are tested together. The test result received represents the total chemical content (lead in paint in this case) in the mixture. The total chemical content is completely allocated to each paint in proportion to the composite. If the computation of total lead divided by the weight of each paint does not exceed the lead–in–paint limits, then no paint in the mixture exceeds the lead content limits. If this computation exceeds the lead limits, it still may be possible that no paint in the composite individually exceeds the lead limit. This is especially likely if the paint with the largest proportion in the composite has some lead and there are only small amounts of other paints in the composite.

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 content. Assume the doll has three different paints, A, B, and C. Composite testing of a mixture of 50%A, 30% B, and 20% C are tested for lead content. The lead content of the composite is 40 ppm. When the total lead content is applied to each paint, the potential concentration of lead in each paint is the measured amount divided by the percentage of the composite, or:

- Potential lead content of paint A = 40 ppm/50% or 80 ppm.
- Potential lead content of paint B = 40 ppm/30% or 133 ppm.
- Potential lead content of paint C = 40 ppm/20% or 200 ppm.

In this example, because both paints B and C could potentially contain more than 90 ppm lead, more testing is needed to determine if this is actually the case.

We disagree with the commenter's characterization of composite testing as a "gamble." Composite testing is a way to screen several paints quickly and less expensively than separate tests for each paint. If the composite does not meet the lead limits, then according to the rule, ". . . additional testing would be required to determine which of the paints, . . . if any, fail to meet the applicable limit." The commenter's suggestion that 90 ppm be retained for the composite sample would not comply with the law because the composite might have less than 90 ppm lead, but some of the individual paints (that could be used on products or component parts) in the composite might exceed 90 ppm.

We have finalized proposed § 1109.14(a) with several changes. On our own initiative, we created a new Subpart C for composite testing so that Subpart B is for regulations about specific consumer products or chemicals, and we renumbered this section to § 1109.21(a). We also shortened the title of this section to "Paint" and removed "and other surface coatings," because "paint" is a defined term in § 1109.4(j) that includes other surface coatings. In the first

sentence, we broadened the reference to "testing parties" to include both "certifiers and testing parties," to acknowledge and clarify that certifiers can also be testing parties. Also in the first sentence, we revised the phrase "parties may test a combination of different paint samples" to "parties may procure tests conducted on a combination of different paint samples" to clarify and emphasize that certifiers and testing parties for children's products must procure tests from a third party conformity assessment body. As set forth in the response to Comment 42, we added a sentence to this section to clarify the use of composite testing of paints to certify a product. Finally, we clarified that the testing and certification of composite paints must meet the general requirements for component part testing set forth in § 1109.5 and the requirements for component part testing of paints set forth in § 1109.11.

b. Proposed § 1109.14(b) – Component parts

Proposed § 1109.14(b) (renumbered to § 1109.21(b) in the final rule) would allow a third party conformity assessment body to test a combination of component parts so long as the third party conformity assessment body follows procedures ensuring that no failure to comply with the content limits will go undetected, as described in proposed § 1109.14(c). 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.

We did not receive any comments on proposed § 1109.14(b). On our own initiative, however, we made several changes in finalizing this section, in addition to renumbering. We revised the opening sentence to clarify who is responsible for procuring third party testing to state that "[a] certifier or testing party may procure tests conducted on a combination of component parts for compliance with chemical content limits so long as test procedures are

followed to ensure that no failure to comply with the content limits will go undetected . . .." We removed "third party conformity assessment bodies" from the opening sentence and replaced it with "[a] certifier or testing party," because this rule puts the responsibility for ensuring that a certification is based on appropriate test methods and protocols on the party procuring testing. Consistent with this fact, we emphasized that certifiers and testing parties may "procure tests," because they must rely on a third party conformity assessment body to conduct certification testing for children's products. We clarified that composite part testing for lead content must comply with the general rules for component part testing in § 1109.5 as well as the requirements for component part testing of lead content in § 1109.12. We made this same clarification for phthalate testing, such that composite part testing for phthalate content must comply with the general rules for component part testing in § 1109.5 as well as the requirements for component part testing of phthalate content in § 1109.13.

c. Proposed § 1109.14(c) – How to evaluate composite part testing

Proposed § 1109.14(c) (renumbered to § 1109.21(c) in the final rule) would state that when using composite testing, only the total amount or percentage of the target chemical is determined instead of the amount 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.

We received no comments on this proposed definition. However, because we have renumbered the provisions that were proposed as subpart B into a new subpart C, we have renumbered it as § 1109.21(c).

E. Miscellaneous Comments

(Comment 44) – One commenter urged us to conduct a full cost–benefit analysis of both the component testing rule and the testing and labeling rule.

(Response 44) – While we could have conducted a cost–benefit analysis, in the case of the component part testing rule, such an analysis would have little value. The component part testing rule gives manufacturers with a lower cost alternative for meeting the testing and certification requirements of section 14 of the CPSA. If manufacturers do not find that component part testing reduces their costs, they are free to rely solely upon tests conducted on the finished product.

(Comment 45) – One commenter stated that implementation of the proposed rule would end the use of recycled materials in children's products. The commenter stated that it was unnecessary for safety reasons and not environmentally "friendly."

(Response 45) – We acknowledge that the 100 ppm lead content limit in section 101 of the CPSIA could result in reduced use of recycled materials in children's products. This is because the lead content of general use products can be higher than the amount allowed for children's products. Therefore, manufacturers of children's products may need to refrain from using recycled materials to avoid the possibility that the lead content exceeds the limits established by section 101 of the CPSIA. However, the lead limits were established by the CPSIA and so any changes to those limits must occur by statute rather than by regulation.

(Comment 46) – One commenter stated that the imposition of regulating each part of a particular product at the level before the final piece is completed made little sense and that safety issues should be dealt with at the finished product level. The commenter felt that because it is up to the manufacturer of a finished product to ensure its safety, it would be unnecessary and cumbersome for a government entity to micromanage each component part of that product. The commenter felt that while component part regulation of simpler products, such as children's toys, may be possible, component part regulation of more complex products would be senseless and a very difficult task. The commenter asserted that we should be concerned only with the finished product's compliance with the applicable standard. How the product was produced should be of lesser importance. The commenter predicted that such a focus on finished product compliance would force those who run businesses and commerce to compete and innovate to achieve the mandatory result. The commenter concluded by suggesting that the CPSC should not over regulate and thereby miss the mark of ensuring a safe toy for children.

(Response 46) – Finished product certifiers are responsible for the finished product's compliance with applicable product safety rules. Finished product certifiers include domestic manufacturers and importers.

In some cases, component part testing, while optional, may be more economical than finished product testing. For example, assume that a manufacturer makes 10 different toy cars, and the toy cars use the same metal axles. Component part testing of the metal axles for their compliance with the lead limit for children's product could result in testing only the metal axles rather than testing the metal axles 10 times (once with each type of toy car). Therefore, the final rule gives finished product certifiers the option to take advantage of component part testing, provided that the testing follows 16 CFR parts 1107 and 1109. However, we do not require

component part manufacturers to test component parts as participation is voluntary. Finished product certificates always may be based on testing the finished product. Even when a regulation requires that tests be performed on a per part basis, such as lead content in children's products, finished products can be disassembled for testing purposes, if that is more efficient for a particular product.

(Comment 47) – One commenter noted that a publisher's ordinary books may have varying titles and authorial content, but they are all made with the same materials in the same manner. The commenter asserted that the differences between ordinary books are not material to compliance with the applicable rules. The commenter suggested relying on component part certification for all children's paper–based printed products manufactured using tested component materials. The commenter said a publisher with a reasonable testing program that publishes products without material changes could rely on the component certifications for all materials published within a 2–year period.

(Response 47) – Pursuant to section 14(i)(5)(A)(i) of the CPSA, as amended by H.R. 2715, third party certification testing no longer applies to ordinary books or to ordinary paper-based printed materials. The exception does not apply to non–paper components like metal or plastic parts, or to accessories that are not part of the binding and finishing materials. The exception also does not apply to books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book. Thus, it is unnecessary for us to address the commenter's concerns as they relate to ordinary books and ordinary paper-based printed materials. With regard to the non-excepted products, we agree that component part testing of books for chemical content can be used in the manner described by this commenter. As long as

all of the inks and other component parts of a book meet all applicable requirements, the printed and assembled book will meet the requirements as well. As for the 2-year testing interval for nonexcepted children's books, as suggested by the commenter, the testing interval is subject to the children's product periodic testing provisions of 16 CFR part 1107.

(Comment 48) – One commenter suggested that final testing and certification should defer to the Occupational Safety and Health Administration (OSHA)-designated Nationally Recognized Testing Laboratory (NRTL) certification program. The commenter added that this program determines products certified by the NRTL, because they are manufactured and distributed for consumer use, and they are *per se* compliant with the proposed testing and certification rules. The CPSC would still maintain its authority to exercise recall, civil penalty, and other authorities, if violations are found, the commenter asserted.

(Response 48) – Pursuant to section 14(a)(3)(C) of the CPSA, we have chosen to designate accrediting bodies that are full-member signatories to the International Laboratory Accreditation Cooperation–Mutual Recognition Arrangement (ILAC-MRA) to conduct third party testing. Given that children's products intended for the U.S. market are manufactured in nations throughout the world, we decided to avoid designating accreditation programs or entities that are recognized only in a specific region, nation, or locality. The reasons for this are: (1) to keep the program as simple as possible for use by manufacturers, private labelers, importers, testing laboratories, and other interested parties; (2) to establish uniform requirements, regardless of location; (3) to establish a program that is manageable within agency resources; and (4) to maintain a degree of consistency in the procedures used by the designated accrediting bodies.

Moreover, the commenter appears to misstate testing requirements. Consumer products are not tested for whether they are compliant with the testing and certification rule (*i.e.*, parts

1107 and 1109); rather, consumer products are tested for compliance with applicable rules, bans, standards, and regulations that the CPSC enforces. Moreover, section 14(i)(2)(B)(i) of the CPSA requires such testing periodically and when there has been a material change. Therefore, continued testing is required by the statute and "*per se* conformance" with the applicable product safety rules is not allowed. Additionally, section 14(a) of the CPSA requires manufacturers (including importers) to certify that their products comply with the applicable product safety rules. This responsibility cannot be delegated to another party, such as a certification body.

The qualifications of testing laboratories performing certification tests are outside the scope of this final rule. Such qualifications are addressed in the various notices of requirements that we have published pursuant to section 14(a)(3) of the CPSA.

Finally, we acknowledge that recently enacted H.R. 2715 requires us to seek public comment on "opportunities to reduce the cost of third part testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation." One topic that H.R. 2715 requires us to address pertains to "the extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer product safety rules, bans, standards, or regulations applicable under [the Consumer Product Safety Act]." Elsewhere in this issue of the *Federal Register*, we have published a notice inviting public comment on the issues identified in H.R. 2715, so the commenter's argument would be raised and addressed, more appropriately, in that proceeding. We note, however, that very few products covered under the OSHA-designated Nationally Recognized Testing Laboratory certification program would be children's products for which third party testing would be required. Moreover, products that are subject to the OSHA certification program would likely be covered by CPSC regulations, if at all, for which

the only requirement is a General Conformity Certificate based on a reasonable testing program. OSHA certification testing may be a sufficient basis for such certifications depending upon the product and the type of testing involved. Given that the CPSC does not have jurisdiction over products when the risks of injury associated with the consumer product could be eliminated or reduced to a sufficient extent by the actions of OSHA, there may be very little overlap between a particular product's results under OSHA's testing program and any CPSC-required testing.

(Comment 49) – One commenter said that it should be unnecessary for the manufacturer or private labeler of a finished children's product to ensure that every certificate (notably component part or materials testing certificates) required under section 102 of CPSIA accompanies the product or shipment of products and is furnished to each distributor or retailer of the product.

(Response 49) – Section 14(g)(3) of the CPSA requires that a GCC or a CPC accompany the applicable product or shipment of products covered by the same certificate, and it also requires that a copy of the certificate be furnished to each distributor or retailer of the product. We do not require component part certificates to accompany the finished product, although testing parties and certifiers must provide such documentation to a certifier relying on the documentation to issue a certificate, and must provide such documentation to the CPSC, upon request.

(Comment 50) – One commenter stated that the final rule should require adequate product design hazard review, both before introduction of products into commerce in the United States and, where appropriate, as an element of remedial action plans.

(Response 50) – This comment is outside the scope of 16 CFR part 1109 because product design hazard review may not be appropriate for all components, and neither the proposed, nor

final rules on component part testing addresses remedial action plans. Remedial action plans are discussed in the rulemaking for 16 CFR part 1107, and so we address this comment in that rulemaking.

(Comment 51) – One commenter said that testing requirements for lead and the imposition of penalties on companies that violate the lead standards would reduce the incidence of lead poisoning. The commenter, however, did not provide any additional comment on the proposed rule.

(Response 51) – The requirements limiting lead content in children's products (section 101 of the CPSIA) and the imposition of penalties for violations of those requirements are beyond the scope of this rule.

(Comment 52) – A commenter disagreed with recent notices of requirements that we issued regarding the flammability standards for carpets and rugs (16 CFR parts 1630 and 1631) and vinyl plastic film (16 CFR part 1611), which considered a standard of general application to all consumer products in a category to be a "children's product safety rule" for purposes of the CPSIA. *See* 75 FR 42315 (July 21, 2010) and 75 FR 42311 (July 21, 2010), respectively. The commenter contended that a standard of general application to all consumer products in a category should not be considered a "children's product safety rule" for purposes of the CPSIA. The commenter expressed the belief that such an interpretation will expand testing burdens in an unwarranted way, posing difficulties for all participants in the supply chain and potentially resulting in the elimination of some products from the children's product category due to added test costs.

(Response 52) – The question of which rules constitute children's product safety rules is beyond the scope of this rulemaking. This rule addresses the requirements and conditions for

component part testing, and it does not address whether a particular safety standard constitutes a children's product safety rule.

(Comment 53) – One commenter suggested that the testing costs could be reduced by reducing the number of components that must be tested. The commenter suggested that this could be done by expanding the number of materials for which testing for phthalate content is not required. Another commenter pointed out that inaccessible components are exempted from the lead content requirements. The commenter stated that, using the same logic, inaccessible components also should be exempted from the phthalate requirements.

(Response 53) – The question of which materials require testing for phthalate content is beyond the scope of this rulemaking. This rule addresses the requirements and conditions for component part testing, and it does not address section 108 of the CPSIA, which contains the requirements for phthalate content.

We acknowledge, however, that recently enacted H.R. 2715 contains a provision excluding inaccessible component parts from the phthalate prohibitions. The legislation requires us to promulgate regulations with respect to the inaccessible phthalates section or to adopt a guidance document comparable to that for lead. We will address such matters in a separate proceeding.

(Comment 54) – One commenter suggested that wet chemistry should not be considered the only retest method if a composite sample fails a test. X-Ray fluoroscopy could be a valid method for lead and heavy metals, and Fourier transform infrared spectroscopy could be a valid method for phthalates in determining which component or components caused the failure, the commenter observed. The commenter urged us to allow the use of XRF technology, following the method in ASTM F2853 for testing small quantities of paints and coatings where there is an

insufficient amount of the paint or other surface coatings to using the method that would normally be recommended.

(Response 54) – Section 1109.21(c) of the final rule does not specify what type of testing is required to determine which component parts have not met the concentration limits of the applicable rules. Specifying alternate test methods for determining the lead content in paint and surface coatings and for phthalate concentrations is beyond the scope of this rulemaking.

We do note, however, that on April 5, 2011, we published in the *Federal Register* a notice of requirements for accreditation of third party conformity assessment bodies for lead in paint (76 FR 18645). In that notice of requirements, the use of ASTM F2583–10, "Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogeneous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams," is allowed for testing the lead content in paint.

III. 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 final rule contains the Commission's 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 in section 14 of the CPSA. As such, the final 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.

IV. 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 RFA further requires agencies to consider comments they receive on the initial regulatory flexibility analysis and prepare a final regulatory flexibility analysis describing the impact of the final rule on small entities and identifying alternatives that could reduce that impact. *Id.* 604. This section summarizes CPSC staff's final regulatory flexibility analysis for the final rule on component part testing. (CPSC staff's final regulatory flexibility analysis can be found at Tab B of staff's briefing package.)

A. Reason for Agency Action and Objective of the Final Rule

Some testing can be done more efficiently on component parts of a product rather than on the finished product itself. This is especially true for tests for the chemical content (*e.g.*, lead or phthalate content) of a component part. The final rule establishes the conditions and requirements that must be met for a finished product certifier (the domestic manufacturer or importer) of a consumer product to rely upon tests conducted on component parts of the finished product as a basis for issuing a finished product certificate. It also describes the conditions and requirements that must be met for a finished product certifier to rely upon finished product testing conducted by or certificates issued by other parties.

In the absence of a rule allowing for component part testing, each component part of a children's product would have to be tested each time the manufacturer had to certify or periodically test the product, even if the same component part were used and tested in other products. The final rule allows the finished product certifier to rely upon tests conducted on component parts to certify that finished products in which the component parts are used comply with the applicable safety rules. Therefore, component part testing allows some testing costs to be spread over more units of finished products. The final rule also describes the conditions and requirements that must be met for a finished product certifier to rely upon finished product testing procured by or certificates issued by other parties that can reduce the cost of testing a product that is imported by more than one importer. This can reduce significantly the cost of testing consumer products for compliance with applicable consumer product safety rules, bans, standards, and regulations.

B. Comments on the Initial Regulatory Flexibility Act

We received three comments regarding the initial regulatory flexibility analysis.

(Comment 55) – One commenter noted that, in estimating the number of firms that could be impacted by the proposed rule, the book publishing industry (NAICS code 511130) and printing industry (NAICS code 323117) were not included; thus, the commenter recommended their inclusion for the final Regulatory Flexibility Analysis.

(Response 55) – We acknowledge that the initial regulatory flexibility analysis inadvertently omitted these industries. However, the recently enacted H.R. 2715 exempts ordinary books and ordinary printed materials from the third party testing requirements, so the commenter's concern no longer applies.

(Comment 56) – One commenter stated that the initial regulatory flexibility analysis was "flawed and self–justifying." The commenter asserted that a "best case" scenario was used to justify the rule. The commenter claimed that the requirements that the rule imposes to use component testing, including the recordkeeping burdens and legal risks, could make the rule hard to use. Therefore, the commenter asserted, the rule could end up providing little, if any, relief to small businesses. Another commenter echoed these comments, stating that some aspects of the proposed rule would reduce the costs of testing for some products, but the proposed rule's restrictions and conditions would prevent the rule from providing material relief to small and medium–sized businesses that manufacture or import thousands of different products using tens of thousands of components that are consumed at very small volumes.

(Response 56) – The purpose of a regulatory flexibility analysis is to describe the impact of a rule on small entities. The intent of the component part testing rule is to provide manufacturers and private labelers the option of certifying conformity with some safety rules based upon certification or testing of component parts. In many cases, this option has the potential for reducing testing costs, especially if the same component part is used in more than one finished product. However, to ensure that the testing and certification requirements of the CPSIA are not undermined by allowing component part testing, there are some conditions on the use of component testing, including the traceability and recordkeeping requirements. We acknowledge that, in some cases, these requirements may reduce or even eliminate the advantages that the component part testing option offers. In these cases, the manufacturer or private labeler always has the option to certify their products based upon tests of the finished product.

(Comment 57) – One commenter stated that while some suppliers might provide certificates or third party testing, several types of components are not likely to be tested voluntarily by the suppliers. These include:

- Low-volume components;
- components made in small lots;
- components made by a small supplier (*e.g.*, many fabrics); and
- components that derive only a tiny percentage of revenue from regulated products; or that cater principally to other industries.

The commenter asserted that the CPSC's logic appeared to be that if the CPSC can be certain that some certificates will be widely available, then all certificates will be widely available. Another commenter stated that they had surveyed their suppliers and found little interest in providing the testing required for children's products.

(Response 57) – The initial regulatory flexibility analysis did not assume that suppliers would certify all component parts. Where suppliers voluntarily certify their products or provide testing reports, component part testing has the potential to reduce significantly the testing costs for manufacturers of finished products. However, the rule does not require suppliers to certify or provide third party test results on their products. We agree that some suppliers, such as the ones that supply the products in the above list, might choose not to certify their products or provide the third party testing results.

C. Description of the Number of Small Entities to which the Final Rule Will Apply

The final rule applies to any domestic manufacturer or importer of consumer products who must issue a finished product certificate, pursuant to 16 CFR part 1110, who uses component part testing or finished product testing or certification by another party as the basis

for certification. The regulatory flexibility analysis for the final rule on testing and labeling pertaining to certification indicates that there were about 250,000 firms classified in industries, according to the North American Industrial Classification System (NAICS), that could manufacture or import children's products that could be subject to a consumer product safety rule, ban, standard, or regulation. Of these, more than 91 percent would be classified as a small business, according to the classification standards established by the U.S. Small Business Administration. Additionally, there are more than 4,700 small firms classified in industries that are unlikely to include children's products but could manufacture or import other consumer products subject to a product safety rule, ban, standard, or regulation. These include manufacturers of household appliances, lawn and garden equipment makers, manufacturers of fireworks, and firms that could manufacture or use architectural glazing materials. However, these are over estimates of the number firms to which the rule would apply.

Many of the NAICS categories included in the analysis are broad and include products that are not covered by any consumer product safety rules. Most firms included in the estimates were retailers or wholesalers and not manufacturers. Retailers or wholesalers that import consumer products would be responsible for ensuring that the product was tested properly and certified; but many retailers and wholesalers likely obtain all of their products from domestic manufacturers or wholesalers, and therefore, would not be impacted directly by the final rule. Finally, not all of the manufacturers and importers of consumer products that are subject to consumer product safety rules will use component part testing in certifying the products.

In addition to the firms discussed above, the U.S. Census Bureau estimates that there are more than 600,000 nonemployer businesses classified in the same NAICS categories. Nonemployer businesses are generally very small sole proprietorships with average receipts of

about $55,000. Very little is known about the nonemployer businesses, but an unknown number could be manufacturers or importers of consumer products subject to a consumer product safety rule, ban, standard, or regulation.

The final rule also applies to manufacturers or wholesalers of component parts that may be used in consumer products, who voluntarily provide test reports or certify their products as complying with one or more consumer product safety rules. Manufacturers of clothing textiles, paints and coatings, buttons and other fasteners, and plastic materials and resins could certify their products voluntarily or provide third party test results to their customers. The 2007 Economic Census showed that there were 5,220 establishments that were engaged in manufacturing these materials or components.[4] However, not all of these establishments are expected to test or certify their products.

D. Projected Recordkeeping and Compliance Requirements

Component part testing is voluntary[5] for manufacturers (including importers) of consumer products and for manufacturers and suppliers of components that might be used in consumer products. The only firms that are expected to use component part testing are firms that determine that it would be advantageous for them to do so. This could include manufacturers of consumer products who might be able to reduce their testing costs by using component part testing and manufacturers or suppliers of component parts who believe that it would be to their advantage to do so, perhaps because it provides a marketing advantage over competitors (or

[4] Based on the 2007 Economic Census establishment data for the following NAICS codes: 313, 325211, 325510, and 339993. Obtained from http://factfinder.census.gov/ on 30 March 2010.

[5] While testing and certification of component parts is voluntary, some statutes and/or regulations require that an applicable chemical limit be measured by component part. For example, the lead content requirement is now 100 ppm per component part. Although the specific lead measurement is by component part, component part testing under this rule is still voluntary. A finished product certifier could supply samples of finished product to a third party conformity assessment body, who would measure the lead content in each applicable sample by component part.

because competitors are doing so). However, if a firm chooses to engage in component part testing, the final rule describes the conditions and requirements that must be met.

A manufacturer or supplier who tests a component part must ensure that the samples are collected and that the tests are performed according to the requirements in sections 14(a) and 14(i) of the CPSA. If the product is a children's product or a component to be used in a children's product, the testing must meet the requirements of 16 CFR part 1107, which includes requirements for the testing and certification of children's products, including requirements for third party testing. For both children's and non-children's products, any testing or certification must also meet any more specific rules, bans, standards, or regulations that are applicable to the product or component. A finished product certifier cannot rely upon component part product testing or finished product testing procured by another party unless the component parts or finished products are traceable to the parties who procured the tests. Firms using component part testing must exercise due care to ensure that no action or inaction subsequent to testing and before distribution in commerce has occurred that would affect the compliance of the component part, such as by contamination or degradation during the manufacturing process of the finished product.

A subassembly or even a finished product can be considered to be a component part for purposes of the final rule. Thus, the final rule allows a foreign manufacturer of a children's product to procure the required third party tests on the children's product and provide those test results to the importers of the product. The importers could rely upon the tests procured by the foreign manufacturer in issuing their own certificate for the product, provided that all of the requirements of the final rule have been met.

The final rule requires that the component part testing be documented, and if the testing is done by a manufacturer or supplier of a component part, this documentation must be provided to the finished product certifier. The required documentation or records are:

(1) identification of the component part or the finished product tested;

(2) identification of a lot or batch number, or other information sufficient to identify the component parts or finished products to which the testing applies;

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

(4) identification of the testing method(s) and sampling protocol(s) used;

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

(6) test reports that provide the results of each test on a component part or finished products, and the test values, if any;

(7) identification of the party that conducted each test (including testing conducted by a manufacturer, testing laboratory, or third party conformity assessment body and an attestation by the party conducting the testing that all testing of a component part or finished product by that party was performed in compliance with applicable provisions of section 14 of the CPSA, 16 CFR part 1107, or any more specific rules, bans, standards, or regulations;

(8) component part certificate(s) or a finished product certificate, if any;

(9) records to support traceability as defined in the draft final rule; and

(10) an attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure among other things, that the products, components, and raw materials were not handled, stored, or processed in a way that could affect the ability of the product to comply with all applicable rules.

All records must be maintained for five years. The records must be made available to the CPSC for inspection, upon request. The records do not have to be maintained in English, as long as the records in the original language can be provided to us immediately and can be translated into English within 48 hours of a request by us, unless a longer period is negotiated with CPSC staff.

The professional skills that would be required are the same that would be required to meet the requirements of the testing and labeling rule. Depending upon the specific product and the safety rules with which the component part manufacturer or supplier intends to test for compliance, people with special knowledge, such as engineers or chemists, may be needed to design and develop a testing program and to conduct the testing. Statistical skills or statistical consultants may be required to determine the testing frequency, sample size, and collection method for internal production testing and third party testing if the product is a children's product or the component part is for a children's product.

The final rule is not likely to have a significant adverse impact on a substantial number of small entities. As noted, component part testing is not mandatory. The only companies that are expected to engage in component part testing are companies that believe it will be advantageous to do so. Finished product manufacturers are expected to use component part testing if it lowers their testing costs. Although there will be some cost to manufacturers or suppliers of component parts who elect to engage in the voluntary testing of component parts, if the cost increase would have a significant adverse impact, it is unlikely that such firms would engage in or continue to engage in component part testing. Component part suppliers who engage in component part testing would be able to spread the cost of the testing over a higher production volume than finished product manufacturers. This would lower the cost of the testing per unit. At least some costs incurred by component part suppliers are likely to be passed on to the finished product manufacturers because finished product manufacturers are likely to be willing to pay more for a component part if it means that they do not have to test the component part themselves.

E. Steps Taken to Minimize Impact on Small Entities

The intent of the final rule is to reduce the impact of the testing and certification rule; thus, it is actually a step that the Commission has taken to reduce the impact of the testing and certification rule on manufacturers of finished products. It is not expected to have a significant adverse impact on a substantial number of small entities. Nevertheless, we made some changes to the rule that will reduce the economic impact further.

One change from the proposed rule is that the final rule does not require records to be kept in the English language. Instead, the final rule requires that an English translation of the records be provided to the CPSC upon request. Additionally, the records do not need to be maintained in the United States, as long as the records can be provided to us, either in hardcopy or electronically, upon request.

We also simplified the traceability requirements to require that traceability only has to be maintained back to the party who procured the testing results. For example, if a component part supplier, who is not the manufacturer of a component part, obtains testing results, a manufacturer of a finished product that uses that component part would have to maintain traceability only to the party who procured the testing, not to the manufacturer of the component part, as would have been required by the rule as proposed.

F. Alternatives Considered to the Final Rule

We considered alternatives to the final rule. These included: not issuing a final rule allowing for component part testing (*i.e.*, taking no action); not imposing any recordkeeping requirements; and eliminating the traceability requirements from the rule.

One alternative would be to end rulemaking concerning component part testing and not finalize the proposed rule. If this alternative were adopted, manufacturers potentially could use component part testing for lead content testing following the interim enforcement policy issued

on December 28, 2009 (74 FR 68593 – 68596). However, manufacturers could not rely upon testing procured by suppliers to establish compliance with other consumer product safety rules, bans, standards, or regulations (such as for compliance with limits on phthalate content or the limits on the heavy metal content in paints and surface coatings on toys). If the final rule were not finalized, importers of consumer products would not be able to rely upon testing procured by or certifications issued by the foreign manufacturers of the products.

We decided not to end the rulemaking because the final rule offers domestic manufacturers and importers options that have the potential to reduce the cost of testing and certifying consumer products, by spreading the cost of testing over more units of production and allowing certifiers of finished products to rely upon testing procured by or certificates issued by their suppliers. Moreover, manufacturers retain the option of submitting samples of finished products to testing laboratories to be evaluated for compliance with all applicable rules, bans, standards, and regulations. Therefore, the final rule allows manufacturers and importers of consumer products to select the option that is most advantageous to them.

We considered eliminating altogether—or reducing significantly—the recordkeeping and traceability requirements in the final rule. However, while eliminating these requirements could have reduced, somewhat, the costs associated with component part testing, we concluded that the recordkeeping and traceability requirements are needed to provide the finished product certifier with the information required by section 14(g) of the CPSA to certify the finished product, which includes the test results, the date and place where the product was tested, and the parties who conducted the testing. Moreover, many of the records required normally would be generated in the course of testing a product or component and reporting the results (*e.g.*, the test reports), which suggests that eliminating the requirements would not necessarily eliminate all of the

recordkeeping costs. Further, such documentation is required for the CPSC to investigate testing and certification failures when component part testing is used. Finally, the final rule allows the firms that are impacted significant flexibility in designing and maintaining the records. Generally, the rule requires specific information, but it does not specify the format in which the information must be maintained, as long as the information is provided to parties who require it, such as finished product certifiers and the CPSC, if it is requested.

V. Paperwork Reduction Act

The final 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). In a May 20, 2010, *Federal Register* notice regarding the proposed rule (75 FR 28208, 28217–18), we described the information collection and the annual reporting burden. Our estimate included the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

We invited comment 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.

We received several comments about the burden estimates contained in the proposed rule.

(Comment 58) – Several commenters stated that the estimates for recordkeeping time and expense were greatly underestimated. One commenter asserted that the proposed rule would impose more extensive requirements than the requirements that are contained in the interim enforcement policy, emphasizing that those requirements are extremely burdensome. The commenter stated that the proposed rule would impose specific and voluminous recordkeeping requirements. The commenter said that we should not require this information on every item, nor should we require companies to integrate multiple systems to compile the data, as long as companies, upon request, can provide reasonable data that is customary in a particular industry. Another commenter noted the burden associated with extracting all of the data that would be required by the proposed rule. The commenter pointed out that the data would come from several different record systems, some of which would have to be obtained manually. Moreover, the commenter remarked that the CPSC is unlikely to review the data, making the task unnecessarily burdensome, without any practical utility. The commenter, a large toy manufacturer, stated that it has several full-time staff who operate globally to manage their component testing process. Therefore, the commenter said that the 20,000 to 30,000 hours, or approximately 20 full-time employees, which we estimated would be needed to handle the paperwork and recordkeeping requirements of the component testing rule, is probably grossly underestimated. One commenter stated that it would be costly to extract the data required from multiple recordkeeping systems that have evolved over time. The commenter added that we envisioned extraction of the data to be easier than it is. One commenter stated that its company would probably have to open an office in Asia and expand its staff in the United States to manage the paperwork and recordkeeping required by the rule. The commenter expressed the

belief that complying with the component part testing rule at its company alone could require 20,000 hours, per annum.

(Response 58) – We acknowledge that we significantly underestimated the total cost burden of the recordkeeping requirements. We have increased our estimate of the recordkeeping burden of meeting the requirements in the final rule. To decrease the burden presented by the recordkeeping requirements, the final rule provides that records do not have to be kept in the United States—if they can be accessed by the CPSC—upon request. Also, records do not have to be maintained in English if they can be translated by the manufacturer in a timely manner.

Nevertheless, we believe that some commenters might have misunderstood aspects of the proposed recordkeeping requirements. Neither the proposed rule, nor the final rule, require a firm to develop a new system of records if: it has retained the information in a different set of records; can provide the required information to distributers and finished product certifiers; and is able to furnish it to the CPSC, upon request, as required by the rule.

Title: 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

Description: The scope of the final rule includes component part testing and certification, as well as testing and certification of a finished product by a party who is not required to do so by 16 CFR part 1110, such as a foreign manufacturer ("finished product supplier"). The final rule requires testing parties (parties that procure tests) and certifiers (both component part and finished product certifiers) to provide the following documentation to a certifier intending to rely upon such information to issue a certificate:

- identification of the component part or the finished product tested;

- identification of a lot or batch number, or other information sufficient to identify the component parts or finished products to which the testing applies;
- identification of the applicable rules, bans, standards, and regulations for which each component part or finished product was tested;
- identification of the testing method(s) and sampling protocol(s) used;
- date or date range when the component part or finished product was tested;
- test reports that provide the results of each test on a component part or finished product, and the test values, if any;
- identification of the party that conducted each test (including testing conducted by a manufacturer, testing laboratory, or third party conformity assessment body), and an attestation by the party conducting the testing that all testing of a component part or finished product by that party was performed in compliance with applicable provisions of section 14 of the CPSA, part 1107 of this chapter, or any more specific rules, bans, standards, or regulations;
- component part certificate(s) or finished product certificate(s), if any;
- records to support traceability as defined in § 1109.4(m); and
- an attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure compliance with the requirements set forth in § 1109.5(b).

Certifiers and testing parties must maintain this information for five years from the date of creation.

Records required to be maintained are similar to the records that a manufacturer would be required to develop and maintain under the final rule on "Testing and Labeling Pertaining to Product Certification" (which appears elsewhere in this issue of the *Federal Register*). Most of the records for children's products concern documentation of the test plan and test results for the component part or finished product, which would be required regardless of 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 because changes in the

component part or the sourcing of the component part would constitute a material change and trigger requirements for additional testing.

Based on the comments received, we revised the burden estimate that was set forth in the proposed rule on "Testing and Labeling Pertaining to Product Certification" and likewise, we revised the burden estimate for the component testing rule. A full discussion of the revised analysis appears in the final rule on "Testing and Labeling Pertaining to Certification," which is published elsewhere in this issue of the *Federal Register*. The estimate of the total recordkeeping burden consists of three components: (1) the number of products for which recordkeeping will be required; (2) the average number of hours, per product, that will be required to manage the recordkeeping; and (3) the hourly compensation rate to be used to estimate the cost of the recordkeeping. The final rule on "Testing and Labeling Pertaining to Certification" contains the following revised estimates, concluding that the total cost of recordkeeping associated with that rule is $ 197 million:

- 300,000 non-apparel children's products are covered by the final rule;
  - an average of 5 hours will be required for the recordkeeping associated with these products;
- approximately 1.3 million children's apparel and footwear products are covered by the final rule;
  - an average of 3 hours will be required for the recordkeeping associated with these products;
- Total hour burden = 5.4 million hours (300,000 x 5 hours plus 1,300,000 x 3 hours);
- Total cost of recordkeeping burden = $197 million (5.4 million hours x $36.43 per hour).

The component part rule will shift some testing costs and some recordkeeping costs to component part and finished product suppliers because some testing will be performed by these parties rather than by the finished product certifiers. However, a finished product certifier will

still be responsible for receiving records from component part and finished product suppliers and recording information on the finished product certificate. Thus, even if a finished product certifier could rely entirely on component part and finished product suppliers for all required testing, the finished product supplier would still have some recordkeeping burden. Therefore, although the component part testing rule is expected to reduce the total cost of the testing required by the testing and certification rule, it will lead to an increase in the recordkeeping burden for those who choose to use component part testing.

No clear basis exists for estimating the amount of testing that will be performed by component part and finished product suppliers; nor is it known how many component part and finished product suppliers will be willing to provide the required testing or conformity certificates. Likewise, there is no clear method for estimating the number of finished product certifiers who might conduct their own component part testing. In the preamble to the proposed rule (75 FR at 28218), we suggested that the recordkeeping burden for the component part testing rule could amount to 10 percent of the burden estimated for the testing and labeling rule. Although some comments suggested that the resulting estimates were too low, no commenter provided a better estimate or suggested a better method for estimating the burden. Moreover, because the estimate of the recordkeeping burden for the testing and labeling rule has been increased, using the same methodology used in the proposed rule, the estimates for the component rule also would increase. This may address the concern of the commenters who believed the estimate used in the proposed rule was too low.

Therefore, if we continue use to use the estimate that component part testing will amount to about 10 percent of the burden estimated for the testing and labeling rule, then the hour burden

of the component part rule would be about 540,000 hours. At $36.43 per hour, the total cost of the recordkeeping for the component part rule would be about $19.7 million.

Estimate Limitations: There are some limitations to the above estimates that warrant mentioning.

While the estimates of the number of products are more accurate than the original estimates, they are not based on a well-designed survey or comprehensive database. Additionally, the extent to which some products might be certified by multiple importers or are manufactured at different sites has not been established.

Recordkeeping for the flammability of children's sleepwear might be captured in the OMB submission on another rule, but the recordkeeping associated with the lead content rules should be captured here. However, no adjustment for this has been made because we have not tried to separate children's sleepwear from other apparel items.

The recordkeeping considered here is best thought of as the recordkeeping required by the testing and certification requirements of section 102 of the CPSIA. It would be impossible to separate the time associated with the initial certification from the time associated with periodic testing and documenting material changes, especially given that it often involves issuing a new certificate.

For finished goods manufacturers who also perform their own component testing, it is difficult to separate the recordkeeping burden associated with component part testing from the recordkeeping burden associated with the testing and labeling rule. This could lead to overestimates of the costs associated with the testing and labeling rule and possibly underestimates associated with the component part testing rule. Better estimates may be possible if the recordkeeping burden is reevaluated after the rules are finalized.

VI. 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.

VII. 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 preamble to the proposed rule indicated that we would make any final rule based on this proposal effective 180 days after the date of publication of a final rule in the *Federal Register*. The preamble to the proposed rule explained that 180 days should allow time for any product changes needed for testing of component parts and for implementation of the component part testing requirements.

We did not receive any comments regarding the effective date. However, we recognize that the stay of testing and certification requirements for lead content and phthalates in certain children's products expires on December 31, 2011. Accordingly, we want stakeholders to be able to take advantage of the efficiencies of component part testing or certification, as well as finished product testing or certification, without undue delay. While this rule does impose recordkeeping obligations, component part testing is voluntary. Therefore, the final rule will become effective on [insert date 30 days after date of publication in the **FEDERAL REGISTER**].

List of Subjects in 16 CFR Part 1109

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

Accordingly, 16 CFR part 1109 is added to read 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

Subpart A – General Conditions and Requirements

Sec.

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

Subpart C – Conditions and Requirements for Composite Testing

1109.21 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.

(a) 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.

(b) Component part manufacturers and suppliers may certify or test their component parts, but are not required to do so. Also, parties that are not required to test finished products, or to issue finished product certificates pursuant to part 1110 of this chapter, may do so voluntarily.

(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 of chemical content. Subpart C describes the conditions and requirements for composite testing.

§ 1109.2 Purpose.

The purpose of this part is to set forth the conditions and requirements under which passing component part test reports, certification of component parts of consumer products, or finished product testing or certification procured or issued by another party, can be used to meet, in whole or in part, the testing and certification requirements of sections 14(a) and 14(i) of the CPSA.

§ 1109.3 Applicability.

The provisions of this part apply to all manufacturers and importers who are required to issue finished product certifications pursuant to section 14(a) of the CPSA and part 1110 of this chapter and to procure tests to ensure continued compliance pursuant to section 14(i) of the CPSA. This part also applies to manufacturers and suppliers of component parts or finished products who are not required to test or certify consumer products pursuant to part 1110 of this chapter, but who voluntarily choose to undertake testing or certification.

§ 1109.4 Definitions.

The following definitions apply to this part:

(a) *Certifier* means a party 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, the component parts to be tested and the tests to be conducted may vary, depending on the applicable regulations and required test methods, if any.

(c) *Component part certifier* means a party who, although not required to do so pursuant to part 1110 of this chapter, voluntarily certifies the following as complying with one or more rules, bans, standards, or regulations enforced by the CPSC, consistent with the content requirements for certifications in part 1110 of this chapter:

(1) Component parts to be used in consumer products; or

(2) Finished products.

(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. Due care does not permit willful ignorance.

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

(i) *Identical in all material respects* means there is no difference with respect to compliance to the applicable rules, bans, standards, or regulations, between the samples to be tested for compliance and the component part or finished product distributed in commerce.

(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 963-08 (or any successor standard of section 4.3.5.2 of ASTM F 963-08 accepted by the Commission).

(k) *Testing party* means a party (including, but not limited to, domestic manufacturers, foreign manufacturers, importers, private labelers, or component part suppliers) who procures tests (either by conducting the tests themselves, when this is allowed, or by arranging for another party to conduct the tests), of 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. Testing laboratories and third party conformity assessment bodies are not testing parties under this definition.

(*l*) *Third party conformity assessment body* means a testing laboratory whose accreditation has been accepted by the CPSC to conduct certification testing on children's products. Only third party conformity assessment bodies whose scope of accreditation includes the applicable required tests can be used to test children's products for purposes of supporting certification pursuant to section 14(a) of the CPSA and testing to ensure continued compliance pursuant to section 14(i) of the CPSA.

(m) *Traceable* means the ability of a certifier to identify all testing parties of a component part of a consumer product or a finished product, including the name and address of each testing party and any party that conducted testing on the component part or finished product. Parties that conduct testing may include a manufacturer, a supplier, a testing laboratory,

or a third party conformity assessment body. Traceability extends to the component part of the product that was tested for compliance, such that if a subassembly is tested, that subassembly must be traceable, not each component part of the subassembly, if those parts were not individually tested for other rules, bans, standards, or regulations.

§ 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 subparts B and C of this part. 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 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.

(b) *Test Result Integrity*. A certifier or testing party must exercise due care to ensure that while a component part or finished product is in its custody:

(1) Proper management and control of all raw materials, component parts, subassemblies, and finished products is established and maintained for any factor that could affect the finished product's compliance with all applicable rules;

(2) The manufacturing process does not add or result in a prohibited level of a chemical from any source, such as the material hopper, regrind equipment, or other equipment used in the assembly of the finished product; and

(3) No action or inaction subsequent to testing and before distribution in commerce has occurred that would affect compliance, including contamination or degradation.

(c) *Limitation.* A certifier must not use tests of a component part of a consumer product for any rule, ban, standard, or regulation that requires testing the finished product to assess compliance with that rule, ban, standard, or regulation.

(d) *Test method and sampling protocol*. Each certifier and testing party must exercise due care to ensure that when it procures a test for use in meeting the requirements of sections 14(a) or 14(i) of the CPSA:

(1) All testing is done using required test methods, if any;

(2) Required sampling protocols are followed, if any; and

(3) Testing and certification follows the applicable requirements in sections 14(a) and 14(i) of the CPSA, and part 1107 of this chapter or any more specific rules, bans, standards, or regulations, used to assess compliance of the component part or finished product.

(e) *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.

(f) *Traceability*. A certifier must not rely on component part or finished product testing procured by a testing party or another certifier unless such component parts or finished products are traceable.

(g) *Documentation by certifiers and testing parties*. Each certifier and testing party must provide the following documentation, either in hard copy or electronically, to a certifier relying on such documentation as a basis for issuing a certificate:

(1) Identification of the component part or the finished product tested;

(2) Identification of a lot or batch number, or other information sufficient to identify the component parts or finished products to which the testing applies;

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

(4) Identification of the testing method(s) and sampling protocol(s) used;

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

(6) Test reports that provide the results of each test on a component part or finished product, and the test values, if any;

(7) Identification of the party that conducted each test (including testing conducted by a manufacturer, testing laboratory, or third party conformity assessment body), and an attestation by the party conducting the testing that all testing of a component part or finished product by that party was performed in compliance with applicable provisions of section 14 of the CPSA, part 1107 of this chapter, or any more specific rules, bans, standards, or regulations;

(8) Component part certificate(s) or finished product certificate(s), if any;

(9) Records to support traceability as defined in § 1109.4(m); and

(10) An attestation by each certifier and testing party that while the component part or finished product was in its custody, it exercised due care to ensure compliance with the requirements set forth in subparagraph (b) of this section.

(h) *Effect of voluntary certification.* (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. All certificates must contain all of the information required by part 1110 of this chapter.

(2) Any party who elects to certify compliance of a component part or a finished product with applicable rules, standards, bans, or regulations, must assume all responsibilities of a manufacturer under sections 14(a) and 14(i) of the CPSA and part 1107 of this chapter with respect to that component part or finished product's compliance to the applicable rules, standards, bans, or regulations.

(i) *Certification by finished product certifiers.* (1) A finished product certifier must exercise due care in order to rely, in whole or in part, on one or more of the following as a basis for issuing a finished product certificate:

(i) Finished product certificate(s) issued by another party;

(ii) Finished product test report(s) provided by another party;

(iii) Component part certificate(s); or

(iv) Component part test report(s).

(2) If a finished product certifier fails to exercise due care in its reliance on another party's certifications or test reports, then the Commission will not consider the finished product certifier to hold a certificate issued in accordance with section 14(a) of the CPSA. Exercising due care in this context means taking the steps that a prudent and competent person in the same line of business would take to conduct a reasonable review of another party's certification or test reports, and to address any concern over their validity, before relying on such documents to issue a finished product certificate. Due care does not permit willful ignorance. Such steps may vary according to the circumstances.

(3) A finished product certifier must not rely on another party's certifications or test reports unless the finished product certifier receives the documentation under paragraph (g) of this section from the certifier or testing party. The finished product certifier may receive such documentation either in hard copy or electronically, or access the documentation through an Internet website. 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.

(j) *Recordkeeping requirements*. Each certifier or testing party must maintain the documentation required in paragraph (g) of this section for five years, and must make such documentation available for inspection by the CPSC upon request, either in hard copy or electronically, such as through an Internet website. Records may be maintained in languages other than English if they can be:

(1) Provided immediately by the certifier or testing party to the CPSC; and

(2) Translated accurately into English by the certifier or testing party within 48 hours of a request by the CPSC or any longer period negotiated with CPSC staff.

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

§ 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 4.3.5.2 of ASTM F 963-08 or any successor standard of section 4.3.5.2 of ASTM F 963-08 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.

(b) *Requirement*. For each paint used on the product:

(1) Unless using the test method ASTM F 2853-10 to test for lead in paint, 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; and

(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 for testing either in liquid form or in the form of a dried film of the paint on any suitable substrate.

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

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 the requirements in § 1109.5 are met, and the determination of which, if any, parts are inaccessible pursuant to section 101(b)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and part 1500.87 of this chapter is based on an evaluation of the finished product.

§ 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.

Subpart C – Conditions and Requirements for Composite Testing

§ 1109.21 Composite testing.

(a) *Paint.* In testing paint for compliance with chemical content limits, certifiers and testing parties may procure tests conducted on a combination of different paint samples so long as test procedures are followed to ensure that no failure to comply with the lead limits will go undetected (see paragraph (c) of this section). A certificate may be based on testing each

component part of the paint according to the requirements of § 1109.11 and certifying that each component part in the mixture individually complies with the lead in paint limit or other paint limit. Testing and certification of composite paints must also comply with §§ 1109.5 and 1109.11.

(b) *Component parts*. A certifier or testing party may procure tests conducted on a combination of component parts for compliance with chemical content limits so long as test procedures are followed to ensure 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 also comply with §§ 1109.5 and 1109.12. Testing and certification of composite component parts for phthalate content must also comply with §§ 1109.5 and 1109.13.

(c) *How to evaluate composite testing*. When using composite 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: October 21, 2011

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Todd A. Stevenson,
Secretary, Consumer Product Safety Commission

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